



**PURCHASING DIVISION  
CITY OF WORCESTER  
ROOM 201, CITY HALL  
WORCESTER, MA 01608  
(508) 799-1220**

**ISSUANCE DATE: March - 2023**

**Christopher J. Gagliastro, Purchasing Director**

**INVITATION FOR BIDS  
BID #: CR-7948-1-W3**

**AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER  
NOTICE TO PROPOSERS**

**IFB TITLE: Property Lease – Chester Street Water Tank / DPWP**

All bids are subject to the terms, conditions, and specifications herein set forth:

1. The City of Worcester, through the Department of Public Works & Parks (“DPWP”) is offering for lease the real property located at 175 Chester Street (See Appendix A) for communications equipment. The City is seeking qualified communications companies to lease space on the property per the attached requirements and specifications.

**Bids are due at the City of Worcester Purchasing Department, Room 201, City Hall, Worcester, Massachusetts 01608 no later than 10:00 A.M. on April 12, 2023.**

2. Bids to lease the property must include a certified check made payable to the “City Treasurer, City of Worcester” in the amount of \$ **10,000.00** as bid security. This must be submitted under separate sealed cover marked “Bid Security.” In the case of default, the surety shall be forfeited to the City as liquidated damages.
3. Any prospective Bidder requesting a change in or interpretation of existing specifications or terms and conditions must do so within five (5) days (Saturdays, Sundays, and Legal Holidays excluded) before scheduled bid opening date. All requests are to be in writing to the Purchasing Department and are to be in duplicate. No changes will be considered or any interpretation issued unless such request is submitted to the City of Worcester within five (5) days (Saturdays, Sundays, and Legal Holidays excluded) before the scheduled bid submission date.

Any inquiries related to technical or contractual matters must be submitted in writing to:

Christopher J. Gagliastro, Purchasing Director  
City of Worcester, City Hall  
455 Main Street, Room 201  
Worcester, MA 01608  
Email address: [gagliastroc@worcesterma.gov](mailto:gagliastroc@worcesterma.gov)

4. Nothing herein is intended to exclude any responsible Bidder or in any way restrain competition. All responsible Bidders are encouraged to submit bids. The City encourages participation by Minority and Women Owned Business Enterprises (M/WBE).
5. The following meanings are attached to the defined words when used in the RFB.
  - a. The word "City" means the City of Worcester, Massachusetts.
  - b. The word "Bidder" means the person, firm, or corporation submitting a bid in response to this IFB.
  - c. The phrase "Preferred Bidder" means the Bidder that is selected through this IFB.
  - d. The phrase "Lessee" means the Preferred Bidder(s) that are selected to lease the property offered through this IFB.
6. All material submitted by a Bidder becomes the property of the City. The City is under no obligation to return any of the material submitted by a Bidder in response to this RFB.
7. Each bid offer must remain in effect for 120 days from the deadline for submission. The City will decide upon acceptance within 120 days of submission.
8. The requirements of this IFB are binding and not subject to negotiations. The City reserves the right to accept or reject any or all of the bids submitted and waive informalities and technicalities.
9. The City shall select the Bidder that has made the highest bid deemed to be in compliance with the terms of this IFB.
10. The Bidder must certify that no official or employee of the City of Worcester, Massachusetts, is peculiarly interested in this IFB or in the contract which the Lessee offers to execute or in expected profits to arise therefrom, unless there has been compliance with the provisions of Massachusetts G.L.C. 43, Section 27, and G.L.C. 268A, §§ 3, 17, 19, 20, and 23, and that the Bidder's bid is made in good faith without fraud or collusion or connection with any other person submitting a bid.
11. Any bid that is withdrawn after the time and date specified as the bid due date under paragraph (1) of this IFB will be subject to forfeiture of the bid security deposit required as specified in this IFB under paragraph (2).
12. It is understood and agreed that it shall be a material breach of any lease resulting from this IFB for the Lessee to engage in any practice which shall violate any provision of Massachusetts General Laws, Chapter 151B, relative to discrimination in hiring, discharge, compensation, or terms, conditions, or privileges of employment because of race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information, ancestry, disability or source of income.

13. The Lessee shall not discriminate against any qualified employee or applicant for employment because of physical disability, race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information, ancestry, disability or source of income. The Lessee agrees to comply with all applicable Federal and State Statutes, rules, and regulations prohibiting discrimination in employment including: Title VII of the Civil Rights Acts of 1964; The Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; Massachusetts General Laws Chapter 151B, Section 4(1) and all relevant administrative orders and executive orders.

If a complaint or claim alleging violation by the Lessee of such statutes, rules, or regulations is presented to the Massachusetts Commission Against Discrimination (MCAD), the Lessee agrees to cooperate with the MCAD in the investigation and disposition of such complaint or claim.

In the event of non-compliance with any of the provisions of this IFB on the part of the Bidder, the City shall impose such sanctions as it deems appropriate, including but not limited to the following:

At the sole determination of the City, any Bidder who fails to comply with the listed provisions will be deemed unacceptable as failing to adhere to the IFB Requirements and may forfeit the deposit.

14. The successful Bidder shall comply with all applicable federal, state, and local laws, ordinances, and regulations. The awarded contract shall be governed under the laws of the Commonwealth of Massachusetts.
15. If the Purchasing Agent or any employee of his department, the heads of using agencies, or any other officer or employee of the City who has taken part in the disposition of this property, is financially interested, directly or indirectly, any contract agreement shall be void.
16. The award to the successful Bidder may be cancelled in the event of nonperformance as may be determined by the City.
17. The City shall disqualify from review any and all Bidders, including any individual or entity affiliated or closely related to such Bidder, determined to be, by the Treasurer and Collector of Taxes, not current on real estate taxes and/or water and sewer fees, which have accrued to the Bidder's properties during the time the Bidder has been the owner of record of such properties. The term "current" in the preceding sentence means that Bidder shall not owe, at the time of submission, real estate taxes, water fees, and sewer fees for all the Bidder's properties other than taxes, water fees, and sewer fees that have accrued in the current fiscal year and liens or arrearages accrued to such properties while owned by someone other than the Bidder. Upon receipt of all bids, the DPWP shall provide the Treasurer and Collector of Taxes with the names of all Bidders for the Treasurer to review their status with respect to the provisions of this paragraph. The Treasurer and Collector of Taxes shall have the sole discretion to determine which Bidders are current and which are not with respect to the provisions of this paragraph. After review, the Treasurer shall then provide for the EOED the names of all Bidders determined to be current or not current.

18. The City shall disqualify from review any and all Bidders, including any individual or entity affiliated or closely related to such Bidder, which are the owners of record of property and are determined to be, by the Building Commissioner, not in compliance with all government approvals, laws, and regulations at the time of the proposal submittal date. Upon receipt of all bids, the DPWP shall provide the Building Commissioner with the names of all Bidders for the Building Commissioner to review their status with respect to the provisions of this paragraph. The Building Commissioner shall have the sole discretion to determine which Bidders are in compliance and which are not with respect to the provisions of this paragraph. After review, the Building Commissioner shall then provide for the DPWP the names of all Bidders determined to be in compliance or not in compliance.
19. The Lessee shall execute a Contract Agreement, with the City within 30 days from receipt of the City Manager's designation of a winning bid. At the City's sole determination, the timeline above may be extended. The Lessee agrees to work in good faith with the City to arrive at a viable agreement.
20. The agreement and any related documents will be drafted by the City's Law Department in compliance with the terms of the IFB.
21. No amendment to the agreement shall be effective unless it is in writing and signed by authorized representatives of all parties and is accepted by the City of Worcester.
22. The Lessee will be required to indemnify and save harmless the City of Worcester for all damages to life and property that may occur due to his or her negligence or that of his or her employees, subcontractors, agents, invitees, etc. during the duration of actions taken under the agreement.
23. Except for purposes of obtaining financing or involving an entity controlled by the Lessee, the Lessee shall not assign, transfer, sublet, convey or otherwise dispose of any contract which results from this IFB, or its right, title, or interest therein or its power to execute the same to any other person, firm, partnership, company, or corporation without the previous consent in writing of the City. Should the Lessee attempt any of the above without written consent of the City, the City reserves the right to declare the Lessee in default and terminate the agreement for cause.

LEASE OF SPACE ON CHESTER STREET ELEVATED WATER TANK  
175 CHESTER STREET, WORCESTER, MA  
BID # CR-7948-1-W3

The City of Worcester is seeking bids from federally licensed communications companies to enter a non-exclusive lease of space on a municipal water tank located at 175 Chester Street, Worcester, Massachusetts (the "Premises"). The location of the water tank is more fully described in "Attachment A" attached hereto. The lease will be solely for the purpose of installing and maintaining wireless cellular antennae and related apparatus at the site. By submission of a bid, the offeror agrees, if its bid is accepted, to enter into a lease with the City of Worcester (the "City") that incorporates all the terms and conditions herein. The Lessee will be responsible to obtain any required permits pursuant to federal, state and local regulations and codes, including zoning, and all costs of construction and maintenance of their facilities.

It is the intent of the City to issue one (1) lease to one (1) communications company. The existing cellular antenna arrays on the tank will only remain if their associated communication company is the successful bidder on this bid. Upon completion of this bid and award of one (1) lease, there will be only two (2) lease holders with equipment on the Premises. This bid **will not** result in any additional leases for any additional antenna arrays.

#### SUBMISSION REQUIREMENTS

The following shall be included with all bids. Any bid submitted without the required information and documentation shall be rejected.

1. Plans, photos, and other documents to clearly outline the scope of the installation and the equipment necessary for the Lessee's use of the Premises. The City shall not allow welding of any kind to the tank surface, railings, or appurtenances.
2. Aesthetic impacts of telecommunications equipment installed on the Premises must be minimized. Bidders shall describe how ground level equipment will be screened from abutting properties.
3. Photos of other existing water tank telecommunication installations that would be similar to the proposal, if any.
4. Five (5) references concerning similar installations of telecommunication facilities on water tanks.
5. Evidence of federal and state licenses pertaining to cellular antennae arrays.
6. A letter outlining the proposal, price and other details.
7. A signed state tax affidavit form.

8. A signed non-collusion statement.
9. A structural assessment by a Massachusetts Registered Professional Engineer attesting that the tank, including railings, ladders, walkways and supports, will not be structurally damaged by the attachment of antennas and that the tank can structurally support the antennas including under wind and snow loads.

## LEASE TERMS

The selected proponent will enter a lease for use of the Premises which will include, at a minimum, the following terms:

1. The Lessee shall use the Premises solely for transmission and reception of communication signals by wireless means and construction, alteration, maintenance, repair and relocation of antennas, equipment, cables, structures, facilities and improvements related thereto. In no instance shall the Lessee use the Premises for any purpose not related to the allowed use.
2. Prior to installation or construction, the Lessee shall secure all necessary and pertinent federal, state and local permits and other approvals required for the construction, use and operation of the antennas and all appurtenances thereto, including, but not limited to the Federal Communications Commission, the City of Worcester, and all other relevant federal, state, and local authorities.
3. Prior to any installation or construction, the Lessee must provide the Department with a drawing and description of the Premises indicating where the Lessee intends to install its equipment, wires, antenna, utility service, and any other apparatus. The City shall have aesthetic control over the proposed Site Development Plan and shall approve all plans and specifications prior to the Lessee's application for zoning approval (if required). The Lessee shall obtain the City's written approval prior to any installation on the tank. Said approval not to be unreasonably withheld.
4. The Lessee shall comply with zoning of the City of Worcester for a telecommunication facility located on an existing water tank.
5. No more than nine (9) antennas may be attached to the tank by each Lessee.
6. The lease shall be for a term of five (5) years, renewable for three successive terms of five years upon mutual agreement by the parties. The Lessee shall provide the City with written notice of its intention to renew or not renew the lease within thirty days of expiration of the existing lease term. In the event either party elects not to renew the lease or in the event the lease is terminated for any reason, the Lessee will be responsible for removing the antennas and all associated apparatus and returning the Premises to its original condition with 60 days of termination or expiration.
7. The City reserves the right to terminate the lease for cause, including, but not limited to, failure by the Lessee to fulfill its obligations under the lease or under law, rule, regulation or permit required. The Lessee agrees to reimburse the City for all costs associated with the enforcement of said lease,

or any and all provisions therein, including, but not limited to all legal and court costs.

8. All equipment and installations must be secured in a manner as to address any reasonable safety and aesthetic issue raised by the Department. All apparatus will be installed in such a manner to not interfere with the municipal operations or use at the Premises and to ensure the health and safety of City employees or City contractors working on the tank or at the Premises.
9. Lessee agrees to and shall indemnify and hold harmless the City and its officers, employees and agents from and against any and all asserted claims and liabilities of every kind and nature whatsoever, arising during the term of this Agreement and any renewal or extension hereof or during such further time as Lessee's facilities are located on the Premises, out or of in any way relating to the construction, installation, operation or maintenance, updating and reconstruction of the Lessee's telecommunication facilities, including without limitation by reason of enumeration those for bodily injury (including death), property damage, those arising from any breach or default on the part of the Lessee in the performance or observance of any agreement on its part to be performed or observed pursuant to the terms of this Agreement, or from any act or omission of Lessee or any of its agents, contractors, or employees, and any and all actions, suits, proceedings, claims, demands, judgements, assessments, costs, liabilities and expenses, including without limitation by reasons of enumeration attorney's fees, incident to any item to which the foregoing indemnity of the City relates. The City shall not indemnify the Lessee.
10. The Lessee shall procure and maintain on the Premises bodily injury and property insurance with a combined single limit of at least Five Million Dollars (\$5,000,000.00) per occurrence insuring both the Lessee and the City with regard to all claims, injuries or damages associated with Lessee's use of the Premises. Lessee shall furnish proof to the City of insurance, which shall name the City as an additional insured and contain a provision that written notice of cancellation or material change in the insurance policy will be delivered to the City thirty (30) days in advance of the effective date thereof.
11. Any damages to property that occur as a consequence of the Lessee's use of the Premises shall be repaired by the Lessee to the satisfaction of the City.
12. The Lessee's use of the Premises shall not cause measurable interference, as defined by the Federal Communications Commission, to any present or future municipal communications equipment of the City, residents of the City of Worcester, and/or other telecommunications Lessees on the Premises. If Lessee's equipment causes such interference, Lessee shall shut down its equipment and correct and eliminate such interference within thirty (30) days of receipt of written notice from the City. The Lessee bears the burden of demonstrating that any alleged interference is not caused by the Lessee's equipment or use of the Premises.
13. Lessee will have responsibility for all utility (electric, gas, etc.) costs for the antennas and associated apparatus and pay all costs associated with installation, maintenance and insurance of equipment

and employees or contractors during construction and throughout the duration of the lease.

14. Connecting systems shall not disturb the tank surface. Any damages to the tank surface, railings, and associated structures that result from antennas installation and use shall be repaired immediately (within 30 days' notice) and re-coated per AWWA Standards and meet the approval of the City.
15. Lessee may not assign, or otherwise transfer all or any part of its interest in the Lease or in the Premises without prior written approval from the City, provided, however, that Lessee may assign its interest to its parent company, any subsidiary or affiliate or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets.
16. Installation of antennas and equipment shall not interfere with the City's access to the tank. There shall be no interference with the use of railings, walkways or ladders attached to the tank.
17. Following initial antenna installation, Lessee shall not access the tank without first providing notice of the date and time of the visit to the Worcester Department of Public Works & Parks Water Operations (the "Department"). The Department's activities and uses at the site shall have priority over the Lessee's access rights. Unlimited access to ground level equipment associated with the antennas shall be permitted only if the Lessee has secured said equipment in a manner that would prevent access to the tank itself through the equipment area.
18. Upon 30-days written notice from the City, Lessee shall temporarily remove, as necessary, any equipment that might interfere with the inspection, cleaning and/or painting of the tank. Said equipment may be re-installed when authorized by the City. During times when equipment must be removed for extended periods (e.g., tank repair and painting), the Lessee may, as permitted by Federal, State and Local authorities, erect a temporary mast for mounting antennae provided it can be done so with no interference to the City access and use of the tank. Terms of the lease and lease payments shall remain in effect while Lessee's equipment has been temporarily removed.
19. The Lessee shall not move, remove, adjust, alter or otherwise disturb any cables, antennae, or other equipment of another telecommunications lessee at Chester Street Tank unless authorized in writing by the other Lessee. Copy of such authorization shall be provided to the City prior to any such work.

## EVALUATION CRITERIA

Leases will be awarded to the one (1) responsible bidder that have met all submittal requirements, has the highest total lease payments for the initial five (5) year period and conform to the terms and conditions herein. The evaluation of bids will address the



responsiveness of the bid proposal, the responsibility of the bidder, the design of the facility for visual aesthetics and the total price. Each proposal shall be submitted with a price sheet indicating the monthly lease payments offered and the five (5) year total of lease payments (60 months). The City hereby establishes a minimum lease payment of \$50,000 per year.

## TESTING

Any party interested in submitting a bid that is licensed by the Federal Communication Commission to provide wireless telecommunications service may contact the City for the purpose of scheduling an appointment to conduct testing at the Premises.

## ATTACHMENT A

### DESCRIPTION OF PROPERTY

The Property is described as follows:

One half million-gallon elevated water tank located at 175 Chester Street, Worcester, MA on the westerly side of Chester Street, Map 33, Lot 32/40.

Beginning at the Southeasterly corner of the parcel herein described in the westerly line of Chester Street, said point of beginning being 21.80 feet northwesterly of (measured on the westerly line of Chester Street) an angle in said street;

Thence running S 73° 53' 40" W, by land now formerly of Linnea Beckman, 250.0 feet to a point at land now or formerly of Kelleher and Murphy;

Thence running N 8° 22' 30" W, by land of now or formerly said Kelleher and Murphy 242.20 feet to a point at land of now or formerly Reed;

Thence running N 73° 53' 40" E, by land of now or formerly said Reed, 250.0 feet to a point in the westerly line of Chester Street;

Thence running S 8° 22' 30" E, by the westerly line of Chester Street, 242.20 feet to the point of beginning.

Said parcel contains 1.377 acres of land.

All as shown on "Plan of Land" in Worcester, Massachusetts, for the City of Worcester (Water Department) dated April 7, 1966, and drawn by Thompson-Liston Associates, Inc., 201 Commercial Street, Worcester, Massachusetts.

PROPERTY LEASE –  
CHESTER STREET WATER  
TANK / DPWP

OFFER:        \$ \_\_\_\_\_ X    60 MONTHS    =    \$ \_\_\_\_\_  
                 PER MONTH                                  TOTAL 5 YEAR TERM

Email Address: \_\_\_\_\_

## **LIST OF APPENDICES**

- 1) Appendix A – Certificate of Non-Collusion
- 2) Appendix B – Certificate of Tax Compliance
- 3) Appendix C – Proposer Entity Disclosure Statement
- 4) Appendix D – Real Property Disclosure Statement

## APPENDIX A

### **Certificate of Non-Collusion**

Under Massachusetts General Laws C. 40, 4B ½, the following Certification must be provided:

“The undersigned certifies under the penalties of perjury that this proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in any of these sections the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.”

(Please Print) \_\_\_\_\_  
Name of person signing proposal

\_\_\_\_\_  
Signature of person signing proposal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address & Zip Code

\_\_\_\_\_

**No award will be made without Proposer certification of the above.**

## APPENDIX B

### Certificate of Tax Compliance

STATE LAW NOW MANDATES THAT TO DO BUSINESS WITH THE CITY OF WORCESTER the Massachusetts Revenue Enforcement and Protection Program of 1983 requires that the following be supplied with your bid:

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

Pursuant to M.G.L. Ch. 62C, Section 49A, I certify under the Penalties of Perjury That I, To My Best Knowledge and Belief, Have Filed All Mass. State Tax Return and Paid ALL Mass. State and City Taxes Required under Law.

Company Name \_\_\_\_\_

Street and No. \_\_\_\_\_

City or Town \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_

Tel. No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Social Security No.

or

Federal Identification No. \_\_\_\_\_

Certified by State Office of Minority and Women Business Assistance (SOMWBA)

Yes \_\_\_\_\_ Date of Certification \_\_\_\_\_

**Failure to complete this form may result in rejection of bid and/or removal from City Bid Lists.**

\_\_\_\_\_  
Authorized Signature

**APPENDIX C**  
**Proposer Entity Disclosure Statement**

Give full names and residences of all persons and parties interested in the foregoing proposal:

(Notice: Give first and last name in full; in case of Corporation give names of President, Treasurer and Manager; and in case of Firms give names of the individual members.)

<b>NAMES</b>	<b>ADDRESSES</b>	<b>ZIP CODE</b>
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_____	_____	_____
_____	_____	_____
_____	_____	_____

Kindly furnish the following information regarding the Respondent:

(1) If a Proprietorship

Name of Owner: \_\_\_\_\_

<b>ADDRESS</b>	<b>ZIP CODE</b>	<b>TEL. #</b>
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Business: \_\_\_\_\_

Home: \_\_\_\_\_

(2) If a Partnership

Full names and address of all partners:

<b>NAMES</b>	<b>ADDRESSES</b>	<b>ZIP CODE</b>
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_____	_____	_____
_____	_____	_____
_____	_____	_____

<b>BUSINESS ADDRESS</b>	<b>ZIP CODE</b>	<b>TEL. #</b>
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_____	_____	_____
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(3) If a Corporation

Full Legal Name: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Principal Place of Business: \_\_\_\_\_ Zip Code \_\_\_\_\_

Qualified in Massachusetts: Yes \_\_\_\_\_ No \_\_\_\_\_

Place of Business in Massachusetts: \_\_\_\_\_ Zip Code \_\_\_\_\_ Tel. # \_\_\_\_\_

Give the following information regarding Surety Company:

Full Legal Name of Surety Company:

\_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Principal Place of Business: \_\_\_\_\_

Admitted in Massachusetts: Yes \_\_\_\_\_ No \_\_\_\_\_

Place of Business in Massachusetts: \_\_\_\_\_ Zip Code \_\_\_\_\_ Tel. # \_\_\_\_\_

NOTE: The Office of the Attorney General, Washington, D.C. requires the following information on all proposals amounting to \$1,000.00 or more.

E.I. Number of Proposer \_\_\_\_\_

This number is regularly used by companies when filing their "EMPLOYER'S FEDERAL TAX RETURN," U.S. Treasury Department Form 941.

Authorized Signature of Proponent:

\_\_\_\_\_

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

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



## APPENDIX D

### **Real Property Disclosure Statement For Transactions with a Public Agency ~ M.G.L. c. 7C, s. 38**

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

- (1) REAL PROPERTY:
- (2) TYPE OF TRANSACTION, AGREEMENT, OR DOCUMENT:
- (3) PUBLIC AGENCY PARTICIPATING IN TRANSACTION:
- (4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY:
- (5) ROLE OF DISCLOSING PARTY (Check appropriate role):

\_\_\_\_\_ Lessor/Landlord

\_\_\_\_\_ Lessee/Tenant

\_\_\_\_\_ Seller/Grantor

\_\_\_\_\_ Buyer/Grantee

\_\_\_\_\_ Other (Please describe): \_\_\_\_\_

- (6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than then percent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) as owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary)

**NAME**

**RESIDENCE**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (7) None of the above-named persons is an employee of the Division of Capital Asset Management & Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below. (Check NONE if none)

\_\_\_\_\_ NONE

**NAME**

**POSITION**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signed under the penalties of perjury.

\_\_\_\_\_

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

## LEASE AGREEMENT

This Lease Agreement ("Lease") made and entered into this \_\_\_\_\_. 2023, by and between [ ] (hereinafter "Lessee"), and the City of Worcester, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts ("City"), acting through its Department of Public Works and Parks ("Department") (City and Department hereinafter also collectively referred to as "Lessor").

### WITNESSETH

**WHEREAS**, the City, acting through its Purchasing Department, invited sealed proposals for the lease of property located at 175 Chester Street, Worcester ("Property") and the water tank located thereon, known as the Chester Street Water Tank (hereinafter "Premises") for the placement and operation of telecommunications equipment thereon; and,

**WHEREAS**, the Lessee submitted a proposal which was acceptable to the Lessor; and,

**WHEREAS**, the Lessor and Lessee have agreed upon the terms, conditions and covenants wherein and whereby the said Lessee will lease the Premises;

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, it is mutually agreed as follows:

1. The Lessor, in consideration of the rents to be paid and the covenants and agreements to be performed by Lessee hereunder, does hereby demise and lease unto Lessee, and Lessee hereby leases from Lessor the non-exclusive right to occupy, enter upon, re-enter, to install, operate, maintain, replace, and remove telecommunications equipment upon the Premises and its appurtenant land, located at 175 Chester Street, and situated on the westerly side of Chester Street, as more fully described in Exhibit "A" attached hereto and made part hereof, all in accordance with the requirements and specifications as set forth in Bid No. [ ] and Lessee's proposal submitted in response thereto, dated [ ] (hereinafter, collectively, "Bid Documents"). In the event of a conflict between the terms of this Lease and the Bid Documents, the terms of this Lease shall control.

2. Term. The initial term of this Lease shall be for a period of five (5) years, commencing on \_\_\_\_\_ ("Commencement Date") and terminating on \_\_\_\_\_.

(A) Renewal. The Term may be renewed for three (3) successive terms of five (5) years each, upon mutual agreement by both parties ("Renewal Term"). The Lessee shall provide the Lessor with written notice of its intention to exercise a renewal option or terminate the Lease within thirty (30) days prior to the expiration of the

then existing Term.

(B) Termination. At the termination of this Lease, either by non-renewal of the Term or in the event of termination pursuant to this Lease, the Lessee shall remove the telecommunications equipment, including the antennas and all associated apparatus on the Premises and appurtenant land on the Property, and return the Premises, and applicable portion of the Property, to its original condition within sixty (60) days of termination or expiration.

3. Rent. The rent payable by Lessee to Lessor during the initial Term shall be as follows:

Year 1:	/month
Year 2:	/ month
Year 3:	/month
Year 4:	/month
Year 5:	/ month

(A) Renewal Term. During each and every Renewal Term, if any such options are exercised, the rental fee shall be increased four (4) percent per annum.

(B) Monthly payments shall be made on or before the first of each month by check made payable to "City of Worcester" and forwarded to the attention of Commissioner, Department of Public Works & Parks, 20 East Worcester Street, Worcester, MA 01604.

(C) **Interest.** In addition to the Lessor's remedies hereunder, any payments of rent, due under this Lease not paid within ten (10) days of the date due shall bear interest at the rate of twelve percent (12%) per annum from the original due date until paid.

4. The Lessee shall use the Premises, and appurtenant land, solely for the transmission and reception of communications signals by wireless means and construction, alteration, maintenance, repair and relocation of antennas, equipment, cable structures, facilities and improvements related thereto. In no instance shall the Lessee use the Premises for any purpose not related to the allowed use.

5. Lessee's use of the Premises shall comply with all applicable federal, state, and local laws and regulations including the Worcester Zoning Ordinance requirements related to a telecommunication facility located on an existing water tank.

6. (A) Prior to any installation or construction, the Lessee must provide the Department with a drawing and description of the Premises indicating where the Lessee intends to install its equipment, wires, antennas, utility service, and any other apparatus ("Site Plan"). The Department shall have aesthetic control over the proposed Site Plan and shall approve any such plans and specifications prior to the Lessee's submittal of an application to the Worcester Zoning Board of Appeals

or any other local board or commission, as required. The Lessee shall not attach more than nine (9) antennas to the Premises.

(B) Prior to installation or construction, the Lessee shall secure all necessary and pertinent federal, state and local permits and any other approvals required for the construction, use(s) and operation of the antennas and all appurtenances thereto, including, but not limited to the Federal Communications Commission, the City of Worcester, and any other relevant federal, state and local authorities.

(C) The Lessee must obtain the Department's approval prior to the initial installation of any equipment on the Premises and appurtenant land. Said approval shall not be unreasonably withheld by the City. Following the initial installation, Lessee shall notify Lessor at least twenty-four (24) hours in advance requesting access to the Property and Premises. Access shall not be unreasonably withheld by the City and to the extent possible and practical the City shall provide said access within a reasonable timeframe of the request. Lessee shall not enter upon the Property or the Premises without the consent and approval of Lessor. Any unauthorized entry upon the Property shall be considered a trespass and a breach of this Lease.

(D) Lessee's access to the Premises for installation, repairs, maintenance, and modifications shall conform to the Department's security policies, procedures and guidelines, on file at the Department of Public Works & Parks.

(E) Connecting systems shall not disturb the tank surface. Within thirty (30) days of written notice from the City, Lessee shall repair, and re-coat per AWWA Standards, any damages to the tank surface, railing, and associated structures that result from antenna installation(s). The repair shall be subject to the Department's approval.

(F) Any damage to the Property, including the tank and the appurtenant land, that occurs as a consequence of the Lessee's use of the Premises shall be repaired by the Lessee, subject to the City's approval.

(G) Lessee shall install all telecommunications equipment and related apparatus in a manner so as not to interfere with the municipal operations or use at the Property, including but not limited to, the City's access to the water tank, use of railings, walkways or ladders attached to the Premises.

7. Lessee shall be responsible for all utility costs (electric, gas, etc.) for the antennas and associated apparatus and shall pay all costs associated with installation, maintenance and insurance of equipment and employees or contractors during construction and throughout the duration of the Lease.

8. Lessee's use of the Premises shall not cause Measurable Interference, as defined by the Federal Communications Commission, to any

existing or future communications equipment of the City, residents of the City of Worcester, and/or other telecommunications lessees with equipment on the Premises.

(A) If Lessee's equipment causes a Measurable Interference and said interference cannot be eliminated within seventy two (72) hours of notice from Lessor, Lessee shall shut down its equipment and correct and eliminate such interference within thirty (30) days of receipt of written notice from the City. The Lessee bears the burden of demonstrating that any alleged interference is not caused by the Lessee's equipment or use of the Premises.

9. The Premises is under the direct care, custody and control of the commissioner of the city of Worcester's department of public works and parks, whose decision shall be final relative to all issues regarding use and access to the Premises, including but not limited to: security, guidelines, procedures, municipal operations, and the provisions set forth in paragraphs 4-8 above. The City's activities and uses at the Premises have priority over the Lessee's access rights.

10. Upon thirty days (30) written notice to the Lessee from the City, Lessee shall temporarily remove, as necessary, any equipment that might interfere with the inspection, cleaning and/or painting of the water tank. Said equipment may be re-installed when authorized by the Department. Notwithstanding anything herein to the contrary, Lessee, with the prior written approval of Lessor, which approval shall not be unreasonably withheld, may bring a cell-on-wheels or other temporary communications facility onto the Premises to maintain continuous operations during the period of such temporary removal of Lessee's equipment.

11. Termination. (A) Termination for Cause. The Lessor reserves the right to terminate the Lease for cause, including, but not limited to, failure by the Lessee to fulfill its obligations pursuant to this Lease or any applicable law, rule, regulation or required permit.

(B) The Lessee may terminate the Lease, without penalty or further obligation, (1) if Lessee is unable, after due diligence, to obtain or maintain (or decides in its sole discretion that it is unlikely to obtain or maintain without undue cost or time); any license, permit or other governmental approval necessary to the construction and/or operation of the equipment on the Premises; (2) if the Premises or equipment are destroyed or damaged and rendered unsuitable for normal use as related to the stated purpose of this Lease; or (3) if Lessee determines that any of the equipment cannot be used without a Measurable Interference, as defined herein, to other occupants of the Premises.

(C) Notwithstanding anything to the contrary in subsection (B), above, if written notice of termination is delivered to the Lessor on or after the fifteenth (15<sup>th</sup>) day of the month, the Lessee shall be obligated to pay the Lessor the entire rental amount for the next ensuing month.

12. Lessee shall indemnify and hold harmless the Lessor and its officers, employees and agents from and against any and all asserted claims and liabilities of every kind and nature whatsoever, arising during the term of this Lease and any renewal or extension hereof, or during such, further time as Lessee's facilities are located on the Premises, out of or in any way relating to the construction, installation, operation or maintenance, updating and reconstruction of the Lessee's telecommunications facilities, including without limitation by reason of enumeration, those for bodily injury (including death), property damage, those arising from any breach, or default on the part of the Lessee in the performance or observance of any agreement on its part to be performed or observed pursuant to the terms of this Lease, or from any act or omission of Lessee or any of its agents, contractors, or employees, and any and all actions, suits, proceedings, claims, demands, judgments, assessments, costs, liabilities and expenses, including without limitation by reasons of enumeration attorney's fees incident to any item to which the foregoing indemnity of the Lessor relates. The indemnification required hereunder shall not be limited by reason of the specification of any particular insurance coverage under this Lease. Lessor shall not be required to indemnify Lessee.

13. The Lessee shall procure and maintain at all times during the term(s) of this Lease, bodily injury and property insurance with a combined single limit of at least Five Million Dollars (\$5,000,000.00) per occurrence insuring both the Lessee and the Lessor with regard to all claims, injuries or damages associated with the Lessee's use of the Premises. Prior to entry onto the Premises, or installation of any telecommunications equipment thereof, the Lessee shall furnish proof of such insurance coverage, which shall name the City of Worcester as an additional insured and contain a provision that written notice of cancellation or material change in the insurance policy will be delivered to the Lessor thirty (30) days in advance of the effective date thereof.

The Certificate Holder shall be identified as: Commissioner, Department of Public Works & Parks, 20 East Street, Worcester, MA 01608.

14. Any formal notices necessary under this Lease shall be given by certified mail, return receipt requested, and addressed to the City at:

City Manager  
Room 306, City Hall  
Worcester, Massachusetts  
01608

With a copy to:

Commissioner  
Department of Public Works & Parks  
20 East Street  
Worcester, Massachusetts 01604

to Lessee at:

[ ]

15. Except as set forth in in this paragraph, Lessee may not assign, or otherwise transfer all or any part of its interest in the Lease or in the Premises without prior written approval from the Lessor.

(A) The Lessee may assign this Lease and all rights granted to Lessee hereunder to, (1) an affiliate ("Affiliate"), or (2) any entity which is merged or consolidated with Lessee or purchases a majority or controlling percentage ("Controlling Percentage") in the ownership or assets of Lessee or with which Lessee effectuates a change in control ("Change in Control") (collectively, the "Permitted Parties").

(B) As used herein, Affiliate shall mean an entity which controls, is controlled by, or which is under common control with Lessee. Change in Control shall mean, any dissolution, merger, consolidation or reorganization of Lessee, or the aggregate sale or other transfer of a controlling percentage of the capital stock of Lessee, or the sale during the Term or any Renewal Term of this Lease in the aggregate of fifty-one percent (51%) or more of the value of the assets of Lessee. The phrase Controlling Percentage shall mean the ownership of, and the right to vote, stock possessing fifty-one percent (51%) or more of the total combined voting power of all classes of Lessee's capital stock issued, outstanding and entitled to vote for the election of directors.

16. The Lessor reserves the right to enter into additional non-exclusive leases, licenses, or agreements, pertaining to the Premises, provided however that any additional telecommunications provider or entity shall locate and operate its telecommunications equipment without physical or operational interference with Lessee's installations.

17. This Lease contains all of the agreements between Lessor and Lessee with respect to the subject matter of this Lease and supersedes any prior agreement, writings and dealings between them with respect to this Lease.

18. None of the provisions or terms of this Lease shall be deleted, amended, or modified in any manner except by a written instrument signed, and mutually agreed upon by all parties to this Lease.

19. This Lease shall bind and inure to the benefits of the parties to this Lease and to their respective representatives, successors, and assigns.

20. This Lease Agreement, RFP # [ ] , and all incorporated exhibits, shall be construed and governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principals. Lessor and Lessee agree to bring any

Federal or State legal proceedings arising under this Lease, in a court of competent jurisdiction within the Commonwealth of Massachusetts.

21. Waiver. The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease shall not prevent a subsequent act that would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease shall be deemed to have been waived by any party unless such waiver is in writing and signed by an authorized representative of the party to be bound by such waiver.

22. The titles and headings of the paragraphs contained herein are for convenience in reference only, and are not intended to define, extend, or limit the scope of any provisions of the Lease.

23. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall be declared invalid, or unenforceable in a final arbitration or judicial award, the remaining terms, covenants, conditions and provisions of this Lease and their application to persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties.

24. This Lease may be executed in counterparts, each copy of which is identical, and any one of which shall be deemed to be complete in itself.

25. Nothing contained in this Lease shall constitute or be construed to be or create a partnership or joint venture between the City and the Lessee.

[signature page to follow]



**IN WITNESS WHEREOF**, the **LESSOR and LESSEE** have hereunto set their hands and seals as of this \_\_\_\_\_ of \_\_\_\_\_, 2023.

**LESSOR**  
CITY OF WORCESTER

**LESSEE**

RECOMMENDED BY:  
Department of Public Works & Parks

\_\_\_\_\_  
Jay J. Fink, P.E.  
Commissioner

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

\_\_\_\_\_  
Christopher J. Gagliastro  
Purchasing Director

Approved as to legal form:

Approved:

\_\_\_\_\_  
Alexandra H. Kalkounis  
Deputy City Solicitor

\_\_\_\_\_  
Eric D. Batista  
City Manager

[ Exhibits]

Exhibit A – Property

SAMPLE

**Premise**

**Notice of Lease**

SAMPLE