

TO: MAYOR AND CITY COUNCIL

FROM: NEIL JENSEN, City Administrator

SUBJECT: Mediacom Lease Lime-kiln Hill Property

MEETING DATE: April 19, 2022

BACKGROUND

This is an updated lease for the property on Lime-kiln Hill that houses the Mediacom tower. The lease is the same except for one item taken out that states the lease and its contents are confidential. The terms (5 plus 5) and rates (3% or COLA whichever is greater) are the same only the rates are current (\$9,407.00 annually). There is a \$5,067.86 true-up payment with the signing of the lease. This lease was to be renewed in 2018 starting in 2019 but Mediacom was in the process of selling the tower and wanted to wait on the lease. The sale fell apart and Mediacom retained ownership. This is the reason for the 2019 start date on the lease.

STAFF RECOMMENDATION

Please approve the new Mediacom lease and have Mayor Althoff sign the lease.

REQUESTED COUNCIL ACTION

Please approve the new Mediacom lease and have the Mayor Althoff sign the lease.

LEASE AGREEMENT

THIS AGREEMENT (“Agreement”) made this _____, 20____, between the **City of Cannon Falls, Minnesota** (“Lessor”) and **Mediacom Minnesota LLC**, a Delaware Limited Liability Company (“Lessee”).

WHEREAS, Lessee is authorized to construct and operate communications systems throughout the United States;

WHEREAS, Lessor controls and maintains the property located in Cannon Falls, Minnesota, as described in “Exhibit A” (“Property”); and

WHEREAS, Lessor desires to Lease a portion of the Property (“Leased Property”), as described in Exhibit B, to the Lessee; and

WHEREAS, Lessee desires to use the Leased Property for all legal purposes, including the purpose of constructing, operating, maintaining, repairing, replacing, relocating and removing equipment (the “Facilities”). Such Facilities may include, without limitation, earth stations, towers and buildings for the housing of electronic components and related appliances, appurtenances, and fixtures, whether above or below ground, with any necessary housing for same, which may be deemed by Lessee to be necessary or desirable in connection therewith. In no event may the Leased Property, or any part thereof, be used for any unlawful purpose.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, Lessee and Lessor, intending to be legally bound, mutually agree as follows:

1. **Term.** The term of this Agreement shall be for a period of 5 years beginning on May 1, 2019 (“Original Term”). This Agreement shall automatically renew for an additional 5 year term (“Renewal Term”) unless the Lessee gives written notice of its desire not to renew at least sixty (60) days prior to the expiration of the Original Term. After the Renewal Term, this Agreement shall continue for successive terms of one month each until either Lessor or Lessee terminates the lease by giving the other thirty (30) days written notice of an intention to terminate or a new lease agreement is executed. Notwithstanding the foregoing, Lessee may terminate this Agreement at any time during the Original Term or any Renewal Term, by giving prior written notice of at least ninety (90) days. Should this Agreement be terminated early, Lessee shall have no further obligation to pay any additional rent, including any rent that would have otherwise been due for any portion of the remainder of the lease term.
2. **Work Performed.** All work performed by Lessee shall be performed in a proper manner in accordance with industry standards, local codes and the approved specifications. Lessee agrees to repair and replace any damage to the Leased Property resulting from the installation, operation or removal of the Facilities. Lessee shall observe all sanitary laws and regulations applicable to the Leased Property.
3. **Indemnification.** Lessee agrees to indemnify and hold harmless the Lessor from any and all claims, demands, damages, actions, costs, including attorneys’ fees, and charges which the Lessor or the Lessee may have to pay by reason of injury to any person or property, loss of life or property

resulting from the condition or use of the Leased Property unless such injury or loss arises directly from the sole negligence of the Lessor, or any of its agencies, officers or employees, while acting within the scope of their employment.

Notwithstanding any other provision of this Agreement, neither party hereto shall be liable to the other of any special, indirect or consequential damages or lost profits to anyone arising out of this agreement or the performance or non-performance of any activity pursuant to this agreement even if such party has been informed of the possibility of such damages.

4. **Rent.** In consideration of the Agreement, Lessee shall pay to the Lessor the yearly sum of \$9,407.00, payable annually. Rent shall be paid by May 1st each year, except for the first payment to be made under this lease shall be due within 30 days after the execution of this lease by both parties. Rent shall increase 3% annually or by an amount equal to the increase in the Consumer Price Index (“CPI”), whichever is greater.

Within 30 days of final execution of this Lease, Lessee shall pay Lessor a one-time payment of \$5,067.86 representing the outstanding rent from May 1, 2016 through April 30, 2021.

5. **Easement.** Lessor hereby grants to Lessee a non-exclusive continuing Easement to use the Leased Property and access roads shown in Exhibit B to access the Facilities for purposes which include installing, constructing, maintaining, operating, replacing, upgrading, repairing, relocating and removing, equipment and the Facilities. The Easement shall be in effect for the term of this Lease. If an access road to the Facilities is needed, Lessee shall construct and maintain such road at no expense to the Lessor. Lessor shall approve any plans to construct a road on Lessor’s Property.

Upon the execution of this Agreement, Lessor shall deliver to Lessee all necessary keys and combinations to facilitate Lessee’s ingress to and egress from the Leased Property. Lessee shall be entitled to have access to the Leased Property 24 hours a day, 7 days a week. The rights of Lessee under this Section shall be limited to authorized employees, contractors or subcontractors of Lessee, FCC inspectors or persons under their direct supervision. Notwithstanding the foregoing, Lessor accepts no responsibility for any acts or omissions committed by Lessee’s employees, contractors, subcontractors or invitees.

6. **Insurance.** Lessee shall obtain and carry liability or indemnity insurance providing as a minimum, limits of \$1,000,000.00 per person (personal injury) in any one claim; \$1,000,000.00 for damage to the Property suffered or alleged to have been suffered, by any person or persons as the result of the operations conducted on the Property; and an aggregate limit of \$2,000,000.00 for any number of persons or claims arising from any one incident with respect to bodily injuries, property damage or death resulting therefrom.

The insurance certificate provided under this paragraph shall provide that said certificate will not be subject to cancellation, termination or change except after at least 30 days’ prior written notice to Lessor.

7. **Force Majeure.** Except as otherwise provided herein to the contrary, the Lessee shall be excused for the performance of its obligation to pay fees because of the non-operation of its Facilities on the Leased Property if this is due to an act of God, fire, lock out, flood, tornado, hurricane, riot or civil

commotion, earthquake, war, the failure of Facilities not belonging to the Lessee, denial of access to Facilities or rights-of-way essential to serving the Leased Property, government order or regulation or any other circumstances beyond the reasonable control of the Lessee. However, any abatement of rent shall be limited to the reasonable period required to return the Lessee's Facilities to operation.

8. **Assignment.** This Agreement may be assigned by either party with prior written notice to the other party.
9. **Subleasing.** Lessee may sublease all or part of Lessee's Facilities that are on the Property or space on the Property with written notice to Lessor.
10. **Notice.** All notices to be given in writing under this Agreement shall be deemed to be given when delivered personally to the Lessor or the Lessee, or 48 hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to the Lessor: City of Cannon Falls, Minnesota
 918 River Road
 Cannon Falls, MN 55009

If to the Lessee: Mediacom Minnesota LLC
 1504 2nd Street, SE
 Waseca, MN 56093

With copies to: Mediacom Minnesota LLC
 One Mediacom Way
 Mediacom Park, NY 10918
 Attn: Legal Department

11. **Recording.** The Lessee may record this Agreement or a Memorandum of this Agreement in the public records of the County if it so desires.
12. **Waiver of Distress.** The Lessor acknowledges that the Lessee is bound by (or will be bound by) certain covenants in loan agreements with lending institutions which have provided (or will provide) long-term debt financing to the Lessee and that such institutions have (or will have) a security interest on the Lessee's Facilities located on the Leased Property that will be superior to any claim of the Lessor. As part of the consideration hereunder, the Lessor covenants and agrees with the Lessee that none of the Lessee's personal property, Facilities or trade fixtures shall be subject to distress for rent or liable for any lien, right or claim which the Lessor may have, either now or hereafter; and the Lessor further covenants and agrees that in the event that such lending institutions exercise their right to take possession of or remove said Facilities from the Leased Property, the Lessor will not hinder or interfere therewith, and the Lessor consents to the taking of possession and removal of such personal property.
13. **Default.** If at any time during the period in which this Agreement is in effect, either party defaults on any obligation incurred hereunder, then this Agreement shall be subject to termination by the other party. All rights and benefits herein conferred shall be deemed forfeited, provided, however, that

before any termination shall occur under this paragraph, the defaulting party shall be given written notice and be allowed 30 days from date of delivery of such notice in which to cure such default or noncompliance. If said default or noncompliance is cured within the above time period, then this Agreement shall remain in full force and effect.

14. **Modification of Agreement.** This Agreement shall not be modified, altered or amended, except by an “Amendment to Lease Agreement,” executed by all parties to this Agreement.
15. **Binding on Heirs.** The terms, conditions and agreements made and entered into by the parties hereto are declared and agreed to be binding upon and inure to the benefit of their respective heirs, executors, administrators, successors and/or assigns.
16. **Compliance with Laws and Regulations.** The Lessee shall, at its own expense, secure and maintain throughout the term of this Agreement and until all of its Facilities and structure are removed, any and all consents and permits which may now or hereafter be required by all persons or governmental agencies, federal, state, or municipal, for or in connection with this Agreement, shall comply with all applicable laws, ordinances, rules and regulations pertaining to the placement, maintenance, operation, erection, construction, or removal of its attachments, property, apparatus and structure.
17. **Legal Fees.** If either party brings legal action for the enforcement of this Agreement then the prevailing party shall be entitled to recover from the losing party its reasonable attorneys’ fees, including the payment for in-house counsel’s time, fees and expenses plus applicable fees, together with costs incurred, including deposition costs and costs for expert witnesses.
18. **Eminent Domain.** If all or a part of the Property is taken in any proceeding by a public authority, by condemnation or otherwise, or acquired for a public or quasi-public purpose, which shall cause the Leased Property to be inadequate or unsuitable for use by the Lessee, in its usual business, either the Lessor or the Lessee shall have the option to terminate this Agreement effective on the date possession of the Property is surrendered, in which event any unearned rent paid or credited in advance shall be refunded to the Lessee. The Lessee hereby waives any claim against the Lessor for the remaining portion of the Agreement and agrees it will peacefully surrender possession to the Lessor, or to the condemning authority at or before the day of possession is required pursuant to the requirements of the condemning authority.
19. **Applicable Law.** This Agreement, and any claim, controversy or dispute arising under or related to this Agreement (whether based on contract, tort or other legal theory or cause of action,) shall be governed by and construed in accordance with the domestic laws of the state of Minnesota.
20. **Property.** The Lessor covenants that the Lessor owns the Property referenced in “Exhibit A” in fee simple and has full right to make this Agreement and that the Lessee shall have peaceable possession of the Leased Property during the term hereof. It is mutually understood and agreed upon that the Leased Property and authority granted herein shall be subject to any easements, rights-of-way, mineral reservations or other rights upon, over, across or under the Leased Property now outstanding with third persons. The Lessor also retains to itself, its successors or assigns, the right to use the Property for its own purposes, so long as such use does not interfere with the construction, erection, operation, repair or maintenance of the Lessee’s Facilities and operations. The Lessor hereby

covenants and agrees that it will not use nor will it permit its remaining Property to be used in any manner that could interfere in the Lessee's intended uses of the Leased Property. The Lessee, upon the payment of rent herein reserved and upon performance of all material terms of this Agreement, shall at all times, during the Agreement term and during any extension or renewal thereof, peaceably and quietly enjoy the Leased Property without any disturbance from the Lessor or from any other person claiming through the Lessor, except as may be set forth in this Agreement.

21. **Authorization.** The Lessor and the Lessee represent and warrant that each has the authority to enter into this Agreement and to be bound by its terms and all necessary action on the part of each such party has been duly taken approving the execution, delivery and performance of this Agreement.
22. **Headings.** The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.
23. **Breach of Warranty.** It is agreed that if the warranty made by the Lessor in Section 20 above is breached, and it is found that the Lessor does not have the legal right to make this Agreement, the Lessee may receive damages, including, but not limited to, twice the fees already paid to the Lessor, plus administrative and constructive fees and attorneys' fees.
24. **Total Agreement.** This Agreement supersedes all previous agreements, whether written or oral, between the Lessor and the Lessee, for the use and operation of the Lessee's Facilities on Owner's real Property and there are no other provisions, terms or conditions to this Agreement except as expressed herein.
25. **Utilities.** Beginning on the date Lessee takes possession of the Leased Property, Lessee shall make application for, obtain, pay for and be solely responsible for all utilities required, used or consumed in the Leased Property, including, but not limited to, gas, water, (including water of domestic uses and for fire protection), telephone, electricity, sewer service, garbage collection services and any similar service. In the event that any charge for any utility supplied to the Leased Property is not paid by Lessee to the supplier when due, the Lessor may, but shall not be required to, pay such charge for and on behalf of Lessee, with any such amount paid by Lessor being repaid by Lessee to Lessor as additional rent promptly upon demand. Additionally, if Lessor shall elect to supply any utilities to the Leased Property, the Lessee shall pay to Lessor the cost of its utility consumption and the cost of supplying separate metering devices if necessary. Lessor agrees that the cost to Lessee of any utilities supplied by Lessor shall not exceed the amount Lessee would have paid if it independently obtained such service from the local utility supplier to the extent that a relationship exists.

Lessor and Lessee hereby agree that Lessor shall not be liable for any interruptions or curtailment in utility services due to causes beyond its control or due to Lessor's alteration, repair or improvement of the Property.

26. **Taxes.** Lessee shall be responsible for the payment of all general real estate taxes assessed against the Leased Property for any improvements erected on the Leased Property by Lessee or on other personal property owned by the Lessee, whether or not such taxes, liens or other charges are levied against it or against Lessor. Lessor shall present a copy of the paid tax bill to Lessee for reimbursement within 90 days of payment by Lessor.

27. **Additional Taxes.** If Lessor is assessed additional taxes or if its present taxes are increased as a result of any value placed on Lessee's leasehold, fixtures or furnishings, or goods and services, then immediately upon demand and proof of tax increase, Lessee shall pay to Lessor the amount of said additional tax, or the amount of the increase.
28. **Failure to Enforce.** Failure of the Lessor to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment by Lessor of any of said rights or conditions and all obligations of the Lessee and rights of the Lessor shall survive the expiration or termination of this Agreement.
29. **Equipment.** It is agreed by the parties to this Agreement that title to all structures and improvements constructed, erected or placed upon the Leased Property by the Lessee, including Facilities and trade fixtures, shall vest with the Lessee.
30. **Repairs and Maintenance.** The Lessee shall, at its own expense, make all necessary repairs and replacements to the Leased Property and to any of the structures erected thereon by the Lessee at its expense. Such repairs and replacements, ordinary as well as extraordinary, and other structural and non-structural maintenance such as grass and weed trimming shall be made promptly. The Lessee shall at times during the term of this Agreement and any extensions or renewals maintain in good safe condition any of its Facilities and improvements established on the Leased Property.
31. **Restoration.** Upon request of Lessor, or upon Lessee's decision, said structures and improvements shall be removed by Lessee within 90 days after the expiration, cancellation or termination of this Agreement, or as soon as possible if weather or frozen ground delays the work in this paragraph. The surface of the Leased Property shall be restored, as nearly as practicable, to the same condition as it was prior to the initial construction of structures, and any subsequent maintenance, repair and removal of the above-described Facilities. With respect to any cement foundations that were installed by Lessee, the Lessee agrees that it shall dig down one (1) foot below grade, cover with topsoil and seed. Lessee shall completely remove any cement foundations at the request of Lessor within one year of the expiration or termination of this Agreement.
32. **Lessor's Right to Property.** Lessee agrees to allow Lessor the right to use the portion of the Property not in use by the Lessee, provided such use does not interfere with Lessee's use of the Leased Property or the purpose or use of Lessee's tower, buildings, structures, anchors, guy wires, satellite dishes, or other Facilities.

The employees or agents of the Lessor shall have the right to enter upon the Leased Property at all reasonable times during the term of the Agreement for inspection of the Leased Property, and for any other activity related to its operations within the Leased Property.

33. **Lessor Certificate.** Lessor agrees to provide at any time, within 10 days of Lessee's written request, a statement certifying that this Agreement is unmodified and in full force and effect or, if there has been modifications, stating such modifications and that such modifications are in full force and effect, whether Lessee is in default of any of its obligations hereunder, and if so, reasonable details

thereof, and such other statements as may reasonably be required by the Lessee, including that Lessor has no ownership interest in or lien on Lessee's Facilities on the Leased Property. It is intended that any such statement delivered pursuant to this paragraph may be relied upon by any person receiving such certificate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their authorized representatives.

LESSOR **City of Cannon Falls, Minnesota**

LESSEE **Mediacom Minnesota LLC**

Print Name

Print Name

Title

Title

Date: _____

Date: _____

EXHIBIT A

The **Property** is described as the following Real Estate situated in Cannon Falls, County of Goodhue, in the State of Minnesota, to wit:

All the tracts or parcels of land lying and being in the County of Goodhue, and State of Minnesota, described as follows, to-wit:

All of Block Ninety-five (95), except Lot Six (6), all in Cannon Falls City Addition to the City of Cannon Falls, County of Goodhue, State of Minnesota.

AND BEING the same property conveyed to The City of Cannon Falls, a Minnesota municipal corporation from State of Minnesota by Indenture dated February 10, 1961 and recorded May 22, 1961 in Deed Book C10, Page 288.

Tax Parcel No. 52.140.2400

**EXHIBIT B
(CANNON FALLS, MN)**



Please remit this document to:

James McKnight
Senior Director, Legal Affairs
Mediacom Minnesota LLC
One Mediacom Way
Mediacom Park, NY 10918
(845) 443-2636

Prepared by
James McKnight

(Recorders Use Above This Line)

STATE OF _____
COUNTY OF _____

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into on this ___ day of _____, 20___, by and between **Cannon Falls, Minnesota**, (“Lessor”), and **Mediacom Minnesota LLC**, a Delaware limited liability company, with an office at One Mediacom Way, Mediacom Park, NY 10918 (“Lessee”).

1. Lessor and Lessee entered into a Lease Agreement (“Agreement”) on the ___ day of _____, 20___, for the purpose of installing, operating and maintaining a communications facility and other improvements, pursuant to the Agreement.
2. The rental term of the Agreement is for 5 years, commencing on May 1, 2019, automatically renewing on the 5th anniversary of the commencement date for an additional 5 years.
3. The Property which is the subject of the Agreement is described in Exhibit A attached hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

{ Signature page to follow }

LESSOR

Print Name

Title

Date: _____

STATE OF)
) ss
COUNTY OF)

On this _____ day of _____, 20__, before me personally appeared _____, to me known to be the person described herein and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Print Name: _____
Notary Public in and for the State of _____

My Commission expires: _____

LESSEE

Print Name

Title

Date: _____

STATE OF)
) ss
COUNTY OF)

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public for said State, appeared _____ to me personally known, who being be me duly sworn, did say that he/she is the _____ of said Mediacom Minnesota LLC; and that the said _____ as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company and by him voluntarily executed.

Print Name: _____
Notary Public in and for the State of _____

My Commission expires: _____

EXHIBIT A

The **Property** is described as the following Real Estate situated in Cannon Falls, County of Goodhue, in the State of Minnesota, to wit:

All the tracts or parcels of land lying and being in the County of Goodhue, and State of Minnesota, described as follows, to-wit:

All of Block Ninety-five (95), except Lot Six (6), all in Cannon Falls City Addition to the City of Cannon Falls, County of Goodhue, State of Minnesota.

AND BEING the same property conveyed to The City of Cannon Falls, a Minnesota municipal corporation from State of Minnesota by Indenture dated February 10, 1961 and recorded May 22, 1961 in Deed Book C10, Page 288.

Tax Parcel No. 52.140.2400

**EXHIBIT B
(CANNON FALLS, MN)**

