



LICENSEE SITE NAME: UTPRV070-UTCDH170 Name: City of Cedar Hills  
SITE COORDINATES: Lat 40.411389 Long -111.746969

## LEASE AGREEMENT

**THIS AGREEMENT** (the "Agreement") is made as of the date last signed on the signature page ("Effective Date") by and between City of Cedar Hills, 10246 North Canyon Road, Cedar Hills, UT, 84062 (the "Lessor") and Skybeam, LLC d/b/a Rise Broadband 61 Inverness Drive East, Suite 250 Englewood, CO 80112 (the "Lessee").

### RECITALS

**WHEREAS**, Lessor is the owner of record of a parcel of land that includes Lessor's North City Water Tank and South City Water Tank and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

**WHEREAS**, Lessee desires to use Lessor's water tanks on the Property for the purpose of installing and maintaining wireless data communications equipment.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do mutually covenant and agree as follows:

### AGREEMENT

#### **ARTICLE 1** **LEASE**

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the non-exclusive right to install, maintain and operate wireless data communications equipment on the Property as more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Equipment"), to be used for the transmission and reception of radio communication signals for the purpose of providing broadband wireless internet service, together with a temporary license for access to and from the Property as further described in Article 4 of this Agreement.

#### **ARTICLE 2** **TERMS**

The term of this Agreement shall be effective as of the Effective Date and shall continue for an initial term of five (5) years (the "Initial Term"). This Agreement shall automatically renew for one additional term of five (5) years, unless either party provides six (6) months' written notice of its intent to not renew this Agreement prior to the end of the Initial Term (the "Extended Term"). The Initial Term and any Extended Term are collectively referred to herein as the "Term."

#### **ARTICLE 3** **PAYMENTS**

In consideration for Lessee's use of the Property, Lessee will pay to Lessor a monthly lease payment of \$600.00, (the "**Monthly Payment**"), which includes \$300.00 per month for the North City Water Tank site plus \$300.00 per month for the South City Water tank. Such payment will increase by 1.5% annually as of the anniversary of the commencement of this Agreement. Such payments to be made on or before the 5th of each month.

#### **ARTICLE 4 ACCESS TO PREMISES**

Subject to Lessor's security measures, with which Lessee agrees to comply, Lessor agrees that Lessee shall have 24/7 access to the Property for the purpose of installing and maintaining the Equipment, along with all related utility wires, cables and conduits, all as reasonably approved in advance by Lessor. Lessor shall furnish Lessee with only such necessary means of access for the purpose of ingress and egress to the Property as are reasonably required to fulfill the intent of this Agreement. Only authorized engineers, employees or properly authorized contractors of Lessee, as set forth on **Exhibit "C"**, attached hereto and incorporated herein by this reference ("**Approved Access List**"), may enter the Property. Lessee shall allow no one access to the Property, other than those listed on the Approved Access List, which may be updated as necessary by Lessee by notice to Lessor.

#### **ARTICLE 5 MAINTENANCE**

Lessee shall, at its sole cost, maintain and repair the Equipment along with Lessee's related improvements, antennas, equipment or other property approved by Lessor in good working condition. At such times that Lessor becomes aware of required maintenance or repairs to be performed by Lessee, Lessee will complete such repair and maintenance within a reasonable period, not to exceed 30 days, after receipt of notice thereof from Lessor except in the event of an emergency or when the wireless or internet/intranet access is not working correctly whereupon the repair and maintenance shall be completed immediately upon Lessee becoming aware of such need for maintenance and repair, subject to Article 4 hereof. Lessee shall be solely responsible for obtaining and maintaining, at Lessee's expense, all utility services as may be necessary for the operation of the Equipment.

#### **ARTICLE 6 TRANSFER OF INTEREST**

Lessee may assign or transfer this Agreement upon prior written approval of Lessor, such approval not to be unreasonably withheld, to: (i) any affiliate of Lessee; (ii) any entity with or into which Lessee is merged or consolidated; or (iii) any entity resulting from a reorganization of Lessee or its affiliates. For purpose herewith, an affiliate shall mean any entity that controls, is controlled by, or under common control with Lessee. Lessee shall have the right to grant third parties the right of access or use of the Property, whether by sublease, license, or otherwise, in furtherance of the purposes set forth in this Agreement with the written consent of Lessor and subject to the provisions of this Agreement.

#### **ARTICLE 7 TERMINATION**

This Agreement may be terminated as follows:

- A) Immediately, by the non-defaulting party, in the event of a non-monetary default, which the party in default has failed to cure in accordance with Article 8 herein;
- B) Immediately, by Lessor, upon Lessee's failure to make full payment of any amounts owed hereunder within 15 days of Lessee's receipt of notice from Lessor declaring Lessee to be in monetary default;
- C) Immediately, by either party, in the event of a misrepresentation default by the other party;
- D) Immediately, by Lessee, in the event any federal, state or local governmental agency or body prevents Lessee from operating the Equipment on the Property – or withholds, revokes or fails to renew any permit or other approval required for the construction, maintenance or operation of the Equipment at the property.

Following the effective date of termination of this lease, in accordance with any of the foregoing, neither party shall have any further obligation or liability hereunder to the other party, other than as may be specifically set forth herein.

Upon termination of this Agreement, Lessee will remove its Equipment within ninety (90) days and restore the Property to its original condition, notwithstanding reasonable wear and tear. In the event the Equipment is not removed and the Property is not restored to its original condition as set forth in the prior sentence within ninety (90) days of the termination date, the Equipment will be deemed abandoned and Lessor shall have the right to take any and all measures necessary to remove the Equipment and restore the Property to its original condition. Notwithstanding anything contained herein to the contrary, this Agreement may be terminated upon ninety (90) days written notice to the Lessor if Lessee reasonably determined that the Property is not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference.

## **ARTICLE 8**

### **DEFAULT**

8.1 In the event there is a default by the Lessee with respect to any of the provisions of the Agreement or its obligations under it, Lessor shall give Lessee written notice of such default. After receipt of such written notice, Lessee shall have 30 days to cure any such default. In the event that the nature of the cure requires more than 30 days, the Lessor will not hold this Agreement in default so long as the work required is being done continuously and diligently. Lessor may not maintain any action or affect any remedies for default against Lessee unless and until Lessee has failed to cure the same with the time periods provided in this paragraph.

8.2 In the event there is a default by the Lessor with respect to any of the provisions of this Agreement or its obligations under it, Lessee shall give Lessor written notice of such default. After receipt of such written notice, Lessor shall have 30 days to cure any such default. In the event that the nature of the cure requires more than 30 days, the Lessee will not hold this Agreement in default so long as the work required is being done continuously and diligently. Lessee may not maintain any action or affect any remedies for default against Lessor unless and until Lessor has failed to cure the same with the time periods provided in this paragraph.

8.3 If neither party is in default but either party acts in a way that is contrary to the Agreement and the terms and provisions in this Agreement, this constitutes a breach of contract. Either party will then be able to seek appropriate breach of contract remedies, against the breaching party, that are available according to the laws of the state the Property is located.

## **ARTICLE 9**

### **INDEMNITY**

Lessee shall indemnify, defend (using legal counsel reasonably acceptable to Lessor) and save Lessor harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including reasonable attorneys' fees and other costs incurred in connection with claims) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property arising out of or in connection with (a) Lessee's occupation, use or improvement of the Property, or that of its employees, agents, or contractors; (b) Lessee's breach of its obligations hereunder; or (c) any act or omission of Lessee or any sublessee, licensee, assignee or concessionaire of Lessee, or of any officer, agent, employee, guest or invitee of Lessee, or of any such entity in or about the Property; provided, however, such indemnity shall not apply to the extent such claims result from the negligence or willful misconduct of Lessor or its agents or employees.

## **ARTICLE 10**

### **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, INCLUDING LOST PROFITS OR REVENUES, WHETHER FORESEEABLE OR NOT, ARISING OUTOF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT; AND PROVIDED FURTHER THAT THIS LIMITATION SHALL NOT RESTRICT EITHER PARTY'S RIGHT TO PROCEED FOR INJUNCTIVE RELIEF.



13.5 To have installed radio equipment of the type and frequency, which will not cause measurable interference to the equipment of the Lessor, or if applicable, other lessees of the Property. In the event Lessee's equipment causes such interference, and after Lessor has notified Lessee of such interference, Lessee will take all steps necessary to correct and eliminate the interference.

13.6 To provide their own power for the Equipment under a separate agreement between Lessee and another party, all as subject to Lessor's prior written consent.

13.7 Lessee shall be responsible for obtaining all permits and other approvals as may be required by any governmental body for the construction, operation, use and maintenance of the Equipment on the property. The cost of filing any of the aforementioned applications and of obtaining any required approvals shall be assumed solely by Lessee. Lessee will comply with all applicable regulations of the Federal Communications Commission with respect to Equipment installed on the Property.

13.8 Lessee shall keep the property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Lessee and shall indemnify, defend, and hold Lessor harmless from any liens that may be placed on the property. Any such lien shall be released of record within thirty (30) days.

#### **ARTICLE 14 DUTIES OF LESSOR**

Lessor agrees:

14.1 To permit Lessee or its agents, representatives, or employees to enter the Property at any time (i.e., full time access 24/7 365 days) to install, repair, upgrade, operate, inspect, alter, and maintain the Equipment, subject to Article 4 hereof.

14.2 To allow installation of electrical lines, conduit or other means necessary to provide power from a neighboring property to Lessee's Equipment on the Property as provided for in Article 13.6 hereof.

14.3 To not permit the use of the Property by other Lessee's in a manner which unreasonably interferes with the Equipment.

14.4 Lessor leases the property to Lessee, and Lessee accepts the property from Lessor "AS IS."

#### **ARTICLE 15 MISCELLANEOUS**

15.1 This Agreement and the performance thereof shall be governed, interpreted, and regulated by the laws of the State of Utah, without regard to its conflict of law provisions. Any disputes hereunder shall be brought in any federal or state court in Utah which has jurisdiction, and the parties hereby agree to such jurisdiction and venue and shall waive any and all objections that such venue is inconvenient.

15.2 If a party files a lawsuit in a dispute arising out of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred in connection with any such action, including reasonable attorneys' fees and court costs.

15.3 No change or modification of any terms or conditions herein shall be valid or binding on either party unless made in writing as an amendment to this Agreement and signed by authorized representatives of both parties.

15.4 The invalidity under applicable law of any provision of this Agreement shall not affect the validity of any other provision of this Agreement; and, if any provision hereof is determined to be invalid or otherwise illegal, this Agreement shall remain effective and shall be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.

15.5 This Agreement shall constitute the entire agreement between the parties and supersedes all prior oral or written communications or agreements of the parties with respect to the matters contained herein.

15.6 Each individual executing this Agreement represents and warrants that he/she has been duly authorized by appropriate action of the governing body of the party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs, and that as a result of this signature, this Agreement shall be binding upon the party for which he/she signs.

15.7 No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

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IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the latest dated signature below and acknowledge that they have read, understand, and agree to uphold the terms and provisions above.

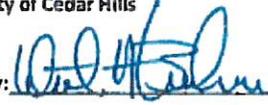
Lessee:  
Skybeam, LLC d/b/a Rise Broadband

By: 

Name: Martin Garrity  
VP Network Planning, Engineering and Construction

Date: 8/18/16

Lessor:  
City of Cedar Hills

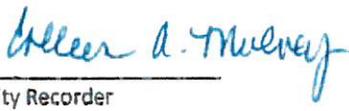
By: 

Name: DAVID H. BUNKER  
CITY MANAGER

Date: 8/15/16



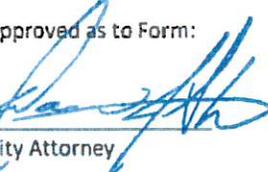
Attest:

  
City Recorder

Approved as to Finances:

  
Director of Finances

Approved as to Form:

  
City Attorney

**Exhibit A**  
**"PROPERTY"**

That particular portion of the property located on the North and South City Water Tanks of the City of Cedar Hills, Utah, and placement of equipment agreed upon by both Landlord and Tenant.

**SITE COORDINATES:** Lat 40.411389 Long -111.746969

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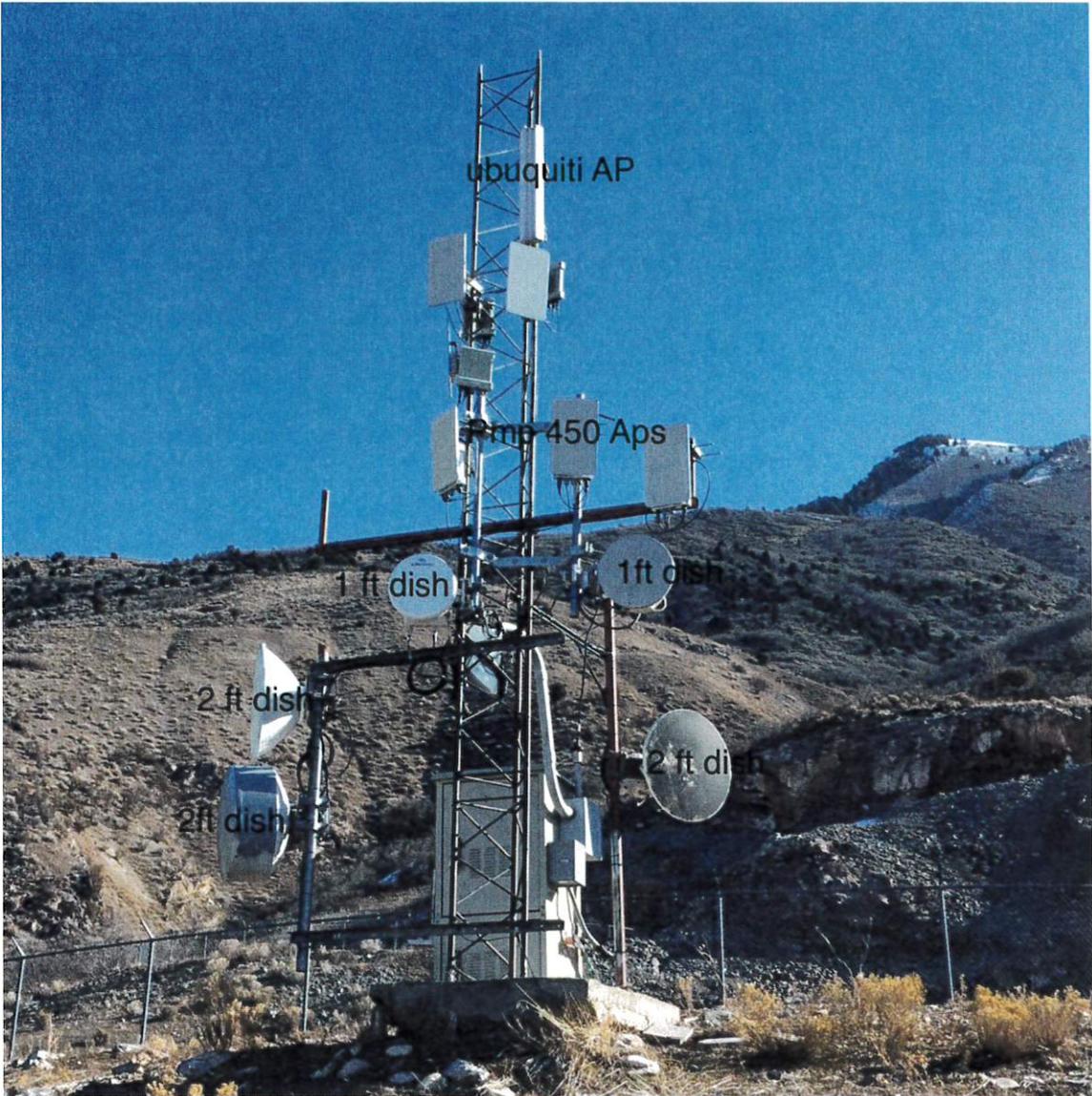
**Exhibit B  
"EQUIPMENT"**

North Water Tank		
Current Equipment	Qty	Potential additional in the next 6 months
PMP 450 Aps	7	4
Ubiquiti	1	
2' Dish	3	1
30" cabinet	1	
1' dish	2	2

South Water Tank		
Current Equipment	Qty	Potential additional in the next 6 months
PMP 450 Aps	3	2
Ubiquiti	1	
2' Dish	1	
30" cabinet	1	
Battery Cabinet	1	
Solar Array Groups of 5 panels	2	

Exhibit B Continued  
"EQUIPMENT"





**Exhibit C**  
**APPROVED ACCESS LIST**

The following individuals are allowed access to the Property for the purposes of this Lease Agreement only:

Infrastructure Team:

Adam Moyer- Supervisor – 801-309-5216 – Access and One (1) Key  
Paul Knudsen – Access  
Taylor Wiscombe – Access  
Sean Preetorius – Access

Infrastructure team member shall give notification via text to City of Cedar Hills after hours phone number when planning on entering the site, whether for routine maintenance, emergency maintenance or any other reason.