

CITY OF MARQUETTE / NORTHERN MICHIGAN UNIVERSITY  
MOUNTAIN TANK LTE AGREEMENT

THIS AGREEMENT is made on \_\_\_\_\_, 2025 by and between NORTHERN MICHIGAN UNIVERSITY, a Michigan constitutional body corporate, whose address is 1401 Presque Isle Avenue, Marquette, Michigan, 49855-5301 (“NMU”) and the CITY OF MARQUETTE, a Michigan municipal corporation, whose address is 300 W. Baraga Avenue, Marquette, Michigan 49855 (“the CITY”).

RECITALS

WHEREAS, NMU operates an educational, wireless fixed/mobile broadband LTE network licensed by the Federal Communications Commission (FCC) throughout Michigan’s Upper Peninsula and specifically the CITY OF MARQUETTE, requiring tower-like infrastructure and utilities to support its LTE transmitters and

WHEREAS, since September 8, 2009, NMU and the CITY have maintained the shared use of NMU and CITY infrastructure;

NOW, THEREFORE, the parties agree as follows:

1. CITY Use of the NMU LTE Network. NMU hereby grants permission to the CITY to use its LTE network for official CITY business at no cost to the CITY. CITY shall, however, be responsible for any costs and replacement or repair of equipment associated with Customer Premise Devices (CPEs) it may use with the NMU LTE Network.

2. Mountain Tank. The CITY hereby leases to NMU space on its Mountain tank water storage facility, such space being sufficient to support NMU’s LTE transmitter, antennas, coax cable, fiber optic cable, and power cable (collectively, the “Mountain Tank Leased Premises”), together with the full and unimpaired access to the Mountain Tank Leased Premises and other common areas of the Mountain Tank Site (as defined herein), with 24 hours advance notice, or on an expedited basis in the event of an emergency, during the term of this Agreement. The Mountain Tank Leased Premises is situated at 46°32'4.78"N, 87°24'34.20"W, adjacent to Mountain Street, in the southern portion of the City of Marquette, Michigan. The Mountain Tank Leased Premises and the adjacent area of the Communications Tower are collectively referred to herein as the “Mountain Tank Site.”

3. Use of Mountain Tank Leased Premises. The CITY hereby grants permission to NMU to install, operate, and maintain the equipment listed in “Attachment 1” to operate its wireless education network (collectively, the “Communications Equipment”) on the Mountain Tank Leased Premises during the term of this Agreement. The CITY also agrees to allow NMU to continue use of the equipment shelter located at the Mountain Tank site to house NMU’s transmission equipment listed in “Attachment 1”. The Communications Equipment located at the Mountain Tank Leased Premises shall be used solely for operating and maintaining NMU’s wireless education network. The Communications Equipment shall not interfere with the CITY’s existing public utility operations or any CITY-owned communications services in operation at the site.

4. Monthly License Fee: Five hundred and 00/100 dollars (\$500.00) per month, which shall be increased by three percent (3%) annually on the anniversary of the Commencement Date of this Agreement. NMU and the CITY agree that the CITY shall invoice NMU annually the amount of six thousand and 00/100 dollars (\$6,000.00) for NMU’s use of the Mountain Tank facility on the Commencement Date of this Agreement. Each year thereafter, the CITY shall invoice NMU an amount equal to the prior year’s lease fee plus three percent (3%). The CITY shall pay no monthly or annual fee to NMU for its use of the NMU LTE Network.

MOUNTAIN TANK LTE FACILITY IMPLEMENTATION AGREEMENT (cont.)

date: \_\_\_\_\_

5. Mountain Tank Facilities. NMU may continue use of its fiber cable attached to the CITY's mountain tank radial to connect NMU's wireless communications system at the Mountain Tank Site. NMU also agrees to continue operating and maintaining its A/C emergency power generation equipment at the Mountain Tank Site to act as back-up power for NMU's wireless education network. NMU agrees to continue its generator connection to CITY utility operations at the Mountain Tank Site to provide both NMU and the CITY with A/C emergency power generation services, which shall be used as back-up power for the CITY's utilities at the Mountain Tank Site, as needed. NMU shall be solely responsible for operating, maintaining (using qualified contractors), and ensuring the service used to support its A/C emergency power generation equipment. NMU also agrees it shall continue to operate and maintain its air conditioning equipment used by NMU and the CITY for equipment cooling inside the CITY's equipment shelter.

6. Mountain Tank Corral Modification. The CITY grants NMU permission to contract work necessary to resolve structural support needs for its LTE transmission equipment atop the water tank ("Attachment 2"). Work shall be performed in accordance with the specifications and structural report in "Attachment 2" and shall be completed by a contractor approved by the CITY. Water Tank corral upgrade work shall be supervised by the NMU, with all costs associated with the project to be paid for by the NMU. In the event that corral modifications to the tank require painting in order to preserve the tank's structural integrity, NMU agrees that it shall be responsible for costs associated with restoring the paint integrity to its original condition. In the event that painting activities associated with corral work require the removal of water from inside the tank, the CITY agrees it shall work with NMU and its contractor(s) to facilitate water removal as necessary to complete repainting activities. If NMU terminates its agreement with the CITY for Mountain Tank use and no longer has use for the corral, the Mountain Tank corral upgrade shall remain as CITY property for use at their discretion. In the alternative, if requested by the CITY, NMU shall remove the corral and appurtenances at its expense, restoring the Mountain Tank to its original condition as outlined in paragraph 10.

7. Water Tank Maintenance. NMU agrees that should the CITY's water tank maintenance needs require the temporary removal of NMU equipment from the water tank facility, NMU shall, at its expense, remove its equipment upon request by the CITY, replacing it once maintenance activities are complete. The CITY agrees that it shall provide NMU with a minimum of 30 days' notice in the event that water tank maintenance needs requires NMU equipment removal.

8. Term. The term of this Agreement shall commence on the date hereof and shall continue for a term of ten (10) years with two (2) five (5) year renewals. Either party may terminate this Agreement by providing one (1) year's written notice to the other party.

9. Installation, Operation, and Maintenance of Communications Equipment. NMU shall be solely responsible for installing (by qualified personnel), operating, and maintaining its Communications Equipment in good working order. All communications equipment owned by NMU at the Mountain Tank Site shall be at NMU's risk only.

10. Removal of the Communications Equipment Upon Termination. Upon termination of this Agreement, NMU shall remove its Communications Equipment and its emergency power generation equipment and repair any damage from such removal to the Mountain Tank Site. If the Communications Equipment and generator are not removed from the Mountain Tank Site within 60 days after termination of this Agreement, the CITY shall be permitted to remove such equipment and bill NMU for the removal costs. The CITY agrees it shall permit NMU to remove CITY-owned communications equipment that is no longer in use at the NMU-owned Mt. Mesnard tower site.

MOUNTAIN TANK LTE FACILITY IMPLEMENTATION AGREEMENT (cont.)

date: \_\_\_\_\_

11. Access. The CITY agrees that during the term of this Agreement, NMU shall have reasonable ingress and egress to the Mountain tank property for the purpose of maintaining, installing, operating, or repairing the Communication Equipment, with access on 24 hours' advance notice or on an expedited basis in the event of an emergency.

12. Insurance.

12.1 CITY Insurance. The CITY shall obtain and maintain during the term of this Agreement: (i) all risk property insurance covering the water tank, improvements and fixtures on the Mountain Tank Site in an amount not less than 100% of their actual replacement cost; and (ii) commercial general liability insurance, including broad form property damage insurance, for bodily injuries and property damage, in amounts not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate covering bodily injuries or death or property damage occurring on the Mountain Tank Site.

12.2 NMU Insurance. NMU shall obtain and maintain during the term of this Agreement: (i) all risk property insurance covering all the Communications Equipment on the Mountain Tank Communications Tower Site in an amount not less than 100% of its actual replacement cost; and (ii) commercial general liability insurance for bodily injuries and property damage, in amounts not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate covering bodily injuries or death or property damage occurring on the Mountain Tank Site.

12.3 Workers' Compensation Insurance. Each party shall ensure that its officers, employees, contractors, subcontractors, and agents who enter onto the Leased Premises are fully covered by Workers' Disability Compensation Insurance to the extent required under Michigan law.

12.4 Certificate of Insurance. Each party shall furnish certificates of insurance or other acceptable evidence that all insurance required by this contract is in force at all times during this Agreement. All policies relating to the Leased Premises shall contain a provision that each policy shall not be modified or canceled unless the insurer first gives at least thirty (30) days prior written notice to the party. Each party must provide at least fifteen (15) days prior written notice of any modification or cancellation to the other party.

12.5 Waiver of Subrogation Rights Under Insurance Policies. NMU and the CITY hereby waive all rights of recovery which either party might otherwise have against the other, and its trustees, officers, agents, employees, invitees, guests, or licensees, for any damage to their property which is covered by a policy of insurance, notwithstanding that such damage may result from the negligence or fault of one of them, or its trustees, officers, agents, employees, invitees, guests, or licensees; provided, however, that this waiver shall be effective only with respect to losses or damages occurring where this waiver will not affect the right of the insured to recover under the applicable policy of insurance.

13. Tank Lighting and Marking Responsibilities. The CITY shall be responsible for compliance with all tower, site and shelter markings and lighting requirements which may be required at their site by the FAA or the FCC. NMU and the CITY shall respectively maintain all required records and shall file any required notification with the FAA or the FCC concerning any repairs to their own structures.

14. Maintenance of Communications Tower Site. The CITY shall maintain, inspect and repair the Mountain Tank Site on an as needed basis to conform with local, state, FAA and FCC ordinances, rules and regulations, as applicable, with reasonable diligence.

MOUNTAIN TANK LTE FACILITY IMPLEMENTATION AGREEMENT (cont.)

date: \_\_\_\_\_

15. Limitation of Damages. Neither party shall have any liability to the other for punitive damages or for any consequential, incidental, or special damages, loss of production, revenue or profits. Nothing in this Agreement is intended to or can be deemed a waiver of either party's governmental immunity.

16. Damage or Destruction. If Mountain Tank Site is damaged or destroyed by fire, winds, flood, riot or other natural or manmade cause, the CITY shall have the option to repair or replace the facility or terminate this Agreement effective on the date of such damage or destruction. If the CITY elects to terminate the Agreement, the other party shall have no further obligations hereunder. If the CITY undertakes such repair or replacement, but cannot complete the same within 90 days after the damage occurred, NMU may terminate this Agreement upon 30 days prior written notice and have no further obligations hereunder.

17. Default. A party shall be deemed to be in default under this Agreement upon occurrence of any of the following events: (a) any failure of the party to perform any other of the terms, conditions or covenants of this Agreement for more than thirty (30) days after written notice of such default shall have been given thereto, or (b) if either party shall abandon the Leased Premises, or allow this Agreement to be taken under any writ of execution.

Upon the occurrence of any of the events of default described in this Section, the defaulting party shall be deemed to be in default of this Agreement and the non-defaulting party may, at its option, without further notice or demand, have all rights and remedies provided at law or in equity.

18. Force Majeure. The parties shall not be in default hereunder if either party is prevented from performing any of its obligations hereunder due to any accident, breakage, strike, riot, shortage of material, tornadoes, floods, acts of God, or other causes beyond the party's control.

19. RF Interference. Under no circumstances shall either party, its employees, invitees, agents, or any other person or entity acting under its authority, put the Leased Premises to any use that in any way interferes with the owner's use of its own property. If the CITY determines that any use of the Leased Premises unreasonably interferes with the use of its property, it shall provide NMU a detailed description of any such interference by registered United States mail. The NMU shall correct any such interference within seventy-two (72) hours, or such other period as may be mutually agreed to by the other party. If NMU fails to correct any such interference to the satisfaction of the CITY within seventy-two (72) hours or within such other time mutually agreed upon, NMU shall cease transmissions until such time that repairs are made and the cause of the interference has been eliminated.

20. Hold Harmless. NMU shall hold the CITY harmless to the extent of any personal injury or death to any NMU employee or contractor, property damage to the Mountain Tank Site, or problems with interference of any third party's communication equipment located on the Mountain Tank Site caused by NMU's Communication Equipment except to the extent caused by the CITY.

21. Assignment. Neither party may assign or sublet any portion of its rights and interests under this Agreement without the express written consent of the other party. Additionally, neither party may sell or transfer any portion of either Leased Premises without prior written notice to the other party. Neither party nor any assignee or subleasee shall install additional towers or equipment, nor in any way increase the use or burden upon the Leased Premises, without a written amendment to this Agreement signed by both parties.

MOUNTAIN TANK LTE FACILITY IMPLEMENTATION AGREEMENT (cont.)

date: \_\_\_\_\_

22. Miscellaneous.

20.1 Notices. All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given: (a) when personally delivered to the party to be given such notice or other communication; (b) on the business day that such notice or other communication is sent by facsimile or similar electronic device, fully prepaid, which facsimile or similar electronic communication shall promptly be confirmed by written notice; (c) on the third business day following the date of deposit in the United States mail if such notice or other communication is sent by certified or registered mail with return receipt requested and postage thereon fully prepaid; or (d) on the business day following the day such notice or other communication is sent by reputable overnight courier, to the address set forth at the beginning of this Agreement or to such other address as the parties may designate in writing.

20.12 Construction. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or partnership or of joint venture between the parties hereto.

20.13 Partial Invalidity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

20.14 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors, assigns, guardians, heirs and legal representatives.

20.15 Choice of Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Michigan.

20.16 Entire Agreement and Amendment. This Agreement and its attachments contains the entire agreement with respect to the matters described herein and is a complete and exclusive statement of the terms thereof and supersedes all previous agreements with respect to such matters. This Agreement may not be altered or modified except by a writing signed by NMU and the CITY.

MOUNTAIN TANK LTE FACILITY IMPLEMENTATION AGREEMENT (cont.)

date: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement and caused it to be effective as of the day and year first set forth above.

NORTHERN MICHIGAN UNIVERSITY

CITY OF MARQUETTE

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

Matt Franti

Its: Asst. Vice President, Budget & Finance

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

Jessica Hanley

Its: Mayor

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

Kyle Whitney

Its: CITY Clerk

APPROVED AS TO CONTENT:

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

Karen Kovacs

Its: CITY Manager

APPROVED AS TO FORM:

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

Suzanne Larsen

Its: Attorney