

COMMERCIAL GROUND LEASE  
FOR WIRELESS INFORMATION SERVICES SITE

THIS LEASE AGREEMENT, made and entered into this \_\_\_\_\_ day of 2022 by and been the following:

CITY OF BILLINGS, MONTANA, hereinafter designated "Lessor"

and

Daniel Denson, doing business under the assumed business name of Denson Technologies, 3940 Becraft Lane, Billings MT 59101 designated "Lessee"

RECITALS

- 1) Lessor owns and operates BILLINGS REGIONAL LANDFILL (hereinafter called the LANDFILL) situated in Yellowstone County in Billings, Montana, and
  - 2) Lessor deems it reasonable to lease to the Lessee a certain parcel of land hereinafter described together with certain privileges, rights, uses and interests, and
  - 3) Lessee, a sole proprietor doing business under the assumed business name of Denson Technologies, wishes to engage in certain wireless information services commercial activities and proposes to lease on a net basis from Lessor said parcel of land and to avail himself of the same privileges, rights, uses and interests contemplated herein and,
  - 4) Lessee has indicated a willingness and ability to properly keep, maintain and improve said land in accordance with standards established by Lessor.
- NOW THEREFORE, the Parties hereto covenant and agree as follows:

ARTICLE I PREMISES AND PRIVILEGES

- A. Description of the Premises. Lessor hereby leases to Lessee and Lessee hereby hires and takes from Lessor that certain parcel of real property consisting of 24 square feet (4 feet by 6 feet) together with improvements (hereinafter called the premises), for its exclusive use, specifically described in "Exhibit A," attached hereto and incorporated herein by reference as if fully set out.
- B. Construction of Improvements. Lessee may construct a 10-foot cell pole for mounting of wireless information services equipment on the part of land described above pursuant to the Plans hereto attached, marked "Exhibit B" and by reference specifically made a part of this Lease. Lessee shall not deviate from the plans in any

way without the prior written consent of Lessor. Construction shall be completed in accordance with all applicable City, county, and state regulations; and all associated construction costs shall be paid by the Lessee.

The Lessor shall review and approve all plans and location of improvements on the premises. Lessor hereby consents to the construction contemplated in Exhibit B hereto. Additionally:

- 1) The pole and associated equipment will be built in a workman like manner.
- 2) Lessee's Equipment. Article VII, Paragraph A, controls the disposition of Lessee's pole, equipment and personal property upon expiration or other termination of this Lease. Except as otherwise noted in Article VII, Paragraph A, Lessor acknowledges and agrees that all personal property, pole, equipment, apparatus, fittings, fixtures and trade fixtures installed or stored on the Premises constitute personal property, not real property, and shall continue to be the personal and exclusive property of Lessee, including without limitation, all wireless information services equipment including, but not limited to, antennas, microwave dishes, coaxial or fiber-optic cable, and regular and backup power supplies, switches, wiring and associated equipment or personal property (collectively, the "Equipment"). The Equipment shall remain at all times the personal property of Lessee, and neither Lessor nor any person claiming by, through or under Lessor shall have any right, title or interest (including without limitation a security interest) in the Equipment. Lessee, and Lessee's successors in interest, shall have the right to remove the Equipment at any time during the Term of this Lease or its earlier termination. Removal of equipment shall not damage, deface, or destroy Lessor's property in any way. With respect to the holder of any mortgage, deed of trust or other lien affecting Lessor's interest in the Premises whether existing as of the date hereof or arising hereafter, Lessor and Lessee hereby agree, acknowledge and declare that the Equipment is now and shall at all times hereafter remain the personal and exclusive property of Lessee. In the event of Lessee's default of a lease payment, however, the parties acknowledge and agree that Lessor shall have the right and authority to grant a lien upon or security interest in any of the Equipment.

C. General Privileges, Uses and Rights. Lessor hereby grants to Lessee the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants herein set forth.

- 1) The general use of the pole site access road and parking area, located on the pole site, on Landfill property, and improvements which are now or may hereafter be connected with or appurtenant to said property, except as hereinafter provided, to be used by Lessee and for commercial activities as herein defined. Said use shall be

subject to Federal and State Laws, rules, regulations and City Ordinances as now or may hereafter have application at the Landfill.

2) The right of ingress to and egress from the premises shall be limited to the common access road to the pole site from Hillcrest Road during hours of landfill operation. Access to the site outside of normal operating hours will be allowed via a gate at the south end of the landfill. After hours access will be utilized only in the event of an emergency and the right shall be revoked if issues arise such as the gate being left unlocked or other activities that negatively impact landfill operations. Said right shall be subject to such ordinances, rules, and regulations as now or may hereafter have application at the Landfill, including public hours of operation of the landfill.

D. Specific Privileges, Uses, and Rights. In addition to the general privileges, uses and rights described above and without limiting the generality thereof, Lessor hereby grants to Lessee the right to engage in commercial activities on the premises as defined in sub-paragraphs 1 through 2 below, subject to the conditions and covenants hereafter set out:

1) The construction of the pole and associated equipment and operation, repair, replacement and maintenance of on the premises described in "Exhibit A" necessary for the conduct of business.

2). The parking of vehicles conducting site maintenance in the designated parking area on the leasehold.

E. Reservation of Right-of-Way. Lessor hereby reserves a right-of-way easement for access purposes over the above- described leasehold. Said reserved right-of-way may be used by Lessor and Lessor's contractors pursuant to them carrying insurance set forth in.

F. Access/Inspection by Lessor. The Lessor or any person designated by the Lessor shall at all times have reasonable access to the premises, and in the event of any emergency the Lessor or its representatives shall have the right to take such action at the premises as they deem necessary for the protection of persons or property.

G. Renting Antenna Space. The Lessee is not authorized to rent pole space to others.

## ARTICLE II TERM OF LEASE

A. Term. The term of this Lease shall be for a period of five (5) years, commencing on the \_\_\_ day of \_\_\_\_\_, 2022.

B. First Right of Refusal. Provided Lessee is not then in default of this Lease and has kept and performed all of his obligations, at the end of the term hereof the Lessee shall have the first right to accept a new lease of the premises at the same rates and charges that the premises may be offered to any other person or entity, subject to City Council approval. Provided, that the Lessor shall have the sole discretion as to the use of said premises and whether or not it will be relet at the end of said term. Provided further, that 60 days prior to the end of the term Lessee shall give notice in writing to Lessor of intent to exercise the first right of refusal. Lessor upon election to relet said premises shall give Lessee notice in writing of its decision and the proposed terms. Lessee shall have 30 days in which to give Lessor notice in writing of acceptance.

### ARTICLE III RENTAL AND FEES

A. Ground Rental. For the land described in Article I, Paragraph A. Lessee shall pay to Lessor an annual rental of \$4,000 per annum for all ground included in this Lease. Said rental shall be payable annually in advance without billing on the 1st day of each new contract year in the amount equal to the total annual rental.

D. Annual Readjustment of Ground Rental and Use Fee. During the term of the Agreement the ground rental and use fee will be adjusted annually on the anniversary of the Agreement using the Consumer Price Index for the previous 12-month period. In no case shall the rates be less than the previous year.

### ARTICLE IV

#### OBLIGATIONS OF LESSOR

A. Lessor Warranties. Lessor warrants all things have happened and have been done to make its granting of said Lease effective and that Lessee shall have peaceful possession and quiet enjoyment of the leased premises during the term hereof, upon performance of Lessee's covenants herein.

B. Operation as Public Landfill. Lessor shall during the term hereof operate and maintain the Landfill and its public facilities, as defined hereinabove, as a public landfill.

C. Condition and Maintenance of Premises. Lessor shall assume no responsibility for the condition of the demised premises after delivery of premises to Lessee. Lessor shall remove snow from the access road as Lessor's resources permit. Snow removal on Lessee's premises will be the responsibility of the Lessee.

### ARTICLE V OBLIGATIONS OF LESSEE

A. Condition of Premises. It shall be the sole responsibility of the Lessee to develop, keep, maintain, and operate the entirety of the premises and all improvements and facilities placed thereon at Lessee's sole cost and expense. This Lease, in every

sense, shall be without cost or expense to the Lessor. Lessee accepts the premises in its as-is and present condition and will repair and maintain any installations thereon except as provided in Article IV, Paragraph B-C.

B. Improvements. Lessee shall have the right to and shall provide for the siting construction, erection, maintenance of its own improvements and installations, in any lawful manner, upon or in the premises, for carrying out any of the activities provided for herein, but all such activities shall require the prior review and written approval of Lessor.

C. Maintenance. Lessee shall, at its sole cost and expense, maintain the premises improvements, installations, equipment and appurtenances thereto in a presentable-condition free of refuse and debris consistent with good business practice.

D. Utilities. Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term thereof;

E. Trash, Garbage, Etc. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage and other refuse occurring as a result of the construction of improvements and operation of his communications facility and equipment. Lessee shall remove all trash and other refuse from the site on a weekly basis. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner, or open storage of materials, personal property, salvage, junk or refuse on or about the premises, is forbidden. The Lessee will pay all disposal costs.

F. Lessee shall not maintain on the premises any billboards or advertising signs.

G. Federal, State, and Local Regulations. Lessee acknowledges that the right to use said pole site facilities in common with others authorized to do so shall be exercised subject to and in accordance with the laws of the United States of America, the State of Montana, and the City of Billings. Lessee shall comply with all Federal, Local and State laws, rules, regulations and ordinances, and all Rules and Regulations of Lessor now in force or hereafter prescribed or promulgated by authority or by law shall be closely observed during the full term of this Lease.

H. Hazardous Substances. Lessee will not introduce any hazardous substances to the site.

I. FCC Authorization. Prior to activating any communications equipment, the Lessee must possess a valid Federal Communications Commission (FCC) authorization and ensure that the operation of the equipment will be conducted in strict compliance with applicable requirements. A copy of each applicable license must be maintained by the Lessee for each transmitter being operated by Lessee. The Lessee must provide the City, when requested, with a current copy of each license for equipment in or on facilities covered by this Lease Agreement. When requested by the City the Lessee shall provide technical information concerning the equipment operated by Lessee under the terms of this Agreement.

J. Interference With Existing Signals. The Lessee must ensure that all equipment is operated in a manner, which will not cause interference with the operation of existing communication towers, poles and equipment located at the Landfill or near Lessee's

site. If the City determines that the Lessee's communications services, facility and equipment is interfering with existing telecommunications facilities and equipment located at the Landfill or near Lessee's site, the Lessee will have fifteen (15) days to eliminate the interference to the satisfaction of the City. If the interference is not corrected in fifteen (15) days the Lessee shall shutdown his equipment until the problem can be corrected. NOTE: If the City determines that the Lessee's equipment is interfering with critical City of Billings Communications or pre-existing telecommunications lessee, Lessee shall immediately shut down all communications systems until the interference is corrected.

K. Encumbrances, Mortgages, and Liens. Lessee shall not encumber in any way any part of the real property of the leasehold estate by assignment, hypothecation, security interest, mortgage, pledge, deed of trust or any other instrument given to or for the benefit of any bank, financing institution or to or for the benefit of any contractor or other third party. Further, Lessee shall keep the real property of the leasehold estate free and clear of all liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

## ARTICLE VI

### INSURANCE AND INDEMNIFICATION

A. Indemnification. Lessor shall stand indemnified by Lessee as herein provided. It is expressly understood and agreed that Lessee is and shall be deemed to be an independent contractor and operator responsible to all parties for his respective acts or omissions and that Lessor shall in no way be responsible therefore. It is further agreed that in the use of the pole site, in the erection and construction of any improvements thereon, and in the exercise or enjoyment of the privileges herein granted, Lessee shall indemnify and save harmless the Lessor from any and all losses that may result to the Lessor because of any negligence, act or omission on the part of the Lessee and his contractors, and shall indemnify Lessor against any and all mechanic's and material men's liens or any other types of liens imposed upon the premises.

B. Insurance. Lessee shall promptly, after the execution of this Lease, procure at his expense and deliver to Lessor a certificate of insurance in amounts as shown below. The City of Billings shall be named as co-insured. The policy of insurance shall also contain a provision requiring the issuer to notify Lessor, by at least thirty (30) days written notice, of any reduction in the face amount of the policy, cancellation or other adverse amendments to the risk covered.

Lessee shall maintain said insurance with insurance underwriters authorized to do business in the State of Montana and with a Best's rating satisfactory to Lessor. All policies shall name Lessor, its officers, servants and agents and employees as additionally insured as their interests shall appear. Lessee shall furnish Lessor with a certificate from the insurance-carrier showing such insurance to be in full force and

effect during the entire term of this Lease or shall deposit with Lessor copies of said. Policies immediately upon execution of this Agreement.

## MINIMUM INSURANCE REQUIREMENTS

Insure that Lessee, and his employees (should Lessee incorporate) as well as Lessee's contractors and their employees, have in effect Commercial General Liability Insurance, Workers' Compensation Insurance, Automobile Liability Insurance and Excess Liability Insurance with coverage limits, set forth, below.

### Workers Compensation and Employers Liability Insurance

Insure that all of your employees, as well as contractors and their employees, have in effect Commercial General Liability Insurance, Workers' Compensation Insurance, Automobile Liability Insurance and Excess Liability Insurance with coverage limits, set forth, below.

Lessee is required to comply with Workers Compensation laws of the State of Montana or obtain a private Worker's Compensation Policy in the amount of \$1,000,000. Otherwise, Lessee is required to show proof of a current Independent Contractor Exemption Certificate issued by the Department of Labor & Industry for the State of Montana to Lessor.

### General Liability

Lessee is required to maintain General Liability insurance endorsing the City of Billings as an additional insured in the following amounts:

Bodily Injury \$750,000 Each Occurrence (Minimum)

Property Damage \$750,000 Each Occurrence (Minimum)

or

Bodily Injury and Property Damage \$1.5 million Combined Single Limit Each Occurrence

### Automobile Liability Insurance

Lessee is required to maintain Automobile Liability Insurance, which shall include coverage for all owned, non-owned and hired vehicles in the following amounts:

Bodily Injury \$750,000 Each Person (Minimum)

\$1.5 million Each Occurrence (Minimum)

Property Damage \$ 750,000 Each Occurrence (Minimum)

Or

Bodily Injury and

Property Damage \$1.5 million Combined Single Limit Each Occurrence (Minimum)

Lessee is required to maintain excess liability insurance in the following amount:  
Excess Umbrella Liability Coverage  
Bodily Injury and  
Property Damage  
(Minimum) \$1,000,000 Combined Single Limit Each Occurrence

## ARTICLE VII

### TERMINATION OF LEASE, CANCELLATION & TRANSFER.

A. Termination. This Lease shall terminate at the end of the full term hereof without any notice by either party. A holding over by the Lessee beyond the expiration of the term shall not be permitted without the written consent of the Public Works Director and then only on a month-to-month basis.

Upon expiration or other termination Lessee shall have the right to remove from the leasehold premises all moveable fixtures, machinery, equipment, apparatus, fittings, fixtures and trade fixtures, all telecommunication and information equipment, switches, cables, wiring and associated equipment, other personal property, and other structures owned or installed by Lessee on the premises. All expenses connected with such removal shall be borne by the Lessee. Said property shall be removed within thirty (30) days after expiration or other termination of the Lease. In the event the Lessee fails to remove any moveable fixtures, machinery, equipment, apparatus, fittings, fixtures and trade fixtures, telecommunication and information equipment, switches, cables, wiring and associated equipment, other personal property, structures or other property installed or located on the premises within thirty (30) days after expiration or other termination of the Lease, then Lessor shall acquire sole possession, right and title to said property. Lessor shall then have the right to remove or otherwise dispose of said property and charge to Lessee the actual cost of removal and restoration of the leasehold premises.

Lessee shall restore the premises to its original condition or to the satisfaction of the Lessor.

B. Cancellation by Lessee. This Lease shall be subject to cancellation by Lessee after the happening of one or more of the following events:

- 1) The lawful assumption of the United States Government or any other authorized agency thereof, of the operation, control, or use of the Landfill, or any substantial part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating in a normal manner.
- 2) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Landfill, and the remaining in force of such injunction for a period of at least 90 days.

3) The default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of ninety (90) days after receipt from Lessee or Written notice to remedy same.

Lessee may exercise such right of termination by written notice to Lessor at any time after the lapse of the above applicable periods and this Lease shall terminate as of that date. Rental due hereunder shall be payable only to the date of the happening of the event, which results in said termination. Upon termination under the provisions of this paragraph. Lessee shall have the same rights as described in the second paragraph of Article VII, Paragraph A herein.

C. Cancellation by Lessor.

1) This Lease shall be subject to cancellation by Lessor in the event

Lessee shall: -

a) Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period often (10) days after is due.

b) File a voluntary petition of bankruptcy.

c) Make a general assignment for the benefit of creditors.

d) Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after written notice from Lessor of said default.

e) Use any portion of Lessor's properties in any way that interferes with the primary functions of the Landfill. Such interference shall be deemed a material breach by Lessee, and Lessee shall have the responsibility to terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Lessor and therefore Lessor shall have the right, in addition to any other rights that it may have at law or inequity, to elect to enjoin such interference or to terminate this Lease.

f) Abandon its conduct of business on the leased premises.

2) In the event of termination because of the happening of any of the aforesaid events, Lessor may take immediate possession of the premises and remove

Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing: Upon said entry, this Lease shall terminate.

3) It is agreed that failure of Lessor to declare this Lease terminated or to re-enter and take possession upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to declare this Lease null and void by reason of any subsequent violation of the terms of this Lease.

## ARTICLE VIII

### GENERAL PROVISIONS

A. **Attorney's Fees.** Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. **Taxes.** Lessee shall pay any taxes or assessments which may be lawfully levied against Lessee's occupancy or use of the premises or any improvements placed thereon as a result of Lessee's occupancy, but Lessee as an independent contractor reserves the right to contest the levy of any tax or assessment, which it feels, is unjust.

C. **Subordination of Lease.**

1) Notwithstanding any other prohibition or limitation of Lessee's right to sublease or assign its interest under this Lease, Lessor acknowledges and agrees that lessee shall have the right to grant a security interest in its rights and interest under this Lease, provided, however, the Lessor give its written consent. Lessor further agrees that any person foreclosing or otherwise realizing upon such a security interest granted by Lessee shall succeed to, and shall have the benefits of, all Lessee's rights, title and interest in, to and under this Lease.

Lessor in no event shall be liable for the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no money judgment against Lessor. Lessee will provide to Lessor immediate written notice by certified mail of each notice of breach of covenant, default, or foreclosure given to Lessee by a holder or trustee of any indebtedness, mortgage, or trust indenture affecting or applying to Lessee's interest under this Lease.

D. **Paragraph Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease or the particular paragraphs.

E. Notices. Notices to Lessor provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Public Works Department  
2251 Belknap Ave  
Billings, MT 59101  
ATTN: Public Works Director

and notices to Lessee, if sent by certified mail, postage prepaid, addressed to:

Daniel Denson dba Denson Technologies  
3940 Becraft Lane  
Billings MT 59101  
ATTN: Dan Denson

or to such other addresses as the parties may designate to each other in writing from time to time.

F. Successors and Assigns. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of successors and assignees of the respective parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands this day of \_\_\_\_\_, 2022.

ATTEST

CITY OF BILLINGS

\_\_\_\_\_  
BY

\_\_\_\_\_  
BY

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
APPROVED AS TO FORM

\_\_\_\_\_  
BY

\_\_\_\_\_  
BY

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DANIEL DENSON

## **Exhibit A**

1 pole that is a base section in concrete and a 10' section attached to the base.  
Approximately 3'x3' of ground space occupied

1 equipment box, approximately 24"x24" mounted on a pad, ground space  
approximately 3'x3'

1 power meter supplied by YVEC for their power delivery.

## Exhibit B

