

PUBLIC SAFETY COMMITTEE

Passed
2/28/11

11-0097R

RESOLUTION AUTHORIZING THE CITY OF DULUTH POLICE DEPARTMENT TO ENTER INTO A USE AGREEMENT WITH THE STATE OF MINNESOTA, DEPARTMENT OF TRANSPORTATION ("MN/DOT") PERMITTING THE POLICE DEPARTMENT TO INSTALL AND MAINTAIN COMMUNICATIONS EQUIPMENT ON THE MN/DOT COMMUNICATIONS TOWER.

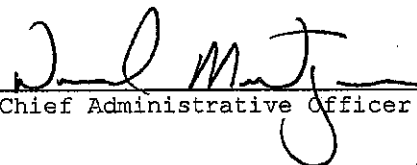
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized and directed to enter into a communications facility use agreement with the state of Minnesota, department of transportation, allowing the city of Duluth police department to lease space on the communications tower located at 329 West 10th Street, which tower is owned by the state of Minnesota; agreement to be substantially in the form of Public Document No. _____ on file in the office of the city clerk.

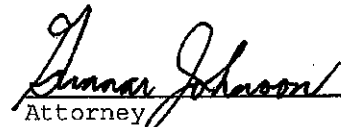
Approved:

 *for chief Ramsey*
Department Director

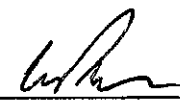
Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

POLICE/ATTY TLL:blj 2/17/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute an agreement for the lease of space on a Mn/DOT communications tower located within the city of Duluth. The police department will be installing equipment onto this tower and maintaining that equipment. This equipment will be used to communicate with wireless cameras that will be installed as part of the Port Security Camera Project.

STATE OF MINNESOTA
COMMUNICATIONS FACILITY
USE AGREEMENT

Agreement #98282
Duluth Tower

THIS AGREEMENT, by and between State of Minnesota, Department of Transportation, hereinafter referred to as Mn/DOT, and the City of Duluth Police Department, hereinafter referred to as DPD;

WHEREAS, the Commissioner of Transportation is empowered by Minnesota Statute 174.70, Subd. 2 to enter into agreements to permit non-state owned communications equipment on Mn/DOT owned communications towers, land, buildings or other structures which are under the jurisdiction of the Commissioner of Transportation, and

WHEREAS, the State of Minnesota owns and the Commissioner of Transportation has custodial responsibility for a communications tower, shelter, and land on which the tower is located, herein referred to respectively as the "Communications Facility," located at 329 West 10th Street in the City of Duluth, which is more fully described in Exhibit A2, attached hereto, and

WHEREAS, MN/DOT has determined that said tower and shelter have excess capacity which is surplus to its needs and MN/DOT is willing and able to provide space on the Tower and in Shelter to DPD under certain terms and conditions, and

WHEREAS DPD requires space on this Tower and in Shelter to install and maintain DPD'S communications equipment as described in the attached Exhibit B1.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants herein contained, which each of the parties hereto acknowledge as adequate and sufficient, it is hereby agreed as follows:

1. COMMUNICATIONS FACILITY

MN/DOT grants and DPD accepts this "Agreement" for the use of Antenna space and shelter space on or within Mn/DOT's Duluth Communications Facility located in the County of St. Louis, Minnesota, more fully described on attached Exhibit A2.

2. TERM

The term of this Agreement is for ten (10) years, commencing on March 1, 2011, and expiring February 28, 2021.

- 2.1 This Agreement shall renew automatically on the expiration date at the same terms and conditions as described herein, unless otherwise terminated by one or both parties as set forth in paragraphs 2.2 and 5 of this Agreement.
- 2.2 In the event that either party elects not to renew this Agreement or renegotiate the terms of the agreement before the expiration date, that party shall give written notice to the other party informing that they wish to terminate or renegotiate the Agreement. Said notice must be received forty-five (45) days prior to the expiration date.

3. USE

- 3.1 Mn/DOT hereby grants DPD a non-exclusive right to install, use and maintain DPD'S communications equipment on the Communications Facility, subject to the terms and conditions described herein. Mn/DOT reserves the right to allow Mn/DOT'S Property to be used by others and make additions, deletions and modifications to Mn/DOT'S communications equipment, if any, located on Mn/DOT'S Property.
- 3.2 Placement of Antenna(s): DPD shall, at DPD'S expense, mount DPD'S antenna(s) only in such location(s) on the Communications Tower as described in **Exhibit B1**, attached hereto.
- 3.3 Placement of Communications Equipment: DPD shall, at DPD'S expense, locate and install their Communications Equipment only in such location(s) inside Mn/DOT's shelter as described in **Exhibit B3** and conform to the installation instructions in **Exhibit B3**.
- 3.4 DPD may not add additional equipment or antennas from that described in **Exhibits B1**, attached hereto without the written approval of Mn/DOT, which shall be granted only in the form of a written amendment hereto.

4. ELECTRICAL SERVICES FEE

- 4.1 DPD agrees to pay to Mn/DOT for two (2) base station(s), for the Term of the Agreement the sum of three hundred dollars and zero cents (\$300.00), payable annually. Rates applied as noted below:

1 to 2 Stations = \$300.00 per year
3 to 4 Stations = \$400.00 per year
5 or more Stations = \$500.00 per year

- 4.2 If this Agreement is terminated at any time other than on the first day of a month, the fee shall be prorated, beginning on the first day of the next month, as of the date of termination, and all prepaid fees shall be reimbursed to DPD.
- 4.3 DPD agrees to pay Mn/DOT the ANNUAL fee set forth above upon execution of this Agreement, and then annually upon receiving an invoice on anniversary date of this

Agreement. Payment will be mailed or delivered to the address provided below unless otherwise instructed on the invoice:

Minnesota Department of Transportation
Office of Electronic Communications
1500 West County Road B2 MS-730
Roseville, Minnesota 55113
(651) 234-7964

All correspondence and telephone calls concerning billing issues should be directed to the address provided above.

5. TERMINATION

- 5.1 DPD may terminate this Agreement for any reason at any time upon giving thirty (30) days written notice of such termination to the Mn/DOT.
- 5.2 DPD may terminate this Agreement if DPD is unable to obtain the required governmental and Federal Communications Commission approvals to operate at the Communications Facility.
- 5.3 Mn/DOT may terminate this Agreement for the following reasons:
 - a. In the event of any failure of DPD to pay any fee due under this Cooperative Agreement within a reasonable amount of time. Or, any failure to perform any other of the terms, and conditions of this Agreement to be observed or performed by DPD for more than thirty (30) days after written notice of such default has been given to DPD. Upon such termination, DPD shall quit and surrender the Communications Facility to Mn/DOT; and by such repossession, Mn/DOT shall not be deemed to have waived its right (if any) to collect fees due (if any) from DPD hereunder or to enforce the other obligations of DPD hereunder.
 - b. Property is needed for governmental services, including but not limited to: tower space, shelter space, ground space, Highway requirements, or other required governmental services.
- 5.4 Upon termination, DPD shall have one hundred eighty (180) days from the date of delivery of notice of termination to remove all of DPD'S equipment from the Communications Facility and MN/DOT'S Property. DPD'S failure to remove such equipment within one hundred eighty (180) days of expiration or termination of this Cooperative Agreement shall be deemed to be abandonment of the improvements and Mn/DOT may possess, remove and dispose of the equipment at will and charge DPD for the reasonable cost of removal and disposal thereof.

- 5.5 Upon termination and at Mn/DOT'S written request, DPD shall restore any painted surfaces disturbed by DPD'S occupancy to their original condition.
- 5.6 Mn/DOT and DPD hereby agree that DPD shall not be reimbursed by Mn/DOT for any investment or expense incurred by DPD as a result of this Agreement upon termination of the Agreement.

6. DUTIES OF MN/DOT

- 6.1 Mn/DOT shall provide for the general maintenance of Mn/DOT'S Property, and Communications Facility, including obstruction lights, if any, inspections and any other measures necessary to maintain the safety and utility of Mn/DOT'S Property. Mn/DOT agrees to maintain Mn/DOT'S Property in strict accordance with all local, state and federal rules and regulations. This shall include, but not be limited to, weed control, tower lights, tower lighting alarm system, lighting monitoring and any other FCC or FAA mandated codes.
- 6.2 Mn/DOT shall, upon execution of this Agreement, provide DPD with the name, address and telephone numbers of Mn/DOT'S Authorized Agent, who shall be DPD'S day-to-day contact person for resolution of equipment issues and other technical issues that may arise during the term of the Agreement. This information is also provided in **Exhibit C** attached hereto.
- 6.3 Mn/DOT hereby grants to DPD non-exclusive right of access to the Communications Facility as necessary to install and maintain DPD'S equipment.
- 6.4 Mn/DOT shall provide DPD with a method of access to the Communications Facility as described in **Exhibit C**, attached hereto.
- 6.5 Mn/DOT shall furnish and provide electrical services, including emergency back-up power to DPD for its use.
- 6.6 Mn/DOT hereby grants to DPD easement rights to connect to services that are available from third party vendors.
- 6.7 Mn/DOT shall approve all electrical and telephone wiring routes inside Mn/DOT'S shelter prior to installation by DPD or DPD'S contractors, which approval shall not be unreasonably withheld.
- 6.8 Mn/DOT shall have no liability to DPD for interruptions of electricity or telephone service by third party vendors or any other interruptions beyond Mn/DOT'S direct control.

7. DUTIES OF DPD

- 7.1 DPD warrants that DPD'S use of the Communications Facility shall not interfere with any of Mn/DOT'S communications equipment or any other users that are on Mn/DOT'S Property prior to the effective date of this Cooperative Agreement. In the event there is interference, DPD shall promptly shut down that portion of its equipment causing the interference, except for intermittent testing, until the interference is corrected. If at any time there is future use of Mn/DOT'S Property by any other communications users, Mn/DOT shall have the responsibility to order the operator of the newly-added equipment to shut down that portion of its equipment causing the interference, except for intermittent testing, until the interference is corrected.
- 7.2 DPD shall in no way alter, disrupt, modify or damage existing drainage patterns and systems affecting the Communications Facility.
- 7.3 DPD, its employees, contractors or consultants shall not perform any construction or any physical modifications of the Communications Facility, including the tower and tower grounds, without first obtaining Mn/DOT'S written consent.
- 7.4 Prior to installing, replacing or modifying any equipment on the Communications Facility, DPD shall notify Mn/DOT'S Authorized Agent and secure written approval from Mn/DOT'S Authorized Agent to proceed.
- 7.5 All wiring shall conform to the existing wiring method used at the Communications Facility and shall conform to the National Electrical Code. DPD shall obtain, or require its contractors to obtain, any necessary permits from applicable units of local government.
- 7.6 DPD shall notify Mn/DOT'S Authorized Agent of any scheduled access or emergency access to the Communications Facility as described in **Exhibit C** "Site Access" attached hereto.
- 7.7 DPD shall install and maintain DPD'S antennas and equipment in accordance with standard engineering practices and in accordance with Mn/DOT'S technical standards, if any. DPD'S communications equipment shall be installed operated and maintained in conformance with 47 Code of Federal Regulations 1.1310, regulating radio frequency radiation exposure levels, and in conformance with all applicable rules and regulations established by the Federal Communications Commission.
- 7.8 DPD shall not cause any mechanic or materialmen's liens to be placed on Mn/DOT'S Property as a result of DPD'S occupancy of said Communications Facility.
- 7.9 DPD hereby agrees that DPD'S access to the Communications Facility shall be limited to personnel qualified to perform equipment installation, maintenance of electrical and other specialized equipment, and other work as necessary to maintain the DPD'S

communications system in proper working order in and around the Communications Facility and tower.

8. **CHANGES TO DPD'S EQUIPMENT** Any future changes to DPD'S antenna, cabling, or related equipment, as well as any changes of wattage, frequency, or functionality of DPD'S equipment, whether or not said alterations affect the fees payable under this Use Agreement or require one-time payments for engineering studies, plan review, modifications to MN/DOT'S property or any other reason, shall be included herein by Amendment hereto.

9. **INSURANCE** DPD and Mn/DOT agree that each party, and all subcontractors, will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. DPD, and subcontractors, agree to maintain self insurance or acquire at its sole expense during the term of this Agreement, commercial general liability insurance.

DPD, and its subcontractors, agree to provide proof of insurance if requested by Mn/DOT.

10. **PERSONAL PROPERTY** Any fixtures or equipment attached to, or installed in any part of the Communications Facility by DPD shall remain the personal property of DPD with right of replacement or removal at all reasonable times during the term of this Use Agreement, or any extension thereof.

11. **DESTRUCTION OF THE COMMUNICATIONS FACILITY** If the Communications Facility is destroyed or damaged by fire, tornado, flood, civil disorder or any other cause so that the Communications Facility are rendered unusable, the electrical fee shall be abated from the date of such damage, and if MN/DOT fails to restore the Communications Facility to a safe, operational condition within thirty (30) days, this Cooperative Agreement shall be deemed terminated, thus releasing both parties of all obligations hereunder.

12. **NOTICES** All notices or communications between DPD and Mn/DOT shall be sent in writing to the following:

Mn/DOT:

Minnesota Department of Transportation
Office of Electronic Communications
Attn: Lease Manager
1500 West County Road B2 MS-730
Roseville, Minnesota 55113
(651) 234-7947 or (651) 234-7977

DPD:

Duluth Police Department
Attn:

() -
Federal Tax ID:
State ID:

- 13. MODIFICATIONS/AMENDMENTS** Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the authorized representatives of the DPD and Mn/DOT. This Agreement shall supersede all other oral and written agreements prior to execution of this document. IN WITNESS WHEREOF, the parties have set their hands on the date(s) indicated below intending to be bound thereby.
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LIST OF EXHIBITS

- EXHIBIT A1: Tower Registration (ASR)
- EXHIBIT A2: Location Map
- EXHIBIT B1: Tower Diagram with DPD Antenna location
- EXHIBIT B2: Compound Layout Diagram
- EXHIBIT B3: Installation Instructions
- EXHIBIT C: Site Access
- EXHIBIT D: Statement of Structural Analysis Requirement

DPD:

**THE CITY OF DULUTH POLICE
DEPARTMENT**

*DPD certifies that the appropriate person(s) have executed
the Use Agreement on behalf of DPD as required by
applicable articles, bylaws, resolutions or ordinances*

By _____

Print Name: _____

Title: _____
(Print or type)

Date _____

By _____

Print Name: _____

Title: _____
(Print or type)

Date: _____

By _____

Print Name: _____

Title: _____
(Print or type)

Date: _____

Mn/DOT:

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
OFFICE OF ELECTRONIC COMMUNICATIONS**

By _____
Mark Gieseke

Title: Director _____

Date _____



**UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
ANTENNA STRUCTURE REGISTRATION**



Owner: MINNESOTA, STATE OF

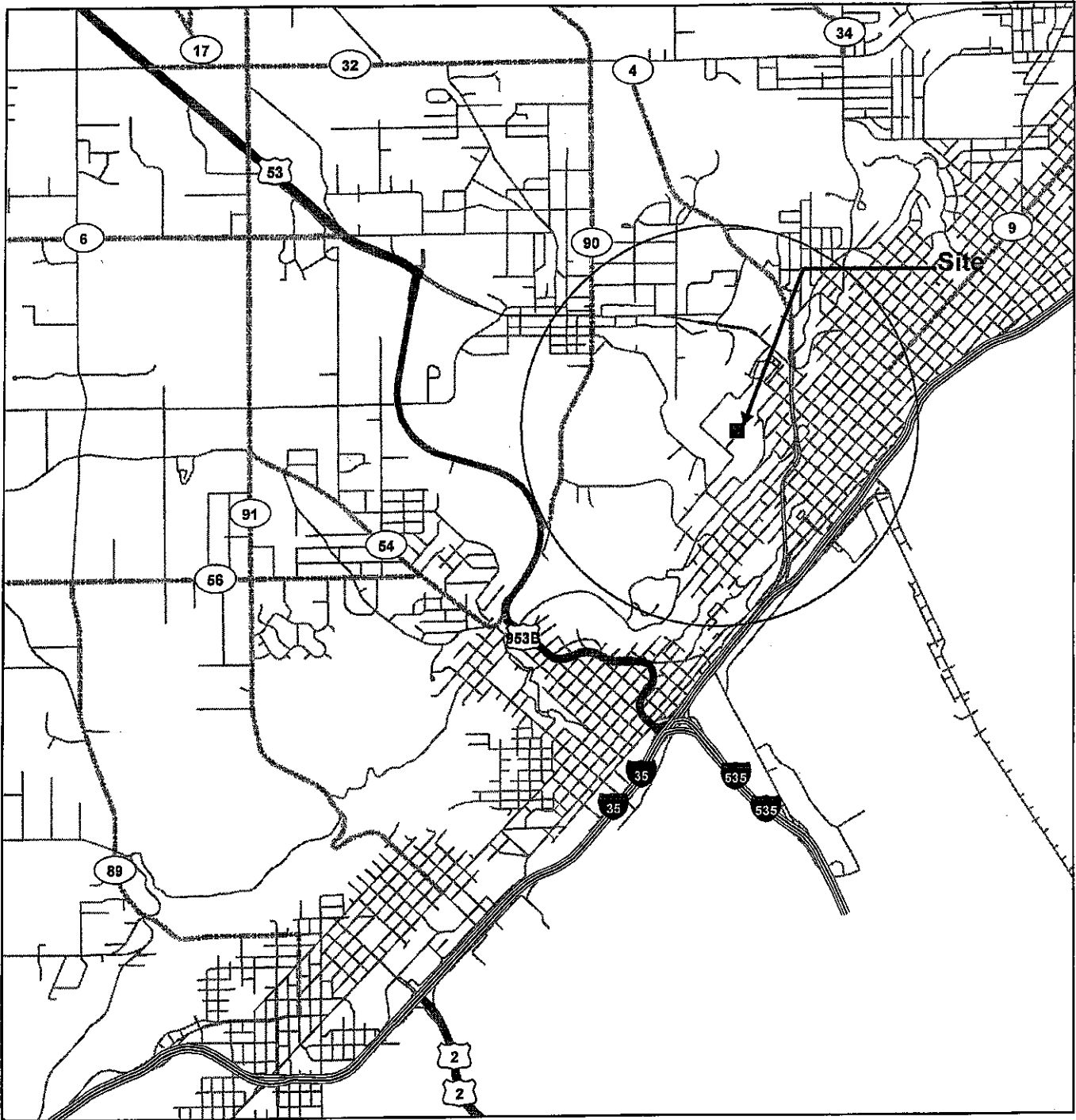
FCC Registration
Number (FRN): 0002608115

MS730 MINNESOTA, STATE OF 395 John Ireland Blvd., SAINT PAUL, MN 55155	Antenna Structure Registration Number: 1014618
	Issue Date: 04-07-2006
Location of Antenna Structure: 329 W 10TH ST DULUTH, MN	Ground Elevation (AMSL): 384.0 meters
	Overall Height Above Ground (AGL) 104.5 meters
Latitude Longitude 46-47-26.0N 92-6-51.0W NAD83	Overall Height Above Mean Sea Level (AMSL): 488.5 meters
Painting and Lighting Requirement s: FAA Chapters 4, 8, 13 Paint and Light in Accordance with FAA Circular Number 70/7460-1H	
Special Conditions:	

This registration is effective upon completion of the described antenna structure and notification to the Commission. **YOU MUST NOTIFY THE COMMISSION WITHIN 24 HOURS OF COMPLETION OF CONSTRUCTION OR CANCELLATION OF YOUR PROJECT, please file FCC Form 854.** To file electronically, connect to the antenna structure registration system by pointing your web browser to <http://wireless.fcc.gov/antenna>. Electronic filing is recommended. You may also file manually by submitting a paper copy of FCC Form 854. Use purpose code "NT" for notification of completion of construction; use purpose code "CA" to cancel your registration.

The Antenna Structure Registration is not an authorization to construct radio facilities or transmit radio signals. It is necessary that all radio equipment on this structure be covered by a valid FCC license or construction permit.

You must immediately provide a copy of this Registration to all tenant licensees and permittees sited on the structure described on this Registration (although not required, you may want to use Certified Mail to obtain proof of receipt); and display your Registration Number at the site. See reverse for important information about the Commission's Antenna Structure Registration rules.



LOCATION MAP

Duluth Antenna Farm

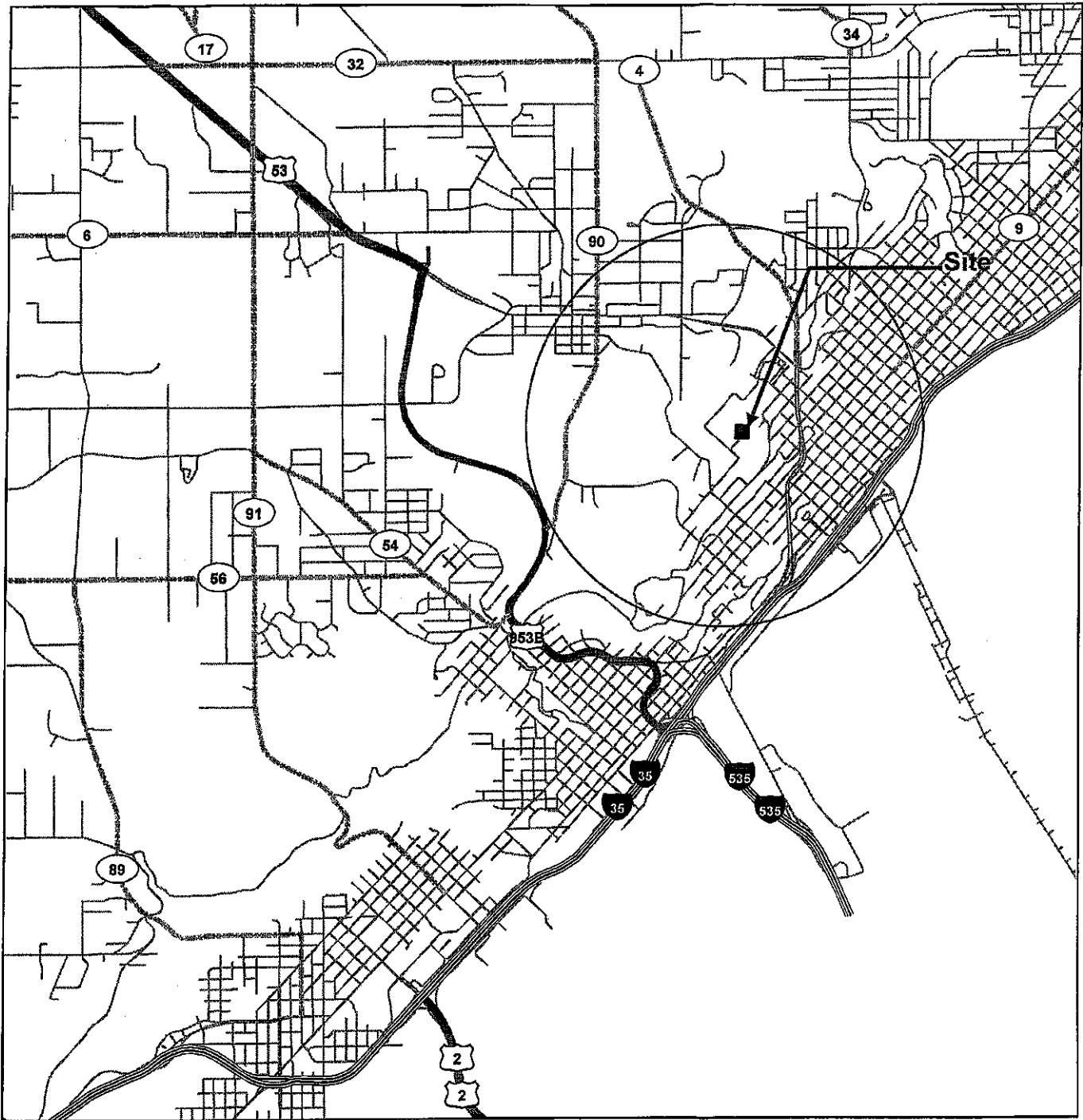
**NE of the NE Quarter, Section 28
T50N, R14W, of Unorganized Territory of Herman
City of Duluth, St. Louis County, Minnesota**

**Agreement #98282
Duluth Police Department**

Driving Directions
North on I35 at intersection of I535 continue for .7 miles to exit 256A, take ramp right for SR-194 West/Mesaba Ave toward Superior St. for .8 miles, turn left onto W 3rd St. for .2 miles, turn right onto N 8th Ave W for .4 miles, turn right onto W 9th St. for .3 miles, turn right onto W 10th St. and continue .1 miles to the end of the road.



Exhibit A2



LOCATION MAP

Duluth Antenna Farm

**NE of the NE Quarter, Section 28
T50N, R14W, of Unorganized Territory of Herman
City of Duluth, St. Louis County, Minnesota**

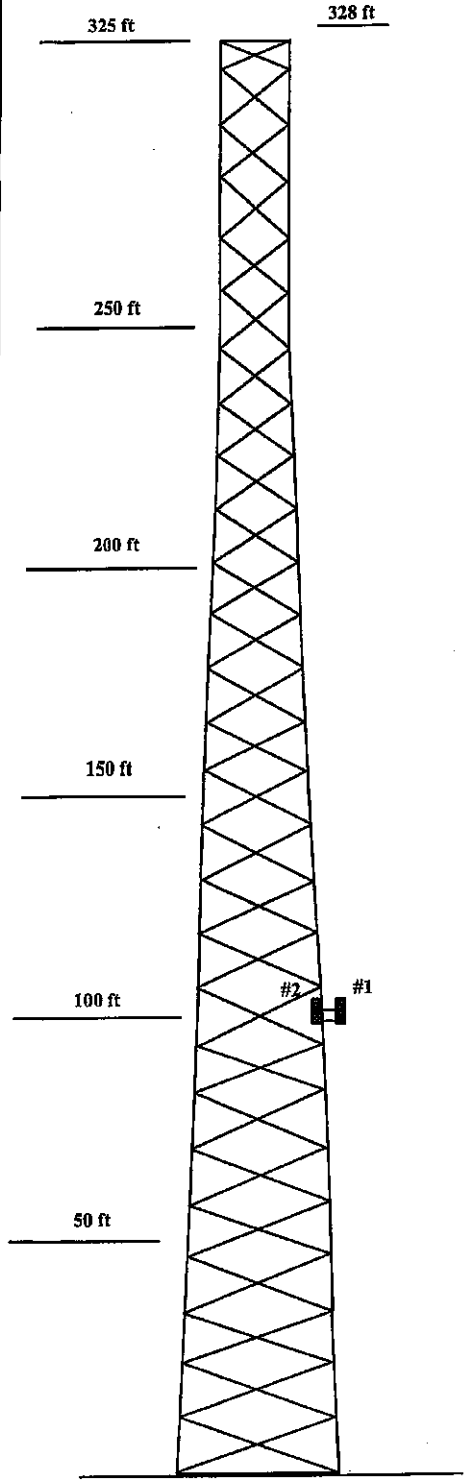
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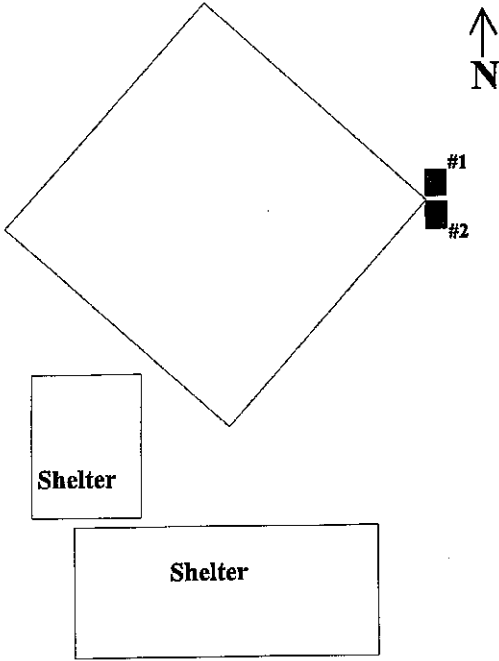


Exhibit A2

ANTENNA KEY -Duluth Police Department Antenna				
#	Model	Ht to Tip	Pipe or Leg	Coax
1	Fluidmesh Integrated	100'	Leg E	Ethernet Cable
2	Fluidmesh Integrated	100'	Leg E	Ethernet Cable
EQUIPMENT IN SHELTER - Duluth Police Department				
Equip.	Description			
Fluidmesh	MITO3100			
Fluidmesh	MITO3100			
FREQUENCY INFORMATION				
Transmit = 4980 Ghz	Receive = 4980 Ghz			
Transmit = 5300 Ghz	Receive = 5300 Ghz			



Tower Orientation

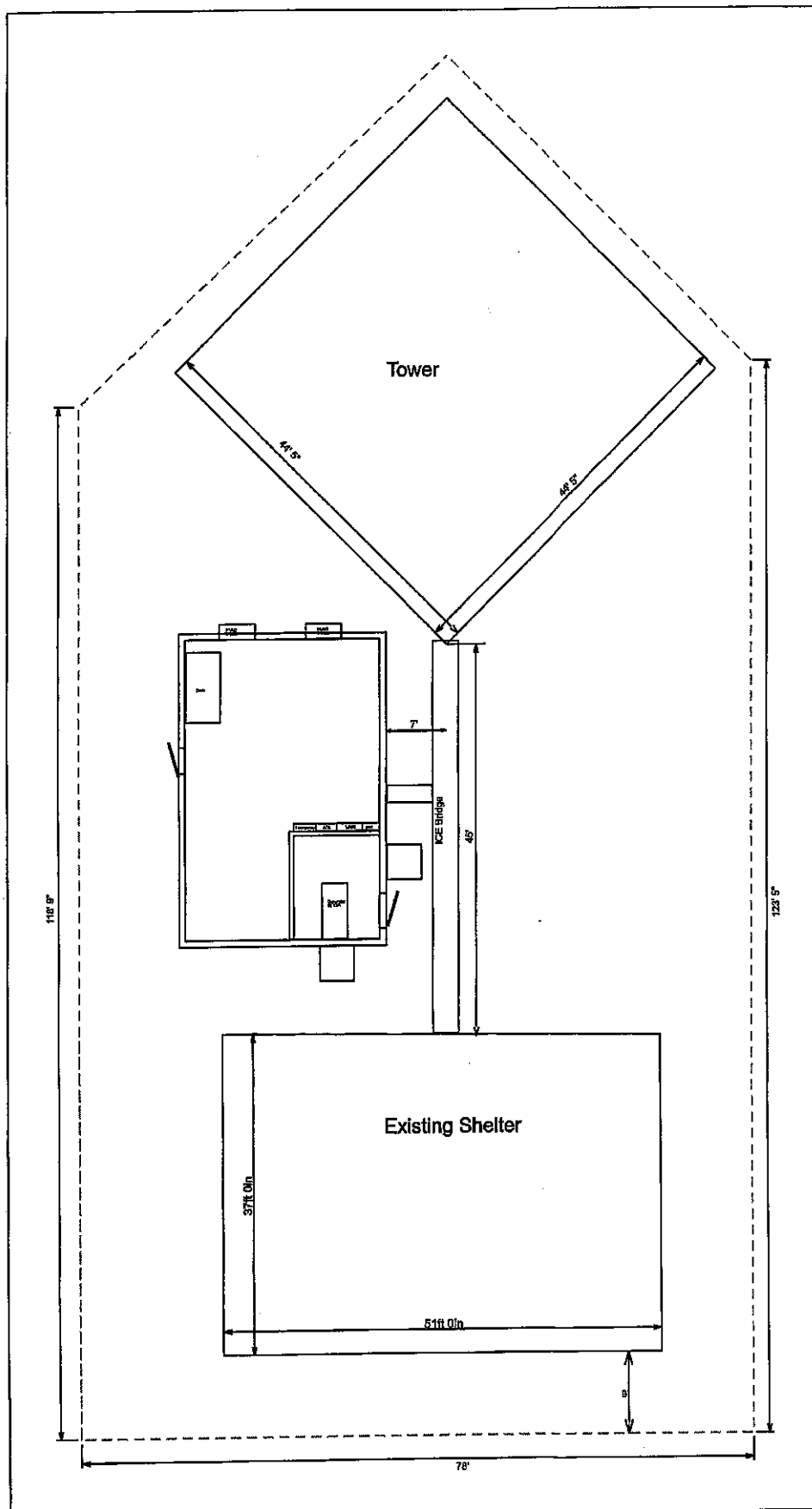


**Duluth Tower
Minnesota Department of Transportation**

January 25, 2011
Agreement #98282
Duluth Police Department

Exhibit B1

Tower Elevation
Scale = None



...Duluth Antenna Farm Site Drawing 2009-10-6.dgn 10/12/2009 2:23:03 PM
Exhibit B2

Installation Instructions

RACK SPACE:

Duluth Police Department (LESSEE) or its contractor shall arrange for rack space with the Radio Maintenance Supervisor (RMS) in accordance with Exhibit B3.

If no Mn/DOT space is available, LESSEE will have to provide a rack to install in shelter. Rack type and installation location shall be approved by RMS.

InterMod Panel:

LESSEE shall install an Intermod Suppression Panel. This item is a requirement at all Mn/DOT towers and of all VHF radio users. A Sinclair PC2213 or equivalent. This item is necessary due to the close proximity of the LESSEE frequencies used at the site and the frequencies used by other public safety agencies.

Grounding

LESSEE or its contractor installation work shall be R56 compliant.

Entrance Panel

LESSEE or its contractor shall arrange the entrance panel location with the RMS.

Coax Management

LESSEE or its contractor shall arrange the cable management location with the RMS.

RMS
Radio Maintenance Supervisor
Darwin Salo
(218) 742-1084
(218) 404-0462 Cellular

Exhibit B3