



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214



File Number	Title	Status
R-2003-0080	Resolution	In Committee
	A Resolution authorizing the Director of Public Works to negotiate a lease agreement with Rogers Memorial Hospital to place two dish antenna on the police/court center tower.	
	Introduced: 3/4/2003	Controlling Body: Public Works Committee

### COMMITTEE RECOMMENDATION

Approve & adopt

MOVER: Kopplin

AYES 4 NOES 0

SECONDER: VITALE

EXCUSED NARLOCK

COMMITTEE ACTION DATE 3-4-03

### SIGNATURES OF COMMITTEE MEMBERS

Chair \_\_\_\_\_

[Signature]  
Vice-Chair

### COMMON COUNCIL ACTION adopted

FINAL ACTION DATE 3-4-03

MOVER: Trudell

SECONDER: Sengstock

	AYE	NO
1. Barczak	<u>Ex</u>	
2. Czaplewski	<u>✓</u>	<u>✓</u>
3. Kopplin	<u>✓</u>	
4. Lajsic	<u>✓</u>	
5. Murphy	<u>✓</u>	
6. Narlock	<u>Ex</u>	
7. Reinke	<u>✓</u>	
8. Sengstock	<u>✓</u>	
9. Trudell	<u>✓</u>	
10. Vitale	<u>✓</u>	
TOTAL	<u>7</u>	<u>1</u>



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2003-0080**

**Final Action:**

A Resolution authorizing the Director of Public Works to negotiate a lease agreement with Rogers Memorial Hospital to place two dish antenna on the police/court center tower.

WHEREAS, Rogers Memorial Hospital, located at 11101 West Lincoln Avenue, has acquired space in the Bentley/Jost building located at 11327 West Lincoln Avenue; and,

WHEREAS, Rogers Memorial Hospital requires high speed data connectivity between the above two referenced sites; and,

WHEREAS, Rogers Memorial Hospital would like to achieve connectivity by sending data signals between dish antenna; and,

WHEREAS, the height of the West Allis Police Court Center, located at 11301 West Lincoln Avenue, between the two Rogers' buildings, prohibits a direct site line for data transmission; and,

WHEREAS, placement of two dish antenna on the police/court center radio tower at a height slightly above the police/court center roof would facilitate connectivity between the two Rogers' facilities; and,

WHEREAS, Teleco Systems, Inc., on behalf of Rogers Memorial Hospital, has approached the City and requested permission to enter into a lease agreement for the placement of two antenna on the police/court center tower.

NOW, THEREFORE BE IT RESOLVED, that the Director of Public Works is hereby and herein authorized to negotiate a lease agreement with Rogers Memorial Hospital to place two dish antenna on the police/court center tower, a copy of the proposed agreement is hereto attached.

**ADOPTED**

3/4/03

Dorothy E. Steinke

Dorothy E. Steinke.  
Deputy City Clerk/Treasurer

**APPROVED**

March 6, 2003

Jeannette Bell

Jeannette Bell, Mayor

## POLICE/COURT CENTER TOWER LEASE AGREEMENT

On this \_\_\_\_\_ date of \_\_\_\_\_, 2003, the City of West Allis, hereinafter called West Allis, and Rogers Memorial Hospital, hereinafter called Rogers, have entered into an agreement in which West Allis will lease Rogers space on West Allis' police/court center tower for the placement of data communications antenna.

### **TERMS OF THE LEASE**

In consideration of the terms and covenants of the Agreement, and for other good valuable consideration, the parties agree as follows:

1. **Leased Premises.** West Allis leases to Rogers space on the West Allis Police Department tower located at 11301 West Lincoln Avenue (hereinafter referred to as the "Tower"). The space on the Tower will be adequate to allow the following uses: 1) attach Rogers' two (2) dish antennas on the Tower; 2) to connect the equipment with electric and telephone utilities, if necessary; and 3) to access the installation by truck or foot for maintenance and installation purposes. West Allis agrees to execute any easement documents that may be required by the electrical and telephone utilities. Exhibit "A" describes the equipment Rogers will place on the Tower (the "Antenna Facilities").
2. **Purpose.** Use of the site by Rogers shall be for the purpose of installing, removing, replacing, maintaining and operating, at its sole expense, and for no other purpose without the prior written consent of West Allis, the Antenna Facilities.
3. **Term of Lease.**
  - a) The term of this lease is five (5) years, commencing at the time of construction of Rogers' Dish Antenna ("Commencement Date"). The Lease will terminate at Midnight on the fifth (5th) annual anniversary of the Commencement Date.
  - b) If Rogers fails to initiate the installation of its Antenna Facilities within twelve (12) months of the Commencement Date of the Lease, the Lease shall be null and void and neither party shall have any further rights or obligations hereunder. In the event the Lease shall terminate as aforesaid, the first year's rent shall be retained by West Allis as a termination fee. Such notice may not be given merely to negotiate lease terms that differ from those found herein, but must be based on one of the grounds for termination found in paragraph (8) below. This Lease shall be renewed automatically for four (4) additional five (5) year terms, unless Rogers notifies West Allis of their intention not to renew the lease at least ninety (90) days prior to the expiration of the relevant term.
  - c) If, at the end of the fourth (4th) five (5) year extension term, this Lease has not been terminated by either party as specified herein, this Lease shall continue in force upon the same covenants, terms, and conditions, and at the rental specified for the fourth (4th) five (5) year extension term, for a further term of one (1) year and for the annual terms thereafter until terminated by either party, by

sending written notice to the other of its intention to so terminate at least ninety (90) days prior to the end of such term.

4. **Rent.**

- a) Annual rent shall be delivered on the Commencement Date and every anniversary thereafter to such place as designated by West Allis. Initial annual rent shall be Two Thousand Five Hundred Dollars (\$2,500) plus the payment of all applicable taxes, including sales tax, related to Rogers' equipment ("Initial Annual Rent"): Initial Annual Rent shall increase annually by 5% through the Term of this Lease and any subsequent Renewal Terms. Rent in the form of a check made payable to the City of West Allis shall be delivered on the Commencement Date and every anniversary thereafter to the office of the Director of Public Works, 6300 West McGeoch Avenue, West Allis, Wisconsin 53219.
- b) If this Lease is terminated at a time other than on the last day of a lease year as provided below, rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than nonpayment of rent, all prepaid rents shall be refunded to Rogers.

5. **Compliance with Laws.** Rogers may use the Tower for the installation, operation and maintenance of the Dish Antenna for the transmission and reception of data between Rogers Memorial Hospital on the property immediately east of the Tower and their newly acquired property immediately to the west of the Tower in such antenna frequencies as may be assigned to Rogers by the Federal Communications Commission ("FCC") and for the storage of related equipment in accordance with the provisions of this Lease. Rogers shall use the Leased Premises in compliance with all federal, state, and local laws and regulations. If for any reason Rogers' use of the Leased Premises fails to comply with any federal, state, or local law and Rogers fails to bring its use within compliance within the time period specified in the written notice of such noncompliance or thirty (30) days, whichever is longer, or such longer period of time as may be required to diligently complete a cure commenced within that thirty (30) day time period, Rogers shall cease all operations of the Dish Antenna until it is able to operate within substantial compliance of all laws and regulations, or at Rogers' option this Lease may be terminated as provided herein, unless sooner authorized by such law. In any event, if Rogers is unable to so operate within an additional twelve (12) months, West Allis shall have the right to terminate this Lease as provided herein. West Allis agrees to reasonably cooperate with Rogers in obtaining, at Rogers' expense, all licenses and permits required for Rogers' use of the Leased Premises. West Allis represents that the site on which the Leased Premises are located are and will be in substantial compliance with all laws, orders, ordinances, and regulations applicable to West Allis.

6. **Installation of Improvements, Access, Utilities.**

- a) Rogers shall have the right, at its sole cost and expense, to install, operate, and maintain the Antenna Facilities described in Exhibit "A". Rogers' installation of all such equipment, personal property, and facilities shall be done according to plans approved by West Allis, which shall not be unreasonably withheld or delayed. These plans shall include engineered drawings, which clearly indicate the location and method of antenna attachment to the tower structure. No

equipment or property shall be subsequently moved without West Allis' approval. The Antenna Facilities shall remain the exclusive property of Rogers, subject to the provisions of Paragraph 8 of this Lease.

- b) Rogers may update or replace the Dish Antenna from time to time without prior written approval of West Allis, provided that the replacement facilities installed are not greater in weight, number or size and are substantially the same in appearance as the existing facilities and provided that their location on the Tower is substantially the same as the replaced equipment or structure. For all replacement facilities that do not meet the above criteria, Rogers shall submit to West Allis a proposal for any such replacement facilities, and for any supplemental materials as may be reasonably requested by West Allis' evaluation and approval, which approval shall not be unreasonably withheld, conditioned or delayed. All costs for required structural studies will be paid by Rogers, within 30 days after receipt of an itemized invoice, which shall not exceed \$2,000.00.
- c) At all times during this Lease, Rogers shall have 24 hours a day, 7 days a week access to its equipment on the Tower at no additional charges to Rogers, however such access shall not interfere with vehicular movement on adjacent roadways.
- d) Rogers, if necessary, shall separately meter charges for the consumption of electricity and any other utilities associated with its use of the Leased Premises and shall pay all costs associated therewith. Placement of utility easements will be arranged with the cooperation of West Allis. All utilities shall be buried.
- e) Prior to commencing construction or installation of its Antenna Facilities, Rogers shall provide to West Allis a plan showing the proposed placement of the Dish Antenna on the Tower. Upon completion of the installation of its Antenna Facilities, Rogers shall provide West Allis with "as built" drawings of the equipment installed on the Tower. Such drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Antenna Facilities actually placed on the tower. West Allis shall have final approval for the location of the Dish Antenna on the tower.
- f) Rogers shall have sole responsibility for the maintenance, repair, and security of its Antenna Facilities and shall keep the same in good repair and condition during the Lease term.
- g) Rogers agrees that the installation of any Antenna Facilities will be completed in a neat and workmanlike manner consistent with sound engineering practices. West Allis may inspect or cause an inspection be made of the installations at the sole, but reasonable, cost of Rogers.
- h) West Allis will notify Rogers at least forty-five (45) days in advance of the date when the Tower is scheduled to be painted. In order to determine the costs of painting the tower with the addition of the Antenna Facilities, WEST ALLIS shall require the painting contractor to first bid on the cost of painting the tower with the assumption that the Antenna Facilities are not on the tower. Then the contractor will bid on the cost of painting the tower with the Antenna Facilities left

in place. The contractor will then proceed to paint the tower with the Antenna Facilities left in place. Rogers will pay the difference between the two bids to WEST ALLIS prior to the awarding of the painting contract by WEST ALLIS, but in no event more than thirty (30) days after written demand therefor from WEST ALLIS.

- i) West Allis shall be responsible for its usual and customary costs for servicing and maintaining the Tower and surrounding property, including, but not limited to, usual snow removal. Any additional reasonable costs for servicing or maintaining the Tower that are due to the presence of the Antenna Facilities, shall be paid by Rogers, within 30 days after receipt of an itemized invoice.
- j) There shall be no advertising by Rogers on the Leased Premises or on any structure on said Premises.
- k) Rogers shall, at its sole expense, paint the associated antenna support structure to match the color of the water tower.

**7. Interference.**

- a) Rogers installation, operation, and use of its Antenna Facilities under this Lease shall not damage or interfere in any way with West Allis' Tower operations or related repair and maintenance activities. West Allis, at all times during this Lease, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the Leased Premises and to temporarily interfere with Rogers' Antenna Facilities as may be necessary in order to carry out any of such activities. Except in the event of an emergency, West Allis agrees to give reasonable advance notice of such activities to Rogers and to reasonably cooperate with Rogers to carry out such activities with a minimum amount of interference with Rogers' transmission operations. If Rogers' use of the Antenna Facilities is disrupted due to repair, maintenance, or alterations of West Allis, then West Allis shall allow Rogers to place a temporary antenna facility or cell on wheels, parked near the Site, for the duration of the interference. In the event it is determined that interference exists with the structure of the Tower or any of its components, Rogers shall provide prompt relief from interference at their sole expenses.
- b) West Allis shall not guarantee to Rogers exclusive use of or non-interference with Rogers' data transmission, provided, however, that in the event any other party requests permission to place any type of additional antenna or transmission facility on the Tower or the surrounding property, this paragraph will govern the determination of whether such antenna or transmission facility will interfere with Rogers' transmission operations. If West Allis receives any such request, it shall submit the proposal to Rogers for review for non-interference. Rogers shall have thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent by Rogers to the installation of antennas or transmission facilities pursuant to said proposal. Any dispute between West Allis, Rogers and said third party regarding the proposed additional installation and its potential for interference with Rogers' transmission operations shall be resolved by submitting the issue for decision to an independent party mutually agreed upon by West

Allis and Rogers, whose decision regarding interference shall be binding to all parties hereto and whose expense shall be borne equally by Rogers and said third party. If in Rogers' sole discretion, Rogers' Antenna Facilities cannot operate property due to interference, such interference shall be deemed a material breach by West Allis, and Rogers may terminate this Lease and shall be entitled to reimbursement of any prepaid rent for the then relevant period.

- c) This Lease is made with the knowledge of both parties that West Allis has radio signal receiver and transmission antenna in place on the tower.

## 8. Termination.

- a) Except as provided herein, this Lease may be terminated by one party upon thirty (30) days written notice (or such other period as specified below) to the other party as follows:
  - 1) By either party, upon a default of any covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default to the other party; or within ninety (90) additional days as may reasonably be required if the defaulting party is pursuing a cure with due diligence within thirty (30) days of receipt of written notice but is unable to complete the cure within such thirty (30) day period.
  - 2) By Rogers, if it is unable to obtain or maintain any license, permit, or other government approval necessary for the construction and/or operation of the transmission facilities or Rogers' business.
  - 3) By Rogers, if the Leased Premises is or becomes unacceptable under the Rogers design or engineering specifications for its Antenna Facilities or the communications systems to which the Antenna Facilities belong.
  - 4) By Rogers, if, at its own cost, Rogers obtains a title report from a title insurance company, and if, in the opinion of Rogers, such title report shows any defects of title or any liens or encumbrances which may adversely affect Rogers' use of the Property, Rogers shall have the right to cancel this Lease immediately upon written notice to West Allis.
  - 5) By West Allis, upon four (4) months written notice to Rogers, if it determines in its sole discretion that the Tower is structurally unsound for use as a water tower, including but not limited to consideration of age of the structure, damage or destruction of all or part of the Tower or the Property from any source, or other factors relating to the safety of the Tower.
  - 6) By West Allis, if Rogers' use of the Property becomes illegal under any federal, state or local law, rule or regulation, including the power density of emissions in excess of safety levels with respect to human exposure to radio frequency and electromagnetic fields as set forth in ANSI standards or any other State or Federal Regulation, subject to the right to cure provision herein.

- 7) By West Allis, in the event that Rogers shall become insolvent or shall make an assignment for the benefit of its creditors or in the event that Rogers or its property is subject to any receivership or court appointed trustee (unless the receiver or trustee is discharged within sixty (60) days after the appointment) In the event of a termination by West Allis pursuant to this provision, neither this Lease nor any interest herein shall become an asset of the trustee or receiver. Upon termination by Rogers pursuant to, 1), 2), 3), 4) above, or by West Allis pursuant to 5), above, a prorated share of the prepaid annual rent shall be returned by West Allis to Rogers.
- b) If the Tower is destroyed, dismantled, or removed, this Lease will terminate and a prorated share of the rent shall be returned to Rogers. If a replacement water tower is constructed by West Allis on the Leased Premises, Rogers shall have the right to resume this Lease under the same terms and conditions and to place Rogers' Antenna Facilities on the new replacement water tower at Rogers' cost and, to the extent possible, in the same manner as Rogers' Antenna Facilities on the existing Tower.
- c) Upon termination of this Lease for any reason, Rogers shall remove all of its leasehold improvements from the Tower and the Leased Premises within sixty (60) days after the date of termination, and shall restore the Tower and the Leased Premises to the condition it was in on the Commencement Date of the term of this Lease, reasonable wear and tear excepted, all at Rogers' sole cost and expense.
- d) In the event of termination of this Lease provided in paragraph 8 a 1) above, West Allis shall also have the right to enforce, at law or in equity, any other rights or remedies set forth in this Lease or otherwise applicable hereto by operation of law or contract. However, neither party shall be liable to the other for consequential, indirect, incidental or exemplary damages, whether based on contract, negligence, strict liability or otherwise. Also, West Allis may, subject to paragraph 8 c above, enter upon the Premises with or without legal process and remove all of Rogers' property. Said property may, at the option of West Allis, be stored or otherwise dealt with as provided in this Lease or as such laws may then provide and permit West Allis may sell or otherwise dispose of the same or to store the same, or any part thereof, at the expense and risk of and for the account of Rogers, one hundred and eighty (180) days after written notice to recover such equipment is issued to Rogers.
- e) Waiver of Landlord's Lien. West Allis hereby waives. any and all lien rights it may have, statutory or otherwise concerning the Antenna Facilities or any portion thereof which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and West Allis gives Rogers and Mortgagee the right to remove all or any portion of the same from time to time, upon reasonable and proper notice to West Allis, whether before or after a default under this Lease.

9. **Insurance.** See Exhibit "B".

10. **Damage or Destruction of Property.** If the Leased Premises, Tower, or Antenna Facilities are destroyed or damaged so as, in Rogers' judgment to hinder its effective use of the Antenna Facilities, Rogers may elect to terminate this Lease upon written notice to West Allis. In the event Rogers elects to terminate the Lease, Rogers shall be entitled to reimbursement of any prepaid Rent for the period subsequent to the date of damage or destruction in a prorated amount pursuant to paragraph 4 b above. Rogers shall remove its Antenna Facilities within sixty (60) days after the date of termination in accordance with paragraph 8 c above. If Rogers elects to continue this Lease, then all Rent shall abate until the premises or tower are restored to the condition existing immediately prior to such damage or destruction.
11. **Condemnation.** In the event the whole of the Leased Premises is taken by eminent domain, this Lease shall terminate as of the date title to the Leased Premises vests in the condemning authority. In the event a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days written notice to the other party. Upon such termination, Rogers shall be entitled to reimbursement from West Allis for prepaid rent pursuant to paragraph 4 b above. In the event In the event of any taking under the power of eminent domain, Rogers shall not be entitled to any portion of the award paid for the taking and West Allis shall receive the full amount of such award. Although all damages, whether awarded as compensation for diminution in value of the leasehold or the fee of the leasehold or the fee of the Leased Premises, shall belong to West Allis, Rogers shall have the right to claim and recover from the condemning authority, but not from West Allis, such compensation as may be separately awarded or recoverable by Rogers on account of any and all damage to Rogers' business by reason of the taking and for or on account of any cost or loss to which Rogers might be put in removing and relocating its leasehold improvements.
12. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

**If to West Allis:** Director of Public Works  
6300 West McGeoch Avenue  
West Allis, Wisconsin 53219

**If to Rogers:**

Attn:

13. **Representations and Warranties.**
- a) West Allis represents that to the best of its knowledge (1) it has the full right, power and authority to execute and perform this Lease; and (2) it has good and unencumbered title to the Leased Premises free and clear of any liens or mortgages, except as may be disclosed by review of title. West Allis warrants that Rogers shall have the quiet enjoyment of the Leased Premises during the term of this Lease, and West Allis has no knowledge of any substance chemical or waste (collectively "Hazardous Substances") on the property that is identified

as hazardous, toxic or dangerous in any applicable Federal, State, or Local law or regulation.

- b) Rogers represents and warrants that its equipment, personal property, Antenna Facilities, and any of their component parts or by-products, do not unlawfully constitute or contain any Hazardous Substance, hazardous facility, hazardous waste, pollutant, or contaminant, as any of those may be defined under federal, state or local laws. Rogers agrees to indemnify and hold harmless West Allis from and against any and all liability, loss, cost, damage and expense, including reasonable attorney's fees, relating or due to the release, threatened release, storage or discovery of any of the above named materials that are part of Rogers' equipment, personal property, Antenna Facilities, or any component parts or by-products thereof, in violation of applicable law.

- 14. **Assignment.** Rogers may assign this Lease to any entity which controls, is controlled by, or is under common control with Rogers, to any entity resulting from any merger or consolidation with Rogers, or to any entity which acquires ownership of Rogers or substantially all of Rogers' assets, without the prior written consent of West Allis. Upon such assignment, Rogers shall be relieved of all liabilities and obligations hereunder and West Allis shall look solely to the assignee for performance under this Lease. Rogers may otherwise assign this Lease upon written approval of West Allis. Rogers may not sublet this Lease without the prior written consent of West Allis. Any sublease approved by West Allis shall be subject to the provisions of this Lease. Additionally, Rogers may, upon notice to West Allis, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, West Allis shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. West Allis agrees to notify Rogers and Mortgagees simultaneously of any default by Rogers and to give Mortgagees the same right to cure any default as Rogers or to remove any property of Rogers or Mortgagees located on the Premises, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 8. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Rogers. Failure by West Allis to give Mortgagees such notice shall not diminish West Allis' rights against Rogers, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Rogers or Mortgagees located on the Premises as provided in Section 8 of this Lease. In the event Rogers shall become bankrupt or insolvent or should a trustee or receiver be appointed to administer Rogers' business or affairs, neither this Lease nor any interest herein shall become an asset of the trustee or receiver and in the event of the appointment of any trustee or receiver, this Lease shall immediately terminate.
- 15. **Successor and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, and assigns.
- 16. **Taxes.** Rogers will be responsible for payment of all general property taxes, if any, assessed directly upon and arising solely from its use and/or occupancy of the Leased Premises.

17. **Waiver and Nonwaiver.** Any waiver of any breach of the terms, conditions, and covenants contained herein to be kept and performed by Rogers or West Allis shall not be considered as a continuing waiver and shall not operate to bar or prevent respectively, Rogers or West Allis from declaring a forfeiture for any succeeding breach either of the same term, condition or covenant or otherwise.
18. **Miscellaneous.**
- a) Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.
  - b) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.
  - c) This Lease shall be construed in accordance with the laws of the State of Wisconsin.
  - d) Time is of the essence of this Lease and each and every provision herein.
  - e) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
  - f) This Lease was executed as of the date first set above.
  - g) In the event that either party successfully enforces the provisions of this Lease against the other through court actions or otherwise, the prevailing party shall be entitled to recover from the other all costs and expenses, including reasonable attorneys' fees, incurred in such enforcement actions or activities.
  - h) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached as Exhibit D) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease by either party. Rogers may obtain title insurance on its interest in the Leased Premises. West Allis agrees to execute such documents as the title company may require in connection therewith.
  - i) In the event that either party is delayed in the performance of any of its obligations under this Lease Agreement as a result of labor disputes, casualty loss, weather conditions, other acts of God, civil disorder, acts of war, or any other cause beyond the control of the applicable party, the provisions in this Lease shall be deemed extended for a reasonable period of time to permit appropriate party to perform its obligations, provided that the party is acting in good faith and using its best efforts in order to perform its obligations in a timely fashion.

- j) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their official capacity as indicated.
- k) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- l) All Exhibits referred herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibit A (the Leased Premises) and Exhibit B (the Antenna Facilities) may be attached to this Lease in preliminary form.

Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A and B, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Rogers with such final, more complete exhibit(s). The terms of all Exhibits are incorporated herein for all purposes.

THE UNDERSIGNED LESSOR HEREBY AGREES TO LEASE THE ABOVE MENTIONED PROPERTY ON THE TERMS AND CONDITIONS SET FORTH HEREIN.

**City of West Allis**

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**Rogers Memorial Hospital**

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

Its: \_\_\_\_\_

STATE OF WISCONSIN     )

COUNTY OF MILWAUKEE    )

I, \_\_\_\_\_, a notary public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of the City of West Allis, a municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such \_\_\_\_\_ he/she signed and delivered the said instrument pursuant to authority duly given, as his/her free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ date of \_\_\_\_\_, 20\_\_\_\_.  
Commission expires \_\_\_\_\_.

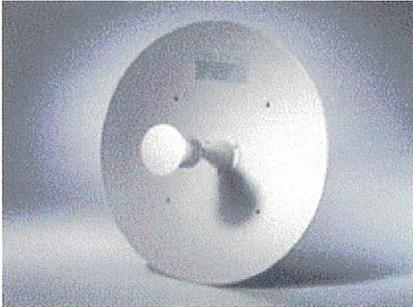
STATE OF WISCONSIN     )

COUNTY OF MILWAUKEE    )

I, \_\_\_\_\_, a notary public in and for said county, in the State aforesaid,  
DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the  
\_\_\_\_\_ of the City of West Allis, a municipal corporation, and personally  
known to me to be the same person whose name is subscribed to the foregoing instrument,  
appeared before me thus day in person and acknowledged that as such \_\_\_\_\_  
he/she signed and delivered the said instrument pursuant to authority duly given, as his/her free  
and voluntary act and deed of said municipal corporation, for the uses and purposes therein set  
forth.

GIVEN under my hand and official seal this \_\_\_\_\_ date of \_\_\_\_\_, 20\_\_\_\_.  
Commission expires \_\_\_\_\_.

## EXHIBIT A



<b>Feature</b>	<b>AIR-ANT3338</b>
<b>Description</b>	Solid dish
<b>Application</b>	Outdoor long-range directional connections
<b>Gain</b>	21 dBi
<b>Approximate Range at 2 Mbps<sup>1</sup></b>	25 miles (40 km)
<b>Approximate Range at 11 Mbps<sup>1</sup></b>	11.5 miles (18.5 km)
<b>Beam Width</b>	12.4° H 12.4° V
<b>Cable Length</b>	2 ft. (0.61m)
<b>Dimensions</b>	Diameter 24 in. (61 cm)
<b>Weight</b>	11 lb. (5 kg)

## EXHIBIT B

### INSURANCE REQUIREMENTS

PREMISES: Described in paragraph 1 on Exhibit "A"

LESSEE: Rogers Memorial Hospital

Lessee shall purchase and maintain for the duration of the Lease as required by the City of West Allis ("West Allis"), insurance indemnifying against claims, suits, personal injury, bodily injury to persons, or damage to property which arises from, or in connection with the performance of work thereunder by Lessee.

Any deductible or self-insured retentions shall be identified to West Allis; those which exceed \$10,000 must be declared to and approved by West Allis. West Allis may require a review of the latest audited financial statements of the Lessee. At the option of West Allis, neither the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects West Allis, its officers, employees, agents and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defenses expenses.

All required insurance under this Lease is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers to be admitted status with the State of Wisconsin, unless otherwise approved in advance by West Allis. West Allis reserves the right to approve nonadmitted carriers with a Best's rating of no less than AX.

The required insurance policy limited may be satisfied through the purchase or primary, umbrella or excess policies in combination, allowing the contractors to choose the best coordination to meet total requirements. It shall be a requirement, however, that all excess policies "follow form" with the underlying coverage approved by West Allis.

Work shall not be commenced under the Lease until all insurance required under this paragraph has been obtained and evidence thereof in the form of certificates, with original endorsements effecting coverage, are filed with and approved by West Allis. West Allis reserves the right to require complete, certified copies of all required insurance policies at any time.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by West Allis. For Workers' Compensation-related risks, only forms approved by the Insurance Commissioner are to be used.

Lessee shall include all contractors and subcontractors as insured under its policies or shall furnish and separate certificates and endorsements for each contractor or subcontractor.

All coverages shall be subject to all of the insurance requirements that are applicable to the Lessee. No contractor or subcontractor shall be permitted to commence work until all required coverages have been obtained and certificates and endorsements thereof are filed with West Allis.

If any part of a loss is not covered because of the application of a deductible or retention, said loss shall be borne by the Lessee and not West Allis. Failure to maintain the required insurance may result in termination of this Lease at the option of West Allis.

### GENERAL ENDORSEMENTS

The protection afforded by the required insurance policies under this Lease shall include, but shall not be limited to, the following-

1. Occurrence Based Policies. All required Liability insurance under the Lease shall be written on an "occurrence" form, except separately approved Professional Liability Policies.
2. Representation of Coverage Adequacy. By requiring insurance for the Lease, West Allis does not represent or warrant that coverage and limits will be adequate to protect the Lessee, its contractors, subcontractors, their agents or any project engineer.
3. Cross-Liability Coverage. If the Lessee's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
4. Cancellation. The policy shall not, be suspended, voided, canceled, reduced in coverage or in limits except after at least thirty (30) days prior written notice has been given to West Allis.
5. Additional Insureds. West Allis, its officers (elected and appointed), employees, agents and volunteers must be named as additional insureds as their interests may appear on the Lessee's liability insurance policies which insures West Allis up to the required limits. Additional insured status shall be endorsed onto the respective insurance policy by the appropriate ISO Endorsement Form approved by West Allis and executed by duly authorized agents of said carrier.
6. Primary Insurance. Lessee's insurance shall provide primary insurance to West Allis, to the exclusion of any other insurance or self insurance programs West Allis may carry. Any insurance or self-insurance maintained by West Allis shall be excess of the Lessee's insurance and shall not contribute to it.
7. Waiver of Subrogation. Lessee waives all rights against West Allis, its officers, employees, agents and volunteers for recovery of damages to the extent these damages are covered by the insurance the Lessee is required to carry pursuant to this Lease-
8. Reporting. Failure to comply with any insurance policy reporting provisions shall not affect coverage provided to West Allis.
9. Cross Liability. The required insurance coverages shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.

10. Indemnification. The policies shall contain an acknowledgment by the underwriters that the Lessee shall indemnify and save harmless West Allis against any and all claims resulting from the wrongful or negligent acts or omissions of the ' Lessee or other parties acting on its behalf under the lease; and that the hold harmless assumption on the part of the Lessee shall include all reasonable costs necessary to defend a lawsuit including actual reasonable attorney fees.

#### REQUIRED COVERAGES, MINIMUM LIMITS AND OTHER PROVISIONS

Lessee shall provide and maintain the following insurance coverage for the duration of the Lease:

1. WORKER'S COMPENSATION INSURANCE.

Workers Compensation Insurance: Wisconsin statutory limits for all employees of the bidder to whom the award is made.

Employers' Liability Insurance:

Bodily Injury by Accident - \$1,000,000 Each Accident

Bodily Injury by Disease- \$1,000,000 Policy Limit

Bodily Injury by Disease- \$1,000,000 Each Employee

All contractors, subcontractors and materialmen shall furnish to the Lessee and West Allis certificates of similar insurance for all of their respective employees, unless such employees are covered by the protection afforded by the contractor.

2. GENERAL LIABILITY INSURANCE.

A. Coverage. Coverages must include, but are not limited to the following:

"Occurrence" Coverage Form must be as broad as 1988 "Commercial General Liability" (form CG 00 01) and include the following-

Premises and Operations

Products and Completed Operations

Personal Injury with Employment Exclusions deleted

Unlicensed Mobile Equipment

Explosion, Collapse and Underground Hazard Coverages

Blanket Contractual (Independent Contractor's Protective)

Broad Form Property Damage

Contingent Coverage for Contractors and Subcontractors

Premises Medical Coverage of at least \$10,000 Per Person

There shall be no endorsement or modification of this coverage limiting the scope of coverage for liability arising from pollution, explosion, collapse underground property damage, or employment-related practices.

B. Minimum Limits of Liability:

1988 Comprehensive General Liability/occurrence Form:

\$1,000,000 Each Occurrence/Aggregate Where Applicable. Combined Single Limit Bodily Injury and Property Damage Liability. Policy written on a project specific basis.

Aggregate Limit of \$1,000,000 Applicable to Products/Completed Operations and Property Damage at the work site during the project.

C. 1988 Commercial General Liability/Occurrence Form:

Per Occurrence Limit:	\$2,000,000
Products/Completed Operations Aggregate Limit:	\$2,000,000
Policy Aggregate:	\$2,000,000
Personal Injury Limit:	\$1,000,000
Fire Damage Limit:	\$1,000,000
Medical Expense Limit:	\$10,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

A. Coverage. Coverage must be as broad as CA 00 01 Ed. 1992 - Occurrence Form Code No. 1, "any auto".

Comprehensive Coverage for all Owned, Non-Owned or Hired Motor Vehicles driven by the employees of the Contractor or Subcontractors, including vehicles and equipment owned by the Authority if used exclusively for the project.

Uninsured or Underinsured Motorists Liability Coverage at full policy limits.

Transportation by insured vehicles of pollutants, or toxic wastes (as determined by the EPA) shall require a minimum of the Pollution Liability Endorsement (CA9948) and/or the Motor Carrier Act Endorsement (MCA90) to address damages and cleanup costs.

B. Minimum Limits of Liability:

Minimum Limits are the same as specifications for General Liability Insurance.

4. PROPERTY INSURANCE.

- A. Coverage - written on a Builder's Risk "all risk" form that shall at least include coverage for physical loss or damage to its property on the leased premises.
- B. Minimum Limits of Liability - to be determined by Lessee in the exercise of its sound business judgment.
- C. Neither party shall be liable to the other or the other's successors or assigns for any loss or damage by fire or any of the risks enunciated in the Builder's Risk Policy. In the event of a loss, neither party's insurance company shall have a subrogated claim against the other.