

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF TWO LEASE AGREEMENTS WITH THE SOUTH CAROLINA EDUCATIONAL TELEVISION FOUNDATION WITH RESPECT TO REAL PROPERTY AND INFRASTRUCTURE LOCATED AT 18 N. HARVIN ST.**

**WHEREAS**, the City of Sumter, South Carolina (the "City"), owns certain property bearing Tax Map No. 228-12-05-005 located at 18 N. Harvin St., Sumter, South Carolina (the "Property");

**WHEREAS**, the South Carolina Educational Television Foundation ("SCETV") has previously occupied a building on said property (the "Building"), and has constructed and owns a microwave tower (the "Tower") located on said Property;

**WHEREAS**, the City Council of the City now desires to approve a lease agreement with SCETV with respect to the Building (the "Building Lease") and a lease agreement with SCETV with respect to the Tower (the "Tower Lease," and together with the Building Lease, the "Leases");

**WHEREAS**, the Building Lease shall be on the terms and conditions set forth in, and shall be substantially in the form of, the proposed Building Lease Agreement attached hereto as Exhibit A;

**WHEREAS**, the Tower Lease shall be on the terms and conditions set forth in, and shall be substantially in the form of, the proposed Tower Lease Agreement attached hereto as Exhibit B;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUMTER, SOUTH CAROLINA, IN REGULAR MEETING DULY ASSEMBLED:**

The City Manager of the City is hereby authorized and directed to negotiate, execute, and deliver the Leases in substantially the forms attached hereto as Exhibits A and B, with such changes as he in his discretion deems advisable. The City Clerk of the City is hereby authorized and directed to authenticate the Lease to the extent required by applicable law or practice.

Ordinance No. \_\_\_\_\_

Page 2

**ADOPTED IN COUNCIL ASSEMBLED THIS 7<sup>TH</sup> DAY OF AUGUST, 2018.**

**CITY OF SUMTER, SOUTH CAROLINA**

\_\_\_\_\_  
Joseph T. McElveen, Jr., Mayor

\_\_\_\_\_  
Thomas J. Lowery, Mayor Pro Tem

\_\_\_\_\_  
Robert A. Galiano, Jr., Councilman

\_\_\_\_\_  
Ione J. Dwyer, Councilwoman

\_\_\_\_\_  
Calvin K. Hastie, Sr., Councilman

\_\_\_\_\_  
David P. Merchant, Councilman

\_\_\_\_\_  
Steven H. Corley, Councilman

**ATTEST:**

\_\_\_\_\_  
Linda D. Hammett, City Clerk

First Reading:            July 17, 2018

Second/Final Reading:   August 7, 2018

**EXEMPT GOVERNMENTAL REAL ESTATE LEASE  
SUMTER, SC: HARVIN STREET BUILDING**

This **LEASE AGREEMENT** (the "Building Lease") is made this \_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF SUMTER, SOUTH CAROLINA** (the "City") having an address at 21 N. Main Street, Sumter, SC 29150, and the **SOUTH CAROLINA EDUCATIONAL TELEVISION COMMISSION** ("SCETV," and together with the City, the "Parties"), an agency, institution, department (including any division or bureau thereof), or political subdivision of the State of South Carolina having an address at 1041 George Rogers Boulevard, Columbia, South Carolina, 29201. The words the "City" and "SCETV" wherever used herein shall include the respective successors and assigns of each of the parties hereto.

**ARTICLE 1 – OTHER AGREEMENTS; PURPOSE**

- 1.1 Concurrently with the execution and delivery of this Building Lease, the Parties have also executed and delivered that certain Exempt Governmental Real Estate Lease, Sumter, SC: Harvin Street Tower, dated as of even date herewith (the "Tower Lease," and together with this Building Lease, the "Leases").
- 1.2 Pursuant to this Building Lease and the related Tower Lease, for and in consideration of the rent reserved in the Leases and of the covenants and agreements contained in the Leases on the part of SCETV to be kept, observed, and performed, the City has demised and leased, and by these presents does demise and lease unto SCETV, the following described real property located in Sumter County, South Carolina:

A portion (as hereinafter described) of a lot of land bearing Tax Map No. 228-12-05-005 located at 18 N. Harvin St., Sumter, South Carolina (the "Property"), as shown on a plat which is attached to this Lease as Exhibit A, and incorporated herein by reference, to include a Tower, as hereinafter defined.

The Tower Lease provides for the rights and duties of SCETV with respect to microwave tower, supporting structures, and cables (collectively, the "Tower"), while this Building Lease provides for the rights and duties of SCETV with respect to the Building (as hereinafter defined) and related land space on the Property. The Leases need not have co-equal terms, and in the event that one of the Leases expires or is terminated, except as specifically set forth in the Leases, the other Lease shall remain in full force in effect.

- 1.3 The parties agree that the purpose of this Building Lease is to provide SCETV with use of the existing building located on the Property, together with parking and related access rights (collectively, the "Building").
- 1.4 The City covenants that it has lawful title and right to make this Lease and that SCETV, on paying the aforesaid installments or rent and performing all the covenants and agreements herein contained to be by it performed, shall and may peacefully and quietly have, hold, and enjoy the leased premises for the full term hereof and any extension.

**ARTICLE 2 –UNDERTAKINGS OF THE CITY**

The City hereby agrees as follows:

- 2.1 It will allow SCETV the undisturbed use of the Building for a term of ten years, commencing on the date of this Building Lease (together with any renewals pursuant to the next sentence, the "Building Lease Term"). The Building Lease Term shall automatically renew for up to two additional terms of ten (10) years each unless the City delivers written notice of termination to SCETV not later than eighteen (18) months prior to the expiration of the then-current term.
- 2.2 It will allow SCETV to display its logo on the Building, subject to all applicable zoning regulations and approvals.
- 2.3 During the Building Lease Term, it will maintain the structural and functional integrity of the Building, except that SCETV shall be responsible for maintaining and servicing the HVAC system at the Building.
- 2.4 It will cooperate with SCETV in improving the available bandwidth for internet access at the Building. Specifically, the City will include the fiber link from the Sumter Opera House to the Building in its upcoming fiber study, and will promptly report to SCETV the results of that study (including available options for fiber upgrade and the associated costs). Nothing in this Building Lease shall obligate the City to pay the costs of a fiber upgrade from the Sumter Opera House to the Building, but the City agrees that it shall negotiate in good faith with SCETV to fairly allocate the costs of reasonable upgrades to such fiber infrastructure.
- 2.5 It will allow SCETV to install a generator in coordination with the City to ensure that requirements are met for safe and quiet operations when needed.

### **ARTICLE 3 – UNDERTAKINGS OF SCETV**

SCETV hereby agrees as follows:

- 3.1 It may use the Building only for operating nonprofit, public benefit, educational television and radio programs. The Building may be used for any other purpose only with the prior written consent of the City, which consent shall be in the full discretion of the City. SCETV shall notify the City of any anticipated extended absences (i.e., five consecutive business days or more) from the Building not later than the first day of the extended absence.
- 3.2 It will maintain liability insurance on the Building and casualty insurance on the contents that belong to SCETV in the Building, as permitted and required by state law and SCETV's insurer.
- 3.3 SCETV agrees to pay for the expenses incurred by the City for the space within the Building relating directly to the Tower or Tower-related equipment, provided that the City obtains SCETV's written approval of the proposed expense prior to it being incurred.
- 3.4 It will use its best efforts to make available office space in the Building for the use of City employees, provided that such use does not unreasonably disrupt SCETV's use of the Building.
- 3.5 It will cooperate with the City, to the extent reasonably practicable, given SCETV's other commitments and resource availability, in producing and distributing City-related content for broadcast consideration on SCETV; provided, however, that all such content complies

with SCETV and PBS editorial guidelines for which SCETV exercises sole decision authority, programming technical broadcast standards, and consistently aligns with SCETV's overall local content strategy.

- 3.6 It will keep the Building and the Tower in clean, safe, and serviceable condition. Without limiting the generality of the foregoing, SCETV will keep the Building, the Tower, and the Property in compliance with all applicable building and property maintenance codes; will keep the outside areas free from garbage and junk; will ensure that all exterior surfaces of the Building (including windows) are intact, secure, and reasonably clean; will respond to reasonable requests from the City to clean, paint, or otherwise improve the appearance of the Building; and will provide appropriate security measures. If the City requests improvements that will cost more than \$2,500 or require more than 40 hours of labor in any given calendar year, the City will cooperate with SCETV to ensure that SCETV's contribution does not exceed such cost or labor time.
- 3.7 It will be responsible for providing and paying for its own utilities (including, without limitation, for electrical, water, wastewater, telephone, and internet access), custodial services, insurance, and security, provided that the City will cooperate with SCETV in causing the City's police department to respond to reasonable requests from SCETV in designing a cooperative security program.
- 3.8 It will be responsible for maintaining and servicing the HVAC system, and will operate the HVAC system (even when the Building is not in use) in such a manner as to prevent the formation of mold, mildew, excessive condensation, or other conditions that may result from underuse or inappropriate use of the HVAC system.
- 3.9 Upon expiration or earlier termination of this Building Lease, then SCETV may take possession of and remove any of its personal property, fixtures, and equipment located on the Property, provided that SCETV (a) shall not damage the Property or the Building in removing such property and equipment; (b) shall use its best efforts to coordinate a removal process with the City that is minimally invasive and disruptive to the City's operations, (c) shall complete the removal within thirty (30) days; and (d) shall preserve, protect, and promptly return to the City any City-owned property or equipment that is located at the Property.
- 3.10 SCETV shall give the City immediate written notice of any damage to the Building. If the Building is damaged or destroyed by fire or other casualty to an extent that prevents SCETV from using the Building in a normal manner, and if the damage cannot reasonably be repaired within ninety days after the occurrence of the event, then either party may terminate this Building Lease by delivering written notice to the other party. If the Building Lease is terminated pursuant to this Section, then the provisions of Sections 3.9 and 4.4 hereof shall apply.
- 3.11 The City shall have the right to enter the Building and the area where the Tower is located on certain property of the City solely for purposes related to the City property to make inspections or to provide necessary services. The City does not assume any liability for the care or supervision of the Premises.
- 3.12 SCETV may not assign or sublease any interest in the Property, nor assign, mortgage, or pledge this Building Lease, without the prior written consent of the City.

#### ARTICLE 4 – TERMINATION

- 4.1 SCETV shall have the right to terminate this Building Lease or to relinquish any portion of the demised premises (subject to giving the City written notice at least 120 days before the proposed termination) upon the occurrence of any one or more of the following:
- (a) If appropriations, revenue, income, grants, or other funding, from any source (including but not limited to Federal, State and/or County sources), are not provided to SCETV in an amount sufficient to carry out the purposes and programs of SCETV, including the payment of rent and all other payment obligations of SCETV pursuant to this Building Lease; or
  - (b) If SCETV is dissolved or no longer performs the functions and purposes ascribed to it; or
  - (c) If during the Building Lease Term, the application of any statute, code, or ordinance of any government, authority, agency, official, or officer applicable to the demised premises makes it impossible or uneconomical for SCETV to operate in the demised premises; or
  - (d) If at any time after the first six (6) months of the Building Lease Term, SCETV shall deliver notice (which notice may be provided within the first six (6) months of the Building Lease Term) of its intention to relocate the operations then conducted pursuant to this Building Lease to a building owned or otherwise controlled by the State of South Carolina or any County or City in the State of South Carolina.

Upon termination, the rent and all other charges payable hereunder by SCETV shall be apportioned as of such date of termination.

- 4.2. SCETV shall have the right to reduce the size of the demised premises during the Building Lease Term, with no continuing obligation under this Building Lease pertaining to such space, by providing the City at least thirty (30) days prior written notice identifying the space to be vacated and the date on which SCETV intends to vacate such space. Should SCETV exercise its right to reduce space, SCETV shall relinquish space which is (i) contiguous with any previously relinquished or otherwise vacant space on the same floor; and/or (ii) is reasonably marketable to a third party. SCETV's rights under this section are separate and in addition to any space that may be relinquished under this Article 4.
- 4.3 Either party may terminate this Building Lease upon an Event of Default by the other party, as follows:
- (a) The term "Event of Default" shall mean (1) a Party materially breaches this Building Lease or materially fails to perform its obligations under this Building Lease, and such breach or failure shall continue not remedied for thirty (30) days following receipt of written notice from the non-defaulting Party; or (2) SCETV shall cease operations in Sumter County, South Carolina, or shall fail to use the any portion of the demised premises for a period of forty-five consecutive days.
  - (b) Prior to terminating this Lease for an Event of Default, the terminating Party shall notify the other Party in writing of its intent to terminate. The other Party shall have a period of at least thirty days (in addition to any period required to trigger the Event of Default as described above) to remedy the alleged basis for the termination.

- (c) In the event of a termination by the City, the City Council of the City must approve the termination by voice vote at a public meeting.
- 4.4 Upon the termination or expiration of the Building Lease Term in accordance with this Building Lease, SCETV shall peaceably quit the demised premises, shall comply with the infrastructure and equipment removal provisions of Section 3.9 hereof, and shall return the Property to the City in substantially the same condition as it existed upon commencement of this Tower Lease, ordinary wear and tear excepted.

#### **ARTICLE 5 – EXEMPTIONS**

- 5.1. The City and SCETV agree that SCETV shall be specifically exempt from the payment, furnishing, or providing to the City of any of the following:
- (a) Security deposits for any rents or other charges to be paid by SCETV pursuant to this Building Lease or for any service or item supplied to SCETV by the City;
  - (b) Liquidated or punitive damages for any cause or reason;
  - (c) The City’s attorney fees, court costs, or costs of collection relating to any action or inaction by SCETV under this Building Lease;
  - (d) Except as set forth in Section 3.2 hereof and Section 5.2 of the Tower Lease, any form of insurance coverage for the City or any person or entity other than SCETV or for any real or personal property of any party other than SCETV including, but not limited to, fire, comprehensive, general public liability, or contractual liability;
  - (e) Any indemnification, hold harmless, release, or waiver agreement by SCETV to the City or any other person, party, or entity; and
  - (f) Payment of any late charges or penalties for failure by SCETV to make payment of rent or any other charges payable to the City pursuant to this Tower Lease.

#### **ARTICLE 6 - NOTICES**

- 6.1. All notices, demands, requests, consents, approvals, offers, statements, and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, addressed to the City or SCETV at the addresses appearing at the heading of this Building Lease.

#### **ARTICLE 7 – AMENDMENTS**

- 7.1 Amendments to this Building Lease covering additional matters or modifying the provisions hereof shall be hereafter set out in writing, signed by the authorized representation of each party, duly approved by an authorized agent of the S.C. Department of Administration, and attached to this Building Lease. If such amendments conflict with other provisions of this Building Lease, the amendments, when duly approved, shall control and be binding upon the parties hereto.

#### **ARTICLE 8 – MINOR REPAIRS/ IMPROVEMENTS**

- 8.1 SCETV shall have the right to remove such trees, underbrush, and earth as shall be necessary for the erection and maintenance of the Tower and the Building and any other related improvements upon the demised premises.
- 8.2 SCETV shall have the right to make all repairs and/or improvements in accordance with the terms of this Building Lease without further consent from the City.
- 8.3 SCETV may install a generator in coordination with the City to ensure that requirements are met for safe and quiet operations when needed.

#### **ARTICLE 9 - MISCELLANEOUS**

- 9.1 If any provision of this Building Lease or any application thereof shall be invalid or unenforceable, the remainder of this Building Lease and any other application of such provision shall not be affected thereby.
- 9.2 This Building Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the Parties.
- 9.3 The failure of either Party to enforce any provisions of this Building Lease shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Building Lease.
- 9.4 This Building Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.
- 9.5 The Article headings of this Building Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.
- 9.6 This Building Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.
- 9.7 In the event the City is involved in any bankruptcy or insolvency proceedings and the City's trustee fails to perform or rejects any of the City's obligations under this Building Lease, SCETV shall have the option to terminate this Building Lease.
- 9.8 Exhibit "A" referred to in this Building Lease is incorporated herein and made a part hereof.
- 9.9 No party other than the City or SCETV themselves has any rights or remedies under this Building Lease.
- 9.10 At any time during the Building Lease Term either Party, at its sole expense, shall be entitled to record a memorandum of this Building Lease and, if either Party so elects, both Parties agree to cooperate in the preparation, execution, acknowledgment, and recordation of such document in reasonable form.



**IN WITNESS WHEREOF**, the Parties have executed this Building Lease as of the day and year indicated above their signature.

By SCETV, this \_\_\_\_\_ day of \_\_\_\_\_, 2018

**SCETV:**

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This Agreement is approved in accordance with the South Carolina Code of Regulations section 19-447.1000 by The South Carolina Department of Administration, Division of General Services, Real Property Services this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name:

Title:

By the City of Sumter, South Carolina, this \_\_\_\_\_ day of \_\_\_\_\_, 2018

**CITY OF SUMTER, SOUTH CAROLINA:**

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXEMPT GOVERNMENTAL REAL ESTATE LEASE  
SUMTER, SC: HARVIN STREET TOWER**

This **LEASE AGREEMENT** (the "Tower Lease") is made this \_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF SUMTER, SOUTH CAROLINA** (the "City") having an address at 21 N. Main Street, Sumter, SC 29150, and the **SOUTH CAROLINA EDUCATIONAL TELEVISION COMMISSION** ("SCETV," and together with the City, the "Parties"), an agency, institution, department (including any division or bureau thereof), or political subdivision of the State of South Carolina having an address at 1041 George Rogers Boulevard, Columbia, South Carolina, 29201. The words the "City" and "SCETV" wherever used herein shall include the respective successors and assigns of each of the parties hereto.

**ARTICLE 1 – OTHER AGREEMENTS; PURPOSE**

- 1.1 Concurrently with the execution and delivery of this Tower Lease, the Parties have also executed and delivered that certain Exempt Governmental Real Estate Lease, Sumter, SC: Harvin Street Building, dated as of even date herewith (the "Building Lease," and together with this Tower Lease, the "Leases").
- 1.2 Pursuant to this Tower Lease and the related Building Lease, for and in consideration of the rent reserved in the Leases and of the covenants and agreements contained in the Leases on the part of SCETV to be kept, observed, and performed, the City has demised and leased, and by these presents does demise and lease unto SCETV, the following described real property located in Sumter County, South Carolina:

A portion (as hereinafter described) of a lot of land bearing Tax Map No. 228-12-05-005 located at 18 N. Harvin St., Sumter, South Carolina (the "Property"), as shown on a plat which is attached to this Lease as Exhibit A, and incorporated herein by reference, to include a Tower, as hereinafter defined.

The Building Lease provides for the rights and duties of SCETV with respect to a building and related improvements on the Property (the "Building"), while this Tower Lease provides for the rights and duties of SCETV with respect to the Tower (as hereinafter defined) and related land space on the Property. The Leases need not have co-equal terms, and in the event that one of the Leases expires or is terminated, except as specifically set forth in the Leases, the other Lease shall remain in full force in effect.
- 1.3 The parties agree that the purpose of this Tower Lease is to provide SCETV with land space to maintain a microwave tower, supporting structures, and cables (collectively, the "Tower"), and any associated fencing and easements relating to its operation of a Tower which will be of direct benefit to The City.
- 1.4 The City covenants that it has lawful title and right to make this Lease and that SCETV, on paying the aforesaid installments or rent and performing all the covenants and agreements herein contained

to be by it performed, shall and may peacefully and quietly have, hold, and enjoy the leased premises for the full term hereof and any extension.

#### **ARTICLE 2 – TERM, RENT, AND PAYMENT SCHEDULE**

- 2.1 The term of this Tower Lease shall be for a period of twenty (20) years from the date hereof (the “Tower Lease Term”) at an agreed rental of one dollar (\$1.00) per year payable annually or, at the option of SCETV, in full upon the execution hereof.
- 2.3 This Lease may be renewed and extended for an additional ten (10) year period (the Tower Lease Term and any renewal period shall collectively be the “Tower Lease Term”) upon the same terms and conditions unless either Party shall notify the other Party in writing at least ninety (90) days prior to the expiration of the Tower Lease Term of its intention not to renew and extend the same.

#### **ARTICLE 3 – USE**

- 3.1. SCETV shall have the right to the undisturbed use of the Tower. SCETV may use certain space in the Building (not to exceed 10% of the total heated and cooled square footage of the Building) for placement or storage of Tower-related equipment that SCETV has determined must be located indoors, and other equipment and supplies, as well as the use of certain areas within the Building for running cables to connect the Tower to the Tower-related equipment. The Tower and Tower-related equipment are and shall remain the property of SCETV.

#### **ARTICLE 4 – ASSIGNMENT AND SUBLETTING**

- 4.1 SCETV may assign this Tower Lease or sublet the demised premises to any State agency, institution, department, bureau, political subdivision or State-operated entity provided that (a) such assignment or sublease shall be upon the same terms and conditions as this Tower Lease, and (b) the City shall have consented in writing to such assignment (which consent shall not be unreasonably denied).
- 4.2 Any act required to be performed by SCETV pursuant to the terms of this Lease may be performed by any assignee or subcontractor of SCETV, and the performance of such act shall be deemed to be performance by SCETV.

#### **ARTICLE 5 – REPRESENTATIONS AND COVENANTS**

- 5.1 The City covenants that it has lawful title and right to make this Tower Lease and that SCETV, on paying the aforesaid installments of rent and performing all the covenants and agreements herein contained to be by it performed, shall and may peacefully and quietly have, hold, and enjoy the demised premises for the full Term hereof and any extension.
- 5.2 SCETV will maintain liability insurance on the Tower as permitted and required by state law and SCETV’s insurer.
- 5.3 SCETV will maintain all required licensure for the ownership and use of the Tower with the Federal Communications Commission, and it will comply with all applicable rules and regulations in its use of the Tower.
- 5.4 SCETV will be responsible for all costs of operating and maintaining the Tower and all associated equipment owned by SCETV. Other than direct expenses there will be no use charges.

- 5.5 SCETV will offer space on the Tower for City-operated transmission equipment to be utilized for public safety communications and Wi-Fi. All such equipment will be maintained by the City at its sole expense. Any risk of loss related to such equipment shall be born exclusively by the City.
- 5.6 SCETV will keep the Tower in clean, safe, and serviceable condition.
- 5.7 SCETV will be responsible for providing and paying for its own utilities (including, without limitation, for electrical, water, wastewater, telephone, and internet access), custodial services, insurance, and security, provided that the City will cooperate with SCETV in causing the City's police department to respond to reasonable requests from SCETV in designing a cooperative security program.
- 5.8 Upon expiration or earlier termination of this Tower Lease, then SCETV may take possession of and remove the Tower and Tower-related equipment, provided that SCETV (a) shall not damage the Property or the Building in removing such infrastructure and equipment; (b) shall use its best efforts to coordinate a removal process with the City that is minimally invasive and disruptive to the City's operations, (c) shall complete the removal within thirty (30) days; and (d) shall preserve, protect, and promptly return to the City any City-owned infrastructure or equipment that is attached to the Tower.
- 5.9 Upon reasonable advance notice to SCETV, the City shall have the right to enter the demised premises to make inspections or to provide necessary services. The City does not assume any liability for the care or supervision of the demised premises.
- 5.10 The City shall have the right of ingress and egress and such other uses approved in writing by SCETV across and upon open portions of the demised premises provided such does not interfere with the operations of the Tower and equipment as well as production operations. The City shall exercise special care and precaution to avoid damage to SCETV's Tower and equipment, and the equipment of licensees, and agrees to reimburse SCETV, and any licensee, for the reasonable cost of repair and replacement of any structure or equipment damaged or destroyed by its employee, agents, assigns or invitees.

#### **ARTICLE 6 – TERMINATION**

- 6.1 SCETV shall have the right to terminate this Tower Lease or to relinquish any portion of the demised premises (subject to giving the City written notice at least 120 days before the proposed termination) upon the occurrence of any one or more of the following:
  - (a) If appropriations, revenue, income, grants, or other funding, from any source (including but not limited to Federal, State and/or County sources), are not provided to SCETV in an amount sufficient to carry out the purposes and programs of SCETV, including the payment of rent and all other payment obligations of SCETV pursuant to this Tower Lease; or
  - (b) If SCETV is dissolved or no longer performs the functions and purposes ascribed to it; or
  - (c) If during the Tower Lease Term the application of any statute, code, or ordinance of any government, authority, agency, official, or officer applicable to the demised premises makes it impossible or uneconomical for SCETV to operate in the demised premises; or
  - (d) If at any time after the first six (6) months of the Tower Lease Term, SCETV shall deliver notice (which notice may be provided within the first six (6) months of the Tower Lease

Term) of its intention to relocate the Tower to property owned or otherwise controlled by the State of South Carolina or any County or City in the State of South Carolina.

Upon termination, the rent and all other charges payable hereunder by SCETV shall be apportioned as of such date of termination.

- 6.2. SCETV shall have the right to reduce the size of the demised premises during the Tower Lease Term, with no continuing obligation under this Tower Lease pertaining to such space, by providing the City at least thirty (30) days prior written notice identifying the space to be vacated and the date on which SCETV intends to vacate such space. Should SCETV exercise its right to reduce space, SCETV shall relinquish space which is (i) contiguous with any previously relinquished or otherwise vacant space on the same floor; and/or (ii) is reasonably marketable to a third party. SCETV's rights under this section are separate and in addition to any space that may be relinquished under this Article 6.
- 6.3. Either party may terminate this Tower Lease upon an Event of Default by the other party, as follows:
  - (a) The term "Event of Default" shall mean (1) a Party materially breaches this Tower Lease or materially fails to perform its obligations under this Tower Lease, and such breach or failure shall continue not remedied for thirty (30) days following receipt of written notice from the non-defaulting Party; or (2) SCETV shall cease operations in Sumter County, South Carolina, or shall fail to use the any portion of the demised premises for a period of forty-five consecutive days.
  - (b) Prior to terminating this Lease for an Event of Default, the terminating Party shall notify the other Party in writing of its intent to terminate. The other Party shall have a period of at least thirty days (in addition to any period required to trigger the Event of Default as described above) to remedy the alleged basis for the termination.
  - (c) In the event of a termination by the City, the City Council of the City must approve the termination by voice vote at a public meeting.
- 6.4. Upon the termination or expiration of the Tower Lease Term in accordance with this Tower Lease, SCETV shall peaceably quit the demised premises, shall comply with the infrastructure and equipment removal provisions of Section 5.8 hereof, and shall return the Property to the City in substantially the same condition as it existed upon commencement of this Tower Lease, ordinary wear and tear excepted.

#### **ARTICLE 7 – EXEMPTIONS**

- 7.1. The City and SCETV agree that SCETV shall be specifically exempt from the payment, furnishing, or providing to the City of any of the following:
  - (a) Security deposits for any rents or other charges to be paid by SCETV pursuant to this Tower Lease or for any service or item supplied to SCETV by the City;
  - (b) Liquidated or punitive damages for any cause or reason;
  - (c) The City's attorney fees, court costs, or costs of collection relating to any action or inaction by SCETV under this Lease;

- (d) Except as set forth in Section 5.2 hereof and Section 3.2 of the Building Lease, any form of insurance coverage for the City or any person or entity other than SCETV or for any real or personal property of any party other than SCETV including, but not limited to, fire, comprehensive, general public liability, or contractual liability;
- (e) Any indemnification, hold harmless, release, or waiver agreement by SCETV to the City or any other person, party, or entity; and
- (f) Payment of any late charges or penalties for failure by SCETV to make payment of rent or any other charges payable to the City pursuant to this Tower Lease.

**ARTICLE 8 - NOTICES**

- 8.1. All notices, demands, requests, consents, approvals, offers, statements, and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, addressed to the City or SCETV at the addresses appearing at the heading of this Lease.

**ARTICLE 9 – AMENDMENTS**

- 9.1 Amendments to this Lease covering additional matters or modifying the provisions hereof shall be hereafter set out in writing, signed by the authorized representation of each party, duly approved by an authorized agent of the S.C. Department of Administration, and attached to this Agreement. If such amendments conflict with other provisions of this Tower Lease, the amendments, when duly approved, shall control and be binding upon the parties hereto.

**ARTICLE 10 – MINOR REPAIRS/ IMPROVEMENTS**

- 10.1 SCETV shall have the right to remove such trees, underbrush, and earth as shall be necessary for the erection and maintenance of the Tower and the Building and any other related improvements upon the demised premises.
- 10.2 SCETV shall have the right to make all repairs and/or improvements in accordance with the terms of this Lease without further consent from The City.
- 10.3 SCETV may install a generator in coordination with The City to ensure that requirements are met for safe and quiet operations when needed.

**ARTICLE 11 – FIRST RIGHT OF REFUSAL TO PURCHASE**

- 11.1 In the event the City decides to sell all or a portion of the demised premises of which the Tower and Building form a part, it shall first, upon written notice, offer SCETV the right to purchase the Tower and/or the Building and any additional portion of the demised premises required by SCETV at a value to be determined by appraisal made by an MAI appraiser agreed to by the Parties. The costs of an appraisal where the parties have agreed upon the appraiser shall be borne equally by the Parties. In the event the parties cannot agree upon selection of such an appraiser then the City shall select one MAI appraiser (whose work and expenses shall be paid for by the City) and SCETV shall select one MAI appraiser (whose work and expenses shall be paid for by SCETV), and these two MAI appraisers shall select a third MAI appraiser (whose work and expenses shall be paid equally by SCETV and the City); the three appraisers so appointed shall appraise the required property, and the decision of any two of the three appraisers shall be final and binding upon the parties. If SCETV shall elect not

to purchase said demised premises or portion thereof or fail to notify the City of its intention to do so within one ninety (90) days of written notice of the City's intent to sell, the City may then sell the same to any purchaser subject to this Tower Lease, the conditions, restrictions, and covenants whereof shall remain in full force and effect and binding upon SCETV and the purchaser of the said demised premises.

#### ARTICLE 12 – USE OF TOWER

- 12.1 SCETV may, without any further consent from the City, permit (whether by license or otherwise) other parties to install and maintain non-owned equipment within or upon the Tower and in the Building, provided that such installation or maintenance shall not unduly burden the City in its operations and use of the non-demised premises.

#### ARTICLE 13 - MISCELLANEOUS

- 13.1. If any provision of this Tower Lease or any application thereof shall be invalid or unenforceable, the remainder of this Tower Lease and any other application of such provision shall not be affected thereby.
- 13.2. This Tower Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the Parties.
- 13.3 The failure of either Party to enforce any provisions of this Tower Lease shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Tower Lease.
- 13.4. This Tower Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.
- 13.5. The Article headings of this Tower Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.
- 13.6. This Tower Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.
- 13.7. In the event the City is involved in any bankruptcy or insolvency proceedings and the City's trustee fails to perform or rejects any of the City's obligations under this Tower Lease, SCETV shall have the option to terminate this Tower Lease.
- 13.8. Exhibit "A" referred to in this Lease is incorporated herein and made a part hereof.
- 13.9 No party other than the City or SCETV themselves has any rights or remedies under this Tower Lease.
- 13.10 At any time during the Tower Lease Term either Party, at its sole expense, shall be entitled to record a memorandum of this Tower Lease and, if either Party so elects, both Parties agree to cooperate in the preparation, execution, acknowledgment, and recordation of such document in reasonable form.
- IN WITNESS WHEREOF**, the Parties have executed this Tower Lease as of the day and year indicated above their signature.

By SCETV, this \_\_\_\_\_ day of \_\_\_\_\_, 2018

**SCETV:**

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This Agreement is approved in accordance with the South Carolina Code of Regulations section 19-447.1000 by The South Carolina Department of Administration, Division of General Services, Real Property Services this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name:

Title:

By the City of Sumter, South Carolina, this \_\_\_\_\_ day of \_\_\_\_\_, 2018

**CITY OF SUMTER, SOUTH CAROLINA:**

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_