# SITE AGREEMENT

This site agreement ("Agreement") is entered into by and between The City of Leesburg, Florida, ("City") and Lake Emergency Medical Services, Incorporated ("EMS"), each of which is referred to individually as a "Party" and severally as the "Parties" in this Agreement.

WHEREAS, City owns a communications tower ("Tower"), a communications building ("Building") and an emergency generator ("Generator") all of which are located on City property near City's police department at 115 East Magnolia Street, Leesburg, Florida, and are collectively referred to in this Agreement as the "Property"; and

WHEREAS, City is willing to allow other parties to place antennas, cables, radios and associated equipment on Tower and in Building; and

WHEREAS, EMS currently has antennas, cables, radios and associated equipment on Tower and in Building; and

WHEREAS, EMS wishes to retain and from time to time maintain, repair and/or replace those antennas, cables, radios and associated equipment on Tower and in Building; and

WHEREAS, EMS may from time to time wish to place additional antennas, cables, radios and/or associated equipment on Tower and in Building;

NOW THEREFORE, the Parties do agree as follows, each willing to accept certain obligations in order to receive certain benefits that are stated in this Agreement.

**1.0** **RECITALS.** The Parties agree that the above recitals are true and comprise a part of this Agreement.

**2.0** **TERM**

**2.1** **Coming Into Force.** This Agreement shall come into force when signed by the last of the Parties to sign it.

**2.2** **Initial Term.** This Agreement shall remain in force through September 30, 2014 ("Initial Term").

**2.3** **Extension Terms.** Upon the expiration of the Initial Term this Agreement shall automatically renew for additional one-year terms ("Extension Term") unless either Party provides written notice to the other per the provisions of Section 9.3 below of its intent to not renew the Agreement not less than ninety (90) days prior to the expiration of the then active term.

**2.4** **Termination.** Either party may terminate this Agreement without cause upon ninety (90) days' notice to the other.

## 3.0 FEES

**3.1 Annual Rent.** EMS shall pay to City an annual fee ("Annual Rent") which shall be based upon the amount of two-thousand, twelve dollars and sixteen cents ($2,012.16) covering the one-year portion of the Initial Term from October 1, 2013 through September 30, 2014.

**3.2 Reserved.**

**3.3 Annual Rent Escalation.** The Annual Rent for each Extension Term shall increase by three percent (3%) from the Annual Rent amount for the previous term.

**3.4 Annual Rent Invoice and Due Date.** City shall issue an invoice to EMS during the final month of any term which has been extended for such Extension Term. EMS shall pay such invoice no later than the due date stated on the invoice.

**3.5 Structural Analysis Fee.** Any Structural Analysis Fee incurred by EMS per Section 5.7 of this Agreement shall be equal to City's actual costs to have the associated Structural Analysis performed. City shall issue a written invoice to EMS that states: (i) the amount due; (ii) the date by which the invoice must be paid; (iii) the party to whom payment should be made; and (iv) the address to which payment is to be sent.

**3.6 Structural Modification Fee.** Any Structural Modification Fee incurred by EMS per Section 5.7 of this Agreement shall be equal to City's actual costs to have the associated Structural Modification performed.

**3.7 Late Fee.** If EMS fails to make timely payment of any amount due to City from EMS under this Agreement, EMS shall pay to City an amount equal to one percent (1.0%) of such overdue amount ("Late Fee") for each calendar month or portion of a calendar month that such amount remains unpaid. Any Late Fee owed to City by EMS shall be paid to City no less than thirty (30) days from the date upon which the Late Fee is incurred.

**3.8 Other Fees.** City shall issue a written invoice to EMS for any other fees that may become due from EMS to City under this Agreement. Any such invoices shall state: (i) the amount due; (ii) the date by which the invoice must be paid; (iii) the party to whom payment should be made; and (iv) the address to which payment is to be sent.

**3.9 Refunds of Fees.** In the event of termination initiated by City, EMS shall be refunded a pro-rated amount of the Annual Rent paid. In the event of termination initiated by EMS, EMS shall not be refunded any portion of prepaid Annual Rent.

## 4.0 CITY'S DUTIES

4.1 City shall allow EMS reasonable access to Tower and Building for the purposes of EMS' installing, removing, securing, repairing, replacing, maintaining and operating antennas, cables, radios and associated equipment.

4.2 City shall allow EMS to have the antennas, cables, radios and associated equipment attached to Tower and in Building that are identified in Exhibit A to this Agreement.

4.3 City shall perform or cause to be performed all observations, inspections, maintenance and repairs to the Property.

4.4 City shall make available 110 volt alternating current commercial electricity for EMS' use in Building. Such electricity shall be backed up by Generator.

4.5 City shall provide air conditioning to Building, ensuring that the ambient air temperature in Building is maintained at a level that typically does not exceed seventy-eight (78) degrees Fahrenheit. City shall correct any air conditioning equipment failures within four (4) hours.

4.6 City shall include Tower, Building and Generator in its pool of insured assets.

4.7 City shall not install, operate or maintain antennas, cables, radios and/or associated equipment on Tower or in Building that interferes with the operation or use of the antennas, cables, radios and/or associated equipment that (i) are identified in Exhibit A to this Agreement or (ii) are placed on Tower or in Building by EMS in conformance with this Agreement. City shall not allow or permit any other party to install, operate or maintain antennas, cables, radios and/or associated equipment that interferes with the operation or use of the antennas, cables, radios and/or associated equipment that (i) are identified in Exhibit A to this Agreement or (ii) are placed on Tower or in Building by EMS in conformance with this Agreement.

4.8 City shall not cause, permit or allow any use of Property that interferes with or impairs any of EMS' use of its antennas, cables, radios and/or associated equipment that is permitted under this Agreement. If such interference or impairment arises and continues, City shall remove or cause the removal of such interference or impairment no later than ten (10) days after receiving written notice from EMS of such interference or impairment.

4.9 City shall maintain the physical security of Property.

## 5.0 EMS' DUTIES

5.1 EMS shall make timely payment to City for all undisputed amounts stated on invoices issued by City to EMS.

5.2 EMS shall ensure that itself; its employees, agents, and contractors; and any other party acting on EMS' behalf installs, removes, secures, repairs, replaces, maintains and/or operates antennas, cables, radios and associated equipment in compliance with all local, state and federal laws, statutes, rules and regulations including all Federal Communications Commission regulations.

5.3 EMS shall ensure that any of its antennas, cables, radios and associated equipment on Tower or in Building does not interfere with or impair any use of Property that is allowed under this Agreement.

5.4 Unless emergency conditions exist, EMS shall provide City with not less than twenty-four (24) hours advance notice of EMS' accessing Property for any reason. If emergency conditions require EMS to access Property, EMS shall first attempt to contact City via City's Communications Utility Hotline.

5.5 Prior to entering the secured portions of City's property at 115 East Magnolia Street, Leesburg, Florida, EMS shall ensure that its employees, agents, contractors and any other party acting on its behalf and needing to enter such secure areas check in with City of Leesburg Police personnel on duty at that time. EMS shall ensure that its employees, agents, contractors and any other party acting on its behalf shall proceed directly through the secure parts of the City of Leesburg Police building. EMS shall ensure that its employees, agents, contractors and any other party acting on its behalf check out with City of Leesburg Police personnel upon leaving the secure portions of City's property at 115 East Magnolia Street, Leesburg, Florida.

5.6 Within three (3) days of any EMS access to Property, EMS shall provide a brief written summary of its activities on Property to City.

5.7 If EMS wishes to add, remove or otherwise change any of the antennas, cables, radios and/or associated equipment on Tower or in Building, it shall provide prior written notice to City. Such written notice shall include sufficient information for City to maintain accurate and complete records of all EMS antennas, cables, radios and associated equipment on Tower and in Building. If EMS wishes to place additional antennas, cables or any associated equipment on Tower, it shall provide full specifications to City no less than sixty (60) days prior to date by which it wishes to place such additional antennas, cables and/or associated equipment on Tower. EMS shall be responsible to City for any costs that City incurs ("Structural Analysis Fee") to perform or cause to be performed any engineering studies whose purpose is to assess the impact of EMS placing any such additional antennas, cables and/or associated equipment on Tower ("Structural Analysis"). If such engineering study performed by a professional engineer recognized by the State of Florida determines that structural modifications to Tower would be necessary prior to placement of such additional antennas, cables and/or associated equipment and if EMS places any such additional antennas, cables and/or associated equipment on tower EMS shall be responsible to City for any costs that City incurs ("Structural Modification Fee") to perform or cause to be performed such structural modifications to Tower ("Structural Modification").

**6.0** **CITY'S RIGHT FOR OTHER USES OF PROPERTY.** Notwithstanding any other provision of this Agreement, City shall retain the right for any use of Property by itself or other parties that does not interfere with or impair any of EMS' rights under this Agreement. This includes, but is not limited to, City's right, as constrained by City's duties stated above, to install, remove, secure, repair, replace, maintain and/or operate antennas, cables, radios and associated equipment on Property or to allow other parties to install, remove, secure, repair, replace, maintain and/or operate antennas, cables, radios and associated equipment on Property.

**7.0** **DEFAULT**

**7.1** **Defaulting Party Defined.** If EMS fails to make any payment when due and such failure continues for thirty (30) days after written notice from City, EMS shall be considered to be in

default of its obligations under this Agreement. If either Party fails to observe or perform any other material term of this Agreement and such failure continues for thirty (30) days after written notice from the other Party, then that Party shall be in default of its obligations under this Agreement.

**7.2 Procedure to Cure Default.**

7.2.1 Upon receipt of written notice of default per Section 7.1 of this Agreement, the defaulting Party shall respond in writing within three (3) days. Such written response shall either (i) acknowledge receipt of notice of default, present an action plan for correcting the default, and present a timeframe for correcting the default; or (ii) acknowledge receipt of notice of default and present an explanation of why a default condition does not exist.

7.2.2 If defaulting Party acknowledges the default condition and non-defaulting Party agrees to defaulting Party's plan of action and timeframe, defaulting Party shall proceed with its plan of action.

7.2.3 If non-defaulting Party disputes the default condition, the Parties shall seek to resolve the dispute per the provisions of Section 9.4 of this Agreement.

**7.3 Non-defaulting Party's Privileges.** If the defaulting Party fails to cure the default per its plan of action and/or timeframe, the non-defaulting Party may: (i) terminate this Agreement and/or (ii) subject to Sections 8.1, 8.2, 8.3 and 8.4 of this Agreement, pursue any remedies it may have at law or in equity.

**8.0 LIABILITIES AND SERVICE LEVELS**

**8.1 No Special Damages.** Neither Party shall be liable to the other Party for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement.

**8.2 Disclaimer of Warranties.** CITY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.

**8.3 Indemnification.** To the fullest extent permitted under Sec. 768.28, Fla. Stat., EMS shall indemnify the City and hold the City harmless against any and all damages, claims, or causes of action, and all costs and attorneys' fees associated therewith, arising out of or resulting from the activities of EMS under this Agreement, excluding any damages, claims or causes of action arising solely and proximately from the negligence of the City.

**8.4 Limitation of Liability and Remedies.** EMS understands and agrees that City's liability and EMS's sole remedy against City for any loss or damage that arises directly or indirectly out of, or resulting from impairment of, any service provided by City pursuant to this Agreement, or any mistake, omission, interruption, delay, error, or defect in the provision of services, or for loss or

damage caused by delayed performance, negligent performance or nonperformance regardless of EMS's form of action shall be limited to recovery of actual damages in an amount equivalent to the lesser of (i) the amount of actual and direct damages that are proven or (ii) the charges incurred by EMS for the term during which such mistake, omission, interruption, delay, error, defect, or failure of service occurred.

## 9.0 GENERAL TERMS

**9.1 Force Majeure.** Neither Party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated Party ("Force Majeure Event"). Both Parties will use reasonable efforts to mitigate the effect of a Force Majeure Event. Force Majeure Events shall not, apart from a Party's gross negligence or willful misconduct, make a Party a defaulting Party per Section 7.1 of this Agreement.

**9.2 Assignment and Resale.** EMS may not assign its rights or obligations under this Agreement without the prior written consent of City, which shall not be unreasonably withheld. This Agreement shall apply to any permitted transferees or assignees. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under or by reason of this Agreement.

**9.3 Notices.** Any notices provided by either Party to the other pursuant to this Agreement shall be in writing and deemed received if delivered personally, sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided) or sent by U.S. Postal Service or First Class International Post, addressed as follows:

**IF TO CITY:**
City of Leesburg
501 W. Meadow Street
P.O. Box 490630
Leesburg, FL 34749
Attn: Communications Manager
Facsimile: (352) 435-9451
Email: communications.manager@leesburgflorida.gov

**IF TO EMS**
Lake Emergency Medical Services, Inc.
2716 West Old U.S. Highway 441
Mount Dora, Florida 32757

Attn: Jim Root
Facsimile: 352-735-4475
Email: jroot@lakeems.org

Either Party may change its notice address by providing written notice to the other Party. All notices shall be deemed given on (i) the date delivered if delivered personally, by facsimile or e-mail (or the next business day if delivered on a weekend or legal holiday), (ii) the business day after dispatch if sent by overnight courier, or (iii) the third business day after dispatch if otherwise sent.

**9.4 Disputes**

9.4.1 The Parties each prefer to settle any disputes arising under this Agreement through informal means. The Parties therefore agree that any disputes arising under this Agreement shall be first addressed through informal discussions extending no less than seven (7) days.

9.4.2 The Parties agree that for any disputes that are not resolved per subsection 9.4.1 of this Agreement, the Parties shall submit the matter to an independent third party for binding mediation ("Mediator"). The Party having first identified the matter as under dispute ("Nominating Party") shall nominate a person to serve as Mediator by providing written notice to the other Party. Such written notice shall provide: (i) the date upon which the nomination is being made; (ii) the nominee's name, address, telephone number, email address and professional qualifications to serve as Mediator ("Nominee"); and (iii) certification from Nominating Party that it has taken steps to ensure no conflict of interest between Nominee and itself. The Party ("Responding Party") receiving a Mediator nomination from Nominating Party shall respond no later than fourteen days after the date upon which the nomination was made, indicating: (i) the date upon the response is being made; (ii) whether the nomination is accepted or rejected; and (iii) if the nomination is rejected, the name, address, telephone number, and email address of a third party ("Third Party"). If Responding Party accepts Nominee, Nominee shall become Mediator. If Responding Party rejects Nominee, Nominee and Third Party shall select a Mediator no later than fourteen days after the date upon which Responding Party rejected Nominee. Each Party shall submit to Mediator whatever material it deems necessary to state its position no later than five days after selection of Mediator. Each Party shall be responsible to maintain communication with Nominee or Third Party respectively with regard to identity of and contact information for selected Mediator. Mediator shall provide a written determination ("Mediator's Determination") to each Party no later than forty-five days after Mediator's selection. Mediator's Determination shall state: (i) the date upon which it is being issued; (ii) any amounts due from one Party to the other under this Agreement or other obligations of one Party to the other under this Agreement; (iii) the proportion of Mediator's fee to be paid by each Party; and (iv) the rationale used in reaching Mediator's Determination.

**9.5** **Intellectual Property and Publicity.** Neither Party is granted a license or other right (express, implied or otherwise) to use any trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of the other Party or its affiliates without the express prior written authorization of the other Party. Neither Party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the Parties in writing.

**9.6** **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without regard to its choice of law rules and jurisdiction for any claim or cause of action shall lie only in Lake County, Florida.

**9.7** **Full Agreement.** This Agreement constitutes the entire and final agreement and understanding between the Parties with respect to the subject matter of the Agreement and supersedes all prior agreements, understandings, proposals, or representations relating to the subject matter of the Agreement, which are of no further force or effect

**9.8** **Amendment.** This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party.

**9.9** **No Waiver.** No failure by either Party to enforce any of its right(s) or the other Party's obligations under this Agreement shall constitute a waiver of such right(s) or obligations.

**9.10** **Relationship.** The relationship between the Parties is not that of partners, agents, or joint venturers.

**9.11** **Severability.** If a court of competent jurisdiction finds or holds any part of this Agreement to be unenforceable, then only the unenforceable provision or section shall be affected and the remaining portions of this Agreement shall continue in full force and effect.

**9.12** **Attorneys' Fees.** In the event litigation is required by either Party to enforce the terms of this Agreement, the prevailing Party of such action shall, in addition to all other relief granted or awarded by the court, be entitled to judgment for reasonable attorney's fees, incurred by reason of such action and all costs of arbitration or suit and those incurred in preparation thereof at both the trial and appellate levels, and in bankruptcy proceedings.

**9.13** **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

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**IN WITNESS WHEREOF**, the Parties have made and executed this Agreement through their respective governing authorities on the day and year undersigned.

**CITY OF LEESBURG, FLORIDA**

**By** _____

**Name** _____

**Title** _____

**Date** _____

## ATTESTED:

**CITY OF LEESBURG, FLORIDA**

**By** _____

**Name** _____

**Title** _____

## APPROVED AS TO FORM AND CONTENT:

**CITY OF LEESBURG, FLORIDA**

**By** _____

**Name** _____

**Title** _____

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**EMS**

**LAKE EMERGENCY MEDICAL SERVICES, INC.**

**Gerald "Jerry" L. Smith II**
**Executive Director**
**Lake Emergency Medical Services, Inc.**

**This** 14th **day of** November**, 2013.**

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# EXHIBIT A
# to
# SITE AGREEMENT
# between
# CITY OF LEESBURG, FLORIDA
# and
# LAKE EMERGENCY MEDICAL SERVICES, INC

## ANTENNAS ON TOWER

Antenna 1
- Type ..... Radio Waves 4-ft dish
- Height AGL .....
- Frequency.....
- RF power .....

Antenna 2
- Type ..... Radio Waves 4-ft dish
- Height AGL .....
- Frequency.....
- RF power .....

Antenna 3
- Type ..... Andrews DB 420
- Height AGL .....
- Frequency.....
- RF power .....

Antenna 4
- Type .....Andrews DB 420
- Height AGL.....
- Frequency .....
- RF power.....

Antenna 5
- Type .....none
- Height AGL.....
- Frequency .....
- RF power.....

Antenna 6
- Type .....none
- Height AGL.....
- Frequency .....
- RF power.....

## CABLES ON TOWER

Cable 1
- Type ..... Andrews 250 ft 7/8”
- To Antenna # .....
- Approx weight .....

Cable 2
- Type ..... Andrews 400 ft 5/8”
- To Antenna # .....
- Approx weight .....

Cable 3
- Type ..... none
- To Antenna # .....
- Approx weight .....

Cable 4
- Type .....none
- Antenna #.....
- Approx weight.....

Cable 5
- Type .....none
- To Antenna #.....
- Approx weight.....

Cable 6
- Type .....none
- To Antenna #.....
- Approx weight.....

## EQUIPMENT IN BUILDING

Equipment 1
- Type ..... Cabinet
- Manufacturer ..... Rital
- Model..... n/a
- Serial number ..... n/a

Equipment 2
- Type ..... Repeater
- Manufacturer ..... Motorola
- Model..... MTR 2000
- Serial number ..... 474CED0170

Equipment 3
- Type ..... Microwave radio
- Manufacturer ..... Adtran
- Model..... 4208
- Serial number ..... E32D2270

Equipment 4
- Type .....Microwave radio
- Manufacturer .....Adtran
- Model .....4208
- Serial number.....F38E7224

Equipment 5
- Type .....UPS
- Manufacturer .....APC
- Model .....1500
- Serial number.....AS065123495

Equipment 6
- Type .....none
- Manufacturer .....
- Model .....
- Serial number.....