

# Memo

103-04302  
RECEIVED  
AUG 22 2003  
LAW DEPT.

**To:** Steve Huggenberger  
**From:** John Miriovsky *JM*  
**Date:** August 22, 2003  
**Subject:** Alltel Use of Air Park Reservoir

Plans were reviewed resulting in several questions concerning Alltel's use of Lincoln Water System's Air Park Reservoir as a possible cell site. These questions were discussed with Jeff Dale and clarified. A summary of our discussion follows.

1. **Question.** The coax is proposed to run up the side of the reservoir to the mounting height of approximately 70 feet. How is the coax tray mounted to the reservoir? Is it attached to the ladder? The concern is that Nextel attached their coaxial tray to the ladder and if Alltel was doing likewise, would the ladder attachment be strong enough to support the weight of an LWS employee also.

**Answer.** The coaxial tray is not attached to the ladder. It is attached using 3/8" diameter stainless steel studs welded to the reservoir. The coaxial tray will be covered and painted to match the paint scheme on the reservoir. I am to provide Jeff with the brand name and paint system used. (Detail of the attachment is shown on Sheet A-3, detail 1).
2. **Question.** How far from the reservoir surface will the coax tray and antennae be mounted? This question was raised by the painting contractor during the last time the reservoir was painted.

**Answer.** The mounting detail of the coax tray is shown on Sheet A-3, detail 1 as flush mounted to the reservoir. The antenna mounting is shown in detail 3 on the same sheet. Sufficient space of approximately 4" will be provided between the antenna and the reservoir allowing for future sand blasting and painting.
3. **Question.** Sheet A-1 shows the overall site plan. It is unclear from this sheet where power is coming from. It almost appears that power is provided from the LWS transformer.

**Answer.** Power will be provided from a new metered service brought onto the site from Superior Street.

4. **Question.** Site access will be through the gate at the entrance to the property. Can Alltel provide a padlock for the gate?  
**Answer.** Alltel will provide a padlock for the gate.

Jeff asked that I sign, date and send the plans to you so you may proceed with Council approval.

If you have any questions, please let me know.

cc Jerry Obrist  
Paul Wimmer  
Don Frazier  
Avery Quakenbush

ORIGI

**ALLTEL**

**CITY OF LINCOLN, NEBRASKA**

**AGREEMENT FOR PCS TOWER  
AND APPURTENANCES**

**AIRPARK WATER DEPARTMENT PREMISES  
LINCOLN, NEBRASKA**

**AGREEMENT FOR PCS TOWER AND APPURTENANCES**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2000 between the CITY of Lincoln, Nebraska, a municipal corporation, hereinafter "CITY" and ALLTEL."

1. Description of Premises. CITY grants to ALLTEL a license to occupy and use a certain parcel of real property located in the CITY of Lincoln, State of Nebraska, as shown on the attached **Exhibit A** (the "Premises"), and a telecommunications Water Tower (the "Water Tower") located in the City of Lincoln, County of Lancaster, State of Nebraska, more commonly known as the Airpark Water Tower (the Water Tower and Land are collectively, the "Property"). CITY hereby licenses to ALLTEL and ALLTEL licenses from CITY land and space on the Water Tower and all access and utility easements, if any, as described in **Exhibit B**.

2. Term of Agreement. The primary term ("Primary Term") of this License will be for ten (10) years, and will commence upon ALLTEL receiving all necessary government approvals, including building permits, necessary to construct and

operate the Communications Facility (the "Commencement Date"), and will terminate at 11:59 p.m. ten (10) years thereafter, unless sooner terminated as provided herein.

This Agreement may thereafter be renewed for three additional terms (each a "Renewal Term") of five (5) years each. The Agreement shall automatically renew for the first Renewal Term, unless ALLTEL provides the CITY with a notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term. The second and third Renewal Terms shall require the mutual consent of ALLTEL and the CITY, which will not be unreasonably withheld, conditioned or delayed. The CITY represents that at the time it enters into this Agreement it has no present intent not to renew this Agreement for the second and third Renewal Terms.

The parties agree that this License is irrevocable until such time that this Agreement expires or terminates as provided herein.

3. Use of Premises. The Premises will be used for the purpose of installing, constructing, maintaining, repairing, operating, altering, inspecting, expanding, adding to and removing ALLTEL's communications equipment, including, but not limited to, the following:

a. Any and all antennas, dishes and/or grids as ALLTEL may deem appropriate.

b. Transmission lines and mounting and grounding hardware.

c. Concrete pads and one communications compound ("Communication Compound") containing, without limitation, telecommunications equipment consisting of base station cabinets, wireless communication equipment, switches, power supplies, batteries, and accessories.

d. An emergency generator (or other back up power source) to be located, at ALLTEL's option, within the Communications Compound, adjacent to the Communications Compound or within a separate area adjacent to the Communications Compound. The fuel tank for the generator (gasoline, diesel, butane, propane, LPG or other) may be located either inside or outside the Communications Compound, in accordance with applicable building codes.

For the purposes of this License, all of ALLTEL's equipment, antennas, dishes, lines, switches, power supplies, batteries, Communications Compound, generator, generator shelter, Tower, accessories, and necessary appurtenances will be referred to herein collectively as the "Communications Facility." The concrete pad and Communications Facility may be installed by ALLTEL.

ALLTEL will submit its building plans and specifications, under seal by a licensed structural engineer, to CITY for written approval prior to construction. Thereafter, CITY shall have thirty (30) days to accept or reject ALLTEL's building plans

(the "Approval Period"). Approvals will not be unreasonably withheld, delayed or conditioned. If CITY does not approve the plans and specifications, this License will be void ab initio, at ALLTEL's election, terminate without penalty, and CITY shall return to ALLTEL any prepaid License Fee paid pursuant to paragraph 6 and received by CITY. The approved plans and specifications shall be attached hereto as **Exhibit C**.

As soon as reasonably possible after CITY accepts the building plans, ALLTEL shall construct and install, at ALLTEL's cost, the Communications Facility at the location depicted on **Exhibit A**, in accordance with the approved plans and specifications, Exhibit C. ALLTEL's antennas shall be installed so as not to interfere with other providers on the Water Tower. The Communications Facility may be installed by ALLTEL or by any of ALLTEL's agents or contractors. ALLTEL may make alterations to the Communications Facility, including ALLTEL's antennas, cables, hangers and associated equipment, from time to time as ALLTEL determines to be necessary or desirable, subject to the approval process described above, which approval will not be unreasonably withheld, conditioned or delayed.

ALLTEL may, at its own cost and expense, install, maintain and operate on the Premises, only the equipment necessary for the operation of the Communications Facility to the fullest extent of its Federal Communications Commission License, in accordance with the plans approved by CITY, as such plans may be amended from time to time for technological or capacity changes. Any damage to the Premises or the Water Tower caused by ALLTEL's activities shall be at ALLTEL's sole expense.

All work to be performed on the Premises and any easement area shall be performed in a good and workmanlike manner, and in accordance with all applicable governmental laws, ordinances, regulations and codes. ALLTEL shall obtain all permits necessary for such construction. Any contractor performing work on the Premises shall furnish a payment bond, with corporate surety licensed to do business in the State of Nebraska, in the full amount of the cost of such improvements, showing CITY as the beneficiary thereon. All such contractors shall carry statutory worker's compensation insurance and liability insurance coverages as are customarily maintained by reputable general contractors in the Lincoln, Nebraska area.

4. Other Licenses and Permits. ALLTEL shall secure from the proper governmental authorities all licenses and permits required by law for the erection, maintenance and operation of the Communication facilities, before construction of the Communications Facility.

5. Ownership. The ownership of the Water Tower remains with the CITY. The ownership of the Communication facilities and the risk of loss for the Communications facilities shall be borne by ALLTEL. If the Water Tower is damaged or destroyed by an act of nature or from whatever cause, the Tower may, at the option of CITY be repaired. The CITY shall not, under any circumstances, be responsible for the loss or damage of any of ALLTEL's Communication facilities located on the Water Tower.

6. Fees. ALLTEL shall pay to CITY a license fee to occupy and use the ground space in the Premises and space on the Tower ("License Fee"). Beginning in the first (1st) month and continuing thereafter for the duration of the Primary Term, the annual License Fee shall be \$21,500 payable in twelve equal monthly installments of \$1791.66 in advance on or before the first day of each and every calendar month. The annual License Fee in each succeeding year of the Primary Term and Extended Terms shall be increased by three percent (3%) of the License Fee for the immediately preceding year. For example, and by way of illustration only, if the License Fee for the first year of the Primary Term is \$1000, then the second year's annual License Fee will be \$1030. The License Fee for any period during the term of this License that is less than one (1) year will be prorated on a monthly basis. All payments shall be made payable to and mailed to the following address:

CITY Treasurer's Office  
Melissa Jones  
555 South 10th Street  
Lincoln, NE 68508

7. Access to CITY Property and Utility Easements. CITY grants to ALLTEL, for use by ALLTEL, its employees, agents, contractors and by utility companies, an easement and license over, under, upon and across the adjoining lands of CITY, and rights-of-way or easements owned or leased by CITY, on a twenty-four (24) hour daily basis, for (i) ingress and egress to and from the Premises and the Communications Facility (the "Access Easement"), and (ii) the installation, operation and maintenance of necessary utilities for the Premises and the Communications Facility (the "Utility Easement"). If reasonable in ALLTEL's opinion, such Access Easement and Utility Easement will be over and lie within existing roads, parking lots and/or roads hereafter established by ALLTEL. ALLTEL may improve the Access Easement by grading, graveling and/or paving. The Access Easement, to the extent further identified, is more particularly described on **Exhibit D**, and the Utility Easement, to the extent further identified and not lying within the Access Easement, is more particularly described on **Exhibit E**. ALLTEL will notify CITY of any change in the particular location of any Access Easement or Utility Easement, if such differs from the descriptions on **Exhibits D and E** hereto.

It is acknowledged that the Communications facilities are constructed on CITY property which is a vital part of CITY's operations. ALLTEL shall operate facilities on the licensed Premises in such a manner so that the operation does not interfere with CITY's operation of its property nor will it interfere with access to the property by CITY personnel, agents or contractors. ALLTEL agrees to comply with any rules, regulations, and procedures that may be adopted by CITY from time to time to provide reasonable security measures to protect the Premises and CITY. CITY retains the right to use the property upon which the Licensed Premises exists at any time in connection with the need of CITY to provide service to its residents. Notwithstanding the foregoing, nothing herein shall be construed as granting CITY access to ALLTEL's Communications

Compound. CITY will endeavor to do so in such a manner so as to not interfere with the construction, operation and maintenance of the ALLTEL's Communications Facility.

8. Taxes. Since the real property is owned and used by a governmental entity (CITY), it is tax exempt. ALLTEL shall be responsible for and pay all taxes attributable solely to its presence or operations on the Premises, before any penalties or interest shall accrue thereon, as an additional license fee, if taxes are subsequently levied against the licensed Premises or against the CITY. ALLTEL will be responsible for payment of all property taxes assessed directly upon and arising solely from its possession or use of the Communications Facility or buildings on the Premises.

9. Payment of Utilities. ALLTEL shall fully and promptly pay for all utility service of every kind furnished to the licensed Premises throughout the license term. ALLTEL shall have the right to install separated metered utilities, at ALLTEL's expense to the licensed Premises. CITY shall not be liable for any damage to equipment or loss of revenue to ALLTEL resulting from the interruption of utility services. All fees due under this Agreement shall continue notwithstanding any interruption of power or other required utility facilities, except for the willful act of CITY; provided however, that if the electric power used to operate the Communications Facility is inadequate or fluctuates to the extent that there are material sustained or unpredictable power interruptions or losses, ALLTEL may upon thirty (30) days notice terminate this Agreement without penalty, and recover all prepaid License Fees paid pursuant to paragraph 6 and received by CITY.

10. Maintenance of Licensed Premises. CITY will maintain the Water Tower in a proper operating and safe condition. All costs associated with the maintenance and repair of the Water Tower, including painting, will be paid by CITY, unless the damage to the Water Tower is caused by ALLTEL, in which case ALLTEL shall repair such damage or, at ALLTEL's option, reimburse CITY for the costs and expenses incurred by CITY to repair the damage. ALLTEL may be required, at the CITY's sole discretion and at ALLTEL's own expense, to periodically move its facilities on the Water Tower for the CITY to perform maintenance on the Water Tower.

ALLTEL shall, throughout the term of this license, at its own cost and expense, keep and maintain that portion of the licensed Premises within its exclusive possession and all appurtenances thereto including all constructed improvements in good, sanitary, lawful and neat order, condition and repair, excluding from such obligation any of CITY's property and equipment upon the licensed Premises. Any landscaping of the Premises required by the CITY or any other appropriate governmental authority required for ALLTEL's permit shall be done at the sole cost and expense of ALLTEL, including all necessary maintenance; provided that ALLTEL shall not be responsible for maintaining or the increased cost to maintain the Premises resulting from additional carriers or CITY operations on the Premises. Neither ALLTEL nor any other party shall be allowed to display any signage or advertisement on the tower, on any building within the Premises or anywhere on the Premises, except as required by law. ALLTEL shall take all necessary measures and precautions to prevent unauthorized persons access to the Premises, its buildings located on the Premises and the Water Tower.

11. Liability. CITY shall not be liable for damage to ALLTEL's improvements or for any loss or damage to any vehicles parked upon the licensed Premises, except for the willful act of CITY. ALLTEL shall at all times during the term of this license carry at its own expense public liability insurance of not less than One Million Dollars (\$1,000,000.00) for the injury to or death of one person, and not less than Two Million Dollars (\$2,000,000.00) for the injury to or the death of two or more persons arising out of a single accident or occurrence on the licensed Premises, naming CITY as an additional insured on such policy. The CITY may, at its discretion, change the required amounts of such insurance during the term of this Agreement. ALLTEL shall furnish CITY with a certificate of such insurance policy which shall provide such insurance policy shall not be reduced or changed without first having given CITY thirty (30) days written notice of such change. Any contractor or subcontractor performing work on the Premises for or on behalf of ALLTEL shall carry workers' compensation insurance, comprehensive general liability and automobile insurance covering the work in such amounts and with companies satisfactory to CITY with said policies naming CITY as an additional insured.

12. Property Damage Insurance. During the term of the license, ALLTEL shall keep in full force and effect an appropriate property damage insurance policy with respect to the Licensed Premises and ALLTEL's associated property in which the limits of the property damage policy shall be not less than One Million Dollars (\$1,000,000.00). ALLTEL shall not commence work under this agreement until it has obtained all insurance required by this paragraph and such insurance has been approved by the CITY Attorney for the CITY.

13. Indemnification. To the fullest extent permitted by law, ALLTEL shall indemnify and hold harmless CITY, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, (collectively "Claims"), arising out of or resulting from ALLTEL's use and occupation of the Premises, that results in any Claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by ALLTEL or anyone directly or indirectly employed by ALLTEL. This section shall not require ALLTEL to indemnify or hold harmless CITY for any Claims arising out of or resulting from the sole negligence of the CITY.

14. Assignment, Renting or Leasing Space. ALLTEL shall have the right to sublicense or assign its rights under this License to any party affiliated, under common control or otherwise related to ALLTEL, successor legal entities or any party acquiring substantially all the assets of ALLTEL (the "Control Group") without the consent of CITY. ALLTEL may sublicense or assign its rights under this License to any other entity with CITY's consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, such assignment or sublicense shall not relieve ALLTEL of any of its liability or responsibility hereunder.

15. Events of Default. Default shall occur if any one or more of the following events shall happen:

a. ALLTEL shall default in the punctual payment of the license fee and such default shall continue for thirty (30) days after receipt of written notice from CITY; or

b. If either party shall neglect or fail to perform or observe any of the material provisions of this Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from the other party, the other party may, at its option, 1) cure the failure at the defaulting party's expense, or 2) terminate this Agreement. If any such default cannot reasonably be cured within thirty (30) days, the defaulting party will not be deemed to be in default under this Agreement if it commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion.

16. Environmental Laws. CITY warrants and represents that the Property, and any existing improvements on the Property are free of Hazardous Substances (as defined below). CITY will indemnify, protect, defend, and hold harmless ALLTEL from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by ALLTEL pursuant to any federal, state or local laws, implementing regulations, common law or otherwise, dealing with matters relating to the environment, hazardous substances, toxic substances and/or contamination of any type whatsoever (collectively, "Hazardous Substances") in, upon or beneath the Property, and the other improvements on the Property (excluding the Communications Facility), provided this indemnification shall not apply with respect to any Hazardous Substances released by ALLTEL.

ALLTEL will indemnify, protect, defend and hold harmless CITY from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by CITY pursuant to any federal, state or local laws, implementing regulations, common law or otherwise dealing with matters relating to Hazardous Substances released by ALLTEL in, upon or beneath the Property, the Communication Facility, and the improvements on the Property.

17. Nebraska Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska and any legal action brought in respect thereto shall be brought either in the state courts of the State of Nebraska located in Lincoln, Nebraska, or if applicable, in the United States District Court located in Lincoln, Nebraska.

18. Binding Effect. This Agreement shall inure to the benefit and be binding upon ALLTEL, its successors or assigns.

19. Interference. ALLTEL shall at all times pertinent hereto be responsible for the proper operation of its equipment located on the Premises and shall make certain that the same complies with all pertinent laws, rules and regulations of any applicable governmental authority. In the event that ALLTEL's equipment causes interference with any preexisting communications equipment of CITY or of a third party, including the public, installed on the Water Tower or the Premises and operational prior to ALLTEL's equipment, then upon notice received of such interference, ALLTEL shall take all steps necessary to correct and eliminate the interference as soon as possible and shall take all necessary precautions and corrective action needed to prevent the reoccurrence of the interference.

Notwithstanding the foregoing, the parties intend to be bound to the principle that the communications provider who is first in time on the Water Tower or Premises shall be protected from interference by subsequent providers or CITY. CITY will not use the Water Tower or Premises in any manner which will limit, impair or restrict the use or operations of the Communications Facility or allow any use which could cause any destructive or conflicting interference with the Communications Facility. If any harmful interference shall result from the CITY's or a third party's operation of any transmitters, equipment, antennae, dishes or other equipment or devices to the Communications Facility, then CITY shall immediately cause such operations to cease until such interference is eliminated, provided that to do so would not jeopardize, compromise, limit, impair, or otherwise interfere with CITY's use of its property. If CITY is unable to cure such interference within thirty (30) days of ALLTEL's demand, ALLTEL may terminate this Agreement without penalty, and CITY shall return to ALLTEL any prepaid License Fees paid pursuant to paragraph 6 and received by CITY.

20. Relocation.

a. Subject to the provision of this Section, ALLTEL shall at CITY's expense, temporarily or permanently, remove, relocate, change or alter the position of that part of the Communications Facilities which the CITY shall have determined is reasonably necessary for:

i. The repair, maintenance or replacement of any existing public improvement for water department purposes; or

ii. The construction of any other public improvement on the Site or Premises for water department purposes and the repair, maintenance or replacement of the same.

b. For purposes of this Section, "water department purposes" shall not be construed to include aesthetic purposes or concerns.

c. Whenever in the opinion of the CITY it shall determine that is necessary for ALLTEL to perform in accordance with Subsection (a), CITY shall notify ALLTEL as soon as practicable following such determination by written notice identifying the

proposed action together with the basis therefor and any alternatives considered by CITY. Except in the event of an emergency, ALLTEL shall use reasonable efforts to complete the actions contemplated by Subsection (a) within 180 days following a meeting with CITY to discuss and determine, in good faith, the nature and extent of the actions to be undertaken by ALLTEL in furtherance of such notice unless, as a result of the application of this Section, ALLTEL is required to relocate any of the Communication Facilities to property other than property owned by CITY in which event ALLTEL shall complete such action within 1 year. In the event of an emergency, CITY and ALLTEL shall meet promptly to determine the actions to be undertaken by ALLTEL as a result of such emergency.

In the event that any action required for ALLTEL as a result of the application of Subsection (a) shall require that all or any part of the Communications Facility shall be relocated outside of the Premises or Site ("Relocation Premises") to an area that is owned or controlled by CITY, then and in such event:

i. ALLTEL shall cause the Relocation Premises to be surveyed by a licensed surveyor at CITY's cost. Such survey shall then replace Exhibit A and all references in this Agreement to "Site" or "Premises" shall thereafter mean and include only such Relocation Premises; provided, however, that neither CITY nor ALLTEL shall be relieved of any of their respective outstanding obligations or liabilities in connection with the Premises.

ii. CITY shall undertake all actions necessary to extend ALLTEL's Permit to the Relocation Premises, wherever located, for a term of not less than the remaining term of the Permit applying to the Premises; provided, however, in the event ALLTEL is required by the application of this Section to expend in excess of \$25,000 at any one time or in the aggregate at any time during the Term of this Agreement, then CITY shall cause a new Permit to be issued for the Relocation Premises for a 10 year period, but in event less than the original permit period, commencing as of the completion of the relocation, and this Agreement shall be extended with additional five year Renewal Terms through the expiration date of such new Permit as provided in Paragraph 2. Notwithstanding the foregoing, in the event the Relocation Premises is to property not entirely owned by the CITY, then ALLTEL shall have the right to terminate this Agreement in its discretion, upon written notice to CITY, in which event this Agreement shall terminate without penalty and all prepaid License Fees shall be refunded to ALLTEL, upon the Relocation Premise's commencement of commercial operation.

Without limitation to any of the foregoing, this Agreement shall automatically be amended and modified as may be necessary or appropriate to extend to ALLTEL in connection with the Relocation Premises, all of its rights and privileges under this Agreement in respect to the Site or Premises, but shall not otherwise amend, alter, modify or adversely affect any of the terms and conditions of the Agreement.

21. Entire License Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the conditions of this license and

supersedes all prior agreements and understandings between the parties with respect to such subject matter. The representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this license agreement or unless mutually agreed to in writing between the parties hereto after the date hereto, and neither party has relied on any verbal representation, agreements, or undertakings not expressly set forth herein.

22. 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, or sent by overnight carrier, to the following addresses:

CITY: CITY Clerk  
555 South 10th Street  
Lincoln, NE 68508

With a copy to: Steven Huggenberger  
Assistant CITY Attorney  
575 S. 10th/ Room 4201  
Lincoln, Nebraska 68508

ALLTEL:

ALLTEL Communications of NEBRASKA, INC.  
c/o of ALLTEL Communications, Inc.  
Attn: Property Management  
One Allied Drive  
Little Rock, AR 72202  
(877) 557-8226

With a copy to:

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

23. Contingencies. This Agreement and ALLTEL's obligations hereunder are expressly contingent upon the following occurring before the Commencement Date:

a. ALLTEL's satisfaction with the status of title to the Premises and, at ALLTEL's option and its expense, ALLTEL's receipt of a leasehold title insurance policy insuring its license interest in the Premises, in form and substance satisfactory to ALLTEL. CITY shall execute the standard form of title company affidavit in order to enable ALLTEL to obtain title insurance on the Premises free and clear of all exceptions other than those which have been disclosed in writing to ALLTEL and which do not interfere with ALLTEL's use of the Premises; and

b. ALLTEL's satisfaction, in its sole and absolute discretion, with the feasibility of engineering, installing, constructing and operating the Communication's Facility; and ALLTEL's receipt of all necessary or appropriate building and construction permits and all licenses, permits, approvals and consents from all applicable governmental authorities necessary or appropriate for ALLTEL to use and operate the Communication's Facility on the Premise.

In the event that any of the foregoing occurs ALLTEL may terminate this Agreement without penalty, and CITY shall return to ALLTEL any prepaid License Fees paid pursuant to paragraph 6 and costs received by CITY.

ALLTEL is hereby given the right to survey, soil test, radio coverage test, and to conduct any other investigations needed to determine if the surface and location of the Premise are suitable for ALLTEL's use intended by this License.

24. Termination. In addition to other termination rights provided for in this Agreement, ALLTEL may terminate this Agreement at any time by notice to CITY without further liability if:

- a. ALLTEL does not obtain all permits or other approvals (collectively, "Approvals") required from any governmental authority or any easements required from any third party to operate the Communications Facility, or if any such Approvals is canceled, expires or is withdrawn or terminated; or
- b. CITY fails to have proper ownership of the Premises or authority to enter into this Agreement.
- c. By ALLTEL, if, in ALLTEL's reasonable judgment, network design or technology changes render the Communications Facility obsolete or unnecessary

Upon termination and except as otherwise provided herein, all prepaid License Fees will be retained by CITY; provided however, that if termination is due to 1) ALLTEL's inability to obtain Approvals from CITY, 2) CITY's failure to have proper ownership or authority to enter into this Agreement, or 3) CITY's default, then in such event CITY shall return to ALLTEL License Fees paid pursuant to paragraph 6 and received by CITY. Additionally, upon termination or nonrenewal ALLTEL must remove its antenna arrays and platforms that it owns from the Water Tower within thirty (30) days after the expiration of this Agreement. Failure to so remove the antenna arrays and platforms will result in the same being removed by CITY and the CITY assessing such removal costs against ALLTEL.

25. Holding Over. If ALLTEL holds possession of the Premises or any portion thereof after the date upon which the Premises are to be surrendered, ALLTEL will become a Licensee on a month-to-month basis upon all the terms, covenants, and conditions of this License except those pertaining to the License term and, during any such month-to-month license, ALLTEL will pay monthly fees in an amount that is one-twelfth (1/12th) of the last License Fee, plus an additional twenty-five percent (25%). After the first year of such holdover, the CITY shall, in its discretion, set the License Fee in any amount it deems appropriate, based upon objective reasonable market conditions for similar cell tower attachments and ground leases in the Lincoln, Nebraska metropolitan area. ALLTEL will continue occupying the Premises from month-to-

month until terminated by CITY or ALLTEL by the giving of thirty (30) days' prior written notice to the other

26. Non-Binding Until Fully Executed. This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.

IN WITNESS WHEREOF, the parties have executed this license agreement the day and year first above written.

CITY OF LINCOLN, NEBRASKA,

By: \_\_\_\_\_  
Mayor Don Wesely

ALLTEL Communications of Nebraska, Inc.

By: \_\_\_\_\_  
*[Handwritten Signature]*

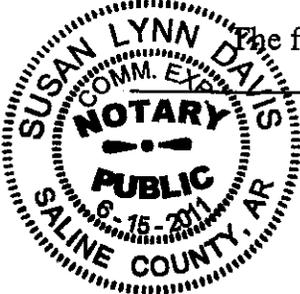
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by Don Wesely, Mayor of the CITY of Lincoln, Nebraska, a municipal corporation, on behalf of the CITY.

\_\_\_\_\_  
Notary Public

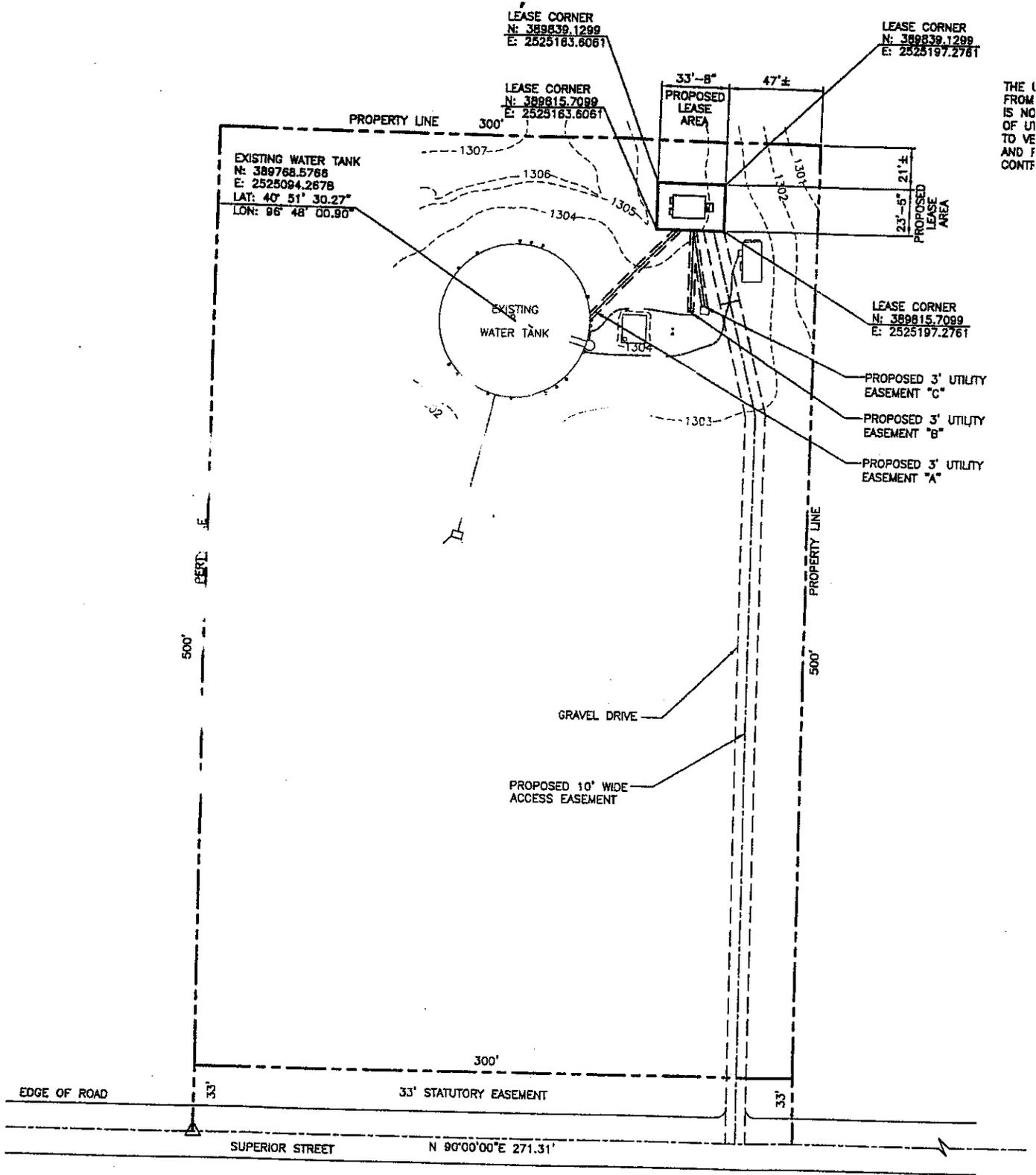
STATE OF AR )  
 ) ss.  
COUNTY OF PULASKI )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of JULY, 2003, by JAMES E McDONALD



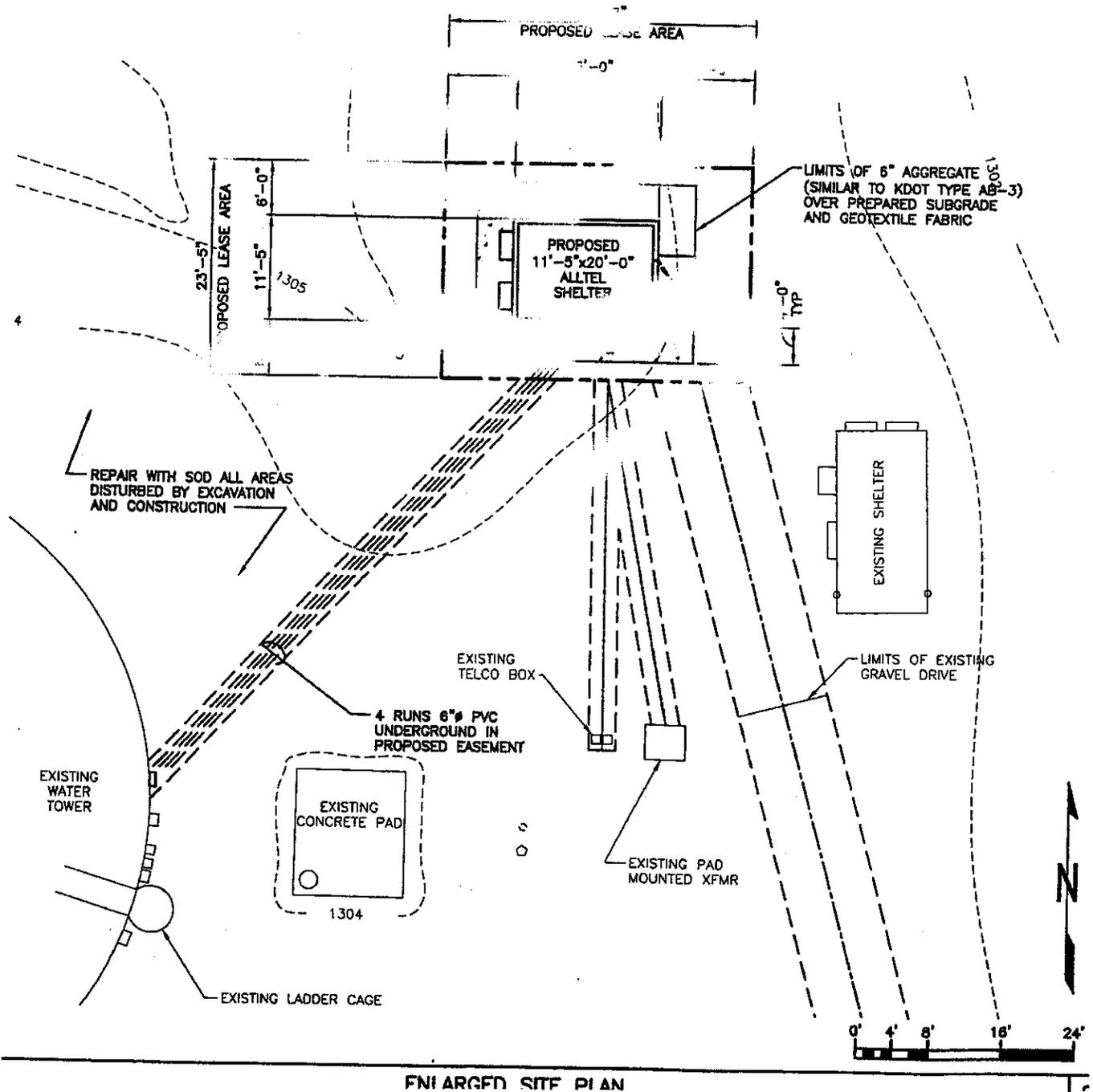
Susan Lynn Davis  
NOTARY PUBLIC

Exhibit A



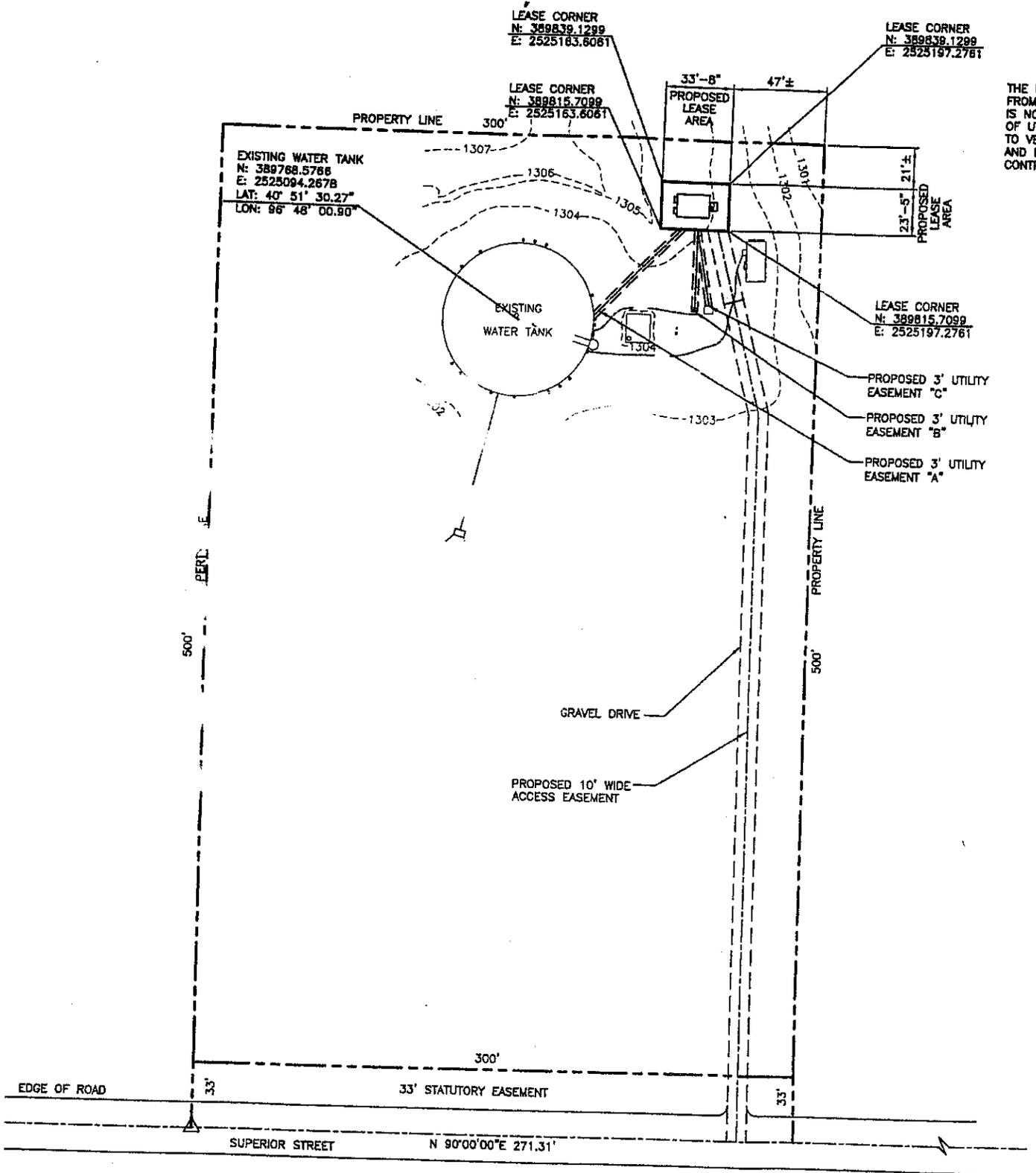
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Exhibit B and E



ENLARGED SITE PLAN

Exhibit D



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