CEDAR FALLS UTILITIES

ARES EQUIPMENT HOSTING AGREEMENT

This ARES Equipment Hosting Agreement (“Agreement”) is made and entered into this first day of May 2023, by and between the MUNICIPAL ELECTRIC UTILITY OF THE CITY OF CEDAR FALLS, IOWA (hereinafter “CFU”), and between the NORTHEAST IOWA RADIO AMATEUR ASSOCIATION (hereinafter “NIRAA”).

WHEREAS, NIRAA, an Iowa Section 504 non-profit corporation, is an independent group of amateur radio enthusiasts providing services throughout Black Hawk County and is associated with the Amateur Radio Relay League (ARRL); and

WHEREAS, NIRAA provides an important public service to the Black Hawk County area residents, including the ability to provide communications services in emergency situations, as well as providing trained weather spotter and coordination services; and

WHEREAS, NIRAA has had its equipment on the Cedar Heights Water Tower for many years; however, this equipment has been removed due to a painting and recoating project; and

WHEREAS, NIRAA desires to have its repeater equipment installed in the penthouse of the CFU’s Streeter Station Power Plant with associated decibel antenna on top of the Unit #6 Baghouse, broadcasting at 146.94 MHz and receiving at 146.34 MHz.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. INSTALLATION AND LOCATION OF NIRAA EQUIPMENT.
	1. CFU shall allow NIRAA’s equipment, specifically its repeater, consisting of a receiver, duplexer, baseband processor and transmitter, to be placed along the south wall of the power plant penthouse, and its antenna to be placed on the south handrail located on top of the Unit #6 baghouse.
	2. Installation of repeater equipment, coax cable and antenna shall be performed by CFU Power Plant personnel. NIRAA personnel shall make all connections to repeater equipment located in the power plant penthouse and perform all operational tests. In addition, NIRAA personnel shall be permitted escorted access to the power plant penthouse to perform any needed corrective or preventative maintenance on the repeater equipment by calling the power plant control room at (319) 268-5307.

1. DURATION. This Agreement shall begin effective May 1, 2023, and remain in force until either party cancels or modifies the Agreement with 30 days written notice to the other party.
2. CONSIDERATION. The parties acknowledge there is adequate and valuable consideration for the mutual promises contained herein, receipt of which is hereby acknowledged. NIRAA provides a valuable public service to Black Hawk County area residents, and CFU is able to facilitate that service by allowing location of the equipment on its property.
3. CONTRARY TO LAW. If at any time during the term of this Agreement, either CFU or NIRAA determine that its continued performance under the terms of this Agreement is contrary to law, then the Agreement may be immediately terminated by written notice provided by the terminating party to the other party.
4. FORCE MAJEURE.
	1. Notice. In the event either party fails wholly or in part to carry out its obligations under this Agreement, and such failure is occasioned by or is in consequence of a Force Majeure condition, then the obligations insofar as they are affected by such Force Majeure condition will be suspended during the continuance of the Force Majeure condition.
	2. Force Majeure Conditions. Force Majeure Conditions are those events or conditions not caused by, and beyond the reasonable control of, the affected party. Force Majeure conditions include, without limitation: acts of God, natural disaster, war, insurrection or other unlawful act against public order or authority; failure of satellite transmission facilities; explosion, fire, freezing or other accidents or acts of sabotage causing breakage of, or damage to, machinery, signal transmission lines, equipment or related signal delivery facilities; communicable diseases, disease outbreaks, epidemics or pandemics; and acts of government.
5. LIABILITY AND INDEMINIFICATION
	1. NIRAA hereby agrees to indemnify CFU against, and to hold CFU harmless of and from any and all liability, loss, damage and expense, including, without limitation, reasonable attorney fees and costs which NIRAA may suffer or incur by reason of any action or proceeding asserted or instituted by any third-party claiming rights under this Agreement. NIRAA and CFU agree that CFU bears no liability to any third parties.
	2. CFU shall have no responsibility to NIRAA for damage to any NIRAA equipment, regardless of the cause. NIRAA and its successors shall hold CFU harmless from any damages caused by CFU, its agents or employees.
	3. CFU shall not be liable for any other type of damages whether direct or indirect, compensatory, consequential or punitive damages.
	4. CFU shall not be liable for nonperformance of NIRAA equipment.
6. NOTICES. Any notice, or other communication required or permitted under this Agreement (collectively a “Notice”) shall be (a) in writing and (b) addressed by the sender to the other party at the address or number and in the manner set forth below. Any change in the information set forth below shall be made in writing and delivered according to this section.
7. If to the Municipal Contract Administration

Electric Utility Cedar Falls Utilities

of the City of Cedar Falls P.O. Box 769

 Cedar Falls, Iowa 50613

 Email: cfucontracts@cfunet.net

 Fax: 319-266-8158

1. If to Customer Northeast Iowa Radio Amateur Association

 Attention: Allen M. Jones

Address: 6908 Danish Ln, Cedar Falls, Iowa 50613

Email: 1852AL@gmail.com

Phone: (319) 239-6772

Except as otherwise provided in this Agreement, each notice shall be effective and shall be deemed delivered on the earlier of: (i) its actual receipt, if delivered personally, by courier service, or by fax (on the condition that a copy of the notice is mailed as set forth below on the same day and the sending party has confirmation of transmission receipt of the notice), or (ii) on the third day after the notice is postmarked for mailing by first class, postage prepaid, certified, or registered, United States mail, with return receipt requested (whether or not the return receipt is subsequently received by the sender).

1. OPERATING PROCEDURES. The parties agree that, if necessary, they will endeavor to develop written operating procedures, which will cover the protocol under which the parties will perform their respective obligations under this Agreement.
2. MISCELLANEOUS

9.1 Assignment. No party hereto shall assign this Agreement or delegate any of its duties, obligations, responsibilities or rights without the prior written consent of the other party, which consent shall not be unreasonably withheld.

9.2 No Partnership or Joint Venture. Nothing in this Agreement is intended, or shall be deemed, to establish a joint venture or partnership between CFU and NIRAA Neither party to this Agreement shall have any express or implied right or authority to assume or create any obligations on behalf of, or in the name of, the other party, or to bind the other party to any contract, agreement or undertaking with any third party.

* 1. Third Parties. Nothing in this Agreement shall be construed as giving any person, firm, corporation or other entity, other than the signatory parties hereto and their respective successors and permitted assigns, any right, remedy or claim under or in respect to this Agreement or any provision hereof.
	2. Law/Exclusive Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Iowa, and the exclusive jurisdiction and venue for all claims or causes of action arising out of this Agreement (including any action for declaratory relief) shall be in the Iowa District Court in Black Hawk County.
	3. Modification. This Agreement shall not be amended, changed, modified, waived, discharged or terminated except in writing signed by the party or parties against which enforcement of the change, waiver, modification or amendment is sought.
	4. Counterparts/Facsimile Copies. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be an original, but all of which together shall constitute on and the same instrument. A facsimile copy of this Agreement and any signature thereon shall be considered for all purposes as an original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year set forth below.

MUNICIPAL ELECTRIC NORTHEAST IOWA RADIO AMATEUR

UTILITY OF THE CITY OF ASSOCIATION

**CEDAR FALLS, IOWA**

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Steve Bernard, General Manager Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_