

6C-1

Agenda Item #:

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: October 20, 2020 [ ] Consent [ X ] Regular  
[ ] Ordinance [ ] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve an Interlocal Agreement with the City of Boca Raton (City) pursuant to which the County will develop and maintain a 400' self-supported public safety radio communications tower and associated improvements, on land owned by City;

B) approve a Temporary Construction Easement (TCE) for the County to construct the tower;

C) approve an Access and Management Easement (Easement) for County to operate, maintain and repair the tower; and

D) authorize the Director of Facilities, Development & Operations (FDO) to execute standard use agreements (Use Agreements) providing the standard terms and conditions for all authorized tower users and setting forth the terms for payment of use, maintenance and renewal/ replacement fees.

Summary: The Interlocal Agreement provides for the County to fund, design, construct, manage and maintain a 400' self-supported public safety radio tower and associated improvements, on land owned by City. The approval of the construction contract will be presented to the BCC for consideration pursuant to a separate board item. Upon substantial completion of the tower construction, the City shall be the owner of the tower and shall be responsible for insuring the tower for loss or casualty. Both the City and the County (as well as any other tower user) will be individually responsible for the costs associated with licensing, procurement, installation and on-going maintenance and renewal/replacement of its own radio system equipment. The term of the Interlocal Agreement is for forty-five (45) years and may be renewed for three (3) additional terms of ten (10) years each by agreement of both City and County. The Interlocal Agreement also provides that the County will manage the tower on behalf of the City, and at no cost to the County, pursuant to a standard tower user agreement that is attached to the Interlocal Agreement. Management responsibilities include all aspects of tower management including collection of tower maintenance and renewal/replacement fees from tower users pursuant to the terms of the standard use agreement, which is materially identical to the terms pursuant to which the County allows municipalities to use County-owned towers. The City has the ability to terminate the County's tower management responsibilities and then the City shall perform the same pursuant to the terms of the Interlocal Agreement (which also includes minimum maintenance standards) and the standard tower use agreement. The Interlocal Agreement delegates signature authority to the FDO Director to execute the tower use agreements on behalf of the County. The tower use agreements have a term of fifteen (15) years with two (2) additional renewal periods of fifteen (15) years each. The TCE provides a temporary easement across City land to allow the County to develop and construct the tower and associated improvements. The Access and Management Easement Agreement provides County access to the City's land in order for the County to operate, maintain and repair the tower for the duration of the Interlocal Agreement. The City cannot terminate the Interlocal Agreement for convenience nor without cause. (Continued) (FDO Admin) District 5/Countywide (LDC)

Attachments:

- 1. Interlocal Agreement (w/attachments "A", "B", "C", "D", "E" and "E-1")
- 2. Temporary Construction Easement
- 3. Access and Management Easement Agreement

Recommended By: [Signature] 9/21/20  
Department Director Date  
Approved By: [Signature] 10/16/2020  
County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	=====	=====	=====	=====	=====
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes  No \_\_\_\_\_  
 Does this item include the use of federal funds? Yes \_\_\_\_\_ No

Budget Account No:

Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
 Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Revenue Source \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:** Although this Agreement does not have a specific fiscal impact associated with it, this Agreement will require the County to design and construct the tower, which will result in the following fiscal impact to the County. Design costs in the amount of \$164,000 have already been encumbered, the total project costs for Tower construction are estimated at \$2,709,100. Separate items will be presented to the BCC in the future for: 1) the construction of the tower, and 2) the migration of the radio and microwave equipment in an amount estimated to be \$500,000. All Tower development costs will be funded from Fund 3801, 800 MHz/Public Safety Tower System Fund. The costs associated with the maintenance and renewal/replacement (R/R) of the tower will be shared among all tower users with the County's portion of the Glades Rd Tower User Fees being funded from Fund 3801. The County's annual maintenance and R/R costs are estimated at \$67,000 per year on the methodology contained in the standard use agreement and may vary based on the updated estimates at the time that the standard use agreement is executed.

C. Departmental Fiscal Review: \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

\_\_\_\_\_  
 OFMB 9/28/20  
 2/9/24 4/1/28

\_\_\_\_\_  
 Contract Development and Control 10/15/2020  
 10-15-2020

**B. Legal Sufficiency:**

\_\_\_\_\_  
 Jean-Adel Williams  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

If a default occurs under the Interlocal Agreement terms, the non-defaulting party shall have the right to grant the defaulting party additional time to cure the default, seek dispute resolution pursuant to the procedure set forth in the Interlocal Agreement, or bring an action for specific performance. If the City does terminate the Interlocal Agreement for cause, it does not have the right to terminate the County's tower use agreement. The County's tower use agreement may only be terminated pursuant to the terms of the tower use agreement. While this structure of this Interlocal Agreement is atypical in terms of the City ownership of a County funded tower; the remaining terms of the Agreement leave the County with the same rights and liabilities, financial and management responsibilities as if the tower were to be County-owned. For these reasons and the difficulty in finding sites that met the County's siting criteria, Staff is recommending approval. All costs associated with this Agreement will be funded from Fund 3801: 800 MHz/Public Safety Tower System Fund.

### **Background & Justification**

The County's Public Safety Radio System is the primary source of radio communications to the Palm Beach County Sheriff's Office, Palm Beach County Fire Rescue, and 17 other public safety providers and provides interoperable communications to 44 local, state and Federal agencies. The system is operated from 13 towers throughout the County. The proposed Glades Road tower is proposed to be the home to the radio system equipment currently operating from an existing privately-owned tower east of the Turnpike at the Glades Road interchange (Turnpike Tower).

The Turnpike Tower was initially constructed by the State and partially funded by the County pursuant to a 1997 agreement. That agreement did not contemplate any other users and was designed to accommodate additional equipment in the future for both the County and the State. Within a few years of the Turnpike Tower being constructed, the State conveyed all towers owned by the State of Florida Division of Communications to Harris Corporation through 9/28/50, but only with a requirement to maintain through 9/28/20. While Harris allowed the County to remain on the Turnpike Tower at no cost, radio system equipment of private parties were added to the tower in the slots "reserved" for the County and the State. In 2011, the County learned that while the Turnpike Tower had not exceeded its designed loading, a structural analysis performed by an independent consultant confirmed that Turnpike Tower to be at maximum loading without capability to support the installation of any additional equipment nor is it capable of being upgraded to current wind load standards for towers hosting public safety communications.

Neither of the existing towers in the immediate vicinity (privately owned guyed wire tower at the Northwest corner of the Turnpike and Glades Rd and the City owned tower in its public golf course) were capable of accommodating the County's current or future radio equipment.

This resulted in the need for the County to secure a site for a new tower to be constructed to current wind load standards and capable of supporting the installation of the County's public safety radio system equipment, both in the near term as well as into the future, to eliminate any risk of service interruption which could result in risk to the public and the public safety providers. As with most any public safety radio communication system, the County's system is designed with technical parameters for both outdoor and indoor/in-building service at defined levels of geographic coverage and operability (i.e. reliability). The ability to achieve those performance requirements is directly related to, and affected by, the precise location of the tower on which the communication equipment is installed, height at which the antennas are installed, directional orientation of that same equipment, and so on. Any movement of the equipment away from the location of the Turnpike Tower has an impact on coverage, system performance and reliability. That being said, the County did research the impact on the system of locating the new tower in either of two other County-owned sites.

One such site is Southwinds Park, which is located approximately one and one-half (1.5) mile northwest of the Turnpike Tower. Evaluation of Southwinds Park resulted in an unacceptable reduction in radio coverage for the southeastern portion of the coverage area. Another site is Veteran's Memorial Park, which is located approximately two (2) miles southwest of the Turnpike Tower. Evaluation of this location demonstrated an unacceptable reduction in radio coverage for the easternmost portion of the coverage area, as well as potential State and Federal Communications Commission (FCC) regulatory issues that could have the effect of reducing coverage.

In comparison, the Boca Raton Golf Course site is approximately one-quarter (.25) mile northwest of the Turnpike Tower. The overall effect of this location is very minimal in comparison to the coverage derived from the Turnpike Tower, and results in no unacceptable degradation. On all of these accounts, the Boca Raton Golf Course site was concluded by the County's professional radio communications consultant (Omnicom Consulting Group, Inc.) and County Staff to be the most suitable location for the new tower to serve the public safety radio system needs of the County into the future.

**Background & Justification (Cont'd)**

At the same time, the City currently has, at its existing public golf course, a communications tower that has outlived its useful life and must be replaced in order to support new radio equipment and state-of-the-art communications. As such, the City retained a parcel of land from the sale of the golf course to G.L. Homes (G.L.) to build a new 180' City tower.

Since the City is in need of a new tower and owned a parcel of land at the location the County deemed optimal for a new tower, City and County staff felt that it would be in the best interest of both parties to prepare the Interlocal Agreement and construct the new tower. Since the City owned the parcel of land the new tower was to be constructed upon, City staff felt that the City needed to retain ownership of the new tower. Because the County is more experienced and has greater staff and resources for the development and management of telecommunications towers, the Interlocal Agreement has been prepared to provide that the County will fund the tower and act as the City's agent to plan, design, construct, operate, and manage the tower. The tower will be +/- 400 feet in height and will accommodate the needs of the City and the County, as well as other public safety and governmental users. The City may review and provide comment on all phases of planning, design, and construction. Construction of the tower is expected to be complete approximately one year after the construction contract is awarded; however construction cannot commence until the resolution of the adjacent property owner's legal challenge to the June 2019 zoning approvals for the tower. If the County is unable to obtain all required zoning approvals for the Tower within five (5) years of the Agreement's effective date, the Agreement and attached easements shall terminate.

Use of the tower will be limited to governmental entities, all of which, including both the City and the County, will contribute to the maintenance and renewal/replacement funds for the tower.

Because the City will at all times continue to own the real property that includes the access road and the Civic Site, the ILA also incorporates a temporary construction easement to allow the County and its contractors access to build the tower, and an access maintenance easement to allow for ongoing repairs and upkeep of the tower. Each user, including the City and the County, will be responsible for installation and maintenance of its own communications equipment, pursuant to the Tower Use Agreement.

To address issues of future growth, capacity and resiliency/survivability, both the County and the City are in need of new infrastructure, in the form of a new public safety communications tower, to support both the County public radio system and the City radio system. Due to these shared needs, it has been determined to be beneficial to both parties to enter into this Agreement, with the County utilizing its expertise in developing, constructing and maintaining such towers, and the City providing the land for the tower.

## INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** ("Agreement") is made and entered into \_\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("County") and the City of Boca Raton ("City"), a municipal corporation existing under the laws of the State of Florida.

### WITNESSETH

**WHEREAS**, Section 163.01, Florida Statutes, permits public agencies to enter into Interlocal Agreements to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately;

**WHEREAS**, the County implemented a migration project pursuant to which the County replaced its existing public safety radio system with one that is compliant with the standards developed by the Association of Public Safety Communications Officials ("APCO") to provide digital voice and data communications systems for public safety and first responders, identified as Project 25 (as currently existing and future upgrades, "APCO P25"); and

**WHEREAS**, the City has been interoperable with the County's current public safety radio system since 2000 and desires to continue such interoperability to new infrastructure necessary to support both the County Public Radio System ("Radio System") and City Radio System ("City Radio System"); and

**WHEREAS**, in addition to the County and City unique needs, the County and City have the common desire to site, design and construct a new tower to address issues of future growth capacity and resilience/survivability ("Tower");

**WHEREAS**, the City owns a large parcel of land known as the City of Boca Raton Municipal Golf Course ("Golf Course"), which address is 8111 Golf Course Rd, Boca Raton, FL 33434, located at Glades Rd and the Florida Turnpike in unincorporated Palm Beach County;

**WHEREAS**, the City entered into a contract with a developer ("Developer") for the redevelopment of the Golf Course for a Planned Unit Development ("PUD");

**WHEREAS**, pursuant to the County's land development regulations, the Developer of the PUD is required to dedicate a site within the PUD to be used for civic purposes ("Civic Parcel"),

**WHEREAS**, it is contemplated by the City and the County that the Civic Parcel will be the site of the new Tower.

**WHEREAS**, the Developer received a development approval from the County which contained zoning conditions to: 1) minimize the impact of the Tower on the remainder of the PUD; 2) assign responsibilities for certain infrastructure and improvements to be provided by the PUD; and 3) assign responsibility for on-going property management and maintenance to the PUD;

**WHEREAS**, the County and City concur that it is in both parties' best interests to jointly plan, design, construct, and manage the Tower; and

**NOW THEREFORE**, in consideration of the mutual covenants, promises and representations contained herein the parties hereto agree as follows.

**Section 1: Recitals**

The foregoing recitals are true and correct and incorporated herein by reference.

**Section 2: Purpose**

The purpose of this Agreement is to define the relationship between the County and the City by setting forth the responsibilities for: (1) securing necessary zoning approvals with required variances for the Tower; (2) design and construction of the Tower, and; (3) maintaining and managing the Tower during the term of this Agreement. This Agreement also establishes the basic terms and cost methodology for Tower Use Agreements with Tower Users, as defined herein.

**Section 3: Definitions**

3.01 Bid: County issued competitive solicitation for the construction of the Tower meeting the requirements of the County's Purchasing and Equal Business Opportunity Ordinance.

3.02 Board: The Palm Beach County Board of County Commissioners.

3.03: Capital Improvement: Any and all design, permitting, labor and materials related to any improvements after the date of Substantial Completion, and not included in the contract for construction of the tower, that add value to the Tower.

3.04 CID or Capital Improvements Division: The Capital Improvements Division of the County's FDO Department. CID is responsible for the administration of the Consultant's and Contractor's contracts.

3.05 City: City of Boca Raton, a municipal corporation of the State of Florida, governed by its City Council.

3.06 City Project Manager: The City Manager or his designee will be the primary City point of contact for the County Project Manager with respect to the administration of

the CSA and the Construction Contract. The City Project Manager shall act on behalf of the City and be responsible for making timely decisions and technical approvals (either approving or securing City approvals). The City Project Manager shall not directly communicate with the Consultant or the Contractor but instead shall communicate with the County Project Manager unless otherwise authorized by the County Project Manager.

3.07 City Radio System: A City owned and operated APCO P25 compliant public safety radio system.

3.08 City Representative: The City Manager, or designee, who has the authority of the City to obligate the City pursuant to this Agreement, after adhering to the City Code of Ordinances and City adopted policies and procedures.

3.09 Civic Parcel: The City property as described in Section 4.01.

3.10 Consultant: Omnicom Inc., a professional engineering firm awarded a continuing services agreement by the County.

3.11 Consultant Contract: The continuing services agreement between the County and the Consultant.

3.12 Construction Contract: The agreement between the Contractor and the County for the construction of the Tower.

3.13 Contractor: The properly licensed vendor awarded a contract by the County for the construction of the Tower.

3.14 County: Palm Beach County, a political subdivision of the State of Florida.

3.15 County Project Manager: The Capital Improvements Division Director, or his designee, that is responsible for the management of the Consultant Contract and the Contractor for the construction of the Tower.

3.16 County Representative: The FDO Director, who is given the authority to obligate the County in accordance with County adopted policies and procedures.

3.17 CSA: The consultant services authorization(s) issued by the County to the Consultant.

3.18 Facilities Development & Operations Department ("FDO"): The County Department responsible for oversight of ESS and the design, construction, management and operation of County electronic systems under the jurisdiction of the Board.

3.19 Final Completion: Under the Construction Contract is when the County is satisfied that all work under the Construction Contract has been completed in accordance with the requirements of the Construction Contract, and the County has notified the

Contractor in writing of final acceptance of its work under the Construction Contract, and the County has made final payment to the Contractor in accordance with the terms of Construction Contract. Fifteen (15) days prior to the County notifying the Contractor of Final Completion, the County will advise City of its intention to notify Contractor of Final Completion.

3.20 Laws: All applicable federal, state, County, City and local laws, codes, ordinances, rules, regulations, standards or orders of any public authority having jurisdiction over the Tower or its operations, including communications, building, health, labor, safety, licensing, environmental or zoning laws, codes, ordinances, rules, regulations, standards or orders of any such public authority.

3.21 Maintenance: The labor and materials which are required to keep the Tower in good order and repair and which are routine, regular, and generally predictable in nature, given the age of the Tower and the use of the Tower and not including any R/R projects. Maintenance includes, but is not limited to, repairs of any value necessary to restore the Tower, an improvement, or equipment to working order only when the resulting repair is not intended to extend the life of the Tower, improvement, or equipment by more than one year. Maintenance includes repair of damage to the Tower caused by vandalism. More specifically, Maintenance includes troubleshooting and making all repairs on a 24 hours per day, 7 days per week, 365 days per year basis as well as maintenance and annual inspections of the Tower, shelter, Tower lighting, back-up power equipment (Uninterruptible Power Supply (UPS), generator, transfer panel, etc.) serving the Tower only. This does not cover any UPS installed solely for Radio System Equipment.

3.22 New Tower User: A Tower User that enters into a Tower Use Agreement after the Construction Contract for the Tower has been awarded.

3.23 Radio System Equipment: The necessary equipment on or about the Tower that a Tower User requires to use the Radio System or the City Radio System. The Tower User owns and is solely responsible for this equipment, which consists of an antenna(s), receiver(s), transmitter(s), transmission line, and any other appurtenances necessary for Tower User to use either radio system.

3.24 Renewal/Replacement (R/R): The labor and materials necessary to renew, rehabilitate or replace a physical improvement, fixture, piece of equipment or any other physical asset of the Tower which is intended to extend the overall life of the improvement or equipment by over a year.

3.25 Substantial Completion: The date of Substantial Completion under the Construction Contract is the date established by the County's architect or engineer of Record and approved by the County when the Tower is sufficiently complete to permit its use for its stated purpose, the County issues a certificate of Substantial Completion and all items listed in the Construction Contract for Substantial Completion have been completed. Fifteen (15) days prior to the County notifying the Contractor of Substantial



Completion, the County will advise City of its intention to notify Contractor of Substantial Completion.

3.26 Tower: A 400' tripod structure with an identified location on the Civic Parcel, built to FAA standards and to provide adequate drainage, equipment shelter, tower lighting, and back-up power equipment (UPS, generator and fuel tank, transfer panels, etc.) serving the Tower. The definition of Tower does not include any radio equipment owned by a Tower User, including the County and City owned Radio System Equipment.

3.27 Tower CSA: A written task order issued against the Consultant's Contract which describes the scope of services to be performed, the cost for services and the timeframe for completion of the Tower.

3.28 Tower Development Phase: The period of time which includes the permitting, design and construction of the Tower.

3.29 Tower Maintenance Standards: Maintenance standards that are substantially equivalent to the maintenance standards that are implemented by the County throughout its Radio System and which are attached hereto as Attachment "E".

3.30 Tower Management Phase: The period of time which includes the Maintenance, Renewal/Replacement, Capital Improvement, Tower Use Agreement management activities are required and generally occurs after Substantial Completion of the Tower. However, there are certain Tower Management activities that occur during the Tower Development Phase.

3.31 Tower User: Governmental entity or a not-for-profit entity providing communication services on behalf of a governmental public safety agency.

3.32 Tower Use Agreement: The standard form document, attached as Attachment C to this Agreement, setting forth the terms of use of the Tower by a Tower User, which shall be utilized for every Tower User, as may be amended from time to time, with agreement of the City and the County, to comply with amendments to State law.

#### **Section 4: Civic Parcel Ownership, Zoning Approval, and Tower Ownership**

4.01 The Civic Parcel as described in Attachment A shall remain in the ownership of the City. The City shall maintain ownership of the Civic Parcel regardless of whether the PUD is ultimately developed or not.

4.02 The City authorizes the County to act as its agent on all zoning applications and required variances necessary for the Tower and the City Representative shall be authorized to provide all consents (consistent with this Agreement) requested by the County to secure the zoning approvals. The County shall fund, without reimbursement of costs and expenses from the City, the direct costs associated with securing the zoning approvals.

4.03 The City Representative shall also be authorized to approve or reject, on behalf of the City, conditions of approval directly related to the Tower that will be attached to the land in perpetuity unless otherwise modified through the process for such modification required by the County's land development code.

4.031 If the zoning approvals for the Tower are granted, but the contract between the City and the Developer is terminated such that the Golf Course is not redeveloped by the Developer, the City will remain obligated to allow the land which constituted the Civic Parcel to be used for the construction the Tower pursuant to the terms of this Agreement and in accordance with the governing development order that runs with the land.

4.04 In addition to securing all land development approvals and permits for the Tower, the County shall design and construct the Tower at its sole cost and expense. At Substantial Completion, the City will allow the land which is the Civic Site to be used pursuant to the terms of the agreement for the Tower constructed as part of the County's Public Safety Radio System. The City's possession of the Tower shall not pre-date Substantial Completion.

**Section 5: Tower Development Phase and Project Management Services**

5.01 The City shall be the owner of the Tower. At the City's request, the County shall act as the tower developer and shall provide project management services and all other services necessary to permit, design and construct the Tower throughout the Tower Development Phase providing that: 1) the procurement of all consultants and contractors is undertaken by the County pursuant to the County's Purchasing Code and Equal Business Opportunity Code; 2) the County uses its standard form contracts, CSA, change orders, etc. for design and construction service authorizations and/or work orders which incorporates all provisions required by state statute, local laws or policies, including but not limited to, payment and performance bonds and insurance requirements; 3) the City grants the County a Temporary Construction Easement ("Easement") included as Attachment B to the Agreement; and 4) City shall grant legal instruments/easements to the County deemed necessary by the City and the County to complete the project in a form acceptable to the City and the County. Each Tower User, including the County and the City, is responsible for all costs related to its Radio System Equipment.

5.02 The County will negotiate a scope of work with Consultant and present same along with the fees for each service to the City for review and comment prior to executing the Tower CSA or a supplement to the Tower CSA. The County shall commence construction on the Tower within six (6) months of execution of this Agreement, or 6 months from the conclusion of any and all zoning or other legal proceedings concerning the Tower being constructed on the Civic Parcel, whichever is later. County shall diligently pursue the completion of the Tower construction pursuant to the terms of the Construction Contract and shall complete construction within twelve (12) months of commencement.

5.03 The County shall cause the Consultant to create a vendor neutral design package that will form the basis of a Bid for a Contractor to construct the Tower. The County shall provide City with the design package for review and comment, and the City shall be encouraged to participate in all aspects of the design package.

5.04 The County Project Manager shall conduct a pre-work conference for attendance by the Consultant, City Project Manager, the Contractor, and all other interested parties. Prior to commencement of construction, the Contractor shall provide a detailed work plan specifically identifying how the work is to be accomplished, the impact on the Golf Course and the timing of any work that is required to be completed by others, which all shall be subject to the City's approval, which approval shall not be unreasonably withheld. In addition, the County shall require the Contractor to furnish a payment and performance bond in accordance with Section 255.05, Florida Statutes, naming the City as a Dual Obligee along with County. The required payment or performance bond shall be delivered to the City no less than fifteen (15) days prior to commencement of construction.

5.05 The County Project Manager and the Consultant shall provide installation administration services described in the CSA. Examples of such services include, but are not limited to: 1) reviewing and commenting on shop drawings; 2) administering coordination meetings; 3) making recommendations on change orders; 4) measuring, estimating and calculating quantities of work and certifying estimates and vendor/installer payments; 5) performing and reporting on field testing of materials and equipment; 6) identifying and resolving technical problems encountered during implementation; 7) conducting on-site inspections of all facilities and equipment installations; 8) ensuring work by others is being properly coordinated; 9) creating a loading and sequencing plan for the Tower Users' equipment on the tower, and; 10) coordinating with all Tower Users to ensure equipment is placed in the contracted location.

5.06 The County shall have the full authority to take all actions and make all decisions necessary to prosecute the work associated with the CSA and Construction Contract. In such capacity, the County shall use its best professional judgment in determining which matters are of a nature and magnitude where consultation with the City Project Manager and/or City Representative must be obtained prior to authorizing an action. The County will provide City with periodic updates on the status of the Tower construction and the completion of work being done as well as provide copies of all documents associated with the work being performed, including work orders, change orders, approved payment applications, etc. The County and the City acknowledge that time is of the essence in constructing the Tower. The County and the City agree to promptly perform its respective duties under this Agreement.

5.07 The County Project Manager shall review the payment applications submitted by the Contractor for completeness and conformance with contract requirements, and certification of the amount(s) to be paid shall be determined with the Consultant.

5.08 After Substantial Completion, the City, as owner, and individual Tower Users will be able to begin the install of their Radio System Equipment on the Tower. The County Project Manager and the Consultant will be responsible for ensuring that each of the Tower Users are complying with the terms of its Tower Use Agreement.

5.09 The County Project Manager and the Consultant shall provide construction project close-out services in accordance with the CSA. Examples of those services include, but are not limited to: 1) review of general accuracy of information submitted and certified by the Contractor; 2) preparation of electronic Auto CAD 2013 record drawings based on information furnished, including significant changes in the work made during implementation; 3) during final inspection assist in the development of the list of items to be completed; 4) assist with acceptance testing, system certifications and inspections to verify final completion of the list of items and the work; and 5) obtain and compile all required close-out documentation including but not limited to record drawings, approved final permits, certificates of occupancy, certificates of completion, product and contractor warranties, training material and user manuals, etc.

5.10 Within 60 days after the Construction Contract having achieved Final Completion, the County will: (1) assign all warranties to the City; and (2) provide all documents referenced in Paragraph 5.09 to the City.

5.11 Any time after Substantial Completion, the County Project Manager and the Consultant may implement the loading and sequencing plan, created in accordance with Paragraph 5.05, allowing each Tower User to install their respective equipment on the Tower and place same in service.

5.111 Each Tower User, including the City and the County, will be responsible for procuring, managing and funding all work necessary to install its respective Radio System Equipment on the Tower and in the shelter.

5.12 In the event the Contractor fails to comply with the Construction Contract requirements and County relies on the Contractor's surety bond to cure the default, the County agrees that the City shall not be responsible for any cost or expense caused by, arising from, or related to the Contractor's default.

5.13 The County is solely responsible for funding all costs or services associated with; 1) the County's staff and County program management services, and 2) litigation with Consultant or Contractor resulting from the CSA and/or Construction Contract(s), provided that the litigation is not the result of any action solely caused by the City.

## **Section 6: Responsibility for Tower Management Phase**

6.01 Following the conveyance of the Tower to the City and subject to the terms of this Agreement and all attachments hereto, the City, at its sole cost and expense, has responsibility for, and is obligated throughout the term of the Tower Use Agreements to

manage all provisions of the Tower Use Agreements, comply with all Laws, and perform all: 1) Maintenance; and 2) Renewal/Replacement from the revenue collected via the Tower Use Agreements, subject to the terms and provisions of this Interlocal Agreement and the Tower Use Agreements.

6.02 The City has requested that the County perform all of its obligations in Section 6.01. The County accepts these obligations and shall manage the Tower pursuant to the terms of this Agreement and the Tower Use Agreements, the standard form of which is attached as Attachment C. The County shall perform all management responsibilities for the Tower throughout the term of the Tower Use Agreements under the conditions that: 1) all Tower Users, including the County, execute a standardized Tower Use Agreement and all Tower Users, including the City, are subject to the terms of a standardized Tower Use Agreement; 2) the City agrees to the cost methodology for the annual maintenance fee and the Annual R/R Fee, which are set forth in Tower Use Agreement; 3) the City agrees to allow the County to fully manage the Boca Tower Maintenance and Renewal/Replacement subunits as set forth in Section 7; and 4) the City grants the County an Access and Management Easement Agreement (AME) included as Attachment D to the Agreement. As tower manager, the County shall be responsible for 1) determining, in its own discretion, the location of Tower User's equipment on the Tower and within the equipment shelter; 2) management of Tower maintenance, excluding maintenance on Tower User's Radio System Equipment, which is the responsibility of Tower User; 3) implementing Capital Improvements and Renewal/Replacement work to the Tower; and 4) computation, re-evaluation, and collection of the Annual Use Fee, the Annual Maintenance Fee, and the Renewal/Replacement Fee from all Tower Users (the computation, re-evaluation and collection of the Annual Use Fee, the Annual Maintenance Fee and the Renewal/Replacement Fee are subject to City review and approval). The County shall not charge the City for the management of the Tower Use Agreements, however the City shall be responsible for its own costs associated with its use of the Tower.

6.021 The City may terminate the County as the tower manager if the City determines that it no longer desires for the County to manage the Tower pursuant to the terms of this Agreement. The City shall ensure that qualifications for the proposed Tower Maintenance Vendor, including response during times of emergency, and the maintenance standards to be implemented by the City are substantially equivalent to those implemented by the County (the Tower Maintenance Standards described in Attachment E). If the City's Tower management plans involves any entity other than the County assuming responsibility for Section 7, the County will transfer to City the existing funds in the Boca Tower Maintenance SubUnit (Section 7.02) and the Boca Tower Renewal/Replacement SubUnit (Section 7.03) and the City will accept the financial responsibility for any insufficient balances in the Boca Tower Maintenance SubUnit (Section 7.02) and/or Boca Tower Renewal/Replacement SubUnit (Section 7.03) necessary to complete the planned and scheduled maintenance and Renewal/Replacement work.

6.03 All Tower Users, including the County, will be bound by a Tower Use Agreement and the County will manage the Tower strictly in accordance with this Agreement and the Tower Use Agreements. As the owner of the Tower and a Tower User, the City agrees to be bound by the financial obligations, operational standards, and non-interference conditions imposed on all Tower Users as set forth in the Tower Use Agreement, which is attached as Attachment C.

6.04 The Tower will be reserved strictly for use by governmental or not for profit entities providing communication services on behalf of a governmental public safety agency. Any New Tower User shall enter into a new Tower Use Agreement directly with the City and the County.

6.05 The Tower will be managed as a site subject to Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance (“Ordinance”), for unescorted access to critical facilities (“Critical Facilities”) or criminal justice information facilities (“CJI Facilities”) as identified in Resolution R-2015-0572, as amended. Tower Users are not permitted to “sub-lease” or assign any of their reserved spaces.

6.06 Any potential Tower User that submits a written letter to the City and the County no later than the date of commencement of the design of the Tower, which letter affirms that Tower User’s intent to recommend approval of a Tower Use Agreement and provides specific loading information, will have the Tower designed to accommodate their load at no cost to that Tower User. If a Tower Use Agreement is not executed prior to award of the Construction Contract for the Tower, then the Tower User will be treated as a New Tower User and may be subject to costs associated with re-design and tower modifications.

6.07 A standard Tower Use Agreement for use with all Tower Users is attached hereto as Attachment C and incorporated herein. Upon approval of this Agreement and the standard Tower Use Agreement by the City Council and the Board of County Commissioners, the City Representative and the Director of FDO shall have authority to execute the standard Tower Use Agreements on behalf of the City and the County, respectively.

6.08 The County shall be solely responsible for the performance of all of the Maintenance of the Tower as required to keep the Tower in good condition at all times. Repair shall be performed on a regular, scheduled basis as is reasonably required to prevent deterioration of the Tower and to extend the useful life of the Tower. The County will be responsible for maintaining and repairing the Tower at the same standard that it maintains all other County owned towers loaded with APCO P25 System equipment in the system. The cost of such Maintenance shall be paid for from the Boca Tower Maintenance Subunit described in Section 7. Tower Maintenance Standards shall be identical to that of any County owned public safety tower. All Maintenance shall be performed in a good and workmanlike fashion, utilizing good quality materials, supplies, components and replacement parts that are of equal or better quality than those being

repaired or replaced. All Maintenance shall meet the manufacturer's recommendation and established government safety and/or regulatory standards, if applicable.

6.09 The County shall be solely responsible for the performance of all Renewal/Replacement work to the Tower to ensure that age, use and deterioration of the Tower does not adversely impair its use or cost to maintain the Tower. Expenses associated with Renewal/Replacement work and Capital Improvements shall be funded from the Boca Tower Renewal/Replacement Subunit described in Section 7.

6.10 Except those Capital Improvements made necessary by a Tower User pursuant to its Tower Use Agreement, the County shall be responsible for the performance of all Capital Improvements to the Tower. All Capital Improvements proposed by the County shall require the prior written consent of the City in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Except those Capital Improvements made necessary by a Tower User pursuant to its Tower Use Agreement, Capital Improvements shall be made to the Tower using funding from the Boca Tower Renewal/Replacement Subunit described in Section 7.

6.11 The City and the County make no representations to any Tower User about the design or capabilities of the Tower. The County has no responsibility and makes no guarantee to any Tower User as to the continual, uninterrupted use of the Tower, system downtime or its fitness for the Tower User's communication needs.

### **Section 7: Financial Accounting for the Boca Tower Unit**

7.01 The Tower Users, including the County and the City, shall each be responsible for paying the required fees to use the Tower, all of which fees are identified, defined, and detailed in the standard Tower Use Agreement that is attached hereto as Attachment C and made a part hereof. The formula to calculate maintenance and renewal/replacement fees is set forth in Attachment C, and shall not be modified without City approval. The County will be responsible for billing and collection of all fees from all Tower Users, including the City, and for accounting for all revenues and expenses within the Boca Tower Unit, a specific Unit with Fund 3801, which fund is managed and controlled by the County. A specific subunit will be identified for the Annual Use Fee and Annual Maintenance Fees paid by Tower Users (the "Boca Tower Maintenance Subunit") and for the Annual Renewal and Replacement Fees paid by Tower Users (the "Boca Tower Renewal/Replacement Subunit"), which are described in Sections 5.01 and 5.02 of Exhibit C, the standard Tower Use Agreement.

7.02 The County will be responsible for maintaining the Tower at the same standard that it maintains all other County owned towers loaded with APCO P25 System equipment in the system. All revenues received from the Annual Use Fees as well as the Annual Maintenance Fees will accrue to the Boca Tower Maintenance Subunit. In the event of a termination of a Tower Use Agreement, Annual Use Fees as well as the Annual Maintenance Fees will not be prorated or returned. The Boca Tower Maintenance Subunit may not be used for a Casualty Loss, as defined in paragraph 10.02 herein. If

there is insufficient balance in the Boca Tower Maintenance Subunit at the time that an expense is required to be paid, the County will "borrow" funding from Fund 3801, which will be reimbursed to Fund 3801 when there is a sufficient balance in the Boca Tower Maintenance Subunit. If the Boca Tower Maintenance Subunit owes Fund 3801 funding for more than five (5) years, the obligation to repay Fund 3801 will be eliminated.

7.03 The County will be responsible for conducting Renewal/Replacement and improvement work at the Tower at the same frequencies and standards that it conducts R/R and improvements at all other County owned towers loaded with APCO P25 System equipment in the system. The Annual Renewal and Replacement Fee is paid on an annual basis throughout the life of the Tower and is designed to provide a structured savings plan by which the cost of the Tower Renewal/Replacement is prorated over the estimated life of the Tower. All revenues received from the Annual Renewal and Replacement Fee will accrue to the Boca Tower Renewal/Replacement Subunit. The Annual Renewal and Replacement Fee can be used for Capital Improvements if the County and City jointly concur that sufficient funds will remain to accomplish the Renewal/Replacement of the Tower, and each and every such Capital Improvement shall require approval by the City Representative. The Boca Tower Renewal/Replacement Subunit shall not be used for a Casualty Loss, as defined in Paragraph 10.02 herein. If there is insufficient balance in the Boca Tower Renewal/Replacement Subunit at the time that payment of an expense is required, the County will "borrow" funding from Fund 3801 which will be reimbursed to Fund 3801 when there is a sufficient balance in the Boca Tower Renewal/Replacement Subunit. If the Boca Tower Renewal/Replacement Subunit owes Fund 3801 funding for more than five (5) years, the obligation to repay Fund 3801 will be eliminated.

7.04 In no circumstance shall funding from the Boca Tower Unit be used for any purpose other than that authorized by this Agreement or for any purpose at any location other than the Tower. The City may request to view/inspect or audit the accounting for the Boca Tower Unit at any time and for any purpose throughout the term of this Agreement. County is required to provide such report and/or access as soon as reasonably practicable.

**Section 8: City Hub Agreement and City Microwave Use Agreement**

8.01 The City has executed a separate hub agreement with County which contains the terms under which the radio systems of the City and the County connect and provide interoperability.

8.02 If the City desires to use the County's microwave system to transport information from the Tower to the County's Master Site, the City shall execute a separate microwave use agreement.



## **Section 9: Liability and Insurance**

9.01 The parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Furthermore, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida Statutes, nor shall anything herein constitute an agreement to be sued by third parties.

9.02 Neither the County nor the City shall be liable to each other or for any third party claim, which may arise out of the services provided hereunder or of the radio system involved, their operation or use, or their failure to operate as anticipated, upon whatever cause of action any claim is based.

9.03 Prior to Substantial Completion, the County shall insure or require its Contractor to insure the Tower for loss or casualty. After Substantial Completion, City shall insure the Tower for loss or casualty. Either City or County may, but is not required to, obtain an insurance policy issued by an insurance company.

9.04 Without waiving the right to sovereign immunity as provided by Florida Statutes Section 768.28, the parties acknowledge that they are each self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may be established by the Florida legislature.

9.05 The terms and conditions of this Agreement incorporate all the rights, responsibilities, and obligations of the parties to each other. The remedies provided herein are exclusive. The County and the City waive all other remedies with respect to each other, including, but not limited to, consequential and incidental damages.

9.06 The provisions of this section shall survive the termination or expiration of this Agreement.

## **Section 10: Casualty**

10.01 After the City takes possession of the Tower, and if all or a portion of the Tower is damaged or destroyed by fire, flood, hurricane, or other similar unforeseen and unpreventable casualty (Casualty Loss), the decision to replace and/or repair the Tower will be solely the City's. The City shall have 60 days after a Casualty Loss to notify the County of its intent to restore/replace the Tower. In the event that the City decides to restore/repair the Tower, the cost of the Tower replacement/repair would be solely the City's and the City shall restore/replace the Tower to the greater of the condition existing immediately prior to such Casualty Loss or the condition required by law.

10.02 In the event the City chooses not to replace/restore the Tower after a Casualty Loss, the City shall send notice of same to the County pursuant to Section 13. The County shall then have 30 days to determine whether it desires to restore/replace

the Tower at its cost and shall notify the City whether it shall do so within the 30-day period and pursuant to Section 13. If the County does not elect to restore/replace the Tower, then this Agreement and the Easements (Attachments B and D hereto) shall automatically terminate as of the expiration of such 30-day period. If the County does elect to restore/replace the Tower, the County shall complete the restoration/replacement within a reasonable time.

10.03 In the event the City declines to restore/replace the Tower and the County elects to do so, the County may, during the term of this Agreement, continue to use and maintain the Tower, and the Tower may remain upon the Civic Parcel for as long as the Tower continues to be used by the County as an active component of its public safety communications system. If the County elects to restore/replace the Tower, the County shall assume all maintenance and management responsibility for the Tower, and Attachment D hereto shall remain in effect as long as the County continues to use the Tower.

10.04 In the event of a Casualty Loss, each Tower User will be responsible for paying all costs and expenses for removing/repairing/replacing their own Radio System Equipment pursuant to the Tower Use Agreement.

10.05 For the period of time between the Casualty Loss and the restoration/replacement of the Tower, the City and the County shall have the right to use the Civic Parcel in any way to continue the operation of the County's Radio System and City Radio System, only if the City and the County mutually agree that the Tower and Civic Parcel are in a condition that enable such operation. Additionally, while the City and the County will attempt to meet each and every other Tower User's needs during this interim period, there is no obligation for the County or the City to do so.

10.06 The provisions of this section shall survive the termination or expiration of this Agreement.

#### **Section 11: Term**

The term of this Agreement shall commence upon execution of the Agreement by the County and City (Effective Date) and shall extend for 45 years unless terminated pursuant to Section 12 of this Agreement, except as elsewhere expressly provided herein. This Agreement may be renewed for three additional terms of ten (10) years each by agreement of both parties. The City Council and Board of County Commissioners can mutually agree to extend this Agreement for any duration acceptable to both parties.

#### **Section 12: Termination; Default; Remedies**

12.01 This Interlocal Agreement and the attached easements shall terminate in the event the County is unable to obtain all required zoning approvals for the Tower within 5 years of the Interlocal Agreement's effective date.

12.02 Default by County Prior to Final Completion of Tower Construction. The County shall be in default if it fails to perform the obligations required of the County under this Agreement and/or the Temporary Construction Easement (Attachment B) as provided herein and within a reasonable time period, but in no event later than ninety (90) days after written notice by City, specifying wherein the County has failed to perform such obligations; provided, however, that if the nature of the County's obligations is such that more than ninety (90) days are required for performance then the County shall not be in default if the County commences performance within such ninety (90) day period and thereafter diligently pursues the same to completion, but in no event shall the cure period extend beyond 270 days, unless a longer duration is agreed to by the County and the City. If County defaults during Tower construction and fails to cure the default, the City may terminate this Agreement, at its sole election, and the attached easements shall also terminate, and County shall provide all design plans and consultant/contractor agreements to City. The County may, at its sole option, execute a Tower Use Agreement as a Tower User subject to the user rights and restrictions therein.

12.03 Default by County or City after Final Completion of Tower Construction. The County or City shall be in default if County or City fails to perform obligations required of the County or City under this Agreement within a reasonable time, but in no event later than ninety (90) days after written notice by County to the City or by City to the County, specifying wherein the County, if notified by City, or City, if notified by County, has failed to perform such obligations; provided, however, that if the nature of the County's or City's obligations is such that more than ninety (90) days are required for performance then the County or City shall not be in default if the County or City commences performance within such ninety (90) day period and thereafter diligently pursues the same to completion, but in no event shall the cure period extend beyond 270 days, unless a longer duration is agreed to by the County and the City. The non-defaulting party shall have the right to: 1) grant the defaulting party additional time within which to cure such default during which time the defaulting party shall use its best efforts to remedy such default; 2) seek dispute resolution pursuant to Section 15 herein to resolve such dispute; or 3) bring an action for specific performance.

12.04 The City shall not terminate this Interlocal Agreement for convenience and without cause.

12.05 Each party shall have only the remedies above in the event of a termination or default of this Agreement.

12.06 The City shall not have the right to terminate the County's Tower Use Agreement unless the City is pursuing termination of the Tower Use Agreement according to the provisions of the Tower Use Agreement.

12.07 The provisions of this section shall survive the termination or expiration of this Agreement.

**Section 13: Notices**

Any notice given pursuant to the terms of this Agreement shall be in writing and done by Certified Mail, Return Receipt Requested. The effective date of such notice shall be the date of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following:

As to the County:

County Administrator  
301 North Olive Avenue  
West Palm Beach, FL 33401

Director, Facilities Development & Operations  
2633 Vista Parkway  
West Palm Beach, FL 33411

With a copy to:

County Attorney's Office  
301 North Olive Avenue  
West Palm Beach, Florida 33401

As to Boca Raton:

City Manager, City of Boca Raton  
201 W. Palmetto Park Rd.  
Boca Raton, FL 33432

With copy to:

Chief of Police  
100 NW Boca Raton Blvd.  
Boca Raton, FL 33432

**Section 14: Applicable Law / Enforcement Costs**

This Agreement shall be governed by the laws of the State of Florida. In any litigation brought by a party to this Agreement to enforce the terms of this Agreement, each party shall bear its own costs and attorney's fees incurred in connection therewith. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.**

**Section 15: Dispute Resolution**

Disputes under this Agreement may be resolved by the County's Authorized Representative and City's Authorized Representative. If such Authorized Representatives are unable to reach a resolution and either party believes that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to both parties to conduct a non-binding mediation of the issues involved and make a recommendation to both parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that each party shall pay the mediator's fees and costs in equal amounts. If the non-binding mediation is also unsuccessful, the Board of County Commissioners and City Council shall meet in a joint session with the purpose of resolving the issues.

**Section 16: Filing**

A copy of this Agreement shall be filed by Palm Beach County with the Clerk of the Circuit Court in and for Palm Beach County.

**Section 17: Delegation of Duty**

Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of any party.

**Section 18: Time is of the Essence**

Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

**Section 19: Force Majeure**

Any party delayed by a Force Majeure Event, as defined herein, in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Agreement. "Force Majeure Event" shall mean any act of God, fire, flood, earthquake, explosion, hurricane, riot, sabotage, terrorist attack, windstorm, failure of utility service, or labor dispute.

**Section 20: Non-Discrimination**

The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the City warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered a default of the Agreement.

**Section 21: Inspector General Audit Requirements**

The County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County and City contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County and the City, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**Section 22: Annual Budget Appropriations**

The County and City's performance and obligations to pay pursuant to this Agreement are contingent upon annual appropriation for its purpose by the Board of County Commissioners and the City Council respectively.

**Section 23: Construction**

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

**Section 24: No Third Party Beneficiary**

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or City.

**Section 25: Assignment**

Neither party may assign, mortgage, pledge, or encumber this Agreement in whole or in part, without prior written consent of the other party, which may be granted or withheld at the other party's absolute discretion. This provision shall be construed to include a prohibition against an assignment, mortgage, pledge, encumbrance or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

**Section 26: Severability**

If any term of the Agreement or the application thereof to any person or circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 27: Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**Section 28: Effective Date**

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

**The remainder of this page intentionally left blank**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

**ATTEST:**

**SHARON R. BOCK  
CLERK & COMPTROLLER**

**PALM BEACH COUNTY, a political  
subdivision of the State of Florida**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Dave Kerner, Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

**APPROVED AS TO TERMS AND  
CONDITIONS:**

By: Jean-Adel Williams  
County Attorney

By: MB Audrey Wolf  
Audrey Wolf, Director  
Facilities Development & Operations

**ATTEST:**

**CITY CLERK**

**CITY OF BOCA RATON, a municipal  
corporation of the State of Florida**

By: Susan S. Saxton  
Susan S. Saxton, City Clerk

By: Scott Singer  
Scott Singer, Mayor

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By: Diana Crub Finney  
Diana Crub Finney, City Attorney



**ATTACHMENT A  
CIVIC PARCEL**

Legal Description:

BEING A PORTION OF TRACT 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT 30, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, SAID PUBLIC RECORDS; THENCE N89°36'40"E, ALONG THE SOUTH LINE OF TRACTS 30 THROUGH 35, SAID BLOCK 76, A DISTANCE OF 1740.38 FEET; THENCE N00°23'20"W, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING; THENCE N00°00'00"E, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, ALONG A LINE 155.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.00 FEET; THENCE S00°24'15"E ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE S89°36'40"W ALONG A LINE 55.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.474 ACRES MORE OR LESS

**ATTACHMENT B**

Prepared by & Return to:  
Ross Hering  
Palm Beach County  
Property & Real Estate Management Division  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605

PCN: portion of 00-42-43-27-05-076-0010

**TEMPORARY CONSTRUCTION EASEMENT**

**THIS EASEMENT** ("Easement") made \_\_\_\_\_20\_\_ by and between the **CITY OF BOCA RATON**, a municipal corporation of the State of Florida ("City") and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("County").

**RECITALS**

**Whereas**, the City is the owner of the land described in **Exhibit "A"** attached hereto (referred to hereafter as the "Easement Premises" or the "City Property"); and

**Whereas**, the County and the City have entered into an Interlocal Agreement dated \_\_\_\_\_20\_\_ (R\_\_\_\_\_) ("Interlocal Agreement") providing, among other things, for the County's development and construction of a 400' self-supported public safety radio tower, equipment shelter and associated improvements (collectively referred hereafter to as the "Tower") on the City Property, which is incorporated herein by reference with respect to applicable terms and provisions; and

**Whereas**, the County requires a temporary construction easement ("Easement") in order to proceed with the development and construction of the Tower.

**Now, therefore**, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the City in hand paid by said County, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City does hereby grant to the County a non-exclusive temporary construction easement over, under, across and upon the Easement Premises.

THE CONDITIONS OF THIS TEMPORARY CONSTRUCTION EASEMENT ARE SUCH THAT:

- 1. Conditions to Right of Usage.** The County shall provide the City with all construction plans of any Tower improvements within the Easement Premises The County represents and warrants that the Tower shall be designed and constructed wholly

within the confines of the Easement Premises and as provided in the design and construction documents.

2. **Use Limitation.** The rights granted pursuant to this Easement shall be limited to the right to utilize the Easement Premises to develop and construct the Tower in accordance with the plans and all permits and applicable statutes, rules, regulations, codes and ordinances. Further, access to the Easement Premises is limited to the County's employees, consultants, contractors, agents and others who are directly associated with the development and construction of the Tower.

The County acknowledges and agrees that the rights granted by this Easement are and shall be strictly limited to those specifically granted herein and that County may not utilize the Easement Premises for any purpose not specifically permitted hereby.

3. **Term and Termination.** The term of this Easement shall extend until the earlier of one of the following: 1) upon final completion (as defined in the Interlocal Agreement) of the construction work of the Tower and the possession of the Tower by the City or 2) until County fails to construct or abandons the Tower. The term may be extended by mutual agreement of the parties. The County shall promptly deliver to the City a release of easement, in a form satisfactory to City, in the event: (1) County does not construct the Tower, (2) in the event the County abandons the Tower; or (3) upon final completion of the Tower and possession of the Tower by the City.

This Easement shall terminate automatically if the County fails to complete the Tower in accordance with the Interlocal Agreement and the design and construction documents.

4. **Diligent Prosecution.** The County and the City agree to diligently pursue their respective responsibilities hereunder to completion.

5. **Prohibition Against Liens.** Neither the City's nor the County's interest in the Easement Premises shall be subject to liens arising from the County's or any other person or entity's use of the Easement Premises, or exercise of the rights granted hereunder. The County shall promptly cause any lien imposed against the Easement Premises to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes. In addition, the County shall require the County's general contractor to furnish a payment and performance bond in accordance with Section 255.05, Florida Statutes, naming City as a dual obligee along with the County. Any required payment or performance bond shall be recorded in the Official Records of Palm Beach County and certified copies delivered to City and County prior to commencement of construction.

6. **Insurance.** The County acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes that the County is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

The County shall require its contractors, subcontractors and all persons performing work upon the Easement Premises to provide, maintain and keep in full force and effect Automobile Liability and General Liability Insurance with coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability coverage and Workers Compensation covering all employees in accordance with Chapter 440, Florida Statutes. The General Liability policy shall include coverage for the Easement Premises, Operations, Contractual Liability, Independent Contractors Contractual Liability, X, C, U and Broad Form Property Damage Liability coverages. The County may lower the coverage limits for subcontractors providing the County's contractor agrees to provide insurance for the difference between the subcontractor's reduced coverage and the amounts required by this paragraph.

Except for Workers Compensation and Automobile, all insurance policies shall name the City as Additional Insured. Such insurance shall be underwritten by an insurance company licensed to do business in the State of Florida and approved by the City.

The County shall provide a Certificate of Insurance and endorsement to the City evidencing such insurance coverage prior to the commencement of any work pursuant to this Easement. Such Certificate and endorsement shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

7. **No Dedication.** The grant of Easement contained herein is solely for the use and benefit of the County, its employees, agents, contractors and others associated therewith, and is not intended, and shall not be construed as a dedication to the public of any portion of the Easement Premises for public use.

8. **Time of Essence.** The parties expressly agree that time is of the essence in this Easement.

9. **Matters of Record.** The County hereby accepts this Easement on the City Property "As-Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the City Property, and all other easements, restrictions, conditions, encumbrances and other matters of record.

10. **Palm Beach County Office of the Inspector General.** The County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County and City contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County or the City, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm

Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

11. **Construction.** The terms of this Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

12. **Entire Understanding.** This Easement (together with the applicable provisions of the Interlocal Agreement) represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Easement.

13. **Notices.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Property & Real Estate Management Division  
Attn: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Telephone: 561-233-0217  
Fax: 561-233-0210

With a copy to:

Palm Beach County Attorney's Office  
Attn: Real Estate  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Telephone: 561-355-2225  
Fax: 561-355-4398

and

City: City of Boca Raton  
C/O City Manager  
201 W. Palmetto Park Rd.  
Boca Raton, FL 33432

Any party may from time to time change the address at which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

14. **Default.** In the event the County fails or refuses to perform any term, covenant, or condition of this Easement for which a specific remedy is not set forth in this Easement, the City shall, in addition to all other remedies provided at law or in equity, have the right of specific performance thereof.

15. **Governing Law & Venue.** This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

16. **Prohibition Against Assignment.** This Easement may not be assigned by the County.

17. **No Third Party Beneficiary.** No provision of this Easement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Easement, including but not limited to any citizens of the County or the City or employees of the County or the City.

18. **Waste or Nuisance.** The County shall not commit or suffer to be committed any waste upon the City Property or any nuisance or other act or thing which may result in damage or depreciation of value of the City Property or which may affect City's fee interest in the City Property. Upon notice by the City to the County of any waste or nuisance, County shall have an opportunity to cure the issue.

19. **Governmental Regulations.** The County shall secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the County or its use of the City Property pursuant to this Easement and the Interlocal Agreement, and shall faithfully observe in the use of the City Property all applicable municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the County's use of the City Property as set forth herein.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF**, the City has executed this Easement as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

**ATTEST:**

Sharon R. Bock  
Clerk & Comptroller

By: \_\_\_\_\_  
                                , Deputy Clerk

**COUNTY:**

Palm Beach County, a political subdivision  
of the State of Florida

By: \_\_\_\_\_  
                                Dave Kerner, Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
                                County Attorney

**APPROVED AS TO TERMS AND  
CONDITIONS:**

By: \_\_\_\_\_  
                                Audrey Wolf, Director  
                                Facilities Development & Operations

Signed, sealed and delivered  
in the presence of:  
(Witness to both County Clerk and Mayor)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Name

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_, day of \_\_\_\_\_, 20 \_\_\_\_\_, as being executed by \_\_\_\_\_, as Mayor, who is personally known to me or have produced \_\_\_\_\_, identification and who did (did not) take an oath.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Name  
Commission No. \_\_\_\_\_  
My commission expires: \_\_\_\_\_

ATTEST:  
By: \_\_\_\_\_  
                                , City Clerk

CITY:  
City of Boca Raton, a municipal corporation  
of the State of Florida

By: \_\_\_\_\_  
                                , Mayor

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
                                City Attorney

Signed, sealed and delivered  
in the presence of:  
(Witness to both City Clerk and Mayor)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Print Witness Name

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_, as being executed by \_\_\_\_\_, as Mayor, who is personally known to me or have produced \_\_\_\_\_, identification and who did (did not) take an oath.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Name  
Commission No. \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**EXHIBIT "A"**  
**(Easement Premises or City Property)**

BEING A PORTION OF TRACT 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT 30, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, SAID PUBLIC RECORDS; THENCE N89°36'40"E, ALONG THE SOUTH LINE OF TRACTS 30 THROUGH 35, SAID BLOCK 76, A DISTANCE OF 1740.38 FEET; THENCE N00°23'20"W, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING; THENCE N00°00'00"E, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, ALONG A LINE 155.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.00 FEET; THENCE S00°24'15"E ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE S89°36'40"W ALONG A LINE 55.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.474 ACRES MORE OR LESS.

**TOGETHER WITH** INGRESS AND EGRESS TO THE ABOVE DESCRIBED EASEMENT PREMISES SHALL BE ON, OVER, ACROSS AND THROUGH THE FOLLOWING DESCRIBED PARCEL:

BEING A PORTION OF TRACTS 30 THROUGH 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT 30, THENCE N89°36'40"E, ALONG THE SOUTH LINE OF SAID TRACT 30, A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE N00°21'11"W, ALONG A LINE 25.65 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 30, A DISTANCE OF 55 FEET; THENCE N89°36'40"E, ALONG A LINE 55 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1920.40 FEET; THENCE N00°24'15"W ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, A DISTANCE OF 35.00 FEET; THENCE S00°24'15"E, ALONG THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 155.50 FEET TO THE SOUTH LINE OF SAID TRACT 35; THENCE S89°36'40"W, ALONG THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1955.45 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.550 ACRES MORE OR LESS

**ATTACHMENT C**  
**TOWER USE AGREEMENT**

THIS TOWER USE AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and among the **CITY OF BOCA RATON**, a municipal corporation of the State of Florida, hereinafter referred to as "City," and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "County," and \_\_\_\_\_, a [not for profit public safety entity or a governmental entity], hereinafter referred to as "Authorized User."

**RECITALS**

**WHEREAS**, the City and the County will construct and the City will own a 400-foot self-supported communication tower and equipment shelter (collectively, "Tower") on property located north of Glades Road, west of the Florida Turnpike, Boca Raton, FL, and

**WHEREAS**, at City's request, the County has agreed to manage the Tower and the Tower Use Agreements via an Interlocal Agreement between the City and the County dated \_\_\_\_\_ (R. \_\_\_\_\_) ("Interlocal Agreement"); and

**WHEREAS**, both the City and the County recognize and acknowledge that the Tower provides a mutual public safety and public service benefit and therefore agree to allow only governmental entities and not-for-profit entities providing communication services on behalf of a governmental public safety agency to enter into Tower Use Agreements; and

**WHEREAS**, Authorized User is a [not for profit public safety entity or a governmental entity] and an entity that desires to use the Tower to enhance its communication capacity and benefit from not having to provide its own infrastructure to support its communication needs; and

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, along with other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1: Recitals**

The foregoing recitals are true and correct and incorporated herein by reference.

**Section 2: Purpose**

The purpose of this Agreement is to provide Authorized User with a public safety and security communications benefit. This Agreement is a standard form document that sets forth the Authorized User's rights, requirements and responsibilities in utilizing the Tower. These rights, requirements and responsibilities will be identical for all entities within Palm Beach County.

**Section 3: Definitions**

3.01 Authorized User Representative. The Authorized User's employee who has the authority to obligate the Authorized User in accordance with applicable law and Authorized User's adopted policies and procedures.

3.02 Capital Improvement: Any and all design, permitting, labor and materials related to any improvements made after the date the Tower achieved Substantial Completion, and that add value to the Tower.

3.03 City: The City of Boca Raton, a municipal corporation of the State of Florida.

3.04 City Representative: The City employee who has the authority of the City to obligate the City pursuant to this Agreement, after adhering to the City Code and the City's adopted policies and procedures.

3.05 County: Palm Beach County, a political subdivision of the State of Florida.

3.06 County Representative: The FDO Director who, pursuant to the Interlocal Agreement between the City and the County, has the authority to administer this Tower Use Agreement on behalf of the City.

3.07 Facilities Development & Operations Department (FDO): The County Department responsible for the management and operation of the Tower under the jurisdiction of the Palm Beach County Board of County Commissioners.

3.08 Maintenance: The labor and materials which are required to keep the Tower in good order and repair and which are routine, regular, and generally predictable in nature, given the age of the Tower and the use of the Tower and not including any R/R projects. Maintenance includes, but is not limited to, repairs of any value necessary to restore the Tower, an improvement, or equipment to working order only where the resulting repair is not intended to extend the life of the Tower, improvement, or equipment by more than one year. Maintenance includes repair of damage to the Tower caused by vandalism. More specifically, Maintenance includes troubleshooting and making all repairs on a 24 hours per day, 7 days per week, 365 days per year basis as well as maintenance and annual inspections of the Tower, shelter, Tower lighting, back-up power equipment (uninterruptible power supply (UPS), generator, transfer panel, etc.) serving the Tower only. This does not cover any UPS installed for Radio System Equipment or any secondary power generating equipment.

3.09 New Tower Authorized User ("New Authorized User"): An Authorized User that enters into a Tower Use Agreement after the construction contract for the Tower has been awarded.

3.10 Property: The City owned property located north of Glades Road and west of the Florida Turnpike on which the Tower is located, legally described on Exhibit 6, attached hereto and incorporated herein.

3.11 Radio System Equipment or Equipment: The necessary equipment on or about the Tower that an Authorized User requires to use the radio system. The Authorized User owns and is solely responsible for this equipment which consists of an antenna(s), receiver(s), transmitter(s), transmission line and any other appurtenances necessary for Authorized User to use its radio system.

3.12 Renewal/Replacement (R/R): The labor and materials necessary to renew, rehabilitate or replace a physical improvement, fixture, piece of equipment or any other physical asset of the Tower which is intended to extend the overall life of the improvement or equipment by over a year.

3.13 Tower: A 400' tripod structure, built to FAA standards and to provide adequate drainage, equipment shelter, tower lighting, and back up power equipment (UPS, generator and fuel tank, transfer panels, etc.) serving the Tower constructed by County on the Property. The definition of Tower does not include any Radio System Equipment owned by an Authorized User, including the County and City owned Radio System Equipment.

3.14 Tower Authorized User ("Authorized User"): A governmental entity or a not-for-profit entity providing communication services on behalf of a governmental public safety agency.

3.15 Tower Use Agreements: This standard form document setting forth the terms of use of the Tower that will be executed by the City, the County and an Authorized User.

#### **Section 4: Use of Tower**

4.01 Tower Use Agreement. No entity shall be able to utilize the Tower without first executing a Tower Use Agreement. The terms of the Tower Use Agreement will be identical for all entities within Palm Beach County.

4.02 Use. Authorized User shall have the right to install, operate, maintain, repair and replace its Radio System Equipment in accordance with the terms and conditions of this Agreement. Authorized User shall not utilize the Tower for any commercial communication or data uses, including, but not limited to, mobile, cellular or wireless facilities, and shall not enter into any sublease or co-location rights agreement with any other entity, including but not limited to any telecommunications provider or other commercial for-profit entity in regard to or relating to use of the Tower.

4.03 Description and Location of Radio System Equipment. The description of all Radio System Equipment and associated facilities and appurtenances and the location

of same on or about the Tower (including in or about the equipment shelter) are more particularly identified and described in **Exhibit 1** ("Location & Description of Radio System Equipment on Tower"), which is attached hereto and incorporated herein. The County shall update **Exhibit 1** within 30 days after a New Authorized User has executed a Tower Use Agreement and has added its Radio System Equipment to the Tower and shall provide a copy of the updated **Exhibit 1** to all Authorized Users.

4.04 Radio System Equipment Installation. Authorized User shall have the right to obtain the necessary permitting and install upon the Tower, at its own cost, its Radio System Equipment as identified in **Exhibit 2** (the "Authorized User's Radio System Equipment"), which is attached hereto and incorporated herein. Authorized User shall install its Radio System Equipment on the Tower in the locations and in the manner identified in **Exhibit 1**.

4.041 Authorized User, its contractors, subcontractors, laborers, materialmen, suppliers and professionals shall exercise diligent care and caution in the installation, construction, maintenance, and repair of its Radio System Equipment or any appurtenances thereto, in order to avoid damage to the Tower and/or the Radio System Equipment and associated facilities and appurtenances of other Tower users. In the event of such damage, County or the owner of the Radio System Equipment that was damaged shall repair said damage, restoring it to its condition prior to such damage, at Authorized User's sole cost and expense.

4.042 To ensure the integrity of the Tower, a New Authorized User shall submit plans, specifications and loading information regarding its Radio System Equipment and follow the process as set forth in Section 4.11.

4.05 Reservation for Future Use. Authorized User may reserve an area of the Tower for future use for the Term of this Tower Use Agreement. The County shall determine the reservation location on the Tower and the location shall be identified on **Exhibit 1**. If Authorized User reserves a location for future use, the fee for the reserved positions on the Tower will be included in the Renewal/Replacement Fee (Section 5.02) as if the position were occupied.

4.06 Licenses and Approvals. Authorized User shall be responsible for obtaining, and the modification of, its own licenses and transmitter site approvals from all appropriate regulatory agencies, as required, prior to activation of its Radio System Equipment on the Tower and throughout the duration of this Agreement.

4.07 Access. Upon passing an individual background check and being issued a badge, pursuant to the requirements of Section 13.17, an Authorized User's employee shall have the right to enter upon the Tower site at all times twenty-four (24) hours a day, seven (7) days a week, and the Authorized User shall comply with any other reasonable security procedures established by the County to prevent unauthorized access to the Tower site.

4.08 Non-Exclusive Use – Duty to Cooperate. Authorized User acknowledges that the rights granted hereby are non-exclusive and that the Tower is a multi-user, co-location site for public safety communications equipment. Authorized User agrees to cooperate in a commercially reasonable manner with City, County and all other present and future Authorized Users in addressing all issues associated with the Tower, maintenance, interference, and any other matter involving the use of the Tower.

4.09 Equipment In Service and Licensed. Any Radio System Equipment located on the Tower that is out of service or not licensed to transmit for more than one hundred eighty (180) days shall be removed from the Tower by Authorized User, at Authorized User's expense. Authorized User shall notify the County of any out of service or unlicensed Radio System Equipment. Failure to notify the County or to remove such equipment shall be an event of default under this Agreement.

4.10 Tower Light Monitoring. Per FAA regulations, the Tower's aircraft avoidance lighting system is required to be monitored 24 hours per day, 7 days per week, 365 days per year. The County, on behalf of the City, will be responsible for monitoring this system and, in the case of malfunction, will advise the FAA and the other Authorized Users. The County will schedule the repair of the system within 48 hours.

4.11 Maintenance of Radio System Equipment. Authorized User, at its sole cost and expense, shall have the right at any time during the Term of this Agreement to make routine and necessary repairs (including replacements, if necessary) to its Radio System Equipment and all appurtenances thereto. Authorized User shall, at its sole costs and expense, maintain its Radio System Equipment in good repair and condition at all times during the Term of this Agreement. Authorized User, its contractors, subcontractors, laborers, materialmen, suppliers, and professionals shall exercise diligent care and caution in the maintenance and repair of its Radio System Equipment or any appurtenances thereto, in order to avoid damage to the Tower and/or the equipment and facilities of other Tower users. In the event of such damage, Authorized User shall promptly repair said damage using materials of like kind and quality, restoring it to its condition prior to such damage, at Authorized User's sole cost and expense. Authorized User's maintenance and repair of its Radio System Equipment shall not disturb, modify, interfere with or alter the communication equipment of another Tower user. Prior to any replacement of any Radio System Equipment, Authorized User shall provide to the County the plans and specifications for such replacement Radio System Equipment, which shall be subject to approval by the County prior to installation. Any contractor utilized by Authorized User shall have insurance, as set forth in Section 9.06 (**For State/Local Government Authorized Users**) or Section 9.08 (**for Non-Profit Authorized Users**), which names and endorses the County and the City as Additional Insureds and Critical Facility background check pursuant to Section 13.18.

4.11.1 While it has no obligation to do so, to ensure the integrity of the Tower, the County may, in its sole discretion, inspect any work conducted on the Tower by any Authorized User, be it repairs, maintenance or otherwise, and inspect an Authorized User's Equipment from time to time. If the County

determines that certain equipment needs to be repaired or further maintenance performed, it shall notify the Authorized User to effect such repairs or maintenance at Authorized User's expense. If Authorized User fails to take the necessary action to make such repairs or maintenance within thirty (30) days, the County has the right to perform the repairs or maintenance and to invoice Authorized User for these expenses. At the County's request, Authorized User shall supply County with any updates or reports it may have on the condition of its Equipment. If the County performs these repairs and maintenance, it shall have no responsibility as to system downtime or its effects on the Authorized User's system users.

4.12 Alterations; Additional Antennas or Equipment. Authorized User shall not at any time construct or install any additional antennas or equipment or make any additional improvements, additions, modifications or alterations other than those referenced and approved in Sections 4.03 and 4.04 of this Agreement without the prior written consent of County, in accordance with this Section.

4.12.1 In the event Authorized User proposes to install, alter, improve or modify its antennas or equipment other than what is described in **Exhibit 1** (hereinafter referred to as "Alterations"), the Authorized User proposing to conduct said Alterations shall submit to all other Authorized Users detailed plans and specification for the proposed Alterations. The plans and specifications must describe the proposed Alterations and new equipment and shall include a structural analysis of the Tower performed by a licensed engineer specializing in tower loading, which engineer shall be pre-approved by the County. The structural analysis shall include in its analysis all reservations by existing Tower users for future uses on the Tower, and shall address wind loading and compliance with TIA-222 Rev. G (or then current revision or standard). In the event that the structural analysis indicates that the Tower cannot support the addition of the Alteration proposed, said Alteration shall not be permitted unless the City, the County and the Authorized User can agree to structural modifications which would enable the Tower to support the proposed Alterations.

4.12.2 If no structural modification of the Tower is necessary to support the Alteration, the Authorized User may install the Alteration, at its sole cost and expense, provided all work 1) is performed only by duly licensed contractors specializing in such work, 2) is performed in a good and workmanlike manner and 3) is prosecuted to completion substantially in accordance with the plans and specifications and all applicable governmental laws, regulations, rules, codes and orders. Any contractor and subcontractor utilized by Authorized User shall have insurance, as set forth in Section 9.06 (**For State/Local Government Authorized Users**) or Section 9.08 (**for Non-Profit Authorized Users**), which names and endorses the County and the City as Additional Insureds.

4.12.3 In the event the City, the County and the Authorized User agree upon the required structural modifications, the County, at its sole option, may perform the required structural modifications and the Authorized User proposing to conduct

said Alterations shall be responsible for all of County's costs in performing the structural modifications to the Tower required to support the Alterations, including the County's costs to administer the project and applicable contract.

4.12.4 In the event the City, the County and the Authorized User agree upon the required structural modifications, and the County, at its sole option, elects not to perform the required structural modifications, the Authorized User may perform such modifications, but shall submit all proposed plans and specifications to City and County, which shall require the City and the County to approve prior to the Authorized User performing such structural modifications. The Authorized User shall also obtain all required licenses and permits, including building permits prior to performing such structural modifications. The Authorized User making said structural modifications shall comply with this Agreement, the approved plans and specifications, and meet all insurance, bonding and indemnification requirements. Such Authorized User conducting said structural modifications shall be responsible for all of City's costs, as Tower owner, and County's costs, as Tower Manager, incurred for the review of the structural modification plans and inspection of the structural modification work, and any additional site work or other costs incurred. Any contractor utilized by Authorized User shall have insurance, as set forth in Section 9.06 (**For State/Local Government Authorized Users**) or Section 9.08 (**for Non-Profit Authorized Users**), which names the County and the City as Additional Insureds.

4.13 Cabling. The Authorized User shall be allowed to install and maintain underground wires, cables, conduits and pipes connecting the component parts of its Radio System Equipment and running from its Radio System Equipment to telephone service and electrical power sources (cabling space). Authorized User shall be allowed to install and maintain above ground cables and attached appurtenances (ice bridge) between the Equipment Building and the Tower.

4.14 Maintenance Funding. The Usage and Maintenance Fees as set forth in Section 5, in addition to any other funds necessary, shall be used to fund the maintenance, repair and renewal/replacement of the Tower.

4.15 Maintenance. The County, on behalf of the City, shall perform all Maintenance of the Tower so that it is in good repair and condition at all times during the Term of this Agreement, including the structural integrity of the Tower, routine repair, Maintenance and renewal/replacement. Maintenance includes, but is not limited to, repairs of any value necessary to restore the Tower, an improvement, or equipment to working order only where the resulting repair is not intended to extend the life of the Tower, improvement, or equipment by more than one year. Notwithstanding the foregoing, any and all damages to the Tower caused by any Authorized User shall be repaired by the Authorized User at its sole cost and expense, as provided herein.

4.16 County as Tower Manager. County shall serve as tower manager and shall be responsible for 1) determining, in its own discretion, the location of Authorized User's



equipment on the Tower and within the equipment shelter; 2) management of Tower maintenance, excluding maintenance on Authorized User's Radio System Equipment, which is the responsibility of Authorized User; 3) implementing Capital Improvements and Renewal/Replacement work to the Tower; and 4) computation, re-evaluation, and collection of the annual use fee, the annual maintenance fee, and the annual Renewal/Replacement fee from all Authorized Users, as further detailed in Section 5.

4.17 Additional Authorized Users. Both the City and the County desire that New Authorized Users be permitted to occupy space at the Tower. The County, as Tower Manager, shall be responsible, in its sole discretion, for selecting and determining the equipment location for any New Authorized User to use any surplus space on the Tower and in the equipment shelter that is not already assigned or reserved, provided that use by any New Authorized User: 1) will not lessen the designed structural or wind load capacity of the Tower; 2) will not interfere with the City or the County's current or reserved usage; and 3) is subject to the non-interference provisions in Section 6 of the Agreement.

The County will notice all Authorized Users, including the City, of a potential New Authorized User's proposed Tower locations, ground space usage, and operational frequencies, and will provide copies of the New Authorized User's intermodulation and structural studies. Authorized Users shall have thirty (30) days to provide notice to the County of any potential conflicts or issues which may result from approval of the potential New Authorized User. Upon approval, the County will cause the New Authorized User to execute a Tower Use Agreement, and within 180 days of approving the New Authorized User, the County will amend the applicable exhibits to this Agreement to reflect the occupied Tower locations, ground space usage, operational frequencies and fee calculations, and will provide copies of the new Authorized User's intermodulation and structural studies to all other Authorized Users.

4.18 Notice of Work. The County shall provide Authorized User with sixty (60) days advance notice of any work at the Tower site which may reasonably be foreseen by the County to impact Authorized User's operations of Radio System Equipment on the Tower. The notice required under this section shall describe in detail the type of work to be performed and the estimated time for completion of such work. The County shall cooperate with the Authorized User and shall attempt minimize the impact of such work to the Authorized User. Notwithstanding the foregoing, in the event of an emergency, the County may immediately undertake any work necessary as a result of such emergency, and shall provide written notice simultaneously with the initiation of the work, or as shortly after the emergency as is possible. For purposes of this section, an "emergency" shall be defined as the occurrence of an event which threatens immediate harm to persons or property or which threatens operation of a public safety communication system.

4.19 Recertification of Tower. Upon notification that there have been changes to the Electronics Industry Alliance/Telecommunications Industry Association (EIA/TIA) tower structural standards affecting the Boca Raton area, the County shall cause a revised structural analysis of the Tower to be performed that includes all current and reserved slots and shall provide an original sealed copy to each Authorized User. Should

the study identify areas on the Tower that need structural improvement, the County shall utilize the R/R fund (Section 5.02) to fund the upgrades and the County shall cause the upgrades to be completed. At the conclusion of the upgrade, the County shall provide to each Authorized User an engineer's letter approving the upgrades and re-certifying the Tower.

4.20 Waste or Nuisance. Authorized User shall not commit or suffer to be committed any waste upon or within the Tower or commit or permit the maintenance or commission of any nuisance or other act or thing which interferes with another Authorized User's use of the Tower or results in damage to the Tower or other equipment or structures or results in an unsightly condition. Authorized User shall cause any and all trash, debris and safety hazards resulting from the Authorized User's use of the Tower to be removed from the Tower at the Authorized User's sole cost and expense immediately. Upon the County's notice to the Authorized User of any waste or nuisance, Authorized User shall have an opportunity to cure the issue within ten (10) days of the date of the County's notice. If Authorized User fails to cure the issue, in the County's sole discretion, the County may terminate this Tower Use Agreement on three (3) days' notice.

4.21 Hazardous Materials. Excepting the power backup fuel tank and the proper maintenance and filling thereof, Authorized User shall not use, store or dispose of any "Hazardous Materials" at the Tower, including, without limitation, any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant which is prohibited, limited or regulated by any applicable federal, state, county, regional or local laws, statutes, ordinances, rules, regulations or other governmental restrictions. Any release of a Hazardous Material, whether by Authorized User or any third party, shall be reported to the County immediately. Authorized User shall be solely responsible for the entire cost of remediation and clean-up of any Hazardous Materials released upon the Tower or onto adjacent lands, if such release was caused by Authorized User or Authorized User's agents, contractors or employees actions, even if discovered after the Term of this Agreement. Authorized User's failure to comply with the provisions of this Section shall constitute a default under this Agreement. The City hereby represents that it has no knowledge of any environmental conditions affecting the Tower site requiring remediation and further represents that it has received no notices of violation of applicable environmental law concerning the Tower site.

## **Section 5 – Fees and Payments**

### **5.01 Annual User and Maintenance Fees.**

5.011 Annual User Fee. Authorized User shall pay an annual user fee for use of the Tower. Authorized Users located in Palm Beach County shall pay an annual user fee in the amount of Ten Dollars (\$10.00) for use of the Tower. This amount shall remain constant throughout the Term of the Agreement.

5.012 Annual Maintenance Fee. Authorized User shall pay, on an annual basis, Authorized User's proportional share of the total Maintenance costs for the

Tower, which shall include, but is not limited to, repairs of any value necessary to restore the Tower, an improvement, or equipment to working order only where the resulting repair is not intended to extend the life of the Tower, improvement, or equipment by more than one year (the "Maintenance Fee"). The Maintenance Fee shall be based upon space utilization, by rack, within the equipment shelter.

5.013 Computation of Annual User and Maintenance Fees. The Authorized User's Annual User and Maintenance Fee are computed in **Exhibit 3** ("Computation of Annual Use and Maintenance Fees"), which is attached hereto and incorporated herein.

5.014 Assessment of Annual User and Maintenance Fees. The Annual User and Maintenance Fees for the first year of this Agreement shall be assessed on the execution date of this Agreement, and thereafter on October 1<sup>st</sup> of each year during the Term of this Agreement or any extensions thereof, and payment shall be due within forty-five (45) days of Authorized User's receipt of the invoice. The full, initial Annual User and Maintenance Fee shall be due at the time this Agreement is executed regardless of how late in the fiscal year this Agreement is executed; there shall be no proration of the Annual User and the Maintenance Fees based upon how late in the fiscal year the Agreement is executed. The County shall be responsible for invoicing, collecting and distributing these funds to pay for maintenance expenses. If the Maintenance Fee is adjusted as described in section 5.015 below, County shall notify Authorized User of the revised Maintenance Fee by April 1<sup>st</sup> and the revised Maintenance Fee will be applicable for the upcoming fiscal year and will automatically become a part of this Agreement and be due on October 1<sup>st</sup> of the applicable year.

5.015 Re-evaluation of the Maintenance Fee. To ensure all Tower maintenance expenses are covered and proportionally shared, the Maintenance Fee shall be re-evaluated, using the methodology in **Exhibit 3**, and adjusted by the County every three (3) years after final completion of the Tower.

5.016 In the event this Agreement is terminated, the annual Maintenance Fee already paid shall not be prorated or returned.

5.02 Annual Renewal and Replacement Fee ("R/R Fee").

5.021 R/R Fee. Authorized User shall pay, on an annual basis, a proportionate share of the estimated costs for renewal, extraordinary expenses, improvements and replacement of the Tower and related facilities.

5.022 R/R Fee Calculation. The annual R/R Fee shall be calculated according to the following, and according to the methodology shown in **Exhibit 4** ("Computation of Renewal & Replacement Fee"), which is attached hereto and incorporated herein:

- a) The R/R Fee will be based on the then-current estimate of R/R costs for the Tower based on an anticipated life cycle of 15 years.
- b) The R/R fee will be prorated among all Authorized Users, including the City and the County, based on the number and type of antenna being used and future reservations.

5.023 Computation of R/R Fee. Authorized User's annual R/R Fee is computed in **Exhibit 4**, which is attached hereto and incorporated herein.

5.024 Assessment of Annual R/R Fee. The R/R Fee shall be assessed on the execution date of this Agreement and on October 1<sup>st</sup> of each year during the Term of this Agreement or any extensions thereof, and payment shall be due within forty-five (45) days of Authorized User's receipt of the invoice. The full, initial annual R/R Fee shall be due at the time this Agreement is executed regardless of how late in the fiscal year this Agreement is executed; there shall be no proration of the initial R/R Fee based upon how late in the fiscal year the Agreement is executed. The County shall be responsible for invoicing, collecting and distributing these funds to pay for R/R expenses. If the R/R Fee is adjusted following re-evaluation as described in Section 5.025 below, County shall notify Authorized User of the revised R/R Fee by April 1<sup>st</sup> and the revised R/R Fee will be applicable for the upcoming fiscal year and will automatically become a part of this Agreement and be due and payable by Authorized User on October 1<sup>st</sup> of the applicable year.

5.025 Re-evaluation of R/R Fee. Provided the same methodology in **Exhibit 4** is utilized, the R/R Fee may be re-evaluated and adjusted when a New Authorized User is added to the Tower and/or every three (3) years by the County after final completion of the Tower based on each Authorized User's then current Tower location, future reservations and R/R estimates.

5.026 New Authorized User. If a New Authorized User is added to the Tower, the County shall recalculate and amend the R/R Fee to reflect the New Authorized User's load on the Tower based on the remainder of the 15 year life cycle, within ninety (90) days of the New Authorized User's Radio Equipment System installation. Similarly, if an Authorized User is removed from the Tower, the County shall recalculate and amend the R/R Fee to reflect this change within ninety (90) days of the termination date of the Authorized User. The amended R/R Fee shall not be effective until the following fiscal year and there will be no proration or refunds of any R/R Fees already paid.

5.027 In the event this Agreement is terminated, the R/R Fee shall not be prorated or returned.

## **Section 6: Frequencies**

6.01 Authorized User Frequencies. The frequencies to be utilized by Authorized User's Radio System Equipment at the Tower are set forth in **Exhibit 5** ("Frequencies"),

which is attached hereto and incorporated herein. Authorized User shall not utilize any frequencies at the Tower not designated on such exhibit for Authorized User's use without the prior written consent of the City and County, which shall not be unreasonably withheld and shall be subject to the provisions of Section 6.02 of this Agreement.

6.02 Interference. **Exhibit 5** is a list of all frequencies approved for use at the Tower by City, County, and all Authorized Users of the Tower. Authorized User, as well as all other Authorized Users, shall mutually agree not to cause any interference with any other party's communication equipment or facilities or any party's permitted use of the Tower. Authorized User shall not modify its communications equipment, including, without limitation, any antenna or associated combiner, combined multicoupler, cross band couplers, or other components of Authorized User's receive and transmit antenna systems, in a manner which reduces either the reception capacity or transmission capability of the communications equipment of any other Authorized User. Authorized User will be deemed to be interfering if it introduces any activity or change, modification or addition to its communication facilities, equipment or its use of the Tower that interferes with another Authorized User's existing communication equipment or facilities or any other Authorized User's then currently authorized use of the Tower. In the event of any such interference, upon receipt of written notice of interference, copied to County, Authorized User shall immediately take all steps necessary at its sole cost to correct and eliminate such interference and to cause its communications equipment to operate within its designated frequencies. Failure of Authorized User to comply with this provision shall constitute a material default under this Agreement. In the event interference is created by Authorized User, the County shall take appropriate action to enforce this provision, which may include termination of this Agreement with Authorized User. Any modifications required by the FCC for compliance and any fines imposed by the FCC for violations shall be the responsibility of Authorized User.

6.03 Changes in Frequencies. Prior to utilizing a frequency other than identified in **Exhibit 5** of this Agreement or the installation of any communications equipment which will utilize another frequency, Authorized User shall obtain, at its sole cost and expense, an intermodulation study performed by a licensed engineer to determine the compatibility of the frequencies proposed to be utilized and the communications equipment proposed to be installed with all communications equipment then existing on the Tower and the frequencies allocated to all Authorized Users on the Tower. Copies of said intermodulation studies shall be provided to all Authorized Users of the Tower not less than ninety (90) days prior to installation of the communications equipment utilizing such additional frequencies.

## **Section 7: County Radio System and Microwave System Use Agreement**

7.01 Authorized User shall execute a separate radio agreement for the use of the County's Public Safety Radio System, which provides for interoperable radio communications with other public safety entities.

7.02 Authorized User may execute a separate Microwave Use Agreement for the use of the County's microwave system to transport information from the Tower to the County's Master Site.

7.03 If Authorized User does not enter into a Microwave Use Agreement with County, Authorized User shall modify its landline telephone connections accordingly, prior to equipment activation at the Tower, and shall be responsible for the management and costs or maintaining such connections throughout the duration of this Agreement.

**Section 8: Liability**

For State/Local Governments:

8.01 No Representation as to Fitness. Neither the City nor the County make representations about the design or capabilities of the Tower. Authorized User has decided to enter into this Agreement and use the Tower on the basis of having a platform to affix its radio equipment and interoperability with the County and other municipalities during times of mutual aid and/or joint operations. The County and the City agree to use best reasonable efforts to provide the Authorized User with full use of the Tower but make no guarantee as to the continual, uninterrupted use of the Tower, or its fitness for the communication needs of the Authorized User.

8.02 No Waiver of Sovereign Immunity. The Parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of any other party. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the City, County or Authorized User pursuant to §768.28, Florida Statutes. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the Authorized User shall indemnify, defend and hold harmless the City and the County against any actions, claims or damages arising out of the Authorized User's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes §768.28, nor shall the same be construed to constitute agreement by any party to indemnify the other for such other party's negligent, willful or intentional acts or omissions.

8.03 No Responsibility for Third Party Claims. Neither the City nor the County nor Authorized User shall be liable to each other or for any third party claim, which may arise out of the use provided hereunder or of the Tower itself, its operation or its failure to operate as anticipated, upon whatever cause of action any claim is based.

8.04 No Consequential Damages. The terms and conditions of this Agreement incorporate all the rights, responsibilities, and obligations of the parties to each other. The remedies provided herein are exclusive.

8.05 Survival. The provisions of this section shall survive the termination or expiration of this Agreement.

For Non-Profits:

8.01 No Representation as to Fitness. Neither the City nor the County make any representations about the design or capabilities of the Tower. The Authorized User has decided to enter into this Agreement and use the Tower on the basis of having a platform to affix its radio equipment and interoperability with the County and /or other municipalities during times of mutual aid and/or joint operations. The County and the City agree to use best reasonable efforts to provide Authorized User with use of the Tower, but make no guarantee as to the continual, uninterrupted use of the Tower, or its fitness for the communication needs of Authorized User.

8.02 Indemnification. Authorized User agrees to protect, defend, reimburse, indemnify and hold City and the County, their agents, employees and elected officials and each of them (hereinafter collectively and for the purposes of this paragraph, referred to as the Indemnified Parties), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney's fees at trial and appellate levels) and causes of action of every kind and character against or in which the Indemnified Parties are named or joined, for any damage to property or the environment, economic losses, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring an interest hereunder, and any third party or other party whomsoever, or any governmental agency, arising out of or in incident to or in connection with Authorized User's performance under this Agreement, the condition of the property, Authorized User's acts or omissions or operations hereunder, of the performance, non-performance or purported performance of the Authorized User of any terms or breach of the terms of this Agreement; provided however, that Authorized User shall not be responsible to the Indemnified Parties for damages resulting out of bodily injury or damages to property which Authorized User can establish as being attributable to the sole negligence of the Indemnified Parties.

Authorized User further agrees to hold harmless and indemnify City for fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from Authorized User's activities pursuant to this Agreement, whether or not Authorized User was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving Authorized User's activities.

Authorized User shall indemnify, defend and save the Indemnified Parties harmless from and against any and all claims, actions, damages, liability and expense in connection with: (i) loss of life, personal injury and/or damage to or destruction of property arising from or out of any use or lack thereof, of the Tower; (ii) use by Authorized User, or (iii) any act or omission of Authorized User, its agents, contractors, employees or invitees. In case the Indemnified Parties shall be made a party to any litigation commenced against the Authorized User or by Authorized User against any third party, then Authorized User shall protect and hold harmless and pay all costs and attorney's fees incurred by the Indemnified Parties in connection with such litigation, and any appeals thereof.

8.03 Waiver of Damages. The terms and conditions of this Agreement incorporate all the rights, responsibilities, and obligations of the parties to each other. The remedies provided herein are exclusive. The Authorized User waives all other remedies it may seek against the County and the City, including, but not limited to, special, indirect, consequential, incidental, exemplary damages of any kind or nature, including without limitation, lost profits, lost revenues or other monetary loss, arising out of or related to this agreement and any actions or omissions with respect thereto, whether or not any such matters or causes are within a party's control or due to negligence or other fault on the part of a party, its agents, affiliates, employees or other representatives, and regardless of whether such liability arises in tort, contract, breach of warranty or otherwise.

8.04 Survival. The provisions of this section shall survive the termination or expiration of this Agreement.

**Section 9: Insurance**

For State/Local Governments:

9.01 Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes ("Statute"), the Authorized User represents that it is a political sub-division of the state or municipal entity subject to the limitations of Florida Statutes 768.28, as may be amended. Authorized User shall maintain a fiscally sound and prudent insurance program with regard to its liabilities under this Agreement.

9.02 Should Authorized User purchase excess liability coverage, Authorized User agrees to include City and County as an Additional Insureds.

9.03 The Authorized User agrees to maintain, or to be self-insured for, Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

9.04 The Authorized User shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance within forty-eight (48) hour of a request by City or County.

9.05 Compliance with the foregoing requirement shall not relieve the Authorized User of its liability and obligations under this Agreement.

9.06 Should Authorized User contract with a third-party (Contractor) to perform any service related to the Agreement, Authorized User shall require the Contractor, and all subcontractors utilized by the Contractor, to provide, and maintain throughout the work performed by the Contractor or subcontractor, the following minimum insurance and to keep such insurance in full force and effect until completion of Contractor's services:

9.61 Commercial General Liability insurance with limits of no less than \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Authorized User shall also require that the Contractor include a Waiver of Subrogation against City and County.



9.62 Business Automobile Liability insurance with limits of no less than \$1,000,000 combined single limits for property damage and bodily injury per occurrence.

9.63 Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with limits of no less than \$1,000,000 each accident.

9.07 The City and the County shall be named as Additional Insureds on each applicable liability insurance policy. The Additional Insured endorsement for the City shall read "City of Boca Raton, a municipal corporation of the State of Florida, its Officers, Employees and Agents", c/o City Manager, 201 W. Palmetto Park Rd., Boca Raton, FL, 33432. The Additional Insured endorsement for the County shall read "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its Officers, Employees and Agents", c/o Electronic Services & Security Division, 2033 Vista Parkway, West Palm Beach, FL, 33411.

For Non-Profit:

9.01 The Authorized User shall at its sole expense, maintain in effect at all times during the term of this Agreement insurance at least the coverage and limits set forth below with insurers and under forms of policies acceptable to the City and the County.

9.02 During the term of this Agreement, Authorized User shall maintain Workers Compensation Insurance and Employers Liability insurance in accordance with Chapter 440 Florida Statutes and applicable Federal Acts.

9.03 Authorized User shall purchase and maintain during the term of this Agreement, Commercial General liability insurance without excluding or limiting coverage for premises/operations, independent contractors, products/completed operations, contractual liability, and broad form liability as applicable with limits of amount no less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

9.04 Should any of the work hereunder involve water craft, Authorized User shall provide evidence of Commercial General Liability Protection and Indemnity insurance with limits of no less than \$5,000,000 per occurrence.

9.05 Should any of the work hereunder involve aircraft (fixed wing or helicopter), Authorized User shall provide evidence of Aircraft Liability insurance with limits of no less than \$5,000,000 per occurrence bodily injury (including passengers) and property damage.

9.06 Should the Authorized User provide patient carrier services, Authorized User shall provide evidence of Business Automobile Liability insurance covering on all owned, non-owned and hired automobiles with limits of no less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

9.07 The requirements contained herein as well as City's approval of insurance coverage to be maintained by Authorized User are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Authorized User under this Agreement.

9.08 Should Authorized User contract with a third-party (Contractor) to perform any service related to the Agreement, Authorized User shall require the Contractor to provide the following minimum insurance, and to keep such insurance in full force and effect until completion of Contractor's services:

9.081 Commercial General Liability insurance with limits of no less than \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Authorized User shall also require that the Contractor include a Waiver of Subrogation against City and County.

9.082 Business Automobile Liability insurance with limits of no less than \$1,000,000 combined single limits for property damage and bodily injury per occurrence.

9.083 Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with limits of no less than \$1,000,000 each accident.

9.09 The City and the County shall be named as Additional Insureds on each applicable. The Additional Insured endorsement for the City shall read "City of Boca Raton, a municipal corporation of the State of Florida, its Officers, Employees and Agents", c/o City Manager, 201 W. Palmetto Park Rd., Boca Raton, FL, 33432. The Additional Insured endorsement for the County shall read "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its Officers, Employees and Agents", c/o Electronic Services & Security Division, 2633 Vista Parkway, West Palm Beach, FL, 33411.

9.10 The Certificates of Insurance must provide clear evidence that Authorized User's Insurance Policies contain the minimum limits of coverage and special provisions prescribed in this Section, in accordance with all of the terms and conditions set forth above and shall remain in force during the entire term of this Agreement. Prior to the execution of this Agreement, Authorized User shall deliver to the City and to the County Certificates of Insurance evidencing that such policies are in full force and effect. Such Certificates shall adhere to the conditions set forth herein. Such initial evidence of insurance shall be sent to:

City of Boca Raton  
C/O City Manager  
201 W. Palmetto Park Rd.  
Boca Raton, FL 33432

And

Palm Beach County  
C/O Facilities Development & Operations Department  
Attn: Business & Community Agreements Manager  
2633 Vista Parkway  
West Palm Beach, FL 33410

9.11 During the term of the Agreement and prior to each subsequent renewal thereof, or within forty-eight (48) hours of a request by City or County, the Authorized User shall provide this evidence of compliance with the insurance requirements contained herein to the City and the County. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage. Should Authorized User fail to maintain the insurance required herein, the City and the County may terminate Authorized User's use of the Tower until coverage is reinstated.

#### **Section 10: Casualty**

10.01 If all or a portion of the Tower is damaged or destroyed by fire, flood, hurricane, or other similar unforeseen and unpreventable casualty (Casualty Loss), the decision to replace and/or repair the Tower is solely the City's or the County's, based on the terms of the Interlocal Agreement. The City shall have 60 days after a Casualty Loss to notify the Authorized User of its intent to restore/replace the tower. In the event that the City decides to restore/repair the Tower, the cost of the Tower replacement/repair is solely the City's and the City shall restore/replace the Tower to the greater of the condition existing immediately prior to such Casualty Loss or the condition required by Law. In the event that the City declines to restore/replace the Tower, the County shall have 30 additional days to notify Authorized User of its intent to restore/replace the Tower. In the event that the County decides to restore/repair the Tower, the cost of the Tower replacement/repair is solely the County's and the County shall restore/replace the Tower to the greater of the condition existing immediately prior to such Casualty Loss or the condition required by Law. In either instance, each Authorized User is fiscally responsible for repairing/replacement of its own Radio System Equipment pursuant to this Agreement. There is no obligation for the City nor the County to restore/replace the Tower.

10.02 For the period of time between the Casualty Loss and the restoration/replacement of the Tower, the County and the City have, upon mutual agreement, the right to use the Tower site in any way to continue the operation of their respective radio system. While the County will attempt to meet Authorized User's needs during this interim period, County is under no obligation to do so nor is it obligated to provide any services during this interim period.

## **Section 11: Term of Agreement & Renewal**

11.01 Length of Term. The term of this Agreement is for fifteen (15) years unless terminated pursuant to Section 12 of this Agreement.

11.02 Renewal. This Agreement may be renewed for two (2) additional terms of fifteen (15) years each. At least eight (8) months prior to the expiration of this Agreement's term, Authorized User shall provide City and County with a request to renew this Agreement. Such renewal will require approval by City, County and Authorized User.

## **Section 12: Termination**

12.01 Default by County or City. The County or City shall be in default if County or City fails to perform obligations required of the County or City under this Agreement within a reasonable time, but in no event later than thirty (30) days after written notice by Authorized User to the County or City, specifying wherein the County or City has failed to perform such obligations; provided, however, that if the nature of the County's or City's obligations is such that more than thirty (30) days are required for performance then the County or City shall not be in default if the County or City commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

12.02 Default by Authorized User. If Authorized User fails to adhere to the terms and conditions of this Agreement, it shall be in default of the Agreement. Upon notice of the specific issue of default, Authorized User shall have thirty (30) days to correct the issue. However, Authorized User shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Authorized User commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion within sixty (60) days. If Authorized User fails to cure the Default, County, with City's consent, shall provide Authorized User notice that the County intends to terminate this Agreement upon a specified date not less than thirty (30) days from the date of the termination notice. In the event of a Default by Authorized User that endangers the integrity of the Tower or the operation of other Radio Systems, the County may proceed immediately to cure such Default and bill the costs of such cure to the Authorized User.

12.03 Termination by Authorized User. Authorized User may terminate this Agreement upon ten (10) days written notice to County and City. In the event this Agreement is terminated, the annual User, Maintenance, and R/R Fees already paid shall not be prorated, refunded or returned.

12.04 Surrender. Upon termination or expiration of this Agreement, Authorized User, at its sole cost and expense, shall, within 60 days: 1) remove the Radio System Equipment and Authorized User's personal property, removable fixtures, equipment and alterations; 2) repair any damage caused by the installation, use, maintenance or removal of the same, using materials of like kind and quality, and 3) surrender the Tower back to

the City and the County in at least the same condition as the Tower was in as of the date this Agreement was executed, with normal wear and tear excepted. The Authorized User shall be responsible to pay the cost of correcting any unrepaired damage to the Tower caused by the Authorized User's removal.

12.05 Waiver. The waiver by any party of any default of any term, condition or covenant contained in this Agreement shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant contained in this Agreement. The consent or approval by the County or the City to or of any act by Authorized User requiring the County's or the City's consent or approval shall not be deemed to waive or render unnecessary the County's or the City's consent to or approval of any subsequent similar act by Authorized User. No waiver of any provision of this Agreement shall be effective against any party unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. No single or partial exercise or non-exercise by any party of any right or remedy shall preclude any other or further exercise of such right or remedy.

**Section 13: Miscellaneous**

13.01 Notices. Any notice given pursuant to the terms of this Agreement shall be in writing and done by Certified Mail, Return Receipt Requested. The effective date of such notice shall be the date of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following:

As to the City:

City Manager, City of Boca Raton  
201 W. Palmetto Park Rd.  
Boca Raton, FL 33432

With copy to:

Chief of Police  
100 NW Boca Raton Blvd.  
Boca Raton, FL 33432

As to the County:

County Administrator  
301 North Olive Avenue  
West Palm Beach, FL 33401

Director, Facilities Development & Operations  
2633 Vista Parkway  
West Palm Beach, FL 33411

With a copy to:

County Attorney's Office  
301 North Olive Avenue  
West Palm Beach, Florida 33401

As to Authorized User:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13.02 Applicable Law / Enforcement Costs. This Agreement shall be governed by the laws of the State of Florida. In any litigation brought by a party to this Agreement to enforce the terms of this Agreement, each party shall bear its own costs and attorney's fees incurred in connection therewith. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.**

13.03 Dispute Resolution. Disputes under this Agreement may be resolved by the City Representative, the County Representative and Authorized User Representative. If such Authorized Representatives are unable to reach a resolution and either party believes that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to the parties to conduct a non-binding mediation of the issues involved and make a recommendation to the parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that each party shall pay the mediator's fees and costs in equal amounts.

13.04 Non-Discrimination. The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Authorized User warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

13.05 Inspector General Audit Requirements. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County and City contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County and/or the City, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

13.06 Annual Budget Appropriations. The County and City's performance and obligations to pay pursuant to this Agreement are contingent upon annual appropriation for its purpose by the Board of County Commissioners and the City Council respectively.

13.07 Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to another party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

13.08 No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the Authorized User, the City, or the County.

13.09 Assignment. No party may assign, mortgage, pledge, or encumber this Agreement in whole or in part, without prior written consent of the other parties, which may be granted or withheld at the other parties' absolute discretion. This provision shall be construed to include a prohibition against an assignment, mortgage, pledge, encumbrance or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

13.10 Severability. If any term of the Agreement or the application thereof to any person or circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

13.12 Entirety of Agreement. The City, the County and the Authorized User agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

13.13 Public Entity Crimes. As provided in sections 287.132-133, Florida Statutes, by entering into this contract or performing any work in furtherance hereof, the parties certify that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by section 287.133(3)(a), Florida Statutes.

13.14 Delegation of Duty. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of any party.

13.15 Exhibits. The Exhibits referenced in this Agreement are incorporated into this Agreement, regardless of whether they are attached. The Exhibits may be amended and updated from time to time as provided in this Agreement and such amended and updated Exhibits shall be deemed incorporated and a part of this Agreement.

13.16 Effective Date of Agreement; Filing. This Agreement shall become effective only when duly approved and signed by each party.

13.17 Criminal History Records Check. The Authorized User, Authorized User's employees, contractors and subcontractors of Authorized User, and employees of contractors and subcontractors of Authorized User that have access to the Tower shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R-2003-1274, as amended. The Authorized User is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the Authorized User acknowledges that it is responsible for any and all direct or indirect costs associated with compliance with this Ordinance.

13.17.1 The Tower has been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and Resolution R2003-1274, as amended. County staff will provide specific instructions for meeting the requirements of this Ordinance and Resolution.



13.17.2 Individuals passing the background check will be issued a badge, which shall be worn by such individual at all times when such individual is on the Tower site. The Authorized User shall collect these badges upon conclusion of the individual's assignment for work on the Tower site and return them to the County within 7 days. If the Authorized User or its contractors or subcontractor(s) terminates an employee who has been issued a badge, the Authorized User shall notify the County of the termination within two (2) hours of its occurrence and shall retrieve the badge from such individual at the time of termination and shall return it to the County within 2 business days.

13.17.3 The County reserves the right to terminate Authorized User's Tower access rights or require an escort at the Authorized User's sole cost if the Authorized User 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the County regarding a terminated Authorized User employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort, as determined by the County in its sole discretion, in attempting to comply with the badge retrieval policy. The County, in its sole discretion, shall determine when Authorized User's access rights may be restored. Under no situation will access rights be restored while Authorized User is not in compliance with County's Criminal History Records Check ordinance and procedures.

#### 13.18 Scrutinized Companies

A. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Authorized User certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(5)(b), if Authorized User is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the County and City.

B. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Authorized User certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the County and City determine, using credible information available to the public, that a false certification has been submitted by the Authorized User, this Agreement may be terminated and a civil penalty equal to the greater

of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

**13.19 E-Verify Requirements**

13.19.1 Effective as of January 1, 2021, Authorized User warrants and represents that it is in compliance with section 448.095, Florida Statutes, and has registered with and shall use the E-Verify System, which is the internet-based system operated by the United States Department of Homeland Security, to electronically verify the employment eligibility of all newly hired workers.

13.19.2 Authorized User shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes. Authorized User shall maintain a copy of any such affidavit from a subcontractor for the duration of the subcontract and any extension thereof.

13.19.3 County and City shall terminate this Agreement if they have a good faith belief that Authorized User has knowingly employed, hired, recruited, or referred, either for itself or on behalf of another, for private or public employment within the State, an Unauthorized Alien.

13.19.3.1 If County and City have a good faith belief that Authorized User's subcontractor has knowingly employed, hired, recruited, or referred, either for itself or on behalf of another, for private or public employment within the State, an Unauthorized Alien, County and City shall notify Authorized User to terminate its contract with the subcontractor and Authorized User shall immediately terminate its contract with the subcontractor.

**Remainder of this page intentionally left blank**

**STANDARD**

IN WITNESS WHEREOF, Authorized User, County, and City have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

CITY OF BOCA RATON, a municipal corporation of the State of Florida

By: \_\_\_\_\_, City Manager

APPROVED AS TO FORM AND TO LEGAL SUFFICIENCY

By: \_\_\_\_\_  
City Attorney

The County hereby certifies that the form of this Agreement is as the standard Tower Use Agreement approved by the Boca City Council, and all the terms and fees of this Agreement comply with the approved standard Tower Use Agreement.

PALM BEACH COUNTY, a political subdivision of the State of Florida

By: \_\_\_\_\_, Director  
Facilities Development & Operations

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

By: \_\_\_\_\_  
Business & Community Agreements Manager

Authorized User

By: \_\_\_\_\_, Title

OFFICE OF THE \_\_\_\_\_ ATTORNEY(if necessary)  
Approved As To Form And To Legal Sufficiency  
By: \_\_\_\_\_

## SCHEDULE OF EXHIBITS

- 1 Location & Description of Radio System Equipment on Tower
- 2 Authorized User's Radio System Equipment
- 3 Computation of Annual Use & Maintenance Fees
- 4 Computation of Renewal & Replacement Fee
- 5 Frequencies
- 6 Property Legal Description

STANDARD

**Exhibit 1**  
**Location & Description of Radio System Equipment on Tower**

**STANDARD**

**Exhibit 2  
Authorized User's Radio System Equipment**

**STANDARD**

**Exhibit 3  
Computation of Annual Use & Maintenance Fee**

I. Annual User Fee (Section 5.011)

Authorized User Annual User Fee = \$10.00

II. Annual Maintenance Fee (Section 5.012)

\$600 per rack utilized within Equipment Shelter

Authorized User utilizes \_\_\_ racks at \$600 per rack =  
\$ \_\_\_\_\_

Tower Maintenance Fee Breakdown by Authorized User		
Authorized User Name	# Racks	Maintenance Fee
Authorized User 1		
Authorized User 2		
Auth. User 3, etc		

III. Authorized User's Annual Use and Maintenance Fee Total =  
\$ \_\_\_\_\_

STANDARD

**Exhibit 4  
Computation of Renewal & Replacement Fee**

I. R/R Cost Estimate Based on a 15 year Life Cycle (Section 5.022)\*

Total R/R Cost Estimate (15 year life cycle) = \$1,000,000 (example only)

Total Annual R/R Cost Estimate = \$66,667 (example only)

II. Proration of Annual R/R Fee Among All Authorized Users (Section 5.022)

The prorated annual R/R fee shall be based upon:

- a) the number and type of antenna being used, and
- b) future reservations

The type of antenna and the loading factor (or multiple) for each type of antenna is as follows:

Antenna Type	Loading Multiple
Yagi	1X
Panel Antennas	2X
Tower Top Antennas (TTA)	2X
Whips	5X
Parabolic Dish	20X

The Total Prorated Tower R/R Fees for All Authorized Users is as follows (Antenna Quantity and dollar figures are utilized as examples only):

Authorized User	Antenna Quantity	Loading Multiple	Annual R/R Fee
<b>Authorized User #1</b>			
Whips	2	5X	\$3900
TTA	2	2X	\$1560
Panel	2	2X	\$1560
Parabolic Dish	4	20X	\$31,200
<b>Authorized User #2</b>			
Whips	2	5X	\$3900
Parabolic Dish	2	20X	\$15,600



Authorized User # 3			
Yagi	1	1X	\$390
Whips	4	5X	\$7800
Panel	1	2X	\$780
<b>Annual Total</b>			<b>\$66,690</b>

III. Authorized User's Annual R/R Fee Total = \$ \_\_\_\_\_

\* This estimate may be re-evaluated by County every 3 years pursuant to Section 5.025.

STANDARD

**Exhibit 5  
Frequencies**

**STANDARD**

**Exhibit 6  
(City Owned Property)**

BEING A PORTION OF TRACT 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT 30, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, SAID PUBLIC RECORDS; THENCE N89°36'40"E, ALONG THE SOUTH LINE OF TRACTS 30 THROUGH 35, SAID BLOCK 76, A DISTANCE OF 1740.38 FEET; THENCE N00°23'20"W, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING; THENCE N00°00'00"E, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, ALONG A LINE 155.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.00 FEET; THENCE S00°24'15"E ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE S89°36'40"W ALONG A LINE 155.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.474 ACRES MORE OR LESS.

**TOGETHER WITH** INGRESS AND EGRESS TO THE ABOVE DESCRIBED CITY OWNED PROPERTY SHALL BE ON, OVER, ACROSS AND THROUGH THE FOLLOWING DESCRIBED PARCEL:

BEING A PORTION OF TRACTS 30 THROUGH 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT 30, THENCE N89°36'40"E, ALONG THE SOUTH LINE OF SAID TRACT 30, A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE N00°21'11"W, ALONG A LINE 25.65 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 30, A DISTANCE OF 55 FEET; THENCE N89°36'40"E, ALONG A LINE 55 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1920.40 FEET; THENCE N00°24'15"W ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, A DISTANCE OF 35.00 FEET; THENCE S00°24'15"E, ALONG THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 155.50 FEET TO THE SOUTH LINE OF SAID TRACT 35; THENCE S89°36'40"W, ALONG THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1955.45 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.550 ACRES MORE OR LESS.

## ATTACHMENT D

Prepared by & Return to:  
Ross Hering  
Palm Beach County  
Property & Real Estate Management Division  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605

PCN: portion of 00 42 43 27 05 076 0010

### ACCESS AND MANAGEMENT EASEMENT AGREEMENT

**THIS EASEMENT (“Easement”)** made \_\_\_\_\_ by and between the **CITY OF BOCA RATON**, a municipal corporation of the State of Florida (“City”) and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“County”).

#### RECITALS

**Whereas**, City is the owner of the land described in **Exhibit “A”** attached hereto (referred to hereafter as the “Easement Premises” or “City Property”); and

**Whereas**, County and City have entered into an Interlocal Agreement dated \_\_\_\_\_ 20\_\_ (R \_\_\_\_\_) (“Interlocal Agreement”) providing, among other things, for County’s development, construction and maintenance of a 400’ self-supported public safety radio tower, equipment shelter and associated improvements (collectively referred to hereafter as the “Tower”) on the City Property, which is incorporated herein by reference with respect to applicable terms and provisions; and

**Whereas**, the County requires an access and maintenance management easement in order to access the Easement Premises and to manage the repairs, renewal, replacement, maintenance, and overall operation of the Tower (“Easement”).

**Now, therefore**, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the City in hand paid by said County, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City does hereby grant to the County a non-exclusive access and maintenance management easement for access, ingress and egress to the Easement Premises and to manage the repairs, renewal, replacement, maintenance and overall operations of the Tower over, under, upon and across the Easement Premises, upon the conditions hereinafter set forth.

1. **Use Limitation.** The County shall manage the overall maintenance and operations of the Tower, as specifically described in the Interlocal Agreement, including but not limited to routine, regular, and emergency repairs and replacements of the Tower improvements as defined and set forth in the Interlocal Agreement and the tower use agreements between the County, the City and the other tower users. The County shall use reasonable efforts to maintain the Tower in good repair and operational condition on a 24 hours per day, 7 days per week, 365 days per year basis, however, the County has no responsibility as to system downtime or its effects on any authorized user.

Access to the Easement Premises is limited to the County's employees, consultants, contractors, and subcontractors who are directly associated with the repairs, renewal, replacement, maintenance, and overall operation of the Tower.

The rights granted by this Easement are and shall be strictly limited to those specifically granted herein and that County may not utilize the Easement Premises for any purpose not specifically permitted hereby.

2. **Term and Termination.** The term of this Easement shall commence upon execution of this Easement by the County and City (Effective Date) and shall extend until the earlier of one of the following: 1) the duration of the Interlocal Agreement and all renewals thereof; or 2) if, as provided in Section 10.03 of the Interlocal Agreement, the City declines to replace or restore the Tower after a casualty loss, and the County elects to do so, the date the County ceases to use the Tower as an active component of its public safety communications system. The City and County can mutually agree to extend this Easement for any duration acceptable to both parties.

This Easement shall terminate automatically if the County fails to complete the Tower in accordance with the Interlocal Agreement and the design and construction documents.

The County shall promptly deliver to the City a release of easement, in a form satisfactory to City, in the event: (1) County does not construct the Tower, (2) the County abandons the Tower or ceases to use the Tower as an active component of its public safety communications system; or (3) of termination of the Interlocal Agreement.

3. **Diligent Prosecution.** The County and the City agree to diligently pursue their respective responsibilities hereunder to completion.

4. **Prohibition Against Liens.** Neither the City's nor the County's interest in the Easement Premises shall be subject to liens arising from the County's or any other person or entity's use of the Easement Premises, or exercise of the rights granted hereunder. County shall promptly cause any lien imposed against the Easement Premises to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes. In addition, the County shall require the County's general contractor to furnish a payment and performance bond in accordance with Florida Statutes Section 255.05 naming City as a Dual Obligee along with County. Any required payment or performance bond shall be delivered to City prior to commencement of

construction.

5. **Insurance.** The County acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes that the County is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

The County shall require its contractors, subcontractors and all persons performing work upon the Easement Premises to provide, maintain and keep in full force and effect Automobile Liability and General Liability Insurance with coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability coverage and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the Easement Premises, Operations, Contractual Liability, Independent Contractors Contractual Liability, X, C, U and Broad Form Property Damage Liability coverages. The County may lower the coverage limits for subcontractors providing the County's contractor agrees to provide insurance for the difference between the subcontractor's reduced coverage and the amounts required by this paragraph.

Except for Workers Compensation and Automobile, all insurance policies shall name the City as Additional Insured. Such insurance shall be underwritten by an insurance company licensed to do business in the State of Florida and approved by the City.

The County shall provide a Certificate of Insurance and endorsement to the City evidencing such insurance coverage prior to the commencement of any work pursuant to this Easement. Such Certificate and endorsement shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

6. **No Dedication.** The grant of Easement contained herein is solely for the use and benefit of the County, its employees, contractors and subcontractors who are directly associated with the repairs, renewal, replacement, maintenance, and overall operation of the Tower, and is not intended, and shall not be construed as a dedication to the public of any portion of the Easement Premises for public use.

7. **Time of Essence.** The parties expressly agree that time is of the essence in this Easement.

8. **Matters of Record.** The County hereby accepts this Easement on the City Property "As-Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the City Property, and all other easements, restrictions, conditions, encumbrances and other matters of record.

9. **Palm Beach County Office of the Inspector General.** The County has established the Office of the Inspector General in Palm Beach County Code, Section 2-

421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County and City contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County or the City, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

10. **Construction.** The terms of this Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

11. **Entire Understanding.** This Easement (together with the applicable provisions of the Interlocal Agreement) represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Easement.

12. **Notices.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Property & Real Estate Management Division  
Attn: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Telephone: 561-233-0217  
Fax: 561-233-0210

With a copy to:

Palm Beach County Attorney's Office  
Attn: Real Estate  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Telephone: 561-355-2225  
Fax: 561-355-4398

and

City: City of Boca Raton  
C/O City Manager  
201 W. Palmetto Park Rd.  
Boca Raton, FL 33432

Any party may from time to time change the address at which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

13. **Default.** In the event the County fails or refuses to perform any term, covenant, or condition of this Easement for which a specific remedy is not set forth in this Easement, the City shall, in addition to all other remedies provided at law or in equity, have the right of specific performance thereof.

14. **Governing Law & Venue.** This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

15. **Prohibition Against Assignment.** This Easement may not be assigned by the County without the City's written approval.

16. **No Third Party Beneficiary.** No provision of this Easement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Easement, including but not limited to any citizens of the County or the City or employees of the County or the City.

17. **Waste or Nuisance.** The County shall not commit or suffer to be committed any waste upon the City Property or any nuisance or other act or thing which may result in damage or depreciation of value of the City Property or which may affect City's fee interest in the City Property. Upon notice by the City to the County of any waste or nuisance, County shall have an opportunity to cure the issue.

18. **Governmental Regulations.** The County shall secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force,



pertaining to the County or its use of the City Property in accordance with this Easement and the Interlocal Agreement, and shall faithfully observe in the use of the City Property all applicable municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the County's use of the City Property as set forth herein.

**Remainder of this page intentionally left blank**





**EXHIBIT "A"**  
**(Easement Premises)**

BEING A PORTION OF TRACT 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT 30, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, SAID PUBLIC RECORDS; THENCE N89°36'40"E, ALONG THE SOUTH LINE OF TRACTS 30 THROUGH 35, SAID BLOCK 76, A DISTANCE OF 1740.38 FEET; THENCE N00°23'20"W, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING; THENCE N00°00'00"E, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, ALONG A LINE 155.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.00 FEET; THENCE S00°24'15"E ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE S89°36'40"W ALONG A LINE 55.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.474 ACRES MORE OR LESS.

**TOGETHER WITH** INGRESS AND EGRESS TO THE ABOVE DESCRIBED EASEMENT PREMISES SHALL BE ON, OVER, ACROSS AND THROUGH THE FOLLOWING DESCRIBED PARCEL:

BEING A PORTION OF TRACTS 30 THROUGH 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT 30, THENCE N89°36'40"E, ALONG THE SOUTH LINE OF SAID TRACT 30, A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE N00°21'11"W, ALONG A LINE 25.65 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 30, A DISTANCE OF 55 FEET; THENCE N89°36'40"E, ALONG A LINE 55 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1920.40 FEET; THENCE N00°24'15"W ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, A DISTANCE OF 35.00 FEET; THENCE S00°24'15"E, ALONG THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 155.50 FEET TO THE SOUTH LINE OF SAID TRACT 35; THENCE S89°36'40"W, ALONG THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1955.45 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.550 ACRES MORE OR LESS.

**ATTACHMENT E**  
**Tower Maintenance Standards**

1. **Tower Structure.** Preventative Maintenance shall be performed on the tower structure by a tower contractor.
  
1. The tower contractor shall meet or exceed the following minimum requirements:
  1. Installation or replacement of microwave dishes ranging in size from 4 to 8 feet in diameter.
  2. Installation or replacement of microwave elliptical waveguide and the installation of waveguide connectors.
  3. Installation or replacement of conventional radio communication antennas ranging in size from 10 to 22 feet in length.
  4. Installation or replacement of coaxial hardline cable, hardline connectors, and outdoor rated CAT5E/CAT6/CAT6A cable.
  5. Installation or replacement of long-Range PTP/PTMP wireless 802.11/ac and WiMAX 802.16 radios and antennas.
  6. Installation or Replacement of Tower-Top Pre-amplifiers on communication facilities.
  7. Installation of antenna mounts meeting the current TIA/EIA 222 specifications.
  8. Adjustment of guy-wire tensions on guyed towers.
  9. Installation or replacement of Aircraft Avoidance Lighting, both strobe and LED and associated controllers.
  10. Painting of existing towers to conform to current FAA certifications.
  
- A. The tower contractor must have experience in analyzing a minimum of ten (10) conventional and microwave antenna systems using the following antenna analyzing equipment:
  1. Time Domain Reflectometer
  2. Return Loss Bridge
  3. Scalar Network Analyzer
  4. Standing Wave (VSWR) Radio Meter
  
- B. The tower contractor agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or act of God. Palm Beach County shall be given "first priority" for all goods and services. The tower contractor agrees to provide all goods and services to County during and after the emergency/disaster at the terms, conditions, with a priority above, a preference over, sales to the private sector. The tower contractor shall furnish a 24-hour phone number to the County in the event of such an emergency. Failure to provide the stated priority/preference during and after an emergency/disaster shall constitute breach of contract and make

the tower contractor subject to sanctions from further business with the County.

C. The tower contractor shall, in conjunction with designated representative of the County, shall:

- Perform all work in accordance with the current Electronics Industry Assoc./Telecommunications Industry Assoc., 222 Standard, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, where applicable;
- Provide and maintain normal safety signs, necessary lighting, hard hats, and temporary barriers around work areas in accordance with OSHA requirements while the work is in progress;
- During execution of any activities described herein, the tower contractor will take the necessary precautions not to disturb other communication antennas and/or systems existing on the tower(s). The tower contractor will also take the necessary precautions not to disturb the existing tower grounding systems and will restore any tower grounds, removed as part of requested work, to their original configuration; and
- Contact the County's designee hourly to report progress. Additionally, prior to the end of any job the tower contract shall provide a minimum of two (2) hours' notice to the County's designee before performing any system testing or analysis. The County will witness all testing of the antenna systems and the tower contractor will provide a copy of the results to the County prior to the County's acceptance of any work performed.

D. The tower contractor shall respond to calls for emergency repairs and call-backs as follows:

**STANDARD RESPONSE TIME:**

Work to be started within four (4) business days from time work is requested and continuously prosecuted until completion.

**EMERGENCY RESPONSE TIME:**

Work to be started within two (2) business days from time work is requested and continuously prosecuted until completion.

E. After each wind event with winds gusts in excess of 85 mph, the tower contractor shall perform visual inspection on the tower, equipment shelters,

equipment, and antennas residing on the towers. Any damage shall be reported to County for action.

- F. Biannually, and by completing an inspection similar in substantially the same format at Attachment E-1, the tower contractor shall conduct a complete condition assessment of the tower including; 1) cable ice bridge inspections and other cable support attachments (rust, loose bolts, grounding), 2) safety climb system (rust and loose bolts), 3) tower lighting and associated wiring (operation, rust, loose bolts) 4) identification of any tower member deficiencies (e.g. rust on tower, loose bolts and condition of weep holes), 5) grounding system to R 56 standard and inspection, 6) coaxial cable weatherproof, grounding kits, butterfly, and hoist grip inspections, 7) tower climbing step bolts inspection and replacement, and 8) antenna mount inspections and tightening.

- 2. **Shelter Structure.** Preventative maintenance shall be performed on the shelter structure and tower related equipment (i.e.: generator and fuel tank) according to the following schedule.

- A. Monthly

- a. HVAC

- i. Change filters as necessary
    - ii. Inspect belts, pulley and sheaves for wear. Replace as necessary.
    - iii. Inspect condenser and evaporator coils, clean as necessary.
    - iv. Check electrical connections.
    - v. Check fan blades and blower hubs for tightness.
    - vi. Check thermostat for proper operation and level.
    - vii. Inspect for unusual condition or vibration.
    - viii. Lubricate motors, shafts and bearings, if necessary.
    - ix. Inspect framework, tie downs, and support on equipment.
    - x. Inspect blower wheels, clean if necessary.
    - xi. Inspect drain pans and drain lines.
    - xii. Clean equipment areas of trash and vegetation.
    - xiii. Check piping and joints for leaks.
    - xiv. Check for proper operation.
    - xv. Clean evaporator, condenser coils and cabinet.
    - xvi. Inspect cabinet and piping and insulation.
    - xvii. Test heat strips/pumps.
    - xviii. Check and record amperage on all motors.
    - xix. Record refrigerant pressures.
    - xx. Exercise and lubricate dampers.

- b. Electrical

- i. Check interior lighting for proper operation and secure mounting
    - ii. Check exterior lighting for proper operation and secure mounting.

- iii. Check exit light
  - iv. Replace all burned out/defective bulbs
  - v. Check time for clocks or photocells for operation and time set.
  - vi. Check cover plates on exterior switched, receptacles and junction boxes. Repair or replace as needed.
  - vii. Check circuit breaker in panels for abnormal temperature.
  - viii. Inspect all flexible conduit and connectors for unusual conditions. Tighten or replace as needed.
  - ix. Sweep and remove all debris from electrical vaults and rooms.
- c. Emergency Generator
- i. Check engine oil. Add as needed.
  - ii. Check radiator coolant level. Add as needed.
  - iii. Check battery water level. Add as needed.
  - iv. Check belt condition and tension. Replace as needed.
  - v. Check fuel level.
  - vi. Check auto start time clock.
  - vii. Check transfer switches and switch contacts.
  - viii. Test run generator and check for unusual conditions.
  - ix. Note: Volts, Amps and Hertz.
  - x. Note: Press, temp and Hour meter
  - xi. On above ground diesel storage tanks, inspect the exterior of the tank for signs of structural damage, corrosion or leakage,
  - xii. On above ground diesel storage tanks secondary containment, inspect for signs of structural damage or leakage.
  - xiii. On above ground diesel storage tanks, check for staining or discoloration of grass in the vicinity of the tank and piping.
  - xiv. On all exposed piping systems, check for signs of structural damage or leakage.
  - xv. Check for any loose pipe connections and fuel filter connections.
  - xvi. The release detections response level shall be by visual inspection of the exterior of the tank and piping for signs of leakage.
  - xvii. On all integral piping systems, for both above and underground tanks, check for diesel oil in the interstitial space between the pipe and its secondary containment systems by removing the cap from the inspections tee.
  - xviii. For all storage tanks and/or integral piping systems with electronic monitoring devices, check for any alarm conditions that would indicate detention of discharge.
  - xix. For those locations with electronic monitoring, activate the units.
  - xx. Fill out log sheets for compliance with FDEP fuel tank inspections.
  - xxi. Record all findings and discrepancies.
  - xxii. Update the generator fuel storage tank inspection forms.



xxviii. Check and clear roof drains.

e. Grounds Maintenance

- i. Inspect the grounds and ensure that the services (ie: mowing, weeding, trimming, etc.) have been provided in accordance with the current grounds maintenance contract.

B. Bi -Annual

a. Facility Audit

- i. Inspect those items listed on the spreadsheet.
- ii. Check blue prints against actual. Edit building files prints.
- iii. Score each component with score of 1 thru 5 based on criteria on spreadsheet.
- iv. List estimated repair costs and year to repair/replace.
- v. Carry forward maintenance items to project list for budget planning,

**ATTACHMENT E-1  
TOWER INSPECTION REPORT**

Date/s: \_\_\_\_\_ Tower Crew: \_\_\_\_\_  
Customer: \_\_\_\_\_  
Site Name: \_\_\_\_\_ FCC #: \_\_\_\_\_  
Site Address: \_\_\_\_\_  
Latitude: \_\_\_\_\_ Longitude: \_\_\_\_\_  
Tower Type:      Guyed          SST          Monopole          Other: \_\_\_\_\_  
Tower Manufacturer: \_\_\_\_\_ Tower Height: \_\_\_\_\_  
Gate Lock Code: \_\_\_\_\_ Signs present on fence? \_\_\_\_\_

Site Deficiencies/Recommendations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cable Ice Bridge 1: Width/Length: \_\_\_\_\_ Condition: \_\_\_\_\_  
\_\_\_\_\_

Cable Ice Bridge 2: Width/Length: \_\_\_\_\_ Condition: \_\_\_\_\_  
\_\_\_\_\_

Cable Ice Bridge 3: Width/Length: \_\_\_\_\_ Condition: \_\_\_\_\_  
\_\_\_\_\_

Condition of Compound Fence: \_\_\_\_\_  
\_\_\_\_\_

Condition of Guy Anchor Fencing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Safety Climb System? \_\_\_\_\_ Condition? \_\_\_\_\_  
\_\_\_\_\_

Climbing Facilities? \_\_\_\_\_  
Deficiencies: \_\_\_\_\_  
\_\_\_\_\_

Lighting Type: \_\_\_\_\_ Tower Painted Red/White? \_\_\_\_\_

Beacons/Markers (#, location, height): \_\_\_\_\_

Lighting System: Red only: \_\_\_\_\_ Dual: \_\_\_\_\_ Side Marker only: \_\_\_\_\_

How is light cable attached to Tower? \_\_\_\_\_

FTW? (Model/Serial #/Location): \_\_\_\_\_

Controller (Model/Serial #/Locations) \_\_\_\_\_

Beacon Bulb Type: Strand: \_\_\_\_\_ Incandescent: \_\_\_\_\_ Flash Tube: \_\_\_\_\_ L.E.D. : \_\_\_\_\_  
Lighting Deficiencies: \_\_\_\_\_

Tower Finish: Painted: \_\_\_\_\_ Galvanized : \_\_\_\_\_ Black Iron: \_\_\_\_\_ Condition: \_\_\_\_\_  
Tower Rust: Heavy: \_\_\_\_\_ Medium: \_\_\_\_\_ Light: \_\_\_\_\_ None: \_\_\_\_\_  
Tower Base Condition: \_\_\_\_\_

Foundation Drainage? \_\_\_\_\_

Tower Leg: Hollow: \_\_\_\_\_ Solid: \_\_\_\_\_ Angle: \_\_\_\_\_ Size: \_\_\_\_\_

Tower Leg Condition: \_\_\_\_\_

Weep Holes? \_\_\_\_\_ Condition (clogged/missing) \_\_\_\_\_

Tower Bracing Type: K Z X Type: Round Angle  
(If Uniform) Horizontal Size O.D.: \_\_\_\_\_ Diagonal Size O.D.: \_\_\_\_\_

Leg length: \_\_\_\_\_ Width at Base: \_\_\_\_\_

Any Tower Member Deficiencies? (Bent, broken, holes) (Location/Concern): \_\_\_\_\_

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Lightning rod? \_\_\_\_\_ Highest point? \_\_\_\_\_ If not, recommendation? \_\_\_\_\_

Grounding present for: Tower Legs? \_\_\_\_\_ Building? \_\_\_\_\_ Generator? \_\_\_\_\_ Fencing? \_\_\_\_\_  
Deficiencies: \_\_\_\_\_

Grounds Cadwelded or Mechanical? \_\_\_\_\_  
Ground Wire Size: Tower: \_\_\_\_\_ Shelter: \_\_\_\_\_

Fence: \_\_\_\_\_ Generator: \_\_\_\_\_

Megger Model: \_\_\_\_\_ Potential/Main: \_\_\_\_\_  
Main/Shelter: \_\_\_\_\_ Main/Generator: \_\_\_\_\_  
Main/Fence: \_\_\_\_\_ Main/Tower Leg 1: \_\_\_\_\_  
Main/Tower Leg 2: \_\_\_\_\_ Main/Tower Leg 3 : \_\_\_\_\_

Cable Ladder On tower? \_\_\_\_\_ How many, What Legs?

Ladder 1: \_\_\_\_\_ leg/face. Total number of 3/8" Holes: \_\_\_\_\_ Available: \_\_\_\_\_  
Ladder 1: \_\_\_\_\_ leg/face. Total number of 3/4" Holes: \_\_\_\_\_ Available: \_\_\_\_\_  
Ladder 2: \_\_\_\_\_ leg/face. Total number of 3/8" Holes: \_\_\_\_\_ Available: \_\_\_\_\_  
Ladder 2: \_\_\_\_\_ leg/face. Total number of 3/4" Holes: \_\_\_\_\_ Available: \_\_\_\_\_  
Ladder 3: \_\_\_\_\_ leg/face. Total number of 3/8" Holes: \_\_\_\_\_ Available: \_\_\_\_\_  
Ladder 3: \_\_\_\_\_ leg/face. Total number of 3/4" Holes: \_\_\_\_\_ Available: \_\_\_\_\_

What Height Does cable ladder 1 end on tower? \_\_\_\_\_ Ladder deficiencies: \_\_\_\_\_

What Height Does cable ladder 2 end on tower? \_\_\_\_\_ Ladder deficiencies: \_\_\_\_\_

What Height Does cable ladder 3 end on tower? \_\_\_\_\_ Ladder deficiencies: \_\_\_\_\_

Proper Weatherproofing? \_\_\_\_\_

Cable Attachment Deficiencies? (Bfly, Snapin, Coax Block, 90mph tape, tie wraps, wrap lock, etc.) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## **Attachment 2**

### **Temporary Construction Easement**

Prepared by & Return to:  
Ross Hering  
Palm Beach County  
Property & Real Estate Management Division  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605

PCN: portion of 00-42-43-27-05-076-0010

### TEMPORARY CONSTRUCTION EASEMENT

**THIS EASEMENT** ("Easement") made \_\_\_\_\_ 20\_\_ by and between the **CITY OF BOCA RATON**, a municipal corporation of the State of Florida ("City") and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("County").

### RECITALS

**Whereas**, the City is the owner of the land described in **Exhibit "A"** attached hereto (referred to hereafter as the "Easement Premises" or the "City Property"); and

**Whereas**, the County and the City have entered into an Interlocal Agreement dated \_\_\_\_\_ 20\_\_ (R\_\_\_\_\_) ("Interlocal Agreement") providing, among other things, for the County's development and construction of a 400' self-supported public safety radio tower, equipment shelter and associated improvements (collectively referred hereafter to as the "Tower") on the City Property, which is incorporated herein by reference with respect to applicable terms and provisions; and

**Whereas**, the County requires a temporary construction easement ("Easement") in order to proceed with the development and construction of the Tower.

**Now, therefore**, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the City in hand paid by said County, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City does hereby grant to the County a non-exclusive temporary construction easement over, under, across and upon the Easement Premises.

THE CONDITIONS OF THIS TEMPORARY CONSTRUCTION EASEMENT ARE SUCH THAT:

1. **Conditions to Right of Usage**. The County shall provide the City with all construction plans of any Tower improvements within the Easement Premises. The County represents and warrants that the Tower shall be designed and constructed wholly

within the confines of the Easement Premises and as provided in the design and construction documents.

2. **Use Limitation.** The rights granted pursuant to this Easement shall be limited to the right to utilize the Easement Premises to develop and construct the Tower in accordance with the plans and all permits and applicable statutes, rules, regulations, codes and ordinances. Further, access to the Easement Premises is limited to the County's employees, consultants, contractors, agents and others who are directly associated with the development and construction of the Tower.

The County acknowledges and agrees that the rights granted by this Easement are and shall be strictly limited to those specifically granted herein and that County may not utilize the Easement Premises for any purpose not specifically permitted hereby.

3. **Term and Termination.** The term of this Easement shall extend until the earlier of one of the following: 1) upon final completion (as defined in the Interlocal Agreement) of the construction work of the Tower and the possession of the Tower by the City or 2) until County fails to construct or abandons the Tower. The term may be extended by mutual agreement of the parties. The County shall promptly deliver to the City a release of easement, in a form satisfactory to City, in the event: (1) County does not construct the Tower, (2) in the event the County abandons the Tower; or (3) upon final completion of the Tower and possession of the Tower by the City.

This Easement shall terminate automatically if the County fails to complete the Tower in accordance with the Interlocal Agreement and the design and construction documents.

4. **Diligent Prosecution.** The County and the City agree to diligently pursue their respective responsibilities hereunder to completion.

5. **Prohibition Against Liens.** Neither the City's nor the County's interest in the Easement Premises shall be subject to liens arising from the County's or any other person or entity's use of the Easement Premises, or exercise of the rights granted hereunder. The County shall promptly cause any lien imposed against the Easement Premises to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes. In addition, the County shall require the County's general contractor to furnish a payment and performance bond in accordance with Section 255.05, Florida Statutes, naming City as a dual obligee along with the County. Any required payment or performance bond shall be recorded in the Official Records of Palm Beach County and certified copies delivered to City and County prior to commencement of construction.

6. **Insurance.** The County acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes that the County is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.



The County shall require its contractors, subcontractors and all persons performing work upon the Easement Premises to provide, maintain and keep in full force and effect Automobile Liability and General Liability Insurance with coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability coverage and Workers Compensation covering all employees in accordance with Chapter 440, Florida Statutes. The General Liability policy shall include coverage for the Easement Premises, Operations, Contractual Liability, Independent Contractors Contractual Liability, X, C, U and Broad Form Property Damage Liability coverages. The County may lower the coverage limits for subcontractors providing the County's contractor agrees to provide insurance for the difference between the subcontractor's reduced coverage and the amounts required by this paragraph.

Except for Workers Compensation and Automobile, all insurance policies shall name the City as Additional Insured. Such insurance shall be underwritten by an insurance company licensed to do business in the State of Florida and approved by the City.

The County shall provide a Certificate of Insurance and endorsement to the City evidencing such insurance coverage prior to the commencement of any work pursuant to this Easement. Such Certificate and endorsement shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

7. **No Dedication.** The grant of Easement contained herein is solely for the use and benefit of the County, its employees, agents, contractors and others associated therewith, and is not intended, and shall not be construed as a dedication to the public of any portion of the Easement Premises for public use.

8. **Time of Essence.** The parties expressly agree that time is of the essence in this Easement.

9. **Matters of Record.** The County hereby accepts this Easement on the City Property "As-Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the City Property, and all other easements, restrictions, conditions, encumbrances and other matters of record.

10. **Palm Beach County Office of the Inspector General.** The County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County and City contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County or the City, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm

Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

11. **Construction.** The terms of this Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

12. **Entire Understanding.** This Easement (together with the applicable provisions of the Interlocal Agreement) represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Easement.

13. **Notices.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Property & Real Estate Management Division  
Attn: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Telephone: 561-233-0217  
Fax: 561-233-0210

With a copy to:

Palm Beach County Attorney's Office  
Attn: Real Estate  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Telephone: 561-355-2225  
Fax: 561-355-4398

and

City: City of Boca Raton  
C/O City Manager  
201 W. Palmetto Park Rd.  
Boca Raton, FL 33432

Any party may from time to time change the address at which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

14. **Default.** In the event the County fails or refuses to perform any term, covenant, or condition of this Easement for which a specific remedy is not set forth in this Easement, the City shall, in addition to all other remedies provided at law or in equity, have the right of specific performance thereof.

15. **Governing Law & Venue.** This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

16. **Prohibition Against Assignment.** This Easement may not be assigned by the County.

17. **No Third Party Beneficiary.** No provision of this Easement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Easement, including but not limited to any citizens of the County or the City or employees of the County or the City.

18. **Waste or Nuisance.** The County shall not commit or suffer to be committed any waste upon the City Property or any nuisance or other act or thing which may result in damage or depreciation of value of the City Property or which may affect City's fee interest in the City Property. Upon notice by the City to the County of any waste or nuisance, County shall have an opportunity to cure the issue.

19. **Governmental Regulations.** The County shall secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the County or its use of the City Property pursuant to this Easement and the Interlocal Agreement, and shall faithfully observe in the use of the City Property all applicable municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the County's use of the City Property as set forth herein.

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**EXHIBIT "A"**  
**(Easement Premises or City Property)**

BEING A PORTION OF TRACT 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT 30, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, SAID PUBLIC RECORDS; THENCE N89°36'40"E, ALONG THE SOUTH LINE OF TRACTS 30 THROUGH 35, SAID BLOCK 76, A DISTANCE OF 1740.38 FEET; THENCE N00°23'20"W, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING; THENCE N00°00'00"E, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, ALONG A LINE 155.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.00 FEET; THENCE S00°24'15"E ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE S89°36'40"W ALONG A LINE 55.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.474 ACRES MORE OR LESS.

**TOGETHER WITH** INGRESS AND EGRESS TO THE ABOVE DESCRIBED EASEMENT PREMISES SHALL BE ON, OVER, ACROSS AND THROUGH THE FOLLOWING DESCRIBED PARCEL:

BEING A PORTION OF TRACTS 30 THROUGH 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT 30, THENCE N89°36'40"E, ALONG THE SOUTH LINE OF SAID TRACT 30, A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE N00°21'11"W, ALONG A LINE 25.65 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 30, A DISTANCE OF 55 FEET; THENCE N89°36'40"E, ALONG A LINE 55 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1920.40 FEET; THENCE N00°24'15"W ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, A DISTANCE OF 35.00 FEET; THENCE S00°24'15"E, ALONG THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 155.50 FEET TO THE SOUTH LINE OF SAID TRACT 35; THENCE S89°36'40"W, ALONG THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1955.45 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.550 ACRES MORE OR LESS

## **Attachment 3**

# **Access and Management Easement Agreement**

Prepared by & Return to:  
Ross Hering  
Palm Beach County  
Property & Real Estate Management Division  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605

PCN: portion of 00 42 43 27 05 076 0010

## ACCESS AND MANAGEMENT EASEMENT AGREEMENT

**THIS EASEMENT (“Easement”)** made \_\_\_\_\_ by and between the **CITY OF BOCA RATON**, a municipal corporation of the State of Florida (“City”) and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“County”).

### RECITALS

**Whereas**, City is the owner of the land described in **Exhibit “A”** attached hereto (referred to hereafter as the “Easement Premises” or “City Property”); and

**Whereas**, County and City have entered into an Interlocal Agreement dated \_\_\_\_\_ 20\_\_ (R \_\_\_\_\_) (“Interlocal Agreement”) providing, among other things, for County’s development, construction and maintenance of a 400’ self-supported public safety radio tower, equipment shelter and associated improvements (collectively referred to hereafter as the “Tower”) on the City Property, which is incorporated herein by reference with respect to applicable terms and provisions; and

**Whereas**, the County requires an access and maintenance management easement in order to access the Easement Premises and to manage the repairs, renewal, replacement, maintenance, and overall operation of the Tower (“Easement”).

**Now, therefore**, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the City in hand paid by said County, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City does hereby grant to the County a non-exclusive access and maintenance management easement for access, ingress and egress to the Easement Premises and to manage the repairs, renewal, replacement, maintenance and overall operations of the Tower over, under, upon and across the Easement Premises, upon the conditions hereinafter set forth.



1. **Use Limitation.** The County shall manage the overall maintenance and operations of the Tower, as specifically described in the Interlocal Agreement, including but not limited to routine, regular, and emergency repairs and replacements of the Tower improvements as defined and set forth in the Interlocal Agreement and the tower use agreements between the County, the City and the other tower users. The County shall use reasonable efforts to maintain the Tower in good repair and operational condition on a 24 hours per day, 7 days per week, 365 days per year basis, however, the County has no responsibility as to system downtime or its effects on any authorized user.

Access to the Easement Premises is limited to the County's employees, consultants, contractors, and subcontractors who are directly associated with the repairs, renewal, replacement, maintenance, and overall operation of the Tower.

The rights granted by this Easement are and shall be strictly limited to those specifically granted herein and that County may not utilize the Easement Premises for any purpose not specifically permitted hereby.

2. **Term and Termination.** The term of this Easement shall commence upon execution of this Easement by the County and City (Effective Date) and shall extend until the earlier of one of the following: 1) the duration of the Interlocal Agreement and all renewals thereof; or 2) if, as provided in Section 10.03 of the Interlocal Agreement, the City declines to replace or restore the Tower after a casualty loss, and the County elects to do so, the date the County ceases to use the Tower as an active component of its public safety communications system. The City and County can mutually agree to extend this Easement for any duration acceptable to both parties.

This Easement shall terminate automatically if the County fails to complete the Tower in accordance with the Interlocal Agreement and the design and construction documents.

The County shall promptly deliver to the City a release of easement, in a form satisfactory to City, in the event: (1) County does not construct the Tower, (2) the County abandons the Tower or ceases to use the Tower as an active component of its public safety communications system; or (3) of termination of the Interlocal Agreement.

3. **Diligent Prosecution.** The County and the City agree to diligently pursue their respective responsibilities hereunder to completion.

4. **Prohibition Against Liens.** Neither the City's nor the County's interest in the Easement Premises shall be subject to liens arising from the County's or any other person or entity's use of the Easement Premises, or exercise of the rights granted hereunder. County shall promptly cause any lien imposed against the Easement Premises to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes. In addition, the County shall require the County's general contractor to furnish a payment and performance bond in accordance with Florida Statutes Section 255.05 naming City as a Dual Obligee along with County. Any required payment or performance bond shall be delivered to City prior to commencement of

construction.

5. **Insurance.** The County acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes that the County is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

The County shall require its contractors, subcontractors and all persons performing work upon the Easement Premises to provide, maintain and keep in full force and effect Automobile Liability and General Liability Insurance with coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability coverage and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the Easement Premises, Operations, Contractual Liability, Independent Contractors Contractual Liability, X, C, U and Broad Form Property Damage Liability coverages. The County may lower the coverage limits for subcontractors providing the County's contractor agrees to provide insurance for the difference between the subcontractor's reduced coverage and the amounts required by this paragraph.

Except for Workers Compensation and Automobile, all insurance policies shall name the City as Additional Insured. Such insurance shall be underwritten by an insurance company licensed to do business in the State of Florida and approved by the City.

The County shall provide a Certificate of Insurance and endorsement to the City evidencing such insurance coverage prior to the commencement of any work pursuant to this Easement. Such Certificate and endorsement shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

6. **No Dedication.** The grant of Easement contained herein is solely for the use and benefit of the County, its employees, contractors and subcontractors who are directly associated with the repairs, renewal, replacement, maintenance, and overall operation of the Tower, and is not intended, and shall not be construed as a dedication to the public of any portion of the Easement Premises for public use.

7. **Time of Essence.** The parties expressly agree that time is of the essence in this Easement.

8. **Matters of Record.** The County hereby accepts this Easement on the City Property "As-Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the City Property, and all other easements, restrictions, conditions, encumbrances and other matters of record.

9. **Palm Beach County Office of the Inspector General.** The County has established the Office of the Inspector General in Palm Beach County Code, Section 2-

421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County and City contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County or the City, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

10. **Construction.** The terms of this Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

11. **Entire Understanding.** This Easement (together with the applicable provisions of the Interlocal Agreement) represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Easement.

12. **Notices.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Property & Real Estate Management Division  
Attn: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Telephone: 561-233-0217  
Fax: 561-233-0210

With a copy to:

Palm Beach County Attorney's Office  
Attn: Real Estate  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Telephone: 561-355-2225  
Fax: 561-355-4398

and

City: City of Boca Raton  
C/O City Manager  
201 W. Palmetto Park Rd.  
Boca Raton, FL 33432

Any party may from time to time change the address at which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

13. **Default.** In the event the County fails or refuses to perform any term, covenant, or condition of this Easement for which a specific remedy is not set forth in this Easement, the City shall, in addition to all other remedies provided at law or in equity, have the right of specific performance thereof.

14. **Governing Law & Venue.** This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

15. **Prohibition Against Assignment.** This Easement may not be assigned by the County without the City's written approval.

16. **No Third Party Beneficiary.** No provision of this Easement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Easement, including but not limited to any citizens of the County or the City or employees of the County or the City.

17. **Waste or Nuisance.** The County shall not commit or suffer to be committed any waste upon the City Property or any nuisance or other act or thing which may result in damage or depreciation of value of the City Property or which may affect City's fee interest in the City Property. Upon notice by the City to the County of any waste or nuisance, County shall have an opportunity to cure the issue.

18. **Governmental Regulations.** The County shall secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force,

pertaining to the County or its use of the City Property in accordance with this Easement and the Interlocal Agreement, and shall faithfully observe in the use of the City Property all applicable municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the County's use of the City Property as set forth herein.

**Remainder of this page intentionally left blank**





**EXHIBIT "A"**  
**(Easement Premises)**

BEING A PORTION OF TRACT 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT 30, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, SAID PUBLIC RECORDS; THENCE N89°36'40"E, ALONG THE SOUTH LINE OF TRACTS 30 THROUGH 35, SAID BLOCK 76, A DISTANCE OF 1740.38 FEET; THENCE N00°23'20"W, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING; THENCE N00°00'00"E, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, ALONG A LINE 155.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.00 FEET; THENCE S00°24'15"E ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE S89°36'40"W ALONG A LINE 55.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 35, A DISTANCE OF 205.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.474 ACRES MORE OR LESS.

**TOGETHER WITH** INGRESS AND EGRESS TO THE ABOVE DESCRIBED EASEMENT PREMISES SHALL BE ON, OVER, ACROSS AND THROUGH THE FOLLOWING DESCRIBED PARCEL:

BEING A PORTION OF TRACTS 30 THROUGH 35, BLOCK 76, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 17, TOWNSHIP 47 SOUTH, RANGE 42 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT 30, THENCE N89°36'40"E, ALONG THE SOUTH LINE OF SAID TRACT 30, A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE N00°21'11"W, ALONG A LINE 25.65 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 30, A DISTANCE OF 55 FEET; THENCE N89°36'40"E, ALONG A LINE 55 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1920.40 FEET; THENCE N00°24'15"W ALONG A LINE 35.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 100.50 FEET; THENCE N89°36'40"E, A DISTANCE OF 35.00 FEET; THENCE S00°24'15"E, ALONG THE EAST LINE OF SAID TRACT 35, A DISTANCE OF 155.50 FEET TO THE SOUTH LINE OF SAID TRACT 35; THENCE S89°36'40"W, ALONG THE SOUTH LINE OF SAID TRACTS 30 THROUGH 35, A DISTANCE OF 1955.45 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.550 ACRES MORE OR LESS.