

34-9

Agenda Item #:

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

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<b>Meeting Date:</b>	<b>May 20, 2008</b>	<input checked="" type="checkbox"/> <b>Consent</b>	<input type="checkbox"/> <b>Regular</b>
		<input type="checkbox"/> <b>Ordinance</b>	<input type="checkbox"/> <b>Public Hearing</b>

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<b>Department:</b>	<b>Facilities Development &amp; Operations</b>
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**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to:**

**A) adopt** a resolution authorizing the Town of Juno Beach to install a wireless internet node at the Juno Beach Pier for a term of three (3) years, with the right to three (3) one (1) year extensions at an annual rent of \$10.00.

**B) approve** a Lease Agreement with the Town of Juno Beach.

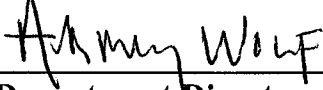

**Summary:** This Lease Agreement will allow for the installation of a wireless internet communication node at the Juno Beach Pier and will improve wireless communications for both the Town's Public Safety Department and residents of the Town. The wireless node is to be installed externally on the Concession Building located at the west end of the Pier. The Concession Building is currently being operated by Dania Pier Management Corp. under a Concessionaire Service Agreement with the County (R2007-2256). Dania Pier Management has consented to the Town's installation of the wireless node on the exterior of the Concession Building. The initial term of the Lease Agreement is three (3) years, with three (3) extension options, each for a period of one (1) year at an annual rent of ten dollars (\$10.00). The County can terminate the Lease at any time after the first year upon ninety (90) days notice. **(PREM) District 1** **(JMB)**

**Background and Justification:** The installation of this wireless node will improve communications services for the Town's Public Safety Department and will also provide wireless service to the Town residents. The node will be installed and maintained at the sole expense of the Town of Juno Beach.

**Attachments:**

1. Location Map
2. Resolution
3. Lease Agreement

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<b>Recommended By:</b>		<b>5/1/08</b>
	<b>Department Director</b>	<b>Date</b>
<b>Approved By:</b>		<b>5/9/08</b>
	<b>County Administrator</b>	<b>Date</b>

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(10.00)</u>	<u>(10.00)</u>	<u>(10.00)</u>	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(10.00)</u>	<u>(10.00)</u>	<u>(10.00)</u>	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes \_\_\_\_\_ No X

Budget Account No: Fund 0001 Dept 410 Unit 4240 Object 6225  
Program \_\_\_\_\_

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

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

## III. REVIEW COMMENTS

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

James B. 5-7-08  
OFMB CN 5/5/08

Jim J. Jacoby 5/8/08  
Contract Development and Control  
E. James 5/8/08

### B. Legal Sufficiency:

James Brubaker 5/8/08  
Assistant County Attorney

This lease complies with  
our review requirements.

### C. Other Department Review:

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

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

C



**ATTACHMENT #1**

**RESOLUTION NO. 200\_\_**

**RESOLUTION OF THE BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,  
AUTHORIZING THE LEASE OF SPACE ON CERTAIN REAL  
PROPERTY TO THE TOWN OF JUNO BEACH, PURSUANT  
TO FLORIDA STATUTE SECTION 125.38; AND PROVIDING  
FOR AN EFFECTIVE DATE.**

**WHEREAS**, The Town of Juno Beach, a municipal corporation ("Town"), has made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County lease space on certain real property owned by Palm Beach County to Town for use by Town for installation of a wireless node to provide wireless services for the Town's Public Safety Department and Town residents;

**WHEREAS**, the Board of County Commissioners of Palm Beach County hereby finds that the aforementioned use constitutes a use for the community interest and welfare, such real property is required for such use and such real property is not needed for County purposes.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**Section 1.   Recitals.**

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

**Section 2.   Authorization to Lease Real Property.**

The Board of County Commissioners of Palm Beach County shall lease to Town, pursuant to the Lease attached hereto and incorporated herein by reference, for a term of three (3) years with the right to three one-year extensions and an annual rental of Ten and no/100 Dollars (\$10.00), the space on the real property identified in such Lease for the use identified above.

**Section 3.   Conflict with Federal or State Law or County Charter.**

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

**Section 4.   Effective Date.**

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner \_\_\_\_\_ whomoved  
its adoption. The Motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a  
vote, the vote was as follows:

COMMISSIONER ADDIE L. GREENE, CHAIRPERSON  
COMMISSIONER JOHN F. KOONS, VICE CHAIR  
COMMISSIONER KAREN T. MARCUS  
COMMISSIONER ROBERT J. KANJIAN  
COMMISSIONER MARY MCCARTY  
COMMISSIONER BURT AARONSON  
COMMISSIONER JESS R. SANTAMARIA

The Chair thereupon declared the resolution duly passed and adopted this  
\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

PALM BEACH COUNTY, a political  
subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK  
CLERK & COMPTROLLER

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

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

By: John H. Woff  
Department Director

**PALM BEACH COUNTY**

**LEASE AGREEMENT**

**between**

**PALM BEACH COUNTY**

**A POLITICAL SUBDIVISION OF THE**

**STATE OF FLORIDA**

**(County)**

**and**

**THE TOWN OF JUNO BEACH**

**(Tenant)**

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APP.032708.DOC

**ATTACHMENT #3**

## AGREEMENT OF LEASE

THIS LEASE made and entered into \_\_\_\_\_, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County" and THE TOWN OF JUNO BEACH, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "Tenant".

### WITNESSETH:

WHEREAS, County is the owner of certain real property as more specifically described hereinafter which Tenant desires to lease space thereon for the installation of a wireless node; and

WHEREAS, Tenant wishes to install the wireless node in order to provide wireless service to Tenant's Public Safety Department and Tenant's residents; and

WHEREAS, County is willing to lease space on such property to Tenant for the installation of a wireless node;

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I BASIC LEASE PROVISIONS

#### Section 1.01 Premises.

County is the owner of a fishing pier located 3.6 miles south of the Jupiter Inlet and commonly known as the Juno Beach Pier (the "Pier"). The fishing pier structure is approximately 22 feet wide, 996 feet long with a terminal platform approximately 34 feet long and 62 feet wide. There is a 660 square foot building (the "Concession Building") located on the west end of the Pier.

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Tenant to be observed and performed, the County demises and leases to Tenant, and Tenant rents from County space on the exterior of the Concession Building for the installation of a wireless node (the "Tenant's Equipment"), the approximate location of which is depicted in Exhibit "A" attached hereto and made a part hereof. Upon installation of Tenant's Equipment, the leased space shall be defined as the space occupied by Tenant's Equipment (the "Premises"). The Concession Building is currently being leased to Dania Pier Management Corp. ("Dania") under the Concessionaire Service Agreement with the County dated December 17, 2007 (R2007-2256) (the "CSA"). Dania has represented to County it has no objection to Tenant's use of the exterior of the Concession Building. Notwithstanding anything to the contrary contained herein, the physical and financial responsibility for the Concession Building as set forth in the CSA shall remain unchanged with the exception that Tenant shall be responsible for repair of any damage to Concession Building or Pier caused by Tenant, its employees and contractors.

Provided that Tenant is not in default of any term, covenant, condition or payment of Rent under this Lease, County will use its best efforts to make any future leases of the Concession Building subject to this Lease.

#### Section 1.02 Length of Term and Commencement Date.

This Lease shall be effective upon the Effective Date as defined hereinafter. The term of this Lease shall commence upon the Effective Date (the "Commencement Date"), and

shall extend for a period of three (3) years thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Lease. The term of this Lease may be modified or extended with the mutual consent of the parties.

**Section 1.03 Option to Renew.**

County hereby grants to Tenant, so long as Tenant shall not be in default of any term, covenant, condition or payment of Rent under this Lease, the right and option to renew the Term of this Lease for three (3) successive period(s) of one (1) year each under the same terms and conditions of this Lease with the first of the three (3) successive one (1) year renewal periods commencing upon the expiration of the initial Term of this Lease. Tenant shall exercise its option to renew if at all, by written notice to the County received by the County on or before sixty (60) days prior to the expiration of the initial Term of this Lease or any renewal thereof, as applicable. Failure of Tenant to duly and timely exercise its option to renew the Term of this Lease shall be deemed a waiver of Tenant's right to said option and all further options.

**Section 1.04 Termination Rights.**

Tenant shall have the right to terminate this Lease for any reason upon thirty (30) days prior written notice to County.

**ARTICLE II  
RENT**

**Section 2.01 Annual Rent.**

Tenant shall pay County an annual net Rent of Ten (\$10.00) Dollars (the "Annual Rent"), payable without notice on the Commencement Date and each subsequent anniversary thereof. Annual Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Finance Department, Revenue Section, P.O. Box 4036, West Palm Beach, Florida 33402.

**Section 2.02 Assessments and Personal Property Taxes.**

Tenant shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against County. Tenant shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, Tenant's leasehold interest in the Premises, Tenant's Alterations or personal property located on the Premises.

**Section 2.03 Additional Rent.**

Any and all sums of money or charges required to be paid by Tenant under this Lease other than Annual Rent shall be considered "Additional Rent," whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to County with regards to Annual Rent.

**Section 2.04 Unpaid Fees, Holdover.**

In the event Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the rate established from time to time by the Board of County Commissioners [currently set at one and one-half percent (1½ %) per month] shall accrue against the delinquent payment(s) from the date due until the date payment is received by County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Lease for default in the payment of rentals, fees, charges, and payments due to County pursuant to this



Lease or from enforcing any other provisions contained herein or implied by law. In the event Tenant shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Lease, Tenant shall be liable to County for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to County during the entire period of such holdover, double the actual fair market rental value of the Premises, pursuant to Florida State Statute 83.06.

**Section 2.05 Accord and Satisfaction.**

In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Lease or under the law.

**ARTICLE III  
CONDITION OF LEASED PREMISES, ALTERATIONS**

**Section 3.01 Acceptance of Premises by Tenant.**

Tenant certifies that Tenant has inspected the Premises and accepts same "As Is", in its existing condition together with any defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Tenant further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Premises, including, without limitation, the physical condition of the Premises, any improvements or equipment located thereon, if any, or the suitability thereof for Tenant's intended use thereof. No repair work, alterations, or remodeling of the Premises is required to be done by County as a condition of this Lease. Tenant agrees to perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Premises for the lawful use of the Premises by Tenant as specified in Section 4.01 of this Lease.

**Section 3.02 Construction of Project.**

Tenant shall be solely responsible for any and all improvements, repairs alterations or other work necessary to render the Premises suitable for Tenant's intended use. Tenant shall design and construct such improvements at Tenant's sole cost and expense, in accordance with the requirements of this Lease and in full compliance with applicable building codes and zoning regulations. All of Tenant's construction and improvements shall be made and performed in a good and workmanlike manner and shall be diligently performed to completion.

**Section 3.03 Alterations.**

Tenant shall not make any improvements, additions, modifications or alterations to the Premises costing in excess of seven hundred and fifty (\$750.00) dollars (hereinafter collectively referred to as "Alterations"), without the prior written consent of County in each instance which consent may be granted or withheld in County's sole and absolute discretion. Tenant shall submit detailed plans and specifications for Tenant's Equipment and any other Alterations to County for County's written approval prior to installing or commencing work on same. Tenant agrees and acknowledges that all work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of Tenant, and not for the benefit of County, such work being nevertheless subject to each and every provision of this Lease. All work done by Tenant shall be done in a good and workmanlike manner and shall be diligently prosecuted to completion strictly in accordance with the approved plans and specifications therefor. Upon giving its approval for any work or Alterations, County may specify whether the Alteration is to be removed by Tenant, at Tenant's sole cost and expense, upon the termination or expiration of this Lease.

**Section 3.04 Construction Bonds.**

Tenant shall ensure that all improvements are constructed to completion in accordance with the approved plans therefor and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Tenant, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements to the Tenant's Premises, a bond, drawn in a form and issued by a company approved by County, guaranteeing compliance by Tenant of its obligations arising hereunder.

**Section 3.05 Contractor Requirements.**

For improvements costing in excess of \$20,000, Tenant shall also require contractors to furnish for the benefit of County a payment and performance bond to County equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. Tenant shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County may reasonably require. County may require additional insurance for any alterations or improvements approved hereunder, in such amount as County reasonable determines to be necessary.

**Section 3.06 No Liens.**

Tenant covenants and agrees that nothing contained in this Lease shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by County, Tenant shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that County's interest shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Tenant's Premises or other County property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within 10 days from the date of filing. In the event that Tenant fails to satisfy or transfer such claim within said 10 day period, County may do so and thereafter charge Tenant, and Tenant shall promptly pay to County upon demand, as Additional Rent, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Tenant agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

**ARTICLE IV****CONDUCT OF BUSINESS AND USE OF PREMISES BY TENANT****Section 4.01 Use of Premises.**

Tenant shall use and occupy the Premises solely and exclusively for installation of Tenant's Equipment as depicted on Exhibit "B" attached hereto. Tenant shall not use, permit, or suffer the use of the Premises for any other purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion.

**Section 4.02 Waste or Nuisance.**

Tenant shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises or which results in an unsightly condition.

**Section 4.03 Governmental Regulations.**

Tenant shall, at Tenant's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Tenant or its use of the Premises, or the Premises generally. Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents on the Premises or any adjacent land in any manner not permitted by law. Tenant shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section.

**Section 4.04 Non-Discrimination.**

Tenant shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation or disability with respect to any activity occurring on the Premises or under this Lease.

**Section 4.05 Surrender of Premises.**

Upon termination or expiration of this Lease, Tenant, at its sole cost and expense, shall (i) remove Tenant's Equipment and any other personal property, removable fixtures, equipment and Alterations from the Premises, (ii) perform whatever work is necessary to restore the Premises, Concession Building, and Pier to the same condition the Premises, Concession Building, and Pier were in as of the Commencement Date of this Lease, and (iii) surrender the Premises to the County. Upon surrender of the Premises, title to any and all remaining improvements, Alterations or property within the Premises shall vest in County.

**Section 4.06 Hazardous Substance**

Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Tenant's operations, on the Premises or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Tenant shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by Tenant or any third party, shall be reported to County immediately upon the knowledge thereof by Tenant. Tenant shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Premises or emanating from the Premises onto adjacent lands, as a result of the use and occupancy of the Premises by Tenant, or Tenant's agents, licensees, invitees, subcontractors or employees.

Tenant hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials upon the Premises or violation of this provision. Tenants responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the

term hereof or otherwise. While this provision establishes contractual liability of Tenant, it shall not be deemed to alter or diminish any statutory or common law liability of Tenant.

Tenant acknowledges that County would not have entered into this Lease without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or termination of this Lease.

## **ARTICLE V REPAIRS AND MAINTENANCE OF PREMISES**

### **Section 5.01 Responsibility of County and Tenant.**

County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Premises. Tenant shall keep and maintain Tenant's Equipment, portions of the Premises, and all Alterations or improvements constructed hereinafter on or about the Premises, in good condition and repair, at Tenant's sole cost and expense.

### **Section 5.02 County's Right to Inspect.**

County or County's agents shall have the right, upon reasonable prior notice to Tenant (except that no notice need be given in case of emergency) to enter the Premises for the purpose of inspection of the Premises and the improvements located thereon. Any such entrance into the Premises shall be conducted by County in a manner calculated to minimize interference with or disruption of Tenant's operations within the Premises.

## **ARTICLE VI UTILITIES**

Tenant shall be solely responsible for and promptly pay all costs and expenses relating to providing a telephone line if such is required for operation of Tenant's Equipment. Due to the minimal amount of electricity required for the operation of Tenant's Equipment, Tenant shall be allowed to connect to the electrical service provided to the Concession Building, provided, however, that such use by Tenant shall be limited to 10 amps @ 110 volts. Tenant shall be responsible for all costs and expenses for any damage resulting from Tenant's use of the electrical service to the Concession Building and Tenant's installation of the telephone line. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Premises.

## **ARTICLE VII INSURANCE**

Without waiving the right to sovereign immunity as provided by *S.768.28 Florida Statutes*, Tenant acknowledges and represents that Tenant is insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event Tenant maintains third-party Commercial General Liability and Business Auto Liability, Tenant agrees to maintain said insurance policies at limits not less than \$500,000 each occurrence. Tenant agrees to add the County as an "Additional Insured" with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or similar endorsement, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents", c/o Property & Real Estate Management Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5605. Tenant agrees the Additional Insured endorsement provides coverage on a primary basis. Claims-

bill indemnification style coverage shall not be considered third-party liability for the purpose of this paragraph.

Tenant agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, Tenant agrees to provide a statement or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve Tenant of its liability and obligations under this Lease.

Tenant agrees its general liability, automobile liability, and property insurance shall be primary as respects to any coverage afforded to or maintained by County.

#### **ARTICLE VIII INDEMNIFICATION**

It is understood and agreed that Tenant is merely a Tenant of County and is an independent contractor and is not an agent, servant or employee of County or its Board of County Commissioners. Tenant shall to the extent permitted by law, indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Lease including without limitation those arising as a result of Tenant's use and occupancy of the Premises, any personal injury, loss of life, environmental contamination, and/or damage to or loss of Tenant's Equipment or other property owned by Tenant, sustained in or about the Premises by reason of, during, or as a result of the use and occupancy of the Premises by the Tenant, its agents, employees, licensees, invitees and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event County shall be made a party to any litigation commenced against Tenant or by Tenant against any third party, then Tenant shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Notwithstanding anything herein to the contrary, Tenant shall not be obligated to indemnify or hold harmless County for matters which are judicially determined to be attributable to the negligent or intentional acts or omissions of County. Tenant recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the County in support hereof in accordance with the laws of the State of Florida. This section shall survive the termination of this Lease. Nothing contained herein shall be construed as a waiver of sovereign immunity or the statutory limits of liability set forth in Section 768.28, Florida Statutes.

#### **ARTICLE IX DESTRUCTION OF PREMISES**

In the event the Premises shall be destroyed or damaged or injured by fire or other casualty during the Term of this Lease, Tenant shall not be responsible for restoring the Premises. In the event the Concession Building, the Pier, and/or the Premises shall be partially or completely destroyed or damaged or injured by fire or other casualty during the Term of this Lease, County shall not be obligated to restore the Concession Building, the Pier, and/or the Premises.

**ARTICLE X  
ASSIGNMENT AND SUBLETTING**

**Section 10.01 Consent Required.**

Tenant may not assign, mortgage, pledge or encumber this Lease in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Premises, without prior written consent of County, which may be granted or withheld at County's absolute discretion. Any attempted assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of Lease. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

**ARTICLE XI  
DEFAULT**

**Section 11.01 Default by Tenant.**

The occurrence of any one or more of the following shall constitute an Event of Default by Tenant under this Lease: (i) Tenant's failure to pay any sum due hereunder within fifteen (15) days after the same shall become due; (ii) Tenant's failure to perform or observe any of the agreements, covenants or conditions contained in the Lease on Tenant's part to be performed or observed if such failure continues for more than thirty (30) days after notice from County unless the same is of such a nature that it can not reasonably be cured within such a time period, in which event Tenant shall be entitled to a reasonable period under the circumstances; or (iii) Tenant's vacating or abandoning the Premises. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to give Tenant notice that County intends to terminate this Lease upon a specified date not less than thirty (30) days after the date notice is received by Tenant, and this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the thirty (30) day period and the County is so notified, this Lease will continue.

**Section 11.02 Default by County.**

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

**ARTICLE XII  
ANNUAL BUDGETARY FUNDING**

This Lease and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. Notwithstanding anything in this Lease to the contrary, after the first anniversary of the Effective Date, County may cancel this Lease for any reason upon ninety (90) days prior written notice to Tenant.

**ARTICLE XIII  
QUIET ENJOYMENT**

Upon payment by the Tenant of the Rent, Additional Rent, and other charges herein provided, and upon the observance and performance of all the covenants, terms and

conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Lease.

#### ARTICLE XIV MISCELLANEOUS

##### Section 14.01 Entire Agreement.

This Lease and any Exhibits attached thereto, constitute all agreements, conditions and understandings between County and Tenant concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Lease shall be binding upon County or Tenant unless reduced to writing and signed by them.

##### Section 14.02 Notices.

All notices, consents, approvals, 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 such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national 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 designate the following addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Property and Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605  
Telephone 561-233-0217  
Fax 561-233-0210

with a copy to:

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

(b) If to the Tenant at:

Town of Juno Beach  
Attn: Town Manager  
340 Ocean Drive  
Juno Beach, FL 33408  
Telephone 561-626-1122  
Fax 561-775-0812

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

**Section 14.03 Severability.**

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

**Section 14.04 Broker's Commission.**

Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

**Section 14.05 Recording.**

Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of County, which may be granted or withheld at County's sole discretion.

**Section 14.06 Waiver of Jury Trial.**

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS LEASE.

**Section 14.07 Governing Law and Venue.**

This Lease shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

**Section 14.08 Radon.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

**Section 14.09 Time of Essence.**

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

**Section 14.10 Waiver.**

The waiver by County of any default of any term, condition or covenant herein contained 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 herein contained.

The consent or approval by County to or of any act by Tenant requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Tenant.



**Section 14.11 Non-exclusivity of Remedies.**

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 14.12 Construction.**

No party shall be considered the author of this Lease 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 Lease 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 Lease and the same shall remain in full force and effect.

**Section 14.13 Incorporation by Reference.**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease by reference.

**Section 14.14 Survival**

Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

**Section 14.15 Effective Date of Lease.**

This Lease 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.

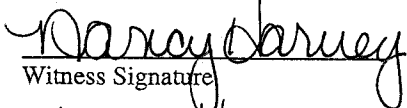
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IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

WITNESS:

  
Witness Signature

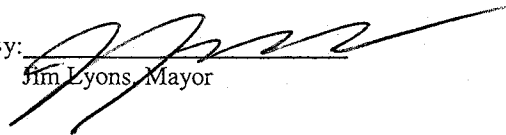
JEAN-MARIE MARK  
Print Witness Name

  
Witness Signature

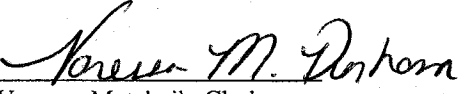
Nancy Harvey  
Print Witness Name

TENANT:

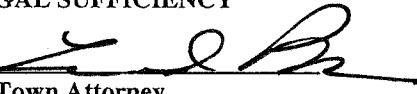
TOWN OF JUNO BEACH, a municipal corporation organized and existing under the laws of the State of Florida

By:   
Jim Lyons, Mayor

ATTEST:

By:   
Vanessa Mutechnik, Clerk  
Dunham

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:   
Town Attorney

ATTEST:  
SHARON R. BOCK  
CLERK & COMPTROLLER

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

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

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

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

APPROVED AS TO TERMS AND  
CONDITIONS

By:   
Department Director

EXHIBIT "A"  
THE "PREMISES"

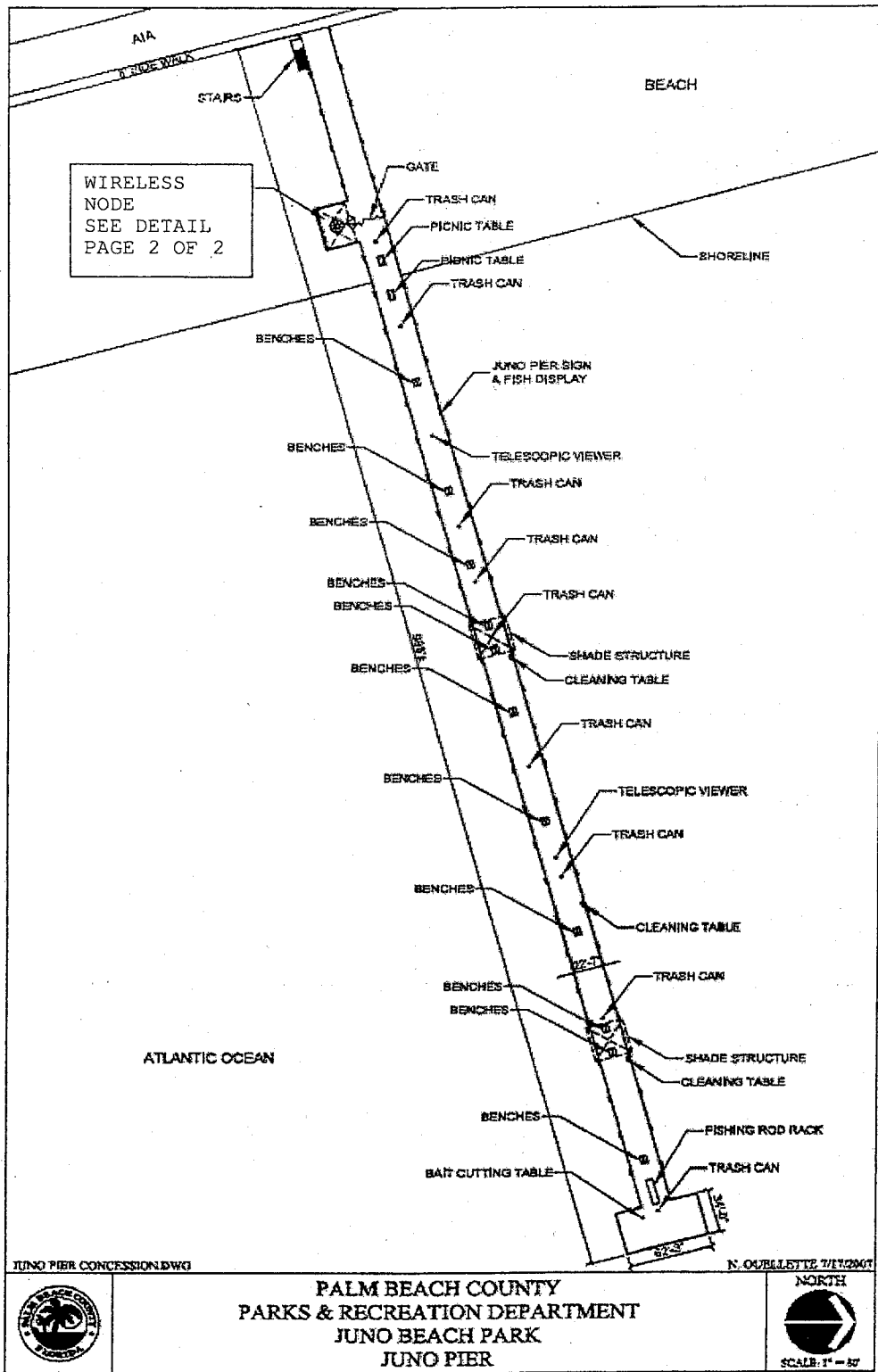


EXHIBIT "A"  
THE "PREMISES"

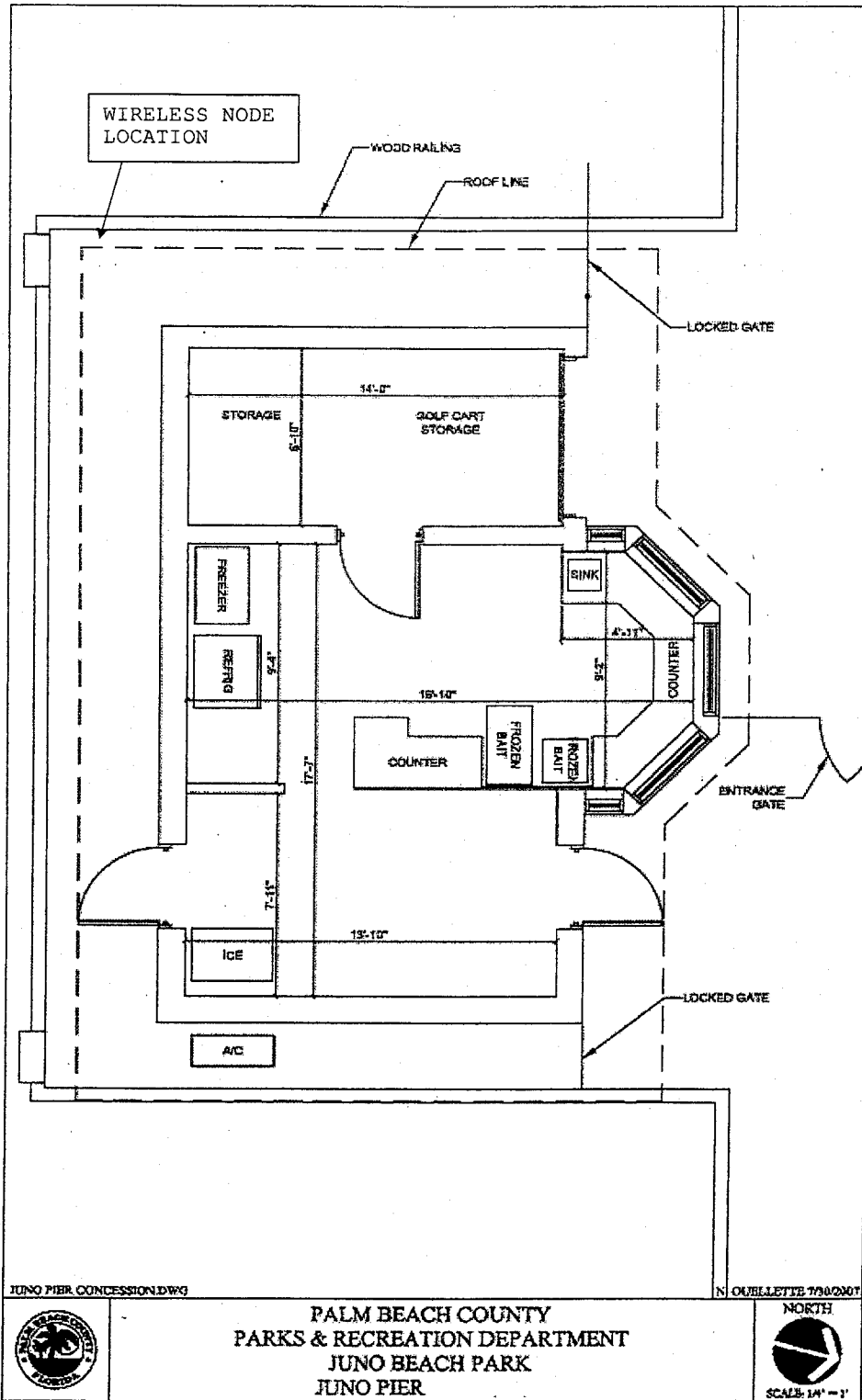


EXHIBIT "B"  
TENANT'S EQUIPMENT

Radio

- Frequency
- 4.940 – 4.990 GHz
  - 5.470 – 5.725 GHz
  - 5.725 – 5.850 GHz
- Data rate
- Up to 48 Mbps, user-configurable
- Channel bandwidth
- 20 MHz
- Duplex technique
- TDD
- Modulation
- OFDM - BPSK, QPSK,
  - 16QAM, 64QAM
- Transmit power
- 4.9 GHz: 10 dBm (max)
  - 5.4 GHz: ETSI 7 dBm (max)
  - 5.8 GHz: 17 dBm (max)
- RF dynamic range
- More than 50 dB

Safety

- TUV according to UL 60950,
- EN 60950-1, EN 60529

EMC

- FCC 47CFR Parts 15, 15.247, and
- subpart B
- CAN/CSA-CET/IEC CISPR 22-02

Environmental

- IEC 60721-3-4 Class 4M5
- IP 67

General

- Diagnostics
- Local and remote loopbacks
- ODU-to-POE injector connection
- Outdoor Cat.5 cable, 100m (328 ft)
  - maximum length

Power

- PoE

Power consumption

- 10W

Physical

- Outdoor unit (with integrated antenna):
- Height: 305 mm/12 in
- Width: 305 mm/12 in
- Depth: 58 mm/2.3 in
- Weight: 1.5 kg/3.3 lb

Environment

- Outdoor unit and external antenna
- Enclosure: all-weather case
- Temperature: -35–60° C/-31–140°F

LAN interface

- Number of ports
- 1
- Type
- 10/100BaseT, autonegotiation
- Framing/Coding
- IEEE 802.3/UT
- Bridging
- Self-learning, up to 2000 MAC addresses
- Traffic handling
- MAC layer bridging, self-learning
- Latency
- 8 msec, 3 msec (typical)
- Line impedance
- 100Ω
- VLAN support
- Transparent
- Connector
- RJ-45
- Antenna characteristics (see Table 1)

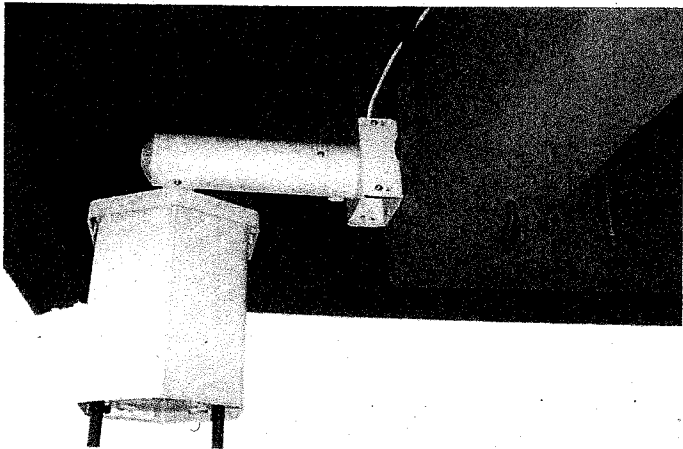
Management

- Protocol
- SNMP-based
- Network management
- SNMPc-based — Supported by Nortel
  - Enterprise-NMS
- Management interface
- 10/100BaseT
- Connector
- RJ-45
- Upgrade capabilities
- Local and over-the-air software download
- Regulatory compliance
- Radio
- FCC 47CFR Part 15, 15.247, and subpart C
  - RSS-210
  - China MIITW[2002]277
  - Taiwan DGT
  - EN 300 216 V1.2.1
  - EN 301 893 V1.2.2

— continued

Table 1. Antenna options

Type	5.8, 5.4 GHz		4.9 GHz	
	Integrated flat panel	External flat panel	External flat panel	External flat panel
Gain	22	28	21	27
Max. Range (km/miles)	40/25	80/50	24/15	80/50
Beam (degrees)	9.0	4.5	9.0	5
Dimensions (mm/in)	305x305x58/ 12x12x2.3	600x600x51/ 23.6x23.6x2	305x305x58/ 12x12x2.3	600x600x51/ 23.6x23.6x2
Weight (kg/lb)	0.5/1.1	5.0/11.0	0.5/1.1	5.0/11.0
Connector	NR	N-type	N-type	N-type
Lightning Protection	Yes	No	Yes	Yes



CERTIFICATE OF COVERAGE

Certificate Holder

Administrator

Issue Date 04/15/08

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS  
FACILITIES DEVELOPMENT & OPERATIONS DEPT  
PROPERTY & REAL ESTATE MANAGEMENT DIVISION  
2633 VISTA PARKWAY  
WEST PALM BEACH FL 33411-5605

Florida League of Cities, Inc.  
Public Risk Services  
P.O. Box 530065  
Orlando, Florida 32853-0065

COVERAGES  
THIS IS TO CERTIFY THAT THE AGREEMENT BELOW HAS BEEN ISSUED TO THE DESIGNATED MEMBER FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE AGREEMENT DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH AGREEMENT.

COVERAGE PROVIDED BY: FLORIDA MUNICIPAL INSURANCE TRUST

AGREEMENT NUMBER: FMIT 0293      COVERAGE PERIOD: FROM 10/1/07      COVERAGE PERIOD: TO 10/1/08 12:01 AM STANDARD TIME

TYPE OF COVERAGE - LIABILITY

General Liability

☒ Comprehensive General Liability, Bodily Injury, Property Damage and Personal Injury

☒ Errors and Omissions Liability

☒ Supplemental Employment Practice

☒ Employee Benefits Program Administration Liability

☒ Medical Attendants'/Medical Directors' Malpractice Liability

☒ Broad Form Property Damage

☒ Law Enforcement Liability

☒ Underground, Explosion & Collapse Hazard

Limits of Liability  
\* Combined Single Limit

Deductible N/A

Automobile Liability

☒ All owned Autos (Private Passenger)

☒ All owned Autos (Other than Private Passenger)

☒ Hired Autos

☒ Non-Owned Autos

Limits of Liability  
\* Combined Single Limit

Deductible N/A

TYPE OF COVERAGE - PROPERTY

☐ Buildings

☐ Basic Form

☐ Special Form

☐ Personal Property

☐ Basic Form

☐ Special Form

☐ Agreed Amount

☐ Deductible N/A

☐ Coinsurance N/A

☐ Blanket

☐ Specific

☐ Replacement Cost

☐ Actual Cash Value

☐ Miscellaneous

☐ Inland Marine

☐ Electronic Data Processing

☐ Bond

Limits of Liability on File with Administrator

TYPE OF COVERAGE - WORKERS' COMPENSATION

☒ Statutory Workers' Compensation

☒ Employers Liability      \$1,000,000 Each Accident  
\$1,000,000 By Disease  
\$1,000,000 Aggregate By Disease

☐ Deductible N/A

☐

Automobile/Equipment – Deductible

☐ Physical Damage      N/A - Comprehensive - Auto      N/A - Collision - Auto      N/A - Miscellaneous Equipment

Other

The limit of liability is \$100,000 Bodily Injury and/or Property Damage per person or \$200,000 Bodily Injury and/or Property Damage per occurrence. These specific limits of liability are increased to \$1,5000,000 for General Liability and \$5,000,000 for Automobile Liability (combined single limit) per occurrence, solely for any liability resulting from entry of a claims bill pursuant to Section 768.28 (5) Florida Statutes or liability imposed pursuant to Federal Law or actions outside the State of Florida.

Description of Operations/Locations/Vehicles/Special Items

RE: Lease Agreement.

The Certificate Holder is hereby added as an additional insured, except for Workers' Compensation and Employers Liability, as respects the member's Liability for the above described item.


THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE AGREEMENT ABOVE.

DESIGNATED MEMBER

TOWN OF JUNO BEACH  
340 OCEAN DRIVE  
JUNO BEACH FL 33408

CANCELLATIONS

SHOULD ANY PART OF THE ABOVE DESCRIBED AGREEMENT BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED ABOVE, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE PROGRAM, ITS AGENTS OR REPRESENTATIVES.



AUTHORIZED REPRESENTATIVE