

Agreement with Palm Beach County and the School Board of Palm Beach County

Re: Mounting antenna on School Board communications towers

Interlocal Agreement

This Interlocal Agreement ("Agreement") permitting the installation antenna equipment on communications towers located on the School Board of Palm Beach County's property ("Towers") is entered into this _____ day of _____, 2013, with the School Board of Palm Beach County, Florida, (the "School Board"), and Palm Beach County (the "County").

WITNESSES THAT:

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined herein to enter into Interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the County and School Board wish to put in place a formal process whereby the School Board staff can review, on a case by case basis, the County's request to place an antenna on specific School Board-owned towers located at School Board facilities ("Towers"). These antennae will be used for joint "Digital Divide" programs, broadband connectivity for the School District or broadband connectivity for County projects.

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

AGREEMENT

SECTION 1 Purpose

The purpose of this agreement is to allow the County access to the Towers, in order to place antenna on the Towers.

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Section 2 Installation

The County shall install the approved antenna, on the Towers, at no cost to the School Board, and the County shall pay for any and all operation, maintenance and repair costs for the antenna. The antenna shall be mounted on each Tower at a mutually agreeable location. Prior to commencing installation of the antenna, the County shall submit detailed plans and specifications for the installation of the antenna, including but not limited to, the specifications of the antenna and mounting hardware, the name of the school or location of the Tower and the height on the Tower on which the antenna will be installed and the name of the contractor that will perform the installation, together with the Antenna Placement Request attached hereto as Exhibit A to the School Board's Senior Broadcast Logistics Engineer (or the individual in the equivalent position in the event that the Senior Broadcast Logistics Engineer position no longer exists) for written approval together with documentation establishing with reasonable certainty that (i) the antenna will not cause the Tower load capacity to be exceeded; and (ii) the antenna will not cause interference with existing or future anticipated equipment on the Tower. For purposes of this paragraph, the School Board's Senior Broadcast Logistics Engineer shall be authorized to approve or reject all plans and specifications and other documentation provided by the County on behalf of the School Board, without further approval of the School Board. The County shall provide appropriate insurance, as required by the School Board, during the time the antenna is located on the Towers. The County shall operate the antenna in full compliance with Federal Communications Commission requirements and shall not interfere with the communications configurations, frequencies or operating equipment which exists on the Tower or is added in the future. If the School Board reasonably determines that the County's operation of the antenna is causing interference or undesirable effects on the operations by the School Board (or other existing party authorized by the School Board to so operate) on other frequencies or other spectrum, or if a third party complains of interference from the County's antenna, then the County shall immediately discontinue its use of the antenna until such time as the parties mutually agree on technical or other solutions that will eliminate the interference. The installation of the antenna and all regular maintenance and repair of the antenna by the County or its agents shall be coordinated with the School Board's Senior Broadcast Logistics Engineer providing a minimum of thirty (30) days prior written notice. Notice of any emergency maintenance or repairs of the antenna by the County shall be given to the Senior Broadcast Logistics Engineer as soon as practical. The County shall ensure that the Tower is safe and secured at all times that the County is performing work and that such work is conducted in such a way as to avoid the risk of personal injury to the students, visitors, faculty

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and staff of the School Board. Access to the Tower shall be provided to the County at all reasonable times and coordinated with the School Board's Senior Broadcast Logistics Engineer.

The School Board agrees to provide the County 180 days notice in the event that either:

- a) The specific location of the antenna on any Tower needs to be changed
- OR
- b) The antenna needs to be removed from the Tower

The County shall use a contractor for installing, repairing and maintaining the antenna ("County Contractor") that is acceptable to the School Board's Senior Broadcast Logistics Engineer, in his reasonable discretion.

Section 3 Location Subject to Agreement

The terms of this Agreement shall apply to the communications Towers located at the School Board's Channel T.E.N. facility, 505 South Congress Avenue, Boynton Beach, FL, the School Board's West Area Office located at 1901 N.W. 16th Street, Belle Glade, FL and any individual school where the School Board's Senior Broadcast Logistics Engineer deems agreeable. In the event that a tower on School Board property is owned by a third-party, the County shall be responsible for securing written authorization from the tower owner prior to and in addition to complying with the process set forth this Agreement.

Section 4 Term:

This Agreement shall have an initial term of five years and may be renewed, upon mutual consent of both parties, for four 5 year renewal terms.

Section 5 Indemnification

Without waiving the right to sovereign immunity in general and as provided by §768.28 Florida Statutes, both the School Board and the County acknowledges to be 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 Florida State Legislature. In the event that either the School Board or the County maintains third-party Commercial General Liability in lieu of exclusive reliance of self-

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insurance under §768.28 Florida Statutes, that party shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage, or such amount which is equal to the per occurrence waiver as amended by the Florida State Legislature. Both the School Board and the County agree to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, both the School Board and the County shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which both the School Board and the County agree to recognize as acceptable for the above mentioned coverage. Compliance with the foregoing requirements shall not relieve either the School Board or the County of its liability and obligations under this Agreement.

Additionally, the County shall provide or cause to be provided to the School Board the following proof of insurance coverages covering the County Contractor and naming the School Board as an additional insured, prior to the County Contractor performing any work on any School Board-owned property:

- A. **WORKERS' COMPENSATION:** County Contractor must comply with Chapter 440, F.S., Workers' Compensation and Employees' Liability Insurance with minimum statutory limits.
- B. **COMMERCIAL GENERAL LIABILITY:** County Contractor shall procure and maintain, for the life of this Agreement, Commercial General Liability Insurance. This policy shall provide coverage for death, bodily injury, personal injury, products and completed operations liability and property damage that could arise directly or indirectly from the performance of work pursuant to this Agreement. It must be an occurrence form policy. **THE SCHOOL BOARD OF PALM BEACH COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR COMMERCIAL GENERAL LIABILITY INSURANCE.**

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined, Single Limit for Bodily Injury Liability and Property Damage Liability.

- C. **BUSINESS AUTOMOBILE LIABILITY:** The County Contractor shall procure and maintain, for the life of the Agreement, Business Automobile Liability Insurance. **THE SCHOOL BOARD OF PALM BEACH COUNTY SHALL BE**

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NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR BUSINESS AUTOMOBILE LIABILITY INSURANCE.

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" form policy. The insurance must be an occurrence form policy.

D. PROFESSIONAL LIABILITY: The County Contractor shall procure and maintain Professional Liability Insurance for the life of this Agreement, plus two years after completion. This insurance shall provide coverage against such liability resulting from the County Contractor's performance of work under this Agreement. The minimum limits of coverage shall be \$10,000,000 with a deductible not to exceed \$5,000. The deductible shall be the responsibility of the County Contractor.

This policy must be continued or tail coverage provided for two years after completion of this Agreement.

Section 6 Miscellaneous

No provision in this Agreement shall provide to any person not a party to this Agreement any remedy, claim, or cause of action, or create any third-party beneficiary rights against either party. In the event that any one or more of the provisions in this Agreement shall for any reason be held to have no force and effect, this Agreement shall, if possible, be interpreted in a manner so as to effectuate the intention of the parties. Provisions contained in this Agreement that, by their sense and context, are intended to survive the suspension or termination of this Agreement, shall so survive. All disputes related to this Agreement shall in the first instance be referred to the appropriate executives of each party who shall make a good faith effort to resolve the dispute. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed on behalf of each party hereto. Notwithstanding any provision of this Agreement to the contrary, the use of the School Board facilities by the County shall only amount to a license to use the School Board facilities on a non-exclusive basis. The parties agree that nothing in this Agreement shall be construed as granting the County any title, interest or estate in the School Board facilities. The School Board's property and facilities shall not be subject to liens arising from the County's use of the Tower, or exercise of the rights granted hereunder. Neither party is an agent or servant of the other. No

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person employed by either party to this Agreement, shall in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. In the event the facilities are damaged by the County, the County shall promptly notify the School Board in writing of the damage and shall reimburse the School Board for the actual costs to repair the damage. Reimbursement shall be made within sixty (60) days of a written request for reimbursement of costs.

Section 7 Notice

Any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered either by hand or by certified mail, postage prepaid, and certified return receipt requested to the following addresses or such other addresses as the parties may provide to each other in writing:

To: School Board: Dave McKinley, Senior Broadcast Logistics Engineer
505 South Congress Avenue
Boynton Beach, FL 33426

With a copies to: Palm Beach County School District
Planning and Real Estate Services Department
3300 Forest Hill Boulevard, Suite C-110
West Palm Beach, FL 33406

General Counsel
P.O. Box 19239
West Palm Beach, FL 33416

To: COUNTY: Robert Weisman, County Administrator
Palm Beach County Board of County Commissioners
301 N. Olive Avenue, 11th FL

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West Palm Beach, FL 33401

Telephone: 561-355-2712

With a copy to: County Attorney's Office
Palm Beach County Board of County Commissioners
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone: 561-355-2225

Section 8 Entire Agreement

This Agreement represents the entire agreement between the School Board and the County and supersedes all prior agreements or representations, whether written or oral, with respect to the subject matter hereof. No provision of this Agreement may be changed or amended except by written agreement signed by both Agencies. This Agreement shall be binding upon the School Board and the County and their respective successors and assigns.

Section 9 Filing

This Agreement will become effective upon filing a copy of the signed Agreement with the Palm Beach County Clerk & Comptroller's Office.

Section 10 Participation

This Agreement shall not be construed against the party who drafted the same as all parties to this Agreement have participated in drafting the same.

Section 11 Venue for Dispute Resolution

This Agreement shall be construed in accordance with the laws of the State of Florida. Should any litigation arise from this Agreement, venue shall lie in Palm Beach County, Florida.

Section 12 Binding Agreement

This Agreement is binding upon the parties hereto, their heirs, successors, and assigns.

Section 13 Subject to Funding

Each party's performance and obligations for subsequent fiscal years are contingent upon annual appropriations for its purpose by the respective governing bodies.

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Section 14 Nondiscrimination

Palm Beach County warrants and represents that 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 and expression.

Section 15 Access and Audits

The School Board shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at City's place of business.

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's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of such records, and to audit, investigate, monitor, and inspect the activities of the City, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in 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.

The County agrees and understands that the School Board's Office of Inspector General ("School Board's Inspector General") shall have immediate, complete and unrestricted access to all papers, books, records, documents, information, personnel, processes (including meetings), data, computer hard drives, emails, instant messages, facilities or other assets owned, borrowed or used by the County with regard to this Agreement. The County's employees, vendors, officers and agents shall furnish the School Board's Inspector General with requested information and records within their custody for the purposes of conducting an investigation or audit, as well as provide reasonable assistance to the School Board's Inspector General in locating assets and obtaining records and documents as needed for investigation or audit relating to this Agreement. Furthermore, the County understands, acknowledges and agrees to abide by School Board Policy 1.092(4)(d).

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Section 16 Acceptance of Facilities

The School Board shall not be required to make any improvements or repairs to the Tower or associated School Board-owned facilities as a condition of use of the Tower by the County. The County shall accept the facilities in their "As Is", "Where Is" condition. The County acknowledges and agrees that that the School Board has not made any warranties or representations to the County regarding the facilities, including, but not limited to, any representations or warranties regarding the suitability of the facilities for use by the County.

Section 17 Termination

This Agreement may be canceled with or without cause by either party during the term hereof upon ninety (90) days written notice to the other party of its desire to terminate this Agreement.

Section 18 Waiver of Jury Trial

Each of the parties hereto hereby knowingly, voluntarily and intentionally waives the right either of them may have to a trial by jury in respect of any litigation based here on, or arising out of, under or in connection with this agreement.

[SIGNATURES ON THE NEXT PAGE]

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IN WITNESS WHEREOF, the parties, by and through their duly authorized agents, have hereunto set their hands and seals on the date indicated above.

ATTEST:

SHARON R. BOCK, Clerk & Comptroller

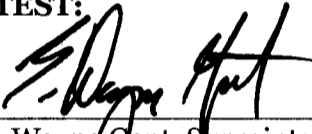
**PALM BEACH COUNTY, FLORIDA,
by its Board of County Commissioners**

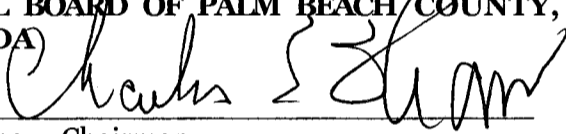
By: _____
Deputy Clerk

By: _____
~~Chair~~ **Steven L. Abrams, Mayor**

ATTEST:

**SCHOOL BOARD OF PALM BEACH COUNTY,
FLORIDA**


By: 
E. Wayne Gent, Superintendent

By: 
Chuck Shaw, Chairman


**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**

By:  12/7/12
School Board Attorney

By: 
County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

By: 
Steve Bordelon, Director
Information Systems Services

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EXHIBIT A

Antenna Placement Request

1. **Date:** _____

2. **Tower Location:** _____

3. **Purpose:**

a. Digital Divide Program _____

b. Broadband Connectivity _____

4. **Detailed Description of the Project:**

5. **Antenna and Mounting Hardware Specifications:**

6. **Requested Tower Attachment Height:**

7. **Requestor Contact Information:**

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8. Contractor Contact Information

Request Submitted By:

Director, Information Systems Services

Date _____

SCHOOL BOARD APPROVALS

Technical Requirements Approved By:

Senior Broadcast Logistics Engineer

Real Estate Requirements Approved By:

Director, Planning & Real Estate Services

Building Code Compliance Approved By:

Director, Building Department