



Date \_\_\_\_\_

II. FISCAL IMPACT ANALYSIS

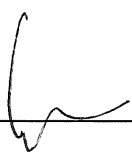
A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	\$736,000				
Operating Costs		\$6,109.36	\$6,109.36	\$6,109.36	
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	\$736,000	\$6,109.36	\$ 6,109.36	\$6,109.36	\$
# ADDITIONAL FTE POSITIONS (Cumulative)					
Is Item Included in Current Budget:	Yes	X	No		
Budget Account No:	Fund	Dept	Unit	Object	
	3801	411	B529	4907	
	3801	411	B538	4907	
	3801	411	B548	4907	

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



The total project budget is \$736,000 and includes all costs associated with the new shelter, generator and tower equipment as well as removal and disposal/salvage of the existing equipment which is approximately 25 years old. Funding for this project was originally allocated in FY 11 & 12 and is from the 800 MHz System Renewal/Replacement Fund is which is made of annual contributions by PBSO, FR, county departments and cities who have direct connect agreements on the existing County system as well as PBSO generated \$12.50 funding. No additional appropriation is required.

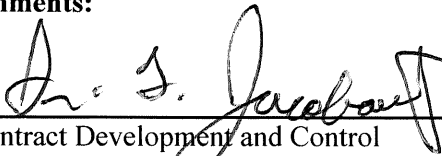
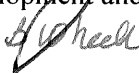
No fee payments are due until after installation of the County equipment so the first annual Maintenance and R/R payment is being reflected in FY 16. Funding for the Maintenance and R/R Payment is from the 800 MHz System maintenance budget.

C. Departmental Fiscal Review:  4-21-15

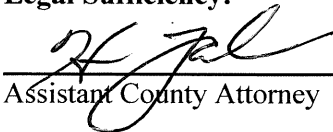
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

  
OFMB  4/23 4:03 PM

 4/29/15  
Contract Development and Control  
4-29-15 

B. Legal Sufficiency:

 4/30/15  
Assistant County Attorney

C. Other Department Review:

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

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

**Background and Justification (Cont'd)**  
**Page 3**

accommodate the then new County equipment. As part of that structural study, the County assumed additional equipment would be added to the tower in the future and the interlocal agreement was amended to reflect that those tower equipment reservations. The City was also advised by PBSO, that the County would be administering the City/PBSO agreement on behalf of PBSO. Despite this amendment in the late 1990s, the City/PBSO agreement lacked terms which would typically be found in a tower use agreement.

Since that time, there have been disagreements between the County/City regarding; 1) the structural integrity, 2) performance and funding of maintenance on the tower, 3) new tower user coordination and encroachment on reserved County slots, and 4) the requirement to remove abandoned equipment. Since the mid-2000s, the County has been suggesting that the City and the County enter into a new agreement which contained terms that would typically be found in a commercial tower agreement to resolve these disagreements. The County was always offering and agreeing to pay its share of the maintenance and R/R costs as is customary in County owned tower leases where other governmental entities have space; however that was not previously accomplished.

This Agreement reserves the same slots currently assigned to the County into the future, delineates the terms by which the County and City (and any future user) will share in the maintenance and renewal/replacement costs, and adds requirements for evaluation of any new user requests.

Last summer and in conjunction with the implementation of the City's new P25 Public Safety Radio System, the City issued an RFP 113-14-215 for the replacement of three (3) City owned towers, one of which is the tower located at the WWTP. The RFP was ultimately awarded October 2014 to Sabre Communication Corporation. The WWTP tower is also being re-constructed in a new location on the WWTP site as the existing tower is within the footprint of an existing expansion project at the WWTP and therefore has to be decommissioned. In order to not delay the WWTP expansion project, the existing tower needs to be decommissioned by the beginning of November and the City has made that a requirement of the interlocal agreement.

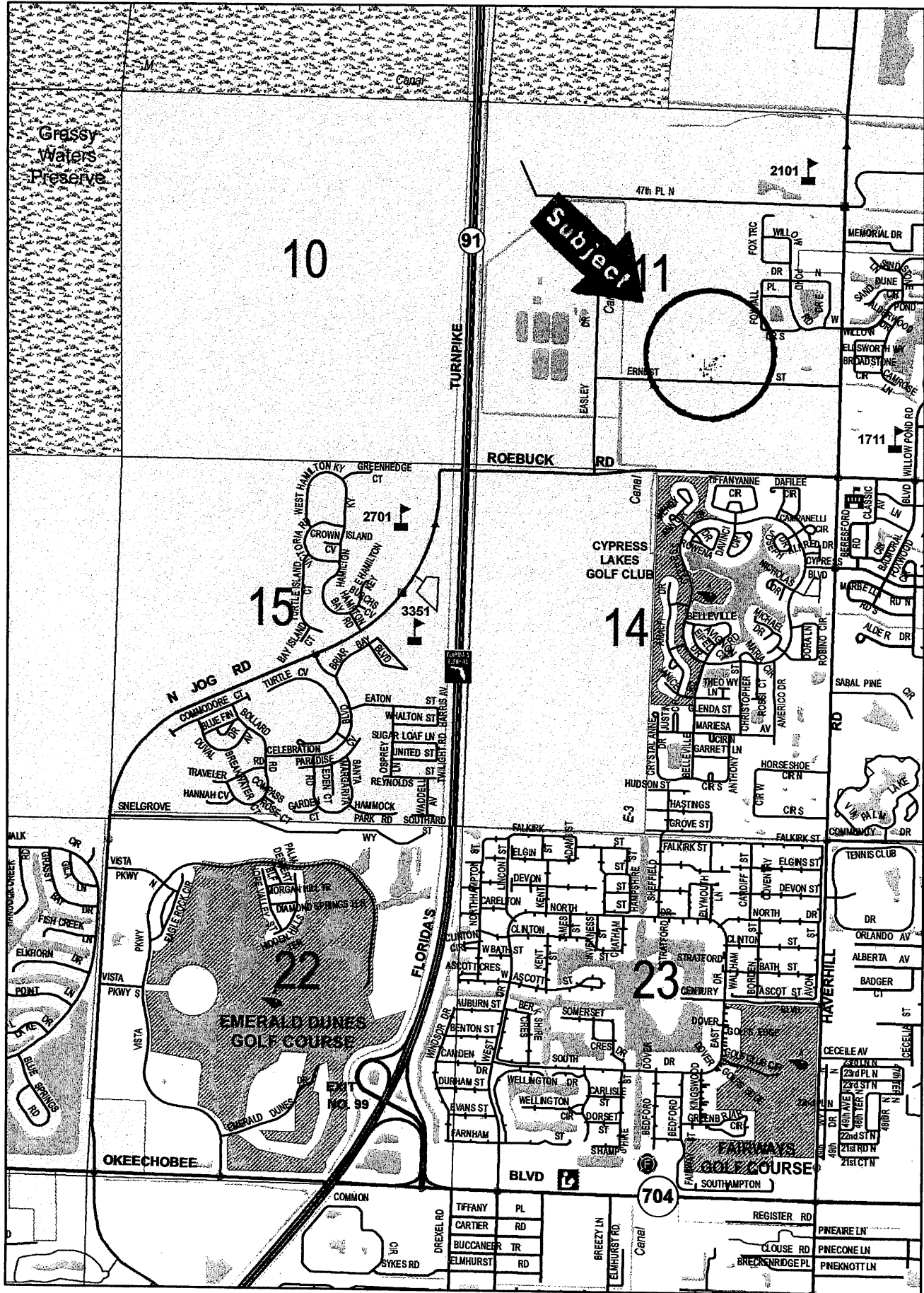
The Purchasing Code states that an emergency procurement mean "a procurement made in response to a need when the delay incident to complying with all governing rules, regulations, or procedures would be detrimental to the interests, health, safety, or welfare of the County." The County could not complete a competitive solicitation (which would take 3-4 months) and complete the scope of the project prior to the date that the existing tower must be decommissioned. If the existing tower were to be decommissioned prior to the County's operation on the new tower, the County would suffer a reduced coverage level for its public safety radio system which can create officer safety issues for those using the County system.

County Staff is recommending that the emergency procurement be awarded to Sabre since they were already selected via a local competitive process, they are in the best position to meet the timeframe requirements as they will be able to complete portions of our work concurrent with the City work, avoid cross liability issues and using Sabre lowers the County's costs as a portion of the mobilization fees will be not be incurred. For the same timing reasons discussed above, Staff is requesting authorization for the County Administrator to execute the construction contract in a not to exceed amount of \$550,000.

TWP  
43

TWP  
43

TWP  
43



RNG 42

See pg 69

RNG 42

LOCATION MAP

**COMMUNICATION TOWER AGREEMENT**

WPB Contract No. 14580

THIS COMMUNICATION TOWER AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY OF WEST PALM BEACH**, 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" or "Authorized User".

**RECITALS:**

WHEREAS, the City is constructing a new 440-foot guyed communication tower and equipment building area on property located at 5801 Ernest Street, West Palm Beach, FL 33409 to replace City's existing communications tower used by City and by public safety and local government agencies; and

WHEREAS, the City intends to decommission and remove the City's existing communication tower (the "former tower") and allow for the entities that currently use space at the existing tower to relocate to the new tower; and

WHEREAS, the County's communication equipment, includes the communication equipment used by Palm Beach County, the Palm Beach County Sheriff's Office and the United States Secret Service; and

WHEREAS, the Antenna Equipment is located on the former tower by virtue of an Interlocal Agreement dated September 25, 1989, originally executed by the City and the Palm Beach County's Sheriff's Office and which will be replaced by this Agreement; and

WHEREAS, the County desires to relocate its Antenna Equipment to the new tower, maintain the ability to install new or additional equipment on the new tower, and construct its own equipment building and appurtenances on a portion of the tower property, to maintain its public safety and public service communication capabilities;

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:

**ARTICLE 1 – CONSTRUCTION AND INSTALLATION**

**1.1 City's Construction.** City is constructing, at its sole cost and expense, a 440-foot guyed antenna tower (the "Tower") and all necessary appurtenances at the following location: 26°44'31.00"N, 80°07'29.00"W ("Tower Site"), as indicated on **Exhibit A** attached. The Tower shall have the structural and design capacity necessary to support the equipment and facilities identified on the Tower Loading Diagram attached hereto as **Exhibit B**.

**1.2 County's Antenna Equipment Installation.** County shall have the right to install upon the Tower County's Antenna Equipment identified in **Exhibit C** (the "Antenna Equipment"). County shall install the Antenna Equipment, on the Tower in the locations and in the manner

identified in the Tower Loading Diagram, Exhibit B. County shall be responsible for the relocation and installation of any Antenna Equipment from the former tower to the Tower, at County's own cost.

**1.3 Licenses and Approvals.** County shall be responsible for the modification of its own licenses and transmitter site approvals from all appropriate regulatory agencies, as required, prior to activation of its Antenna Equipment on the Tower.

**1.4 County's Equipment Building.** County, at its expense, shall have the right to construct and/or install a 12-ft x 36-ft. equipment building, one (1) generator and one (1) diesel storage tank (the "Equipment Building") at the Tower Site in the locations depicted on the site plan attached hereto as **Exhibit D**, along with all equipment and appurtenances described or depicted on Exhibit C or Exhibit D, or otherwise reasonably required for the construction, installation and use of the Equipment Building and its contents. The diesel tank shall be installed above ground. Prior to submitting plans to the City of West Palm Beach's building department for building permits (the "Plans"), County shall submit a copy of its detailed plans and specifications for the construction and installation of the Equipment Building to WPB Engineering Services division (WPBES) (Attn: Glenn Semanisin, Sr. Project Engineer, with copy to Dorritt Miller, Deputy City Administrator). Submittal to WPBES does not act as approval by the City in its regulatory capacity or of the City of West Palm Beach building department or obviate County's obligation to obtain building permits from the City of West Palm Beach building department. In the event the West Palm Beach building department requires changes to the submitted Plans, County shall resubmit the required changes to WPBES prior to resubmittal to the building department. County shall perform all of its construction and installation activities in accordance with the Plans and building permit. County shall provide City with as-built design and construction plans and specifications for the Equipment Building in accordance with the Plans within thirty (30) days of receipt of the certificate of completion.

**1.5 Cabling.** County shall be allowed to install and maintain underground wires, cables, conduits and pipes connecting the component parts of County's Antenna Equipment and running from County's Antenna Equipment and Equipment Building to telephone service and electrical power sources ("Cabling Space"). The County shall be allowed to install and maintain above ground cables and attached appurtenances (Ice Bridge) between the Equipment Building and the Tower.

**1.6 Temporary Construction Easement.** City hereby grants to County, its agents, contractors and assigns, a temporary construction easement, including the right of ingress and egress, in, on, over, under, through and across the Tower Site for the purpose of construction or installation of the Equipment Building and installation of the Antenna Equipment and appurtenances thereto. This Easement shall expire upon the issuance of certificates of completion by the City of West Palm Beach for the Antenna Equipment and Equipment Building.

**1.7 Authorized User(s).** Any user or users of the Tower and Tower Site authorized by written agreement with the City shall be considered an Authorized User of the Tower and Tower Site ("Authorized User").

## **ARTICLE 2 – GENERAL WORK GUIDELINES**

### **2.1 General Work Guidelines.**

2.1.1 All work performed by Authorized Users pursuant to this Agreement shall be performed by the Authorized User at the Authorized User's sole cost and expense, shall be performed only by duly licensed contractors specializing in such work, shall be performed in a good and workmanlike manner and shall be diligently prosecuted to completion substantially in accordance with the Plans and specifications and all applicable governmental laws, regulations, rules, codes and orders. The Authorized User, its contractors, subcontractors, laborers, materialmen, suppliers and professionals shall exercise diligent care and caution in the installation, construction, maintenance, and repair of the Antenna Equipment or any appurtenances thereto, in order to avoid damage to the Tower, its appurtenances and the equipment of the City or other Authorized Users.

2.1.2 In the event of such damage, the Authorized User shall promptly repair said damage using materials of like kind and quality, restoring it to its condition prior to damage by such Authorized User, at the Authorized User's sole cost and expense. Authorized User agrees and acknowledges that all work performed by the Authorized User pursuant to this Agreement is performed and accomplished solely for the benefit and convenience of the Authorized User and not for the benefit of the City, such work being nonetheless subject to each and every provision of this Agreement and shall be performed to the satisfaction of the City. Additionally, all such work shall be performed in a manner which avoids damage to other communication users on the Tower and related facilities.

2.1.3 Prior to the County requesting or granting access to the Tower Site to any contractors, and their employees, County shall provide written evidence to City that said contractor/individual passed a criminal history record check pursuant to Palm Beach County Ordinance No. 2013-023, and no "Disqualifying Criminal Offense" was found.

### **2.2 Construction Bonds.**

a) Authorized User shall ensure that construction of the Equipment Building and installation of the Antenna Equipment, and any other work performed by Authorized User at the Tower Site, is performed to completion in accordance with the Plans 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. Authorized User shall also require contractors to furnish the City recorded payment and performance bond(s), for the benefit of the City and any other Authorized Users, equal to the cost of the improvements and as required under Section 255.05, Florida Statutes. Bonds may be waived for work less than \$200,000 in value.

b) City shall likewise require its contractors to furnish payment and performance bond(s) for the benefit of the County and any Authorized Users whenever City performs construction and installation work at the Tower Site.

### **2.3 Contractor Insurance.**

a) Authorized User shall require its contractors to furnish satisfactory evidence of statutory Worker's Compensation and Employer's Liability insurance. Authorized User shall also require its contractors to furnish Commercial General liability insurance and Automobile Liability insurance, with endorsements naming the City and the East Central Regional Wastewater Treatment Facility Operations Board as Additional Insureds, in such amounts and in such manner as the City requires for its construction contracts. Such endorsement for City shall read: "City of West Palm Beach, its commissioners, officers, employees and agents".

b) City shall likewise require its contractors to furnish the same insurance coverages with interests of County endorsed thereon as Additional Insureds. Such endorsement to 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.

**2.4 No Liens.** Authorized User covenants and agrees that nothing contained in this Agreement shall be construed as consent by the City to subject the City to liability under the Construction Lien Law of the State of Florida, it being expressly understood that the City shall not be subject to such liability. Authorized User shall notify any and all parties or entities performing work or providing materials relating to any improvements made by County of this provision of this Agreement. If so requested by the City, Authorized User shall file a notice, satisfactory to the City, in the Public Records of Palm Beach County, Florida, stating that the City's interest shall not be subject to liens for improvements made by the Authorized User. In the event that a construction lien is filed in connection with any work performed by or on behalf of Authorized User, the Authorized User shall satisfy such claim, or transfer same to security, within ten (10) days from the date Authorized User received notice of such filing. In the event that Authorized User fails to satisfy or transfer such claim within said ten (10) day period, the City may do so and thereafter charge the Authorized User, and Authorized User shall promptly pay to the City upon demand, as Additional Rent, all costs incurred by the City in connection with the satisfaction or transfer of such claim, including attorney's fees.

**2.5 Governmental Approvals.** Authorized User shall obtain, at Authorized User's sole cost and expense, all other approvals, including but not limited to West Palm Beach, County, state and federal permits and consents necessary for construction of the Equipment Building and, installation of Authorized User's Antenna Equipment and shall further be responsible for all conditions which may be imposed in connection with such approvals. Authorized User acknowledges that the City's approval of the conceptual and detailed design and construction plans as aforesaid is for consistency with the terms, conditions and intent of this Agreement only and in no way constitutes regulatory approval by the City. Authorized User also acknowledges that it will not use this Agreement, or the requirements of this Agreement, as a basis for argument that Authorized User should be relieved of, or have modified conditions and/or interpretations of any regulatory requirements. Nothing contained in this Agreement shall be construed to alter, limit or eliminate the obligation of the parties to comply with applicable ordinances, statutes and laws relating to such approvals. The City shall execute such applications and/or consents as may be reasonably required to facilitate the issuance of permits and approvals for County's Equipment Building and installation of the Antenna Equipment.

**2.6 Ownership of Equipment Building and Alterations.** The City agrees and acknowledges that all of the Antenna Equipment, the Equipment Building, County owned appurtenances and personal property of County shall be and remain the personal property of



County, and, upon expiration or earlier termination of this Agreement, shall be removed by County.

### **ARTICLE 3 - USE OF TOWER**

**3.1 Use.** Authorized User shall exercise the rights granted under this Agreement solely and exclusively for installation, operation, maintenance and repair of the Authorized User's Antenna Equipment and Equipment Building, Cabling and all related appurtenances. Authorized User shall have the right to install, operate, maintain and repair the Antenna Equipment for the County's public safety and public service governmental communications, which includes but is not limited to the Palm Beach County Sheriff's Office and the United States Secret Service, in accordance with the terms and conditions of this Agreement. County shall not utilize the Tower or Tower Site for any commercial communication or data uses, including mobile, cellular or wireless facilities, and shall not enter into any sublease or co-location rights agreement with any telecommunications provider or other commercial for-profit entity without the formal approval of the West Palm Beach City Commission. Authorized User shall not use or allow the use of the Tower Site for any other use, business, or purpose other than as specifically permitted in this Agreement.

**3.2 Access.** Authorized User shall have the right to enter upon the Tower Site at all times twenty-four (24) hours a day, seven (7) days a week in order to gain access to its Antenna Equipment, Equipment Building and Cabling Space. Authorized User shall comply with any reasonable security procedures established by the City to prevent unauthorized access to the Tower Site and Tower.

**3.3 Non-Exclusive.** County specifically acknowledges that the rights granted hereby are non-exclusive and that the City reserves the right to utilize the Tower and Cabling Space without constraint or interruption by County and to grant new Authorized Users ("Additional Users") the right to utilize the Tower and Cabling Space that in the City's sole discretion it deems appropriate, provided that use by any new Authorized Users/Additional Users: 1) will not lessen the designed structural or wind load capacity of the Tower; 2) will not interfere with the County's current usage or reserved Tower capacity or County's Equipment Building; and 3) is subject to the non-interference provisions in Article 8 of this Agreement. County acknowledges that City does presently lease or otherwise provide co-location rights to use space on the Tower and related facilities to other governmental and public safety entities.

**3.4 Equipment In Service and Licensed.** Any Antenna 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 the Authorized User's expense.

**3.5 Use by County.** Upon the City obtaining the final building permit inspection and approval from the City of West Palm Beach for the Tower pursuant to the specifications contained in Section 1.1, County shall have the right to inspect the Tower and Tower Site for consistency with this Agreement prior to installation of County's Antenna Equipment. Thereafter, County's commencement of construction of its Equipment Building or use of the Tower and/or Tower Site shall be deemed to be acceptance of same "As Is", in its existing condition, as of the date of this Agreement, together with all defects, latent or patent, if any, and subject to all easements, encumbrances and restrictions and matters of record. County further acknowledges that the City has made no warranties or representations of any nature whatsoever regarding the property, Tower location or Tower, including, without limitation, any

relating to the physical condition thereof or of any improvements located therein, or the suitability of the for County's intended use thereof. County shall provide City with notice prior to installation of County's Antenna Equipment on the Tower. Other than completing the construction of the Tower and obtaining the final building permit inspection approval as set forth in this Agreement, the City shall not be required to perform any repair work, alterations, or remodeling of the Tower Site or Tower as a condition of this Agreement. City or any other Authorized User shall not construct or install improvements at the Tower Site that would impact the County's Equipment Building, fuel tank or Cabling, or County's access thereto.

**3.6 Waste or Nuisance.** Authorized User shall not commit or suffer to be committed any waste upon or within the Tower Site or commit or permit the maintenance or commission of any nuisance or other act or thing which interferes with the City's or any other Authorized User's use of the Tower Site 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 Authorized User's use of the Tower and Tower Site to be removed from the Tower Site at the Authorized User's sole cost and expense immediately.

**3.7 Hazardous Materials.** Excepting the above ground installation of the diesel tank and the proper maintenance and filling thereof, Authorized User shall not use, store or dispose of any "Hazardous Materials" on the Tower Site, 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 City immediately upon the knowledge thereof by County. Authorized User shall be solely responsible for the entire cost of remediation and clean-up of any Hazardous Materials released upon the Tower Site 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. 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.

#### **ARTICLE 4 – TERM & RENEWAL**

**4.1 Length of Term.** The term of this Agreement shall commence upon the date of execution by the parties hereto and shall extend for a term of thirty (30) years thereafter (the "Term"), unless sooner terminated or extended pursuant to the provisions of this Agreement.

**4.2 Option to Extend Term of Agreement.** Provided that County is not in default under the terms of this Agreement, County shall have the option of extending this Agreement for an additional period of five (5) years under the same terms and conditions of this Agreement. Thereafter, provided that County is not in default under the terms of this Agreement, County shall have the option of further extending this Agreement for one additional period of five (5) years, subject to City's review and adjustment of the Annual User's Fee, Maintenance Fee and/or Renewal and Replacement Fee, and otherwise under the same terms and conditions of this Agreement. County shall exercise such options by delivering written notice of County's exercise of such options to the City at least ninety (90) days but not more than one hundred fifty (150) days prior to expiration of the then current Term. Failure of County to duly and timely

exercise its option to renew this Agreement shall be deemed a waiver of County's right to said option.

## **ARTICLE 5 - REPAIRS AND MAINTENANCE, FUTURE USE**

**5.1 Tower.** City shall maintain the Tower in good repair and condition at all times during the Term of this Agreement, including routine repair, maintenance and renewal/replacement. Notwithstanding the foregoing, any and all damages to the Tower caused by the Authorized User shall be repaired by Authorized User at its sole cost and expense.

**5.2 Authorized User's Antenna Equipment, Equipment Building and Cabling.** Authorized User shall have the right at any time during the Term of this Agreement to make routine and necessary repairs (including replacements if necessary) to Authorized User's Antenna Equipment, Equipment Building, Cabling and all appurtenances thereto. County shall, at its sole costs and expense, maintain its Antenna Equipment located on or about the Tower and its Equipment Building 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 installation, construction, maintenance, and repair of the Authorized User's Antenna 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, the Authorized User shall promptly repair said damage using materials of like kind and quality, restoring it to its condition prior to damage by Authorized User, at Authorized User's sole cost and expense.

**5.3 Reservation for Future Use.** City agrees to reserve the area of the Tower identified in Exhibit C, attached hereto, for County's future use. County shall have the right to install upon the Tower additional antennas and equipment in the locations identified in Exhibit C, in accordance with the provisions of this Agreement. County's additional antenna and equipment, as specifically identified in Exhibit C are deemed approved by the City and reserved, and are not subject to the requirements of Section 5.4.

### **5.4 Alterations; Additional Antennas or Equipment.**

5.4.1 County 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 approved by the City pursuant to Sections 1.2, 1.4 and 5.3 of this Agreement without the prior written consent of the City, in accordance with this Section.

5.4.2 In the event County or City, or an Authorized User/Additional User, proposes to install, alter, improve or modify its antennas or equipment other than what is described in Exhibit B (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 acceptable to the City. 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 and all Authorized Users can agree to structural modifications which would enable the Tower to support the proposed Alterations.

5.4.3 If no structural modification of the Tower is necessary to support the Alteration, the City or Authorized User may install the Alteration, provided such Authorized User complies with the General Work Guidelines of Article 2 of this Agreement.

5.4.4 In the event the parties agree upon the required structural modifications, the City, 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 City's costs in performing the structural modifications to the Tower required to support the Alterations, including the City's costs to administer the project and applicable contract.

5.4.5 In the event the parties agree upon the required structural modifications, and the City, at its sole option, elects not to perform the required structural modifications, the Authorized User shall submit all proposed plans and specifications to City for approval, in its ownership capacity, prior to performing any structural modifications and Alterations. The Authorized User shall also obtain all required licenses and permits, including building permits. The Authorized User making said structural modifications and Alterations shall comply with this Agreement, including but not limited to the General Work Guidelines of Article 2 of this Agreement, along with all insurance, bonding and indemnification requirements. Such Authorized User conducting said Alterations shall be responsible for all of City's costs, as Tower owner, incurred for the review of the Alteration plans and inspection of the Alteration work, and any additional site or other costs incurred.

**5.5 Notice of Work.** County shall provide the City and all other Authorized Users with sixty (60) days advance notice of any work at the Tower Site which may reasonably be foreseen by County to impact the City's or other Authorized Users' operations at the Tower Site. 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. County shall cooperate with the City and Authorized Users to devise a plan to permit such work and minimize the impact of such work to the City and other Authorized Users. County shall be responsible for all costs associated with preparation of and implementation of such plan. Notwithstanding the foregoing, in the event of an emergency, 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. 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.

**5.6 Recertification of Tower.** Upon notification that there have been changes to the EIA/TIA tower structural standards affecting the West Palm Beach area, the City, at its expense, shall perform a revised structural analysis of the Tower 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 City shall utilize the R&R fund (Section 6.3) to perform those upgrades. At the conclusion of the upgrade, the City shall provide to each Authorized User an engineer's letter approving the upgrades and re-certifying the Tower.

**5.7 Maintenance Fee.** The City shall perform all work needed to maintain the Tower, including the structural integrity of the Tower, and may utilize the maintenance fee for such expenses. Maintenance activities include, but are not limited to, inspections, lighting repairs,

ground system, site maintenance and plumb and tension of guy wire and similar routine maintenance.

## **ARTICLE 6 - PAYMENTS**

**6.1 Annual User Fee.** Authorized Users shall pay to City an annual user fee for use of the Tower. County shall pay to City an annual user fee in the amount of Ten Dollars (\$10.00) for use of the Tower for public safety and governmental communications.

**6.2 Maintenance Fee.** Each Authorized User shall pay to City, on an annual basis, such Authorized User's proportional share of the maintenances costs for the Tower, including inspections, lighting repairs, line sweeps, ground system, site maintenance, plumb and tension, and other maintenance (the "Maintenance Fee"). City shall invoice County on each anniversary of the date of this Agreement during the Term of this Agreement or any extensions thereof, and payment shall be due within forty-five (45) days of County's receipt of the invoice. For the first year of this Agreement, City will issue the first Maintenance Fee invoice upon the completion of the installation of County's Antenna Equipment, and County's Maintenance Fee shall be pro-rated for the remaining portion of the year. County's initial Maintenance Fee, as computed in **Exhibit F**, is Three Thousand Four Hundred Thirteen and 17/100 Dollars (\$3,413.17). The City will review its maintenance costs each year, and may adjust the Maintenance Fee for the upcoming fiscal year beginning October 1st, by notice to the County no later than April 1st of each year. These revised fees and charges will be applicable for the upcoming fiscal year and will automatically become a part of this Agreement on October 1 of the applicable year.

### **6.3 Renewal and Replacement Fee.**

6.3.1 Each Authorized User shall pay a proportionate share of the estimated costs for renewal, extraordinary expenses, improvements and replacement of the Tower and related facilities ("R&R Costs"). City shall invoice County on each anniversary of the date of this Agreement during the Term of this Agreement or any extensions thereof, and payment shall be due within forty-five (45) days of County's receipt of the invoice. For the first year of this Agreement, City will issue the first invoice upon the completion of the installation of County's Antenna Equipment, and shall be pro-rated for a portion of a year.

6.3.2 The annual R&R fee shall be calculated according to the following, and according to the methodology shown in **Exhibit G**:

- 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 30 years.
- b) The R&R fee will be prorated among all Authorized Users, including the City, based on Tower location and future reservations.

6.3.3 As of the date of this Agreement, the County's share of the R&R Costs shall be Two Thousand Six Hundred Eighty-Six and 37/100 Dollars (\$2,686.37). City shall invoice County on each anniversary of the date of this Agreement during the Term of this Agreement or any extensions thereof, and payment shall be due within forty-five (45) days of County's receipt of the invoice

- 6.3.4 The R&R fee may be re-evaluated by City every three (3) years based on each Authorized User's then current Tower location, future reservations and revised R&R estimates.
- 6.3.5 If an Additional User/Authorized User is added to the Tower, the City shall recalculate and amend the R&R fee to reflect the Additional User/ Authorized User's load on the Tower based on the remainder of the 30 year life cycle, within ninety (90) days of the Additional User/Authorized User's installation at the Tower.

## **ARTICLE 7 – DE-COMMISSION FORMER TOWER**

**7.1** County acknowledges that it is the intent of the City to have all Antenna Equipment removed from the former tower and relocated to the Tower and to then de-commission and demolish the former tower.

**7.2** County shall have removed all of its existing antenna equipment, equipment building, generator and fuel tank from the former tower no later than one hundred eighty (180) calendar days after completion and City's acceptance of the new Tower and City's notice to relocate delivered to County. Any equipment, structure, or property of County remaining on the former tower or at the former tower site after said date shall be deemed to be surplus and may be removed and disposed of by the City as it deems appropriate without any notice by City.

## **ARTICLE 8 – FREQUENCIES**

**8.1 County Frequencies.** The frequencies to be utilized by County's Antenna Equipment at the Tower are set forth in **Exhibit E** attached hereto (hereinafter the "Frequencies"). County shall not utilize any frequencies at the Tower Site not designated on such exhibit for County's use without the prior written consent of the City, which shall not be unreasonably withheld and shall be subject to the provisions of Section 8.2 of this Agreement.

**8.2 Interference.** **Exhibit E** is a list of all frequencies approved for use at the Tower by City, County, and all Authorized Users of the Tower. All Authorized Users 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. No Authorized User shall modify its communications equipment, including, without limitation, any antenna or associated combiner, combined multicoupler, cross band couplers, or other components of said 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. An 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 City, the interfering party 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 the interfering party to comply with this provision shall constitute a material default under this Agreement. In the event interference is created by an Authorized User, the City shall take appropriate action to enforce this provision, which may include

termination of the Tower agreement with the Authorized User creating the interference. Any modifications required by the FCC for compliance and any fines imposed by the FCC for violations shall be the responsibility of the offending Authorized User.

**8.3 Changes in Frequencies.** Prior to utilizing a frequency other than identified in Exhibit E of this Agreement or the installation of any communications equipment which will utilize another frequency, the Authorized User proposing such use or installation 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.

## **ARTICLE 9 - UTILITIES**

**9.1 Electrical Service to Tower Site.** City shall construct and/or install, at its sole cost, electrical service to the Tower Site in sufficient capacity to operate the Antenna Equipment, Equipment Building and appurtenances of County and the communications equipment of Authorized Users.

**9.2 County's Expense.** County, at its cost and expense, shall install a separate meter measuring the consumption of electric power associated with County's use of its Antenna Equipment and the Equipment Building. County shall be responsible for payment of all separately metered utility charges for the operation of County's Antenna Equipment and Equipment Building.

## **ARTICLE 10 - NEW TOWER USERS**

**10.1 Additional Users; Non-Exclusive.** County acknowledges that its use of the Tower and Tower Site is non-exclusive. City shall have the right to allow new Authorized Users ("Additional Users") to use any surplus space on the Tower and in the Tower Site that is not already assigned or reserved for County or another Authorized User, as City in its sole discretion determines, subject to all applicable provisions of this Agreement. City will notice Authorized Users of a proposed Additional User's proposed Tower locations, ground space usage, and operational frequencies, and will provide copies of the new Authorized User's/Additional User's intermodulation and structural studies. Authorized Users shall have thirty (30) days to provide notice of City of any potential conflicts or issues which may result from approval of the proposed Additional User. Within 180 days of approving new Authorized Users/Additional Users, City will amend the exhibits to this Agreement to reflect the occupied Tower locations, ground space usage and operational frequencies and will provide copies of the new Authorized User's/Additional User's intermodulation and structural studies to all other Authorized Users.

**10.2 Most Favorable Terms.** City acknowledges that it derives an interoperability benefit from the Antenna Equipment being located on the Tower and as such the City agrees that it will not enter into any agreement with an Additional User that has terms which are more favorable than that contained in this Agreement. County acknowledges that the Municipal Public Safety Communications Consortium of Palm Beach County, Inc., is already an Authorized User pursuant to an Interlocal Agreement regarding Multi-Regional P-25 System, dated April 8, 2014.

## ARTICLE 11 – INSURANCE

**11.1 Required Coverage:** Authorized User shall maintain following liability coverage, with policy limits in compliance with the then-current City standards:

**COMMERCIAL GENERAL LIABILITY:** Without waiving the right to sovereign immunity as provided by Florida Statute, Chapter 768.28, the County acknowledges to be self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such limits that may change and be set forth by the legislature.

**WORKERS' COMPENSATION:** County acknowledges to be self-insured for Workers' Compensation and Employer's Liability Insurance in accordance with Chapter 440, Florida Statutes.

**11.2 County Property.** County's Antenna Equipment, Equipment Building, its contents and appurtenances, and other personal property placed on the Tower or located on the Tower Site by County shall be kept there at the sole risk of County.

**11.3 Additional Insured.** All required insurance (except Worker's Compensation) shall include an Additional Insured endorsement identifying the City of West Palm Beach, its commissioners, officers, employees, agents, and the East Central Regional Wastewater Treatment Operations Board as additional insureds. Additional insureds are defended and indemnified for claims to the extent caused by the acts, actions, omissions or negligence of Authorized User, its employees, agents, contractors, subcontractors, and representatives; but is not defended or indemnified for the additional insured's own acts, actions, omissions, negligence. No costs shall be paid by City for an additional insured endorsement.

**11.4 Contractor Insurance.** Authorized User shall require its contractors to furnish satisfactory evidence of insurance pursuant to Section 2.3 of this Agreement.

**11.5 Waiver of Subrogation.** Authorized User and its contractors and City shall each have included in all such insurance policies a waiver by the insurer of all right of subrogation against the other in connection with any loss or damage thereby insured against. Any additional premium for such waiver shall be paid by the primary insured party. To the full extent permitted by law, Authorized User and City each waive all rights of recovery against the other for, and agrees to release the other from liability for, loss or damage to the extent such loss or damage is covered by valid and collectible insurance in effect at the time of such loss or damage or would be covered by the insurance required to be maintained under this Agreement by the party seeking recovery, including workers' compensation insurance.

## ARTICLE 12 - INDEMNIFICATION

**12.1** City and Authorized User acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes, Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal



injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. City and County agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes, Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an Agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

## **ARTICLE 13 - DAMAGE OR DESTRUCTION**

**13.1 Tower.** In the event the Tower is destroyed or damaged by windstorm, fire or other casualty during the Term of this Agreement or any extension thereof, City shall have the sole discretion to determine if City will repair or replace the Tower. If City determines to repair or replace the Tower, City shall commence efforts toward repair and restoration of the Tower, at its sole cost, within ninety (90) calendar days and thereafter diligently pursue the restoration to completion. If City determines not to repair or replace the Tower, upon written notice of such determination to Authorized Users, this Agreement shall terminate.

**13.2 County Property.** County shall be responsible for the repair or replacement of County's Antenna Equipment, Equipment Building and other personal property placed on the Tower or located on the Tower Site in the event of damage or destruction by windstorm, fire or other casualty during the Term of this Agreement or any extension thereof.

## **ARTICLE 14 – DEFAULT & TERMINATION**

**14.1 Default by Authorized User.** The occurrence of any one or more of the following shall constitute an Event of Default by Authorized User under this Agreement: (i) Authorized User's failure to pay any sum due hereunder within thirty (30) days after receipt of a past due notice for said payment; (ii) Authorized User's failure to perform or observe any other term, covenant, or condition of this Agreement on Authorized User's part to be performed hereunder and such failure continues for a period of more than thirty (30) days after the date Authorized User receives written notice from the City notifying Authorized User of the specific failure, provided, however, Authorized User shall not be in default and 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 any Event of Default occurs, then at any time thereafter while the Event of Default continues, the City shall have the right to pursue such remedies as may be available to the City under the law, including, without limitation, the right to give Authorized User notice that the City intends to terminate this Agreement upon a specified date not less than thirty (30) days after the date notice is received by Authorized User, in which event this Agreement shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Agreement. If, however, the default is cured within the thirty (30) day period and the City is so notified, this Agreement will continue.

**14.2 Default by the City.** The City shall be in default if City fails to perform obligations required of the City within a reasonable time, but in no event later than thirty (30) days after written notice by Authorized User to the City, specifying wherein the City has failed to perform such obligations; provided, however, that if the nature of the City's obligations is such that more

than thirty (30) days are required for performance then the City shall not be in default if the City commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**14.3 Inability to Operate.** In the event County (i) is unable to obtain or maintain in full force and effect through no fault of County, any permit, license or other governmental approval necessary or required for the installation, construction, operation or continued operation of County's Antenna Equipment or Equipment Building, or (ii) is unable to obtain the coverage required to service County's customers due to construction of improvements upon the surrounding property which interferes with the provision of such service, or (iii) is unable to properly maintain its signal and County can prove that such inability results from interference with a signal emanating from an off-site location, County shall have the right to terminate this Agreement upon an additional sixty (60) days prior written notice to the City. In the event of such termination, any Maintenance Fee or Renewal or Replacement Fee prepaid toward future years shall be refunded; but there shall be no refund of the Annual User Fee, Maintenance Fee or Renewal or Replacement Fee paid through the current year. Thereafter the parties shall be relieved of all further obligation arising subsequent to the date of such termination.

**14.4 Abandonment.** If at any time, for reasons other than that addressed in Article 13, an Authorized User shall completely cease to use the Tower or Tower Site for the uses allowed under this Agreement for a period of one hundred eighty (180) days or more, this Agreement shall terminate without further action by either party, whereupon the Authorized User shall immediately remove its antennas, equipment and property from the Tower and Tower Site. Said Authorized User's location or slot on the Tower will revert to the City for its use or distribution to another Authorized User or Additional User. No refund of previously paid renewal/replacement fees will be provided. This provision shall not apply where an Authorized User has properly reserved a Tower location as shown on the tower loading diagram, Exhibit B, as amended and updated, and by written agreement addressing the reservation of tower slot location, and has continued to make the required payments.

**14.5 Surrender.** Upon termination or expiration of this Agreement, County, at its sole cost and expense shall remove the Antenna Equipment, Equipment Building and County's personal property, removable fixtures, equipment and alterations from the Equipment Building and Tower and shall repair any damage caused by the installation, use, maintenance or removal of the same, using materials of like kind and quality.

**14.6 Non-Exclusivity of Remedies.** No remedy conferred upon any party under this Agreement 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 under this Agreement or which now or hereafter exists at law or in equity or by statute or otherwise.

**14.7 Waiver.** The waiver by either 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 City to or of any act by Authorized User requiring the City's consent or approval shall not be deemed to waive or render unnecessary 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.

**ARTICLE 15 - ANNUAL BUDGETARY FUNDING/CANCELLATION**

This Agreement and all obligations of the City and County under this Agreement are subject to and contingent upon annual budgetary funding and appropriations by their respective governing bodies. In the event County’s obligations under this Agreement are not budgeted and appropriated by the Board of County Commissioners, this Agreement shall terminate without further action by either party, whereupon County shall immediately remove its property from the Tower and Tower Site. In the event City’s obligations under this Agreement are not budgeted and appropriated by the City Commission, County may cease its payment obligations pursuant to this Agreement and perform any essential and necessary repair and maintenance on the Tower in place of City until such time as City’s funding is budgeted and appropriated. The City shall then determine whether and in what manner the lapse in maintenance and R&R funding will be addressed; provided, however, that the payment calculation process set forth in Article 6 shall not be changed. The County shall be allowed to offset from its maintenance and R&R funding any costs incurred by County in performing any essential and necessary Tower maintenance obligations of the City performed during the period when City’s funding was not budgeted.

**ARTICLE 16 - MISCELLANEOUS**

**16.1 Notices.** All notices, consents and approvals (collectively, “notices”) by the parties shall be effective only if in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service (provided in each case a receipt is obtained), or 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 or the date which the return receipt is signed or delivery is refused or the notice designated as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered:

If to the City:

City of West Palm Beach  
Attn: City Administrator  
401 Clematis Street  
West Palm Beach, FL 33401

*With a copy not to constitute notice to:*

City of West Palm Beach  
Attn: City Attorney  
PO Box 3366  
West Palm Beach, FL 33402-3366

If to the County:

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

*With a copy not to constitute notice to:*

County Attorney  
301 North Olive Ave. -Suite 601  
West Palm Beach, FL 33401

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

**16.2 1989 Interlocal.** This Agreement amends, rescinds, supersedes and replaces that Interlocal Agreement regarding Radio Tower (former tower) by and between the City of West Palm Beach and the Sheriff of Palm Beach County, dated September 25, 1989. Upon this Agreement becoming effective, the 1989 Interlocal Agreement shall terminate and be thereafter null and void

**16.3 Assignment.** County may not assign or transfer any of its rights or interests in this Agreement.

**16.4 No Transfer of Powers.** Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. The governing bodies for the County and the City shall each maintain all legislative authority with regard to their respective political subdivision. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.

**16.5. Palm Beach County Office of the Inspector General.** 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 and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of entities contracting with the City, its officers, agents, employees, and lobbyists in order to ensure compliance with the agreement specifications and to detect waste, 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.

**16.6 Non-Discrimination.** The parties agree and certify that each shall comply with Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R-2014-1421, as may be amended, and shall not discriminate against any individual on the basis of their

race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or gender identity or expression or genetic information with respect to any activity occurring under this Agreement.

**16.7 Public Entity Crimes.** Authorized User hereby certifies that, to its knowledge, neither it, nor its agents, contractors or suppliers who will perform work for Authorized User under this Agreement have been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) month period immediately preceding the Term of this Agreement.

**16.8 Compliance with Laws.** With regard to this Agreement, Authorized User shall comply in all material respects with all applicable federal and state laws and regulations and all applicable County and City ordinances and regulations.

**16.9 Governing Law; Jurisdiction; Venue; Litigation.** This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law. The parties agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or the Federal Southern District of Florida. 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.

**16.10 Dispute Resolution.** Disputes under this Agreement may be resolved by the Authorized User'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.

**16.11 Attorneys' Fees.** It is hereby understood and agreed that in the event any lawsuit is brought to enforce compliance with this Agreement or interpret same, or if any administrative proceeding is brought for the same purposes each party shall be responsible for its own fees and costs, including legal, ex parte and/or appellate fees and costs.

**16.12 Time of 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.

**16.13 Force Majeure.** 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, terrorism, riot, sabotage, windstorm, failure of utility service, or labor dispute.

**16.14 Amendment.** This Agreement may be modified and amended only by written instrument duly executed by the parties hereto.

**16.15 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 be 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.

**16.16 Severability.** If any term of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, 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 Agreement shall be valid and enforceable to the fullest extent permitted by law.

**16.17 Headings.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

**16.18 Effective Date of Agreement; Filing.** This Agreement shall become effective only when duly approved and signed by each party, and filed with the Clerk of the Circuit Court for Palm Beach County as an Interlocal Agreement, pursuant to Sec. 163.01, Florida Statutes.

**16.19 Exhibits.** The Exhibits referenced in this Agreement are incorporated into this Agreement, regardless of whether they are attached. The Exhibits shall be amended and updated as provided in this Agreement and such amended and updated Exhibits shall be incorporated and become part of this Agreement.

**16.20 Entirety of Agreement.** The Authorized User and the City agree that this Agreement and any Exhibits hereto set 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.

[Signatures on following page.]

IN WITNESS WHEREOF, 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.

ATTEST:

SHARON R. BOCK  
CLERK AND COMPTROLLER

PALM BEACH COUNTY, BY ITS  
BOARD OF COUNTY COMMISSIONERS

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

By: \_\_\_\_\_  
Shelley Vana, Mayor

(SEAL)

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

APPROVED AS TO FORM AND TO  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

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

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

ATTEST:

CITY OF WEST PALM BEACH

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Geraldine Muoio, Mayor

(SEAL)

Date: \_\_\_\_\_  
4/28/15

OFFICE OF THE CITY ATTORNEY  
Approved as to form and legality  
By: \_\_\_\_\_  
KLR

**SCHEDULE OF EXHIBITS**

- A Tower Site
- B Tower Loading Diagram
- C Antenna Equipment List
- D Tower Site Plan
- E Frequencies Approved for all Tower Users
- F Computation of Maintenance Fee
- G Computation of Renewal and Replacement Fee



Exhibit A:  
Tower Site

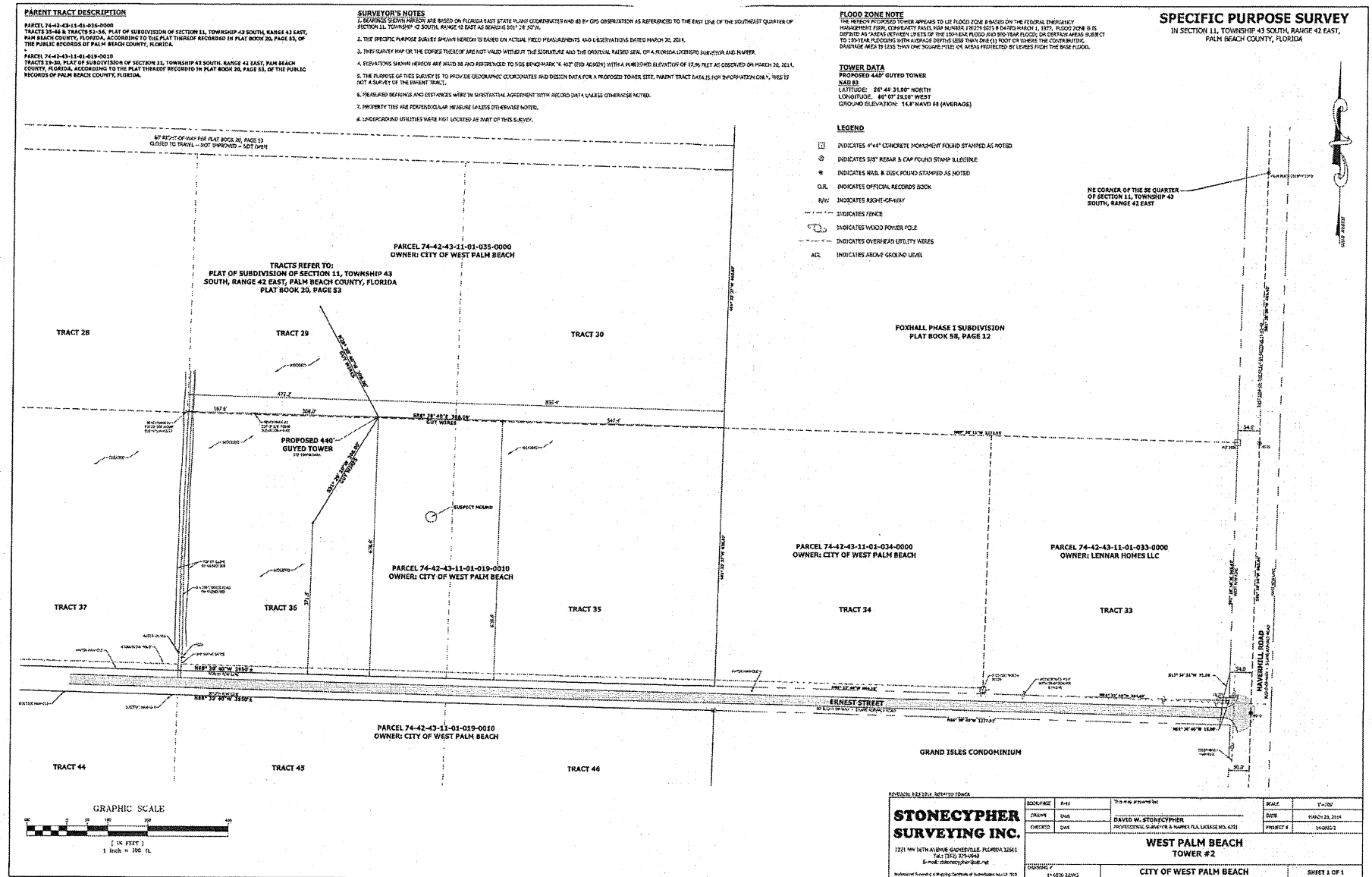


Exhibit B:  
Tower Loading Diagram

Tower #2 – Waste Water Treatment Plant – 440' Guyed Tower

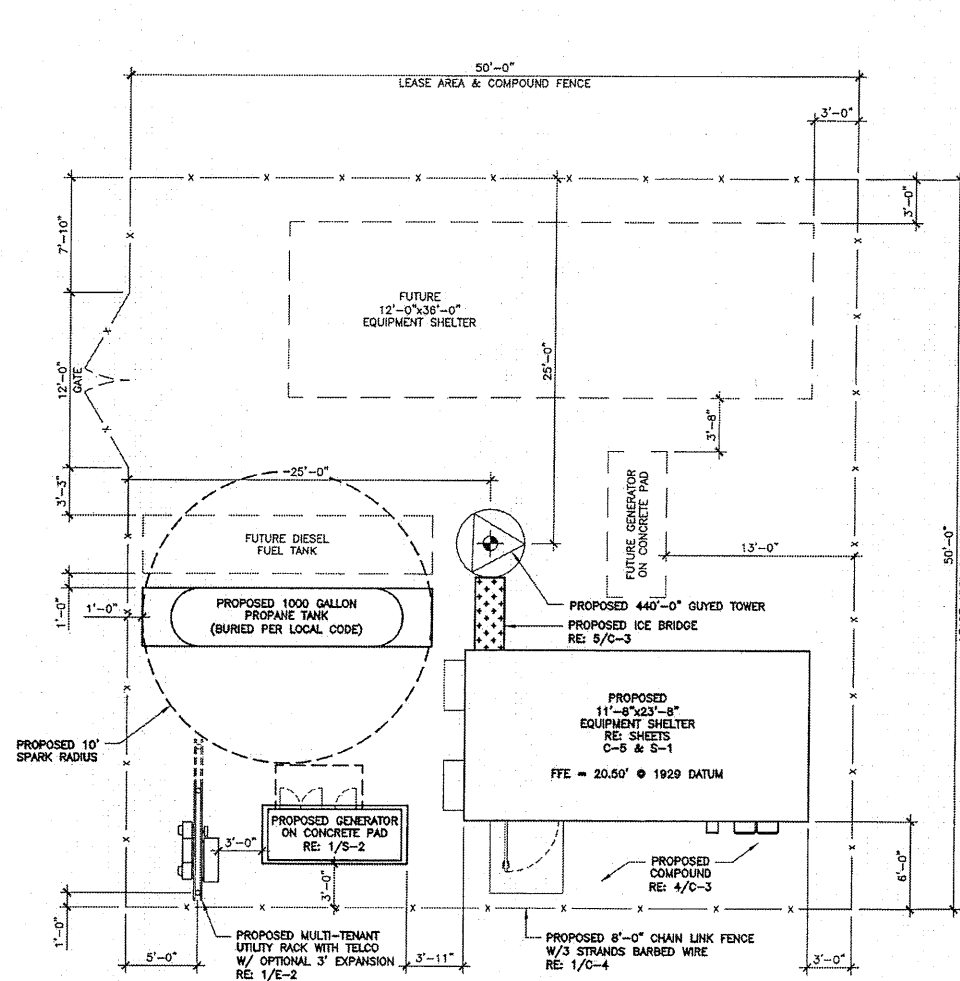
HEIGHT (FT)	ANTENNAS		MOUNTS		LINES		
	#	Model	#	Model	#	Size	Azimuth or Leg Mount
Waste Water Treatment Plant - 440' Guyed (Site#2)							
438	1	Amphenol A.S. BCD-80010	1	6'	1	7/8"	E
435	1	Decibel DB264	1	6'	1	7/8"	NW
435	1	Decibel DB268	1	6'	1	7/8"	SW
408	1	Decibel DB264	1	6'	1	7/8"	NW
380	1	Decibel DB420	1	6'	1	7/8"	NW
380	1	Decibel DB264	1	6'	1	7/8"	SW
355	1	Decibel DB264	1	6'	1	7/8"	E
355	1	Decibel DB264	1	6'	1	7/8"	SW
340	1	Amphenol A.S. BCD-80010	1	6'	1	1-1/4"	E
320	1	Amphenol A.S. BCD-80010	1	6'	1	1-1/4"	E
320	1	Amphenol A.S. BCD-80010	1	6'	1	1-1/4"	NW
320	1	Amphenol A.S. BCD-80010	1	6'	1	1-1/4"	SW
300	1	3 SqFt - Detune Sampling Antenna	1	Leg	1	N/A	NW
275	1	18" x 18" Panel	1	2'	1	3/8"	E
275	1	18" x 18" Panel	1	2'	1	3/8"	E
265	1	4" x 18" Panel	1	2'	1	1/2"	E
265	1	4" x 18" Panel	1	2'	1	1/2"	E
250	1	8' Andrew PL6 Standard w/ Radome	1	Leg	1	EW63	35
250	1	4' SU4-107BC1S1T	1	Leg	1	E105	112
220	1	6' Andrew PL6 Standard w/ Radome	1	Leg	1	EW63	35
206	1	4' RFS w/ Radome	1	Leg	1	EW63	265
200	1	6' Andrew PL6 Standard w/ Radome	1	Leg	1	EW63	E
195	1	6' Andrew PL6 Standard w/ Radome	1	Leg	1	EW63	257
170	1	4' Andrew Shielded HP4	1	Leg	1	1/2"	NW
155	1	3 SqFt - Detune Sampling Antenna	1	Leg	1	N/A	NW
155	1	6' Andrew PL6 Standard w/ Radome	1	Leg	1	EW63	257
140	1	6' VHLP5-11_A	1	Leg	1	EW63	225
123	1	6' Andrew PL6 Standard w/ Radome	1	Leg	1	EW63	200
107	1	4' SU4-107BC1S1T	1	Leg	1	E105	138
100	1	Decibel DB222	1	3'	1	7/8"	SW
38	1	Yagi-Uda 800MHz Antenna	1	Leg	1	1/2"	E
18	1	3 SqFt - Detune Sampling Antenna	1	Leg	1	N/A	NW

\* All provided antenna heights are the height of the antenna mounting brackets, not center line of the antenna.

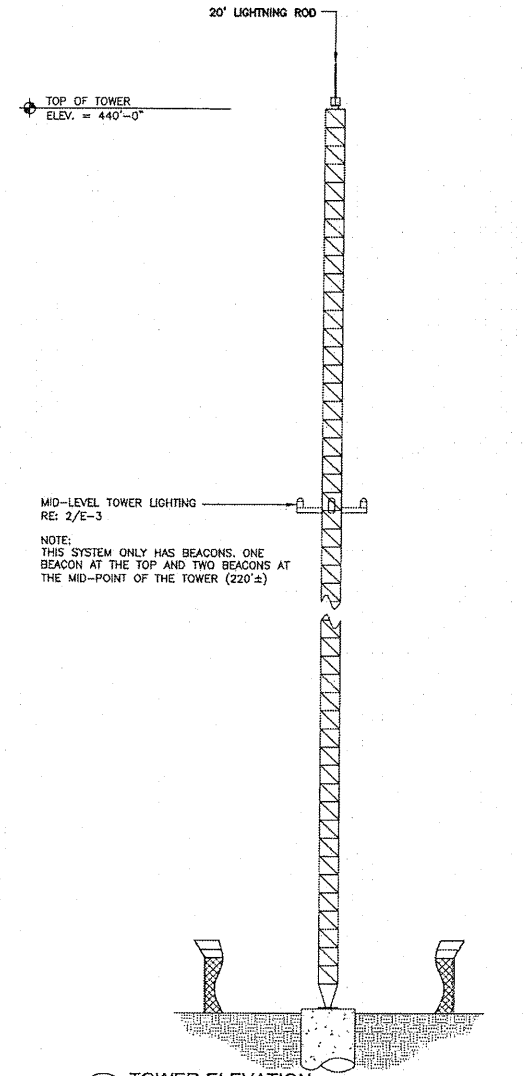
Exhibit C:  
Antenna Equipment List

2014 (proposed new tower)			
#	(FT)	Owner	Type
Waste Water Treatment Plant - 440' Guyed (Site#2)			
1	438	MPSCC	BCD-80010
2	435	PBC	DB264
3	435	PBC	DB268
4	408	PBC	DB264 (future)
5	380	PBC	DB420 (future)
6	380	PBC	DB264 (future)
7	355	Secret Svc	DB264
8	355	Amateur	DB264
9	340	WPB	BCD-80010
10	320	MPSCC	BCD-80010
11	320	WPB	BCD-80010
12	320	WPB	BCD-80010
13	280	WPB	SCADA
14	260	WPB	SCADA
15	250	PBC	8' MW
16	250	WPB	4' MW
17	220	PBC	6' MW
18	206	PBC	4' MW
19	200	WPB	6' MW
20	195	PBC	6' MW
21	170	MPSCC	4' MW
22	155	PBC	6' MW
23	140	MPSCC	4' MW
24	123	PBC	6' MW
25	107	WPB	4' MW
26	100	PBC	DB222
27	100	WPB	SCADA
28	80	WPB	SCADA
29	60	WPB	SCADA
30	38	WPB	Yagi

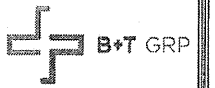
Exhibit D:  
County's Equipment Building Site Plan



1 ENLARGED SITE PLAN  
SCALE: 0' 1' 5' 10' 20'



2 TOWER ELEVATION  
SCALE: N.T.S.

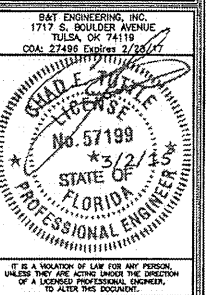


THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO THE CLIENT IS STRICTLY PROHIBITED.

SITE # TOWER #2  
WASTE WATER  
TREATMENT PLANT  
OFF EARNEST ST  
WEST PALM BEACH, FL 33417  
PROPOSED GUYED TOWER

PROJECT NO: 92181.001  
CHECKED BY: CWD

ISSUED FOR:			
REV	DATE	DRWN	DESCRIPTION
0	8/2/14	MAA	CONSTRUCTION
1	11/19/14	CJD	CONSTRUCTION
2	12/10/14	MDW	CONSTRUCTION
3	2/11/15	SWM	CONSTRUCTION
4	3/2/15	SWM	CONSTRUCTION



SHEET NUMBER: C-2  
REVISION: 4

Tower/Site Frequency List for Tower #2						
Agency	Frequency TX	Frequency RX		Agency	Frequency TX	Frequency RX
West Palm Beach				Palm Beach County		
P25	855.4375	810.4375		Cnty UHF	453.5500	458.5500
P25	855.8125	810.8125		Cnty UHF	460.4250	465.4250
P25	856.9625	811.9625		EOC	154.6500	155.6100
P25	857.8375	812.8375		Microwave	6855.000	6695.000
P25	858.9625	813.9625		Microwave	6785.000	6625.000
P25	855.6125	810.6125		Microwave	6545.000	6715.000
P25	856.4375	811.4375		Microwave	6765.000	6605.000
P25	857.4375	812.4375		Microwave	6845.000	6685.000
P25	858.4375	813.4375		Microwave	6585.000	6745.000
P25	859.8125	814.8125		MOSCAD	159.1500	159.1500
Astro	858.1125	813.1125		PSRS	852.7625	807.7625
Astro	860.2125	815.2125		PSRS	852.5750	807.5750
Astro	854.9625	809.9625		PSRS	853.7250	808.7250
800	854.3375	809.3375		PSRS	852.3750	807.3750
State PD Repeater	858.3875	813.3875		PSRS	857.3125	812.3125
SCADA*	216-220	216-220		PSRS	852.3250	807.3250
SCADA*	216-220	216-220		PSRS	852.1000	807.1000
SCADA*	216-220	216-220		PSRS	851.8500	806.8500
SCADA*	216-220	216-220		PSRS	851.8250	806.8250
Microwave	6645.000	6675.000		PSRS	851.7500	806.7500
Microwave	6805.000	6805.000		PSRS	851.6250	806.6250
Amateur	146.670	146.070		PSRS	851.6000	806.6000
				PSRS	851.3500	806.3500
				PSRS	851.3250	806.3250
Agency	Frequency TX	Frequency RX		PSRS	851.1250	806.1250
MPSCC				PSRS	851.1000	806.1000
Open Sky	856.0125	811.0125		PSRS	860.3375	815.3375
Open Sky	858.0125	813.0125		PSRS	859.3375	814.3375
Open Sky	854.0625	809.0625		PSRS	852.4000	807.4000
Open Sky	856.0125	811.0125		PSRS	857.3375	812.3375
Open Sky	858.0125	813.0125		PSRS	856.3375	811.3375
700 MHz	770.7625	725.7625		PSRS	860.3125	815.3125
700 MHz	772.2875	727.2875		PSRS	853.7000	808.7000
700 MHz	773.3875	728.3875		PSRS	853.6500	808.6500
700 MHz	773.6875	728.6875		PSRS	853.3750	808.3750
700 MHz	773.9375	728.9375		PSRS	853.2250	808.2250
700 MHz	774.2375	729.2375		PSRS	856.3125	811.3125
700 MHz	774.4875	729.4875		PSRS	858.3125	813.3125
700 MHz	774.7375	729.7375		PSRS	852.3500	807.3500
MW	11405.000	10915.000		PSRS	858.3375	813.3375
MW	11325.000	10835.000		PSRS	859.3125	814.3125
MW	11445.000	10955.000		PSRS IO	770.7625	800.7625
MW	11445.000	10955.000		PSRS IO	772.2875	802.2875
MW	11285.000	10795.000		PSRS IO	773.3875	803.3875
				PSRS IO	773.9375	803.9375
				PSRS IO	774.7375	804.7375
				PSRS IO	769.2438	799.2438
				PSRS IO	769.7438	799.7438
				PSRS IO	770.2438	800.2438
				PSRS IO	770.9938	800.9938
				PSRS IO	773.2563	803.2563
				PSRS IO	773.7563	803.7563
				PSRS IO	774.2563	804.2563
				PSRS IO	774.8563	804.8563
				USSS	164.4000	166.4000

\* SCADA licensing in the 216-220 MHz band is currently in process pending coordination and FCC approval.

Exhibit E:  
Frequencies Approved  
for all Tower Users

Yearly Tower Maintenance Costs for Tower #2		
	Cost	Notes
<b>Yearly Maintenance Cost for Tower #2</b>		
Item	Cost	Notes
Inspection	\$ 2,500.00	(Yearly, 1 climber, 1 ground, 6 hours, 4 hours for sweeps, no travel)
Tower Lighting Repairs	\$ 1,630.00	(Yearly, 1 climber, 1 ground, 3 hours, no travel, estimated \$1000/parts/year)
Plumb and Tension	\$ 900.00	(Every five years, \$4500/5 = \$900)
Ground System	\$ 250.00	
Weed Spraying	\$ 1,600.00	
Total Yearly Cost	\$ 6,880.00	Base maintenance cost shared between WPB, County, and MPSCC.
Total Monthly Cost	\$ 573.33	

Exhibit F:  
Computation of Maintenance Fee

Total Tower/Site Maintenance Cost Sharing for Tower #2			
Estimated Shared Maintenance Cost		Yearly	Monthly
<b>WPB</b>			
Site #2 - WWTP		\$2,502.94	\$ 208.58
<b>MPSCC</b>			
Site #2 - WWTP		\$963.89	\$ 80.32
<b>County</b>			
Site #2 - WWTP		\$3,413.17	\$ 284.43
<b>Estimated Shared R&amp;R Cost</b>		<b>Yearly</b>	<b>Monthly</b>
<b>WPB</b>			
Site #2 - WWTP		\$1,969.97	\$ 164.16
<b>MPSCC</b>			
Site #2 - WWTP		\$758.64	\$ 63.22
<b>County</b>			
Site #2 - WWTP		\$2,686.37	\$ 223.86
<b>Total Tenant Cost by Site</b>		<b>Yearly</b>	<b>Monthly</b>
<b>WPB</b>			
Site #2 - WWTP		\$4,472.91	\$ 372.74
<b>MPSCC</b>			
Site #2 - WWTP		\$1,722.53	\$ 143.54
<b>County</b>			
Site #2 - WWTP		\$6,099.54	\$ 508.30

Share of Tower Space

36.38%

14.01%

49.61%

### Yearly Replacement and Recovery Costs for Tower #2

	Cost	Notes
Original Tower Cost	\$ 929,359.00	
CPI over 30 years	\$ 1,020,034.31	Calculated at 2.5% annually
Estimated Tower Replacement Cost	\$ 1,949,393.31	
Recovery of Cost by Month Over 30 Years	\$ 5,414.98	
Division of Cost by Tenant		
- West Palm Beach	\$ 1,969.97	36.38% from Tab 1 - '% Tower Space'
- MPSCC	\$ 758.64	14.01% from Tab 1 - '% Tower Space'
- Palm Beach County	\$ 2,686.37	49.61% from Tab 1 - '% Tower Space'

### Exhibit G: Computation of Renewal and Replacement Fee

Site #2 - WWTP			
Year	CPI	Inflation Rate	Dollar Value
2015	Start	2.50%	\$ 929,359.00
2016	\$ 250.87	2.50%	\$ 952,592.98
2017	\$ 257.14	2.50%	\$ 976,407.80
2018	\$ 263.57	2.50%	\$ 1,000,817.99
2019	\$ 270.16	2.50%	\$ 1,025,838.44
2020	\$ 276.91	2.50%	\$ 1,051,484.41
2021	\$ 283.84	2.50%	\$ 1,077,771.52
2022	\$ 290.93	2.50%	\$ 1,104,715.80
2023	\$ 298.21	2.50%	\$ 1,132,333.70
2024	\$ 305.66	2.50%	\$ 1,160,642.04
2025	\$ 313.30	2.50%	\$ 1,189,658.09
2026	\$ 321.13	2.50%	\$ 1,219,399.54
2027	\$ 329.16	2.50%	\$ 1,249,884.53
2028	\$ 337.39	2.50%	\$ 1,281,131.65
2029	\$ 345.83	2.50%	\$ 1,313,159.94
2030	\$ 354.47	2.50%	\$ 1,345,988.94
2031	\$ 363.33	2.50%	\$ 1,379,638.66
2032	\$ 372.42	2.50%	\$ 1,414,129.63
2033	\$ 381.73	2.50%	\$ 1,449,482.87
2034	\$ 391.27	2.50%	\$ 1,485,719.94
2035	\$ 401.05	2.50%	\$ 1,522,862.94
2036	\$ 411.08	2.50%	\$ 1,560,934.51
2037	\$ 421.36	2.50%	\$ 1,599,957.87
2038	\$ 431.89	2.50%	\$ 1,639,956.82
2039	\$ 442.69	2.50%	\$ 1,680,955.74
2040	\$ 453.76	2.50%	\$ 1,722,979.63
2041	\$ 465.10	2.50%	\$ 1,766,054.12
2042	\$ 476.73	2.50%	\$ 1,810,205.48
2043	\$ 488.64	2.50%	\$ 1,855,460.61
2044	\$ 500.86	2.50%	\$ 1,901,847.13
2045	\$ 513.38	2.50%	\$ 1,949,393.31