

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 5, 2017 [X] Consent [] Regular
[] Ordinance [] Public Hearing
Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to Communication Tower Agreement (R98-2029D) with American Tower, L.P. to exercise the County's option to extend the term for a period of 5 years, and to document modification of the County's antenna frequency and equipment.

Summary: Since 1998, the County has leased space on the 450-foot guyed tower located at 1300 Whittaker Road in Belle Glade which is owned by American Tower, L.P. (fka OPM-USA). This space is essential for the operation of the County's communication antennas and equipment shelter supporting the County's 800MHz system. This First Amendment exercises the County's option to extend the term for a period of 5 years commencing on December 1, 2018 and expiring on November 30, 2023; eliminates Exhibit "C" (Tower Loading Diagram), Exhibit "E" (County Frequencies) and Exhibit "F" (User Frequencies); replaces it with an inclusive Exhibit "C-1" (Modified Tower Loading Diagram) to memorialize the equipment and frequency modifications for the County's Motorola P-25 system; corrects a scrivener's error in the Annual Rental Increase provision; and updates various standard County provisions. The annual rent is currently \$46,533.78 subject to annual CPI increases in January. All other terms of the Agreement remain unchanged. FDO/PREM will continue to have administrative responsibility for this Agreement. (PREM) District 6 (HJF)

Background and Justification: In 1997, American Tower constructed its tower on land leased from the Alma Steel Trust. On December 1, 1998, (R98-2029D), the Board approved the initial Agreement with OPM-USA, a Division of American Tower, L.P., for a period of 20 years with options to extend concurrent with the term of the American Tower lease with the Alma Steel Trust. American Tower recently notified the County it is extending the term of its lease and the County has 90 days to exercise its option to extend the Agreement, which is why this extension option is being exercised one year in advance of expiration of the Agreement. The Agreement allowed the County to install communication equipment supporting its 800MHZ radio system on the 450-foot guyed tower. The original installation was not in accordance with the Agreement's exhibits and equipment modifications were necessary to propagate the County's new Motorola P-25 system. American Tower permitted the County to modify its equipment in advance of this amendment and is not requesting a rental increase for the modifications. Exhibits "C", "E" and "F" will be combined into a new Exhibit "C-1" in order to identify the County's installed equipment. Due to the age of the Agreement, updates were required to incorporate various standard County provisions, including disclosure of beneficial interests, radon, construction, no third party beneficiary and the Inspector General. The Electronic Services and Security Division has reviewed and approved the P-25 installation and these Agreement modifications. Florida Statutes does not require that a Disclosure of Beneficial Interests be obtained as American Tower, L.P. is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the public.

- Attachments:**
- 1. Location Map
 - 2. First Amendment to Communication Tower Agreement

Recommended By: ZCH Army Wolf 11/9/17
Department Director Date
Approved By: JBaker 11/30/17
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs	<u>\$47,930</u>	<u>\$49,368</u>	<u>\$50,849</u>	<u>\$52,374</u>	<u>\$53,945</u>
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes No

Does this item include the use of federal funds? Yes No

Budget Account No: Fund 0001 Dept. 410 Unit 4150 Object 4414
 Program _____

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

Annual increases are based on CPI. An estimated CPI 3% increase was assumed for calculating the annual increases.

Fixed Asset Number n/a

C. Departmental Fiscal Review: *[Signature]* 11/14/17

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 11/17/17
 OFMB
 11/16

[Signature] 11/29/17
 Contract Development and Control
 11/28/17 TW

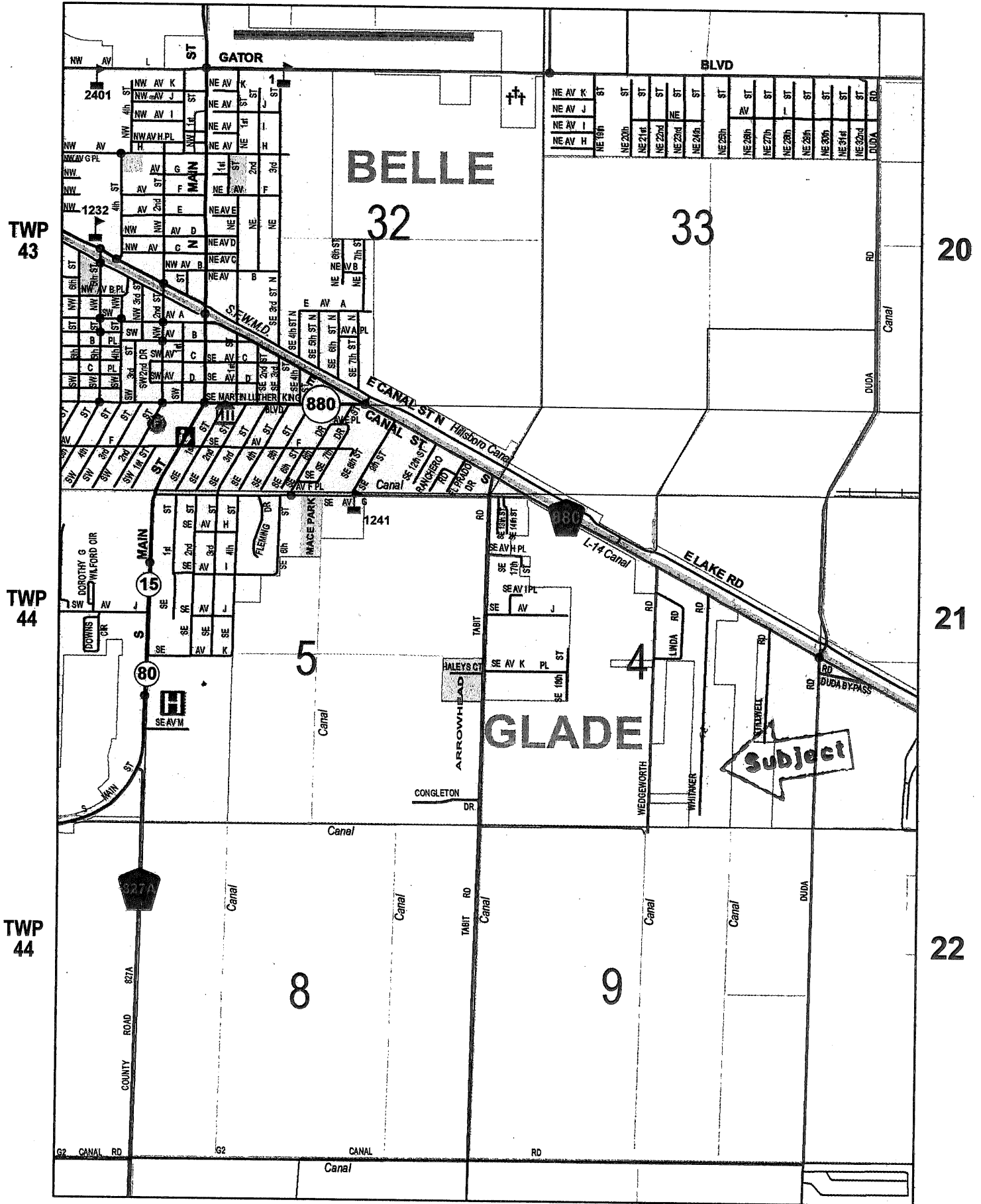
B. Legal Sufficiency:

[Signature] 11/30/17
 Assistant County Attorney

C. Other Department Review:

 Department Director

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



RNG 37

See pg V

RNG 37

LOCATION MAP

Attachment 1
1 of 1

Handwritten signature or initials.

Attachment 2
First Amendment to Communication
Tower Agreement
(10 pages each)

FIRST AMENDMENT TO COMMUNICATION TOWER AGREEMENT

THIS FIRST AMENDMENT TO COMMUNICATION TOWER AGREEMENT (R98-2029D) is made and entered into this _____ day of _____, 2017, by and between **AMERICAN TOWER, L.P.**, a Delaware limited partnership, as successor in interest to OPM-USA (the "Lessor") and **PALM BEACH COUNTY**, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "County") (collectively, the "Parties").

RECITALS

WHEREAS, Lessor owns a certain communications tower ("Tower") located at 1300 Whittaker Road, Belle Glade, FL 33430-4642; and

WHEREAS, Lessor leases certain real property more commonly known as the Belle Glade tower site (the "Property") pursuant to an Agreement dated May 1, 1997, as amended and assigned (the "Prime Agreement"); and

WHEREAS, Lessor and County entered into that certain Communication Tower Agreement dated December 1, 1998 ("Agreement") for the County's use of space on said Tower to enhance its public safety and public service communications capabilities and to create its own equipment compound on a portion of the Property; and

WHEREAS, the Term of the Agreement expires on November 30, 2018; and the Parties desire to extend the Term of the Agreement; and

WHEREAS, County desires to make modifications to its equipment at the Property to support existing uses which said modifications alter the frequencies contained in Exhibit "E" and Exhibit "F"; and

WHEREAS, Lessor has inspected County's modifications and deemed them acceptable; and

WHEREAS, the Parties wish to amend the Agreement to document a five (5) year extension of the Term of the Agreement, modify a scrivener's error, delete and replace certain exhibits to identify modifications to equipment locations, and incorporate certain language required by County; and

WHEREAS, the Parties hereto desire to amend the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning ascribed to them in the Agreement.
2. Pursuant to the Agreement, commencing on December 1, 2018, the Term shall be extended for a period of five (5) years, and expiring on November 30, 2023. Annual Rent shall be adjusted as provided for in Section 2.02 of the Agreement, as amended.
3. Exhibit "C" (Tower Loading Diagram), Exhibit "E" (County Frequencies), and Exhibit "F" (User Frequencies") of the Agreement are hereby deleted in their entirety and replaced with Exhibit "C-1" (Modified Tower Loading Diagram) attached hereto and incorporated by this reference. In the event of inconsistency or discrepancy between Exhibit "C-1" and County's equipment information set forth in the Agreement, Exhibit "C-1" shall control.
4. Section 2.02, Cost of Living Adjustment to Annual Gross Rent, is hereby deleted in its entirety and replaced with the following:

Section 2.02, Cost of Living Adjustment to Annual Gross Rent

Commencing on the first anniversary of the Rental Commencement Date, and on the commencement of each subsequent one (1) year period thereafter during the term of this Agreement (hereinafter referred to as an "Adjustment Date"), the annual Gross Rent shall be adjusted as hereinafter set forth in accordance with any increase in the Consumer Price Index for all Urban Consumers All Items, U.S. City average (1982-1984=100) issued by the Bureau of Statistics of the U.S. Department of Labor (hereinafter referred to as "CPI"). On each Adjustment Date, the annual Gross Rent shall be adjusted by multiplying the annual Gross Rent for the immediately preceding one (1) year period by a fraction, the numerator of which shall be the CPI value for the month three months preceding the applicable Adjustment Date and the denominator of which shall be the CPI value for the prior year. In the event that during the Term of this Agreement the CPI ceases to be published, or if a substantial change is made in the method of establishing or computing the CPI, then the determination of the adjustment in the annual Gross Rent shall be made with the use of such conversion factor, formula or table as may be published by the Bureau of Labor Statistics, or if none is available, by any other nationally recognized publisher or similar information chosen by the Lessor. In no event shall the annual Gross Rent be increased by more than five percent (5%) on any Adjustment Date.

5. Section 6.01, Liability Insurance, is hereby amended to add the following:

Upon reasonable request from Lessee, Lessor will deliver to Insurance Tracking Services, Inc. (ITS), the County's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the Lessor under this Section. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801

Email: pbc@instracking.com or Facsimile: (562) 435-2999

Lessor shall provide such evidence to ITS at pbc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or not renewed during the life of this Agreement, Lessor shall furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage.

8. Section 15.01, Non-Discrimination, is hereby deleted in its entirety and replaced with the following:

Section 15.01 Non-Discrimination.

The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

Lessor has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, has acknowledged through a signed statement provided to County that Lessor will conform to the County's non-discrimination policy as provided in R-2014-1421, as may be amended.

9. Section 15.02, Public Entity Crimes, is hereby deleted in its entirety and replaced with the following:

Section 15.02 Public Entity Crimes.

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Agreement or performing work hereunder, Lessor certifies that, to the best of Lessor's knowledge and without independent investigation, Lessor, its affiliates, suppliers, subcontractors and consultants who will perform work hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

10. Section 15.04, Notices, is hereby modified as follows:

(a) If to the Lessor at:

American Tower, L.P.
10 Presidential Way
Woburn, MA 01801
781-926-4500
Fax: 781-926-4555

With a copy to:

American Towers, LLC
116 Huntington Avenue
Boston, MA 02116
Attention: General Counsel

(b) If to the County at:

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

With a copy to:

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

11. Section 15.09, Governing Law and Venue, is hereby deleted in its entirety and replaced with the following:

Section 15.09 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a State court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No

single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

12. Article XV, Miscellaneous Provisions, is hereby modified to add the following:

Section 15.11 Disclosure of Beneficial Interest.

Lessor represents that simultaneously with Lessor's execution of this Agreement, Lessor has executed and delivered to County, the Lessor's Disclosure of Beneficial Interests attached hereto as Exhibit "E", attached hereto and made a part hereof, (the "Disclosure") disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Property as required by Section 286.23 of the Florida Statutes unless Lessor is exempt under the statute. Lessor warrants that in the event there are any changes to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the Property after the date of execution of the Disclosure until the Effective Date of the Agreement, Lessor shall immediately, and in every instance, provide written notification of such change to the County pursuant to Section 15.04 of this Agreement or, if the case may be, provide a notice that the changed entity is exempt under the statute.

Section 15.12 Radon.

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

Section 15.13 Construction.

In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 15.14 Incorporation by Reference.

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

Section 15.15 No Third Party Beneficiary.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of Palm Beach County or employees of County or Lessor.

Section 15.16 Palm Beach County Office of the Inspector General Audit Requirements.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County contracts,

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

13. Except as set forth herein, all of the terms and conditions of the Agreement, as amended, remain unmodified and in full force and effect.

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

[SIGNATURES APPEAR ON THE NEXT PAGE]

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

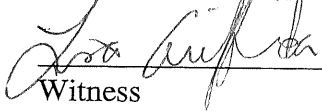
IN WITNESS WHEREOF, the Parties hereto have set their hands to this First Amendment to that certain Communication Tower Agreement as of the day and year written below:

Signed, sealed and delivered in the presence of:



Witness
Matthew Harris

Print Witness Name



Witness
Lisa Gault

Print Witness Name

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

Witness

Print Witness Name

Witness

Print Witness Name

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
County Attorney

Agreed to and accepted by:

LESSOR:

American Tower, L.P., a Delaware limited partnership



By: _____

Name: Margaret Robinson

Title: Senior Counsel

Date: 10/27/07

Agreed to and accepted by:

COUNTY:

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

By: _____
Mayor

APPROVED AS TO TERMS
AND CONDITIONS:

By: 
Department Director

Lessor Site Name/Number: Belle Glade / 2648
Lessor Contract Number: SE007208
County Site Number/ Name: Belle Glade OPM / S-31

EXHIBIT "C-1"

MODIFIED TOWER LOADING DIAGRAM

Exhibit C-1						
Customer Name: PALM BEACH COUNTY		ATC Asset Name: Belle Glade		ATC Asset #: 2648		
Customer Site Name: Belle Glade OPM			Customer Site #: S-31			
GROUND SPACE REQUIREMENTS						
Total Lease Area	Sq. Ft: 850.00'	Primary Contiguous Lease Area		L:12.00'	W:36.00'	H: Sq. Ft: 432.00
	Customer Building			12.00'	36.00'	N/A 432.00
	Outside Primary Lease Area			N/A	N/A	N/A Sq. Ft: 418.00
	Generator AREA			5.00'	10.00'	N/A 50.00
	Fuel Tank AREA			16.00'	23.00'	N/A 368.00
	Setback AREA			N/A	N/A	Refer to Site Sketch
BACKUP POWER REQUIREMENTS						
Generator: Stand Alone		Fuel Tank Size(gal): 1000.0		Fuel Type: Propane		Fuel Tank Setback(radius): 25.0
UTILITY REQUIREMENTS						
Power Provided By: Utility Company Direct						
Telco/Interconnect: N/A						
TRANSMITTER & RECEIVER SPECIFICATIONS						
Type: TX/RX	Quantity: 24	TX Power(watts): 100		ERP(watts): 215		
Type: TX/RX	Quantity: 1	TX Power(watts): 0.8		ERP(watts): 1906		
Type: TX/RX	Quantity: 1	TX Power(watts): 0.8		ERP(watts): 3579		
ANTENNA EQUIPMENT SPECIFICATIONS						
Type	OMNI	OMNI	OMNI	OMNI	OMNI	TTA
Manufacturer	Decibel	RFS	RFS	RFS	RFS	Bird
Model #	DB812KE-XT	BMR8-B-B1	BMR8-B-B1	BMR8-B-B1	BMR8-B-B1	429-83H-01-T
Dimensions HxWxD	292.8" x 3" x 3"	96" x 6.6" x 6.6"	96" x 6.6" x 6.6"	96" x 6.6" x 6.6"	96" x 6.6" x 6.6"	18" x 6" x 6"
Weight(lbs.)	71.0	36.0	36.0	36.0	36.0	20.0
Location	Tower	Tower	Tower	Tower	Tower	Tower
RAD Center AGL	462.0'	454.0'	454.0'	454.0'	454.0'	450.0'
Antenna Tip Height	474.2'	458.0'	458.0'	458.0'	458.0'	450.8'
Antenna Base Height	449.8'	450.0'	450.0'	450.0'	450.0'	449.2'
Mount Type	Side Arm	Pole Mount	Pole Mount	Pole Mount	Pole Mount	Leg/Flush
Quantity	1	1	1	1	1	1
Azimuths/Dir. of Radiation	0	270	270	270	270	0
Quant. Per Azimuth/Sector	1	1	1	1	1	1
TX/RX Frequency Units	MHz	MHz	MHz	MHz	MHz	MHz
TX Frequency	851.1000-860.3375	851.1000-860.3375	851.1000-860.3375	851.1000-860.3375	851.1000-860.3375	851.1000-860.3375
RX Frequency	806.1000-815.3375	806.1000-815.3375	806.1000-815.3375	806.1000-815.3375	806.1000-815.3375	806.1000-815.3375
Using Unlicensed Frequencies?	No	No	No	No	No	No
Antenna Gain	12	12	12	12	12	23
Total # of Lines	1	1	1	1	1	1
Line Quant. Per Azimuth/Sector	1	1	1	1	1	1
Line Type	Coax	Coax	Coax	Coax	Coax	Coax
Line Diameter Size	7/8" Coax	1 1/4" Coax	1 1/4" Coax	1 1/4" Coax	1 1/4" Coax	7/8" Coax
Line Configuration	N/A	N/A	N/A	N/A	N/A	N/A

ANTENNA EQUIPMENT SPECIFICATIONS						
Type	DISH-STANDARD	DISH-STANDARD	DISH-STANDARD	DISH-STANDARD	DIPOLE	N/A
Manufacturer	Commscope	Commscope	Commscope	Commscope	Decibel	N/A
Model #	PAR6-59/B (154 lbs)	PAR6-59/B (154 lbs)	PL4-59/F	PL4-59/F	DB222	N/A
Dimensions HxWxD	6.36' x 6.36' x 1.49'	6.36' x 6.36' x 1.49'	4.23' x 4.23' x 1.35'	4.23' x 4.23' x 1.35'	127" x 0" x 0"	N/A
Weight(lbs.)	154.0	154.0	119.0	119.0	16.0	N/A
Location	Tower	Tower	Tower	Tower	Tower	N/A
RAD Center AGL	170.0'	150.0'	130.0'	120.0'	110.0'	N/A
Antenna Tip Height	173.2'	153.2'	132.1'	122.1'	115.3'	N/A
Antenna Base Height	166.8'	146.8'	127.9'	117.9'	104.7'	N/A
Mount Type	Leg/Flush	Leg/Flush	Leg/Flush	Leg/Flush	Side Arm	N/A
Quantity	1	1	1	1	1	N/A
Azimuths/Dir. of Radiation	85.3	0.9	85.3	.9	0	N/A
Quant. Per Azimuth/Sector	1	1	1	1	1	N/A
TX/RX Frequency Units	GHz	GHz	GHz	GHz	MHz	N/A
TX Frequency	6123.10	6286.19	6123.10	6286.19	159.15	N/A
RX Frequency	6375.14	6034.15	6375.14	6034.15	159.15	N/A
Using Unlicensed Frequencies?	No	No	No	No	No	N/A
Antenna Gain	35.6/ 35.7/ 35.8	35.6/ 35.7/ 35.8	35.4	35.4	6	N/A
Total # of Lines	1	1	1	1	1	N/A
Line Quant. Per Azimuth/Sector	1	1	1	1	1	N/A
Line Type	Elliptical	Elliptical	Elliptical	Elliptical	Coax	N/A
Line Diameter Size	EW63	EW63	EW63	EW63	0.63" (16mm) LDF4-50A	N/A
Line Configuration	N/A	N/A	N/A	N/A	N/A	N/A

OAA657276