

6F-3

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: August 17, 2021 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) **Adopt** a Resolution authorizing an Amended and Restated Communications Tower Joint Use Agreement with New Cingular Wireless PCS, LLC (AT&T) for its continued use of the County's communication tower site located at 8130 N. Jog Road in West Palm Beach for a period of five (5) years commencing on August 20, 2021 and no annual rent; and

B) **Approve** an Amended and Restated Communications Tower Joint Use Agreement with New Cingular Wireless PCS, LLC (AT&T).

Summary: On August 20, 1996, the County entered into a Communications Tower Joint Use agreement (R96-1077D) (Agreement) with BellSouth Mobility who constructed at its sole cost and expense, a 190 foot communications tower and equipment shelter located at 8130 N. Jog Road in West Palm Beach. BellSouth Mobility was later acquired by AT&T, which now operates as New Cingular Wireless PCS, LLC. The Agreement has been amended multiple times to allow for equipment modifications and to exercise extension options. In 2007, AT&T transferred ownership of the tower to the County. The Agreement is set to expire on August 19, 2021. This Amended and Restated Communications Tower Joint Use Agreement extends the term for five years with four additional five-year options, updates all County standard provisions, provides for the County Radio Administrator to approve alterations to antenna equipment, and requires AT&T to continue to be responsible, at its sole cost and expense, for maintenance of the tower and equipment shelter. The agreement will continue to be administered by Facilities Development and Operations (**Property & Real Estate Management**) District 6 (HJF)

Background & Policy Issues: Over the past 25 years the tower and equipment shelter maintenance have been paid for by AT&T. The County has no critical radio equipment located on the tower, but has some secondary equipment and maintains reservations on the tower and within the equipment shelter. Pursuant to Section 22-104 (d)(1) of the Palm Beach County Ordinances, the Board of County Commissioners has the discretion to extend an existing agreement upon a finding that it is in the best interest of the County. Facilities Development and Operations' Electronic Services and Security Division has reviewed and approved the proposed modifications. AT&T is an entity registered with the Federal Securities Exchange Commission whose interest is for sale to the general public. Florida Statutes does not require that a Disclosure of Beneficial Interests be obtained.

Attachments:

1. Location Map
2. Resolution
3. Amended and Restated Communications Tower Joint Use Agreement

Recommended By: [Signature] Department Director Date: 7/20/21
Approved By: [Signature] County Administrator Date: 8/6/2021

II. FISCAL IMPACT ANALYSIS

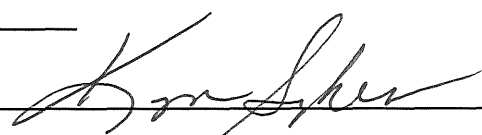
A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# 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 _____	Dept _____	Unit _____	Object _____	
		Program _____			

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

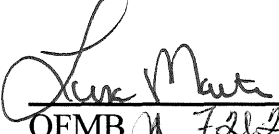
No Fiscal Impacts

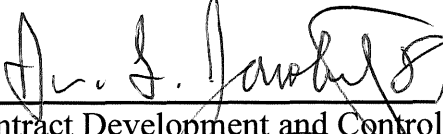
Fixed Assets Number _____

C. Departmental Fiscal Review: 


III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 7/22/21
OFMB *7/22/21* LM
7/21

 8/3/21
Contract Development and Control
8-3-21 TW

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

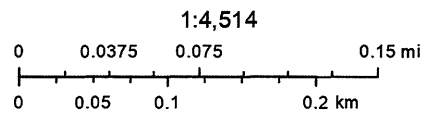
Department Director

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

74-42-42-22-00-000-5030



July 19, 2021



LOCATION MAP



Attachment #1

Attachment #2
Resolution
29 Pages

RESOLUTION NO.

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING AN EXTENSION OF THE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC.; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, New Cingular Wireless PCS, LLC. (“AT&T”), pursuant to a Tower Joint Use Agreement dated August 20, 1996 (R96-1077D, as amended by R2006-0351, R2012-0890, and R2015-1703), built a communication tower and equipment storage facility on property owned by Palm Beach County and maintains equipment on the tower to provide mobile telephone services to the public;

WHEREAS, AT&T transferred ownership of the tower and equipment storage facility to Palm Beach County in 2007 but has remained responsible for maintenance, at its sole cost and expense; and

WHEREAS, AT&T has requested that County extend the term of the Agreement for 25 years by amending and restating the Agreement for a term of five (5) years with four (4) options to extend, each for five (5) years ; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that AT&T provides services to the public and will continue to maintain the tower and equipment storage facility, and it is therefore in the best interest of the County to amend and restate the Agreement and extend the term for occupancy of the tower and equipment storage facility.

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

Section 1. Recitals

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

Section 2. Authorization to Amend and Restate the Agreement

The Board of County Commissioners of Palm Beach County shall grant AT&T an additional 25 years of use of the tower and equipment storage facility, pursuant to the

Amended and Restated Agreement attached hereto as Exhibit "A" and incorporated herein by reference, free of charge,

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

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

Section 4. Effective Date.

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

The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- Commissioner Dave Kerner, Mayor
- Commissioner Robert S. Weinroth, Vice Mayor
- Commissioner Maria G. Marino
- Commissioner Gregg K. Weiss
- Commissioner Maria Sachs
- Commissioner Melissa McKinlay
- Commissioner Mack Bernard

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2021.

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

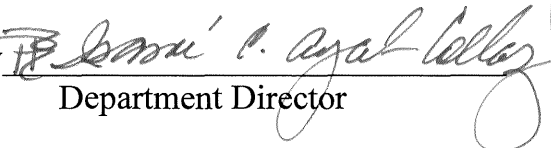
JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO
LEGAL SUFFICIENCY

By _____
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By  _____
Department Director

PALM BEACH COUNTY
AMENDED AND RESTATED COMMUNICATION TOWER JOINT USE
AGREEMENT

between

PALM BEACH COUNTY
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA,
BY AND THROUGH ITS BOARD OF COUNTY COMMISSIONERS

and

NEW CINGULAR WIRELESS PCS, LLC
a Delaware limited liability company

G:\PREM\PM\In Lease\BellSouth Mobility Tower\Amended and Restated 2020\Drafts\ATT Clock tower HF approved 6.17.docx

**AMENDED AND RESTATED COMMUNICATION TOWER JOINT USE
AGREEMENT**

THIS AMENDED AND RESTATED COMMUNICATION TOWER JOINT USE AGREEMENT (“Agreement”) made and entered into on _____, 2021, by and between PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County" and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company licensed to do business in the State of Florida, with FEI/EIN number 22-3330080 ; hereinafter referred to as “AT&T.”

RECITALS:

WHEREAS, on August 20, 1996, the County and AT&T (or its predecessors) entered into an Agreement R96-1077D, that was subsequently amended by the First Amendment to Agreement (R2006-0351) on February 28, 2006, by the Second Amendment to Agreement (R2012-0890) on June 19, 2012, and by the Third Amendment to Agreement (R2015-1703) on December 1, 2015 (collectively, the “1996 Agreement”) setting forth the terms and conditions by which AT&T constructed a 192-foot free standing communication tower (“Tower”) and an Accessory Equipment Building (“Equipment Storage Facility”), the ownership of which has since been transferred to the County; and

WHEREAS, to set forth the terms and conditions for AT&T to maintain equipment placement and operations of the Tower and Equipment Storage Facility, this Agreement amends and restates, in its entirety, and replaces the 1996 Agreement; and

WHEREAS, County is the owner of certain real property situated in Palm Beach County, Florida, legally described in Exhibit “A” attached hereto (hereinafter “the Property”); and

WHEREAS, AT&T operates and maintains its communications equipment within the Equipment Storage Facility and Tower on the Property;

WHEREAS, AT&T has maintained, at its own expense, the Tower and Equipment Storage Facility; and

WHEREAS, AT&T has requested to continue occupying a user space within the Equipment Storage Facility and the footprint of the Tower depicted in Exhibit “B” attached hereto and in accordance with the equipment locations and architectural elevations described and identified in Exhibit “C” attached hereto (the certain user space within the Equipment Storage Facility, footprint of the Tower designated for AT&T’s exclusive use, and Cabling Space as defined in Section 1.01 below are hereinafter collectively referred to as the “Premises”); and

WHEREAS, AT&T will be able to better serve the public in providing mobile cellular service in the general area and County will benefit as a result of such improved service.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
BASIC AGREEMENT PROVISIONS

Section 1.01 Terms and Conditions. The County hereby grants to AT&T the right to continue with the operation of its communications equipment, the component parts of which are set forth in Exhibit "C", said communications equipment being hereinafter referred to as the "Communications Equipment", in the locations indicated on Exhibit "C", attached hereto. AT&T shall have the right to install, operate and maintain the Communications Equipment for the purpose of providing mobile telephone service to the public, in accordance with the specific terms and conditions hereinafter set forth. AT&T shall have the right to occupy approximately three hundred forty-five (345) square feet of floor space within the Equipment Storage Facility and said space shall be used exclusively for the installation of Communications Equipment and attendant facilities necessary to the operation and maintenance of AT&T's Communication Equipment; the surplus space in the Equipment Storage Facility may be used by County or by other users under separate agreements to be issued by County. County shall be entitled to retain all rents from such separate agreements. In addition, AT&T shall be allowed, subject to the provisions of Section 3.01 (a), to install and maintain underground wires, cables, conduits and pipes connecting the component parts of AT&T's Communications Equipment and running from AT&T's Communications Equipment to telephone service and electrical power sources ("Cabling Space"). AT&T specifically acknowledges that the rights granted hereby are non-exclusive and that County reserves the right to utilize the Equipment Storage Facility and Cabling Space without constraint or interruption by AT&T and to grant additional parties the right to utilize any portion of the Equipment Storage Facility and Cabling Space that in County's sole discretion it deems appropriate, subject to the non-interference provisions in Section 4.02 below.

Section 1.02 Length of Term and Commencement Date. The term of this Agreement shall commence on August 20, 2021 at the expiration of the 1996 Agreement (the "Commencement Date") and shall extend for a term of five (5) years thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Agreement or extended pursuant to Section 1.03.

Section 1.03 Option to Extend Term of Agreement. Provided that AT&T is not in default under the terms of this Agreement, AT&T shall have the option of extending this Agreement for four (4) additional terms of five (5) years each, under the same terms and conditions of this Agreement. AT&T shall be deemed to have exercised its then current option unless AT&T provides notice to the County of its election not to exercise its option, which notice must be received by the County on or before sixty (60) days prior to any renewal thereof. Notwithstanding the rights granted to AT&T under this Section 1.03, County may, at any time terminate this Agreement, with or without cause, upon three hundred sixty-five (365) days prior written notice to AT&T; in this event, the parties shall be relieved of all further obligations under this Agreement arising subsequent to the expiration of such three hundred sixty-five (365) days.

Section 1.04 Acceptance by AT&T. AT&T certifies that AT&T currently occupies the Property and Premises and accepts same "As Is," in its existing condition, as of the Commencement 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. AT&T further acknowledges that the County has made no warranties or representations of any nature whatsoever regarding the Property or Premises including, without limitation, any relating to the physical condition thereof or of any improvements located therein, or the suitability of the Property or Premises for AT&T's intended use thereof. County shall not be required to perform any repair work, alterations, or remodeling of the Property or Premises as a condition of this Agreement.

Section 1.05 Inability to Operate. In the event AT&T (i) is unable to obtain or maintain in full force and effect through no fault of AT&T, any permit, license or other

governmental approval necessary or required for the continued operation of AT&T's Communications Equipment, or (ii) is unable to obtain the coverage required to service AT&T'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 AT&T can prove that such inability results from interference with a signal emanating from an off-site location, AT&T shall have the right to terminate this Agreement upon thirty (30) days prior written notice to County. Thereafter the parties shall be relieved of all further obligation arising subsequent to the date of such termination.

Section 1.06 Termination In the event of termination of this Agreement the parties shall be relieved of all further obligations hereunder arising after the date of such termination, except for the provisions of this Agreement which explicitly or by their very nature survive termination of this Agreement. Any such termination shall be in writing. Termination of this Agreement shall not affect AT&T's obligations under this Agreement arising prior to such termination.

ARTICLE II RENT

Section 2.01 Rent. In consideration of AT&T installing, operating and maintaining the Tower and Equipment Storage Facility, AT&T shall have the right to operate and maintain its Communication Equipment on the Tower, have access thereto, and shall otherwise inure to the benefits of this Agreement, without payment of rent during the entire term of this Agreement.

ARTICLE III INSTALLATION OF COMMUNICATIONS EQUIPMENT

Section 3.01. AT&T's Work.

(a) Current Communications Equipment. Attached hereto as Exhibit "C" and "D" are exhibits describing the Equipment Storage Facility, Tower and Communications Equipment and conceptual plans and specifications for the equipment currently located on the Premises.

(b) Alterations. Other than routine and necessary repairs to AT&T's Communications Equipment AT&T shall not at any time construct or install any additional antennas or equipment or make any improvements, additions, modifications or alterations other than those approved by County pursuant to Section 3.01(a) hereof without the prior written consent of County, which consent may be withheld in the sole discretion of County. Notwithstanding the foregoing, AT&T acknowledges that the condition of the Property and Premises, and the compatibility of AT&T's Communications Equipment therewith is a major factor in County's review and approval of AT&T's Communications Equipment and that County shall have sole and exclusive discretion in approving or denying the installation of additional communications equipment or modification of the existing Communications Equipment based solely on aesthetics. In the event AT&T proposes to construct any installation, alteration, improvement, or modification of its antennas or equipment other than those currently installed, AT&T shall submit to the County Radio Administrator conceptual plans and specifications for such proposed antennas and/or equipment (the "Alterations"). In the event the County Radio Administrator approves such Alterations, AT&T shall prepare and submit to the County Radio Administrator for approval detailed plans (such conceptual plans and specifications to reflect at a minimum AT&T's requirements regarding the number and location of antennas, equipment, cabling and cable runs, power, and backup power) and otherwise comply with the terms of this Article III. All approved Alterations, including improvements, additions and modifications constructed by AT&T shall be deemed a part of the Communications Equipment.

Upon approval by the County Radio Administrator of the Alterations,

Exhibit "C" of this Agreement will be revised to include the details of the Alterations approved by the County Radio Administrator. The revised document will be sent to all parties as set forth on Article XVI section 16.02 and it will be automatically incorporated into this Agreement on the effective date of said notice.

(c) Governmental Approvals. AT&T shall obtain and maintain, at AT&T's sole cost and expense, all other approvals, including but not limited to County, state and federal permits and consents necessary for installation of AT&T's Communications Equipment and shall further be responsible for all conditions which may be imposed in connection with such approvals. AT&T also acknowledges that it will not use this Agreement, or the requirements of this Agreement, as a basis for argument that AT&T should be relieved of, or have modified conditions and/or interpretations of any regulatory requirements. Nothing contained herein 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.

(d) General Installation Guidelines. All work performed by AT&T pursuant to this Agreement shall be performed by AT&T at AT&T'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 all applicable governmental laws, regulations, rules, codes and orders. AT&T, its contractors, subcontractors, laborers, materialmen, suppliers and professionals shall exercise diligent care and caution in the maintenance, and repair of the Communications Equipment or any appurtenances thereto, in order to avoid damage to the Equipment Storage Facility and Tower. In the event of such damage, AT&T shall promptly repair said damage using materials of like kind and quality, restoring it to its condition prior to damage by AT&T, reasonable wear and tear excepted, at AT&T's sole cost and expense. Notwithstanding anything in this Agreement to the contrary, AT&T shall have the right at any time during the Term of this Agreement to make routine and necessary repairs (including like for like replacements if necessary) to AT&T's Communications Equipment. AT&T agrees and acknowledges that all work performed by AT&T pursuant to this Agreement is performed and accomplished solely for the benefit and convenience of AT&T and not for the benefit of County, such work being nonetheless subject to each and every provision of this Agreement and shall be performed to the reasonable satisfaction of County. Additionally, all such work shall be performed in a manner which avoids damage to other communication users in the Equipment Storage Facility or on the Tower.

(e) Construction Bonds. AT&T, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements, a bond, in the same amount as the estimated cost of the proposed improvements when the cost of the improvements exceeds twenty-five thousand dollars (\$25,000.00), drawn in a form and issued by a company approved by County, guaranteeing compliance by AT&T of its obligations arising under this Section 3.01(e).

(f) Contractor Requirements. AT&T shall also require contractors to furnish County a payment and performance bond for the benefit of County equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. AT&T shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, commercial general liability insurance, commercial automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County may reasonably require. County may require additional insurance for any alterations or improvements approved hereunder, in such amount as County reasonably determines to be necessary.

(g) No Liens. AT&T covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly

understood that County's estate shall not be subject to such liability. AT&T shall notify any and all parties or entities performing work or providing materials relating to any improvements made by AT&T of this provision of this Agreement. If so requested by County, AT&T shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that County's interest shall not be subject to liens for improvements made by AT&T. In the event that a construction lien is filed in connection with any work performed by or on behalf of AT&T, AT&T shall satisfy such claim, or transfer same to security, within ten (10) days from the date AT&T received notice of such filing. In the event that AT&T fails to satisfy or transfer such claim within said ten (10) day period, County may do so and thereafter charge AT&T, and AT&T shall promptly pay to County upon demand, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, AT&T agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE IV CONDUCT OF BUSINESS AND USE OF BY AT&T

Section 4.01 Use. AT&T shall exercise the rights granted hereunder solely and exclusively for operation and maintenance of the Equipment Storage Facility, Tower and Communications Equipment. AT&T shall not use, or suffer the use of the Premises for any other use, business, or purpose other than those specifically permitted hereby. County reserves the right to use the Tower, so long as County does not interfere with AT&T or any other communication user as set forth in Section 4.02 below.

Section 4.02 Interference. The parties mutually agree not to cause any interference with the communications equipment of the other party or any third party using the Equipment Storage Facility or Tower for purposes of operating communications equipment ("Third Party Communications User"). County, AT&T and Third Party Communications Users are collectively referred to herein as "Communications Users". No Communications User shall modify its communications equipment, including, without limitation, any antenna or associated combined multicoupler, cross band couplers, or other components of said party'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 Communications User. For purposes of this Section 4.02, which shall be referred to herein as the "Interference Provision", a Communications User will be deemed an "Interfering Party" if it introduces any activity or change, modification, or addition to its communications equipment, or its use of the Equipment Storage Facility or Tower or power supply, that interferes with the then existing communications equipment or effective operation thereof of any other Communications User ("Affected Communications User"), or otherwise interferes with a frequency not allocated to such party, as long as the Affected Communications User operates and continue to operates within their respective frequencies and in accordance with all applicable laws and regulations.

In the event of any such interference, the Interfering Party, upon receipt of written notice of a violation of the Interference Provision ("Interference Notice"), 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. In the event the Interfering Party is unable to cure such interference within forty-eight (48) hours after receipt of an Interference Notice, the Interfering Party shall immediately shut down power to its communications equipment causing the interference, or otherwise stop the activity causing the interference, until such time as the interference has been cured to the reasonable satisfaction of the Affected Communications User(s); provided, however, after expiration of the initial forty-eight (48) hours, the Interfering Party shall be allowed to temporarily turn on power to the communications equipment which caused the interference for intermittent testing purposes only. The Interfering Party's failure to comply with this Interference Provision shall constitute a material default under this Agreement (or in the case of a Third Party Communications User, under its agreement with County).

a) Alterations of Frequencies. Prior to installation of any communications equipment in the Equipment Storage Facility or Tower utilizing a frequency other than that originally assigned to said user, as identified in Exhibit "D", the party proposing such installation shall obtain, at its sole cost and expense, an intermodulation study performed by a licensed engineer to determine the compatibility of the communications equipment to be installed and frequencies to be utilized with the communications equipment then existing in the Equipment Storage Facility or Tower and the frequencies allocated to any Communications Users other than the party proposing such installation. Copies of said intermodulation studies shall be provided to all Communications Users not less than sixty (60) days prior to installation of the communications equipment utilizing such additional frequencies. Any Communications User shall be entitled to respond with any comments or objections they may have with respect to the proposed installation within thirty (30) days of receipt of the intermodulation study. The failure to timely respond with objections to the proposed installation will operate as an absolute waiver of the right to subsequently object to the frequencies and equipment identified in the intermodulation study. In the event the intermodulation study indicates that said communications equipment will interfere or is likely to interfere with a then existing Communications User's communications equipment or any of the equipment identified in a Communications User's agreement with County and/or their assigned frequencies, or any communications equipment then being operated at the Equipment Storage Facility or Tower, then such party shall not proceed with said installation unless a plan to mitigate the interference is agreed upon by the affected Communications User(s).

b) Approval of Alterations After Change in Frequency. Upon receipt of the intermodulation study evidencing that the additional communications equipment/frequencies will not cause interference and expiration of the time-frame for responding with objections, or having received objections, upon satisfactory resolution of those objections, Exhibits "C" and "D" of this Agreement (or in the case of a Third Party Communications User, its agreement with County) will be revised by the County Radio Administrator. The revised document will be sent to all parties as set forth on Article XVI section 16.02 and it will be automatically incorporated into this Agreement on the effective date of said notice.

c) Notwithstanding anything contained in Article XII to the contrary, violation by a Communications User of the provisions of this Interference Provision (provided this Interference Provision is included in such Communications Users' agreement with County) shall constitute an immediate event of default under its agreement with County enforceable in equity by injunction and/or specific performance. County hereby agrees to include the provisions of this Interference Provision in any future agreement granting Third Party Communications Users the right to install communications equipment on or within the Equipment Storage Facility and Tower and AT&T shall be deemed a third party beneficiary of said provisions and shall have the same rights to enforce said provisions as County, at AT&T's sole cost and expense. County shall have no liability or obligation to AT&T to seek to enforce the terms of this Interference Provision against any Third Party Communications User (other than to include this Interference Provision in any future agreements with Third Party Communications Users) and AT&T releases County from and waives any and all claims against County with respect thereto (except that this release and waiver shall not apply in the event of County's failure to include this Interference Provision in any future Third Party Communications User's agreement with County) and agrees to pursue enforcement of this Interference Provision directly against such Third Party Communications User as a result of being a third party beneficiary, without joinder of or naming County as a party to any such proceeding, unless required to do so by a court of competent jurisdiction. AT&T hereby acknowledges and agrees that Third Party Communications Users shall be deemed to be third party beneficiaries hereof entitled to enforce the provisions of this Interference Provision directly against AT&T. In the event of interference with another party's use of the Equipment Storage Facility or Tower unrelated to the operation of Communications Equipment, the Interfering Party shall take

immediate steps to remedy the interference. Nothing contained in this Interference Provision shall be construed to alter AT&T's obligation to obtain County's approval pursuant to Article III of any installations, improvements or alterations to the current Communications Equipment at the Premises.

Section 4.03 Waste or Nuisance. AT&T shall not commit or suffer to be committed any waste upon or within the Property or Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which interferes with County's or any third parties' quiet enjoyment of the Property or Premises or results in damage to the Equipment Storage Facility or Tower or which may affect County's fee interest in the Property or results in an unsightly condition. AT&T shall cause any and all trash or discarded materials, including but not limited to construction materials used and/or generated by AT&T, to be removed from the Property and Premises at AT&T's sole cost and expense immediately.

Section 4.04 Governmental Regulations. AT&T shall, at AT&T's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to AT&T's use of the Premises, or the Property generally. AT&T shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from AT&T's failure to perform its obligations in this Section, unless AT&T's failure results from the acts or omissions of County or its agents, employees or contractors.

Section 4.05 Non-Discrimination. The County is committed to assuring equal opportunity in the award of agreements and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, AT&T warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all individuals shall be treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information with respect to any activity occurring at the Premises or conducted pursuant to this Agreement. Failure to meet this requirement shall be considered default of this Agreement. AT&T warrants that in the event the facilities operated upon the Premises are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Premises are located.

Section 4.06 Surrender. Upon termination or expiration of this Agreement, AT&T, at its sole cost and expense shall remove the Communications Equipment and AT&T's personal property, removable fixtures, equipment and Alterations from the Equipment Storage Facility and Tower and shall restore the Premises to its condition at the commencement of this Agreement, reasonable wear and tear and loss by casualty or other causes beyond AT&T's control excepted and repair any damage caused by the installation, use, maintenance or removal of the same, using materials of like kind and quality. Upon termination or expiration of this Agreement, County has the right to require AT&T to remove the Equipment Storage Facility and/or Tower. If County requires AT&T to remove the Tower, AT&T shall remove the foundation, footings, and concrete to a depth of one foot (1') below grade.

Section 4.07 Hazardous Substance. For purposes hereof, "Hazardous Materials" shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions. "Disposal" shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. AT&T shall not use, maintain, store or dispose of any Hazardous Materials, chemicals or other agents used or produced in AT&T's operations, at the Property, in any manner not

permitted by Environmental Laws. Furthermore, AT&T shall not cause or permit the disposal of Hazardous Materials upon the Property or Premises or upon adjacent lands and shall operate and occupy the Property in compliance with all Environmental Laws.

Any disposal of a Hazardous Material brought onto the Property, whether by AT&T or any third party, shall be reported to County immediately upon the knowledge thereof by AT&T. AT&T shall be solely responsible for the entire cost of remediation and cleanup of any Hazardous Materials disposed of or discovered upon the Property, or emanating from the Property, or onto adjacent lands, as a result of AT&T's, or AT&T's agents, contractors or employees exercise of the rights granted by this Agreement.

AT&T hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgements, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs at trial and on appeal, which may arise directly, indirectly or proximately as a result of any violation of Environmental Laws or the disposal of any Hazardous Materials by AT&T, or AT&T's agents, contractors or employees. AT&T's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of AT&T, it shall not be deemed to alter or diminish any statutory or common law liability of AT&T.

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

ARTICLE V REPAIRS AND MAINTENANCE

Section 5.01 Responsibility of AT&T. AT&T shall keep and maintain the Property, Communications Equipment, the Equipment Storage Facility and Tower, and all Alterations, in good condition and repair excluding reasonable wear and tear, and in a clean condition, free of refuse, trash, and rubbish, at AT&T's sole cost and expense. County shall maintain and repair the Property and access thereto, the Tower, and all areas of the Equipment Storage Facility where AT&T does not have exclusive control, in good and tenable condition, subject to reasonable wear and tear and damage from the elements. AT&T shall be responsible for any repairs to the Premises or Property caused by the negligent or intentional acts of AT&T or AT&T's employees, agents, or contractors. In the event that the aforementioned repairs are required, County shall have sole discretion to determine the manner in which such repairs will be made, including but not limited to when and what maintenance, repairs and/or renovations AT&T shall perform. AT&T shall provide County and other users with sixty (60) days advance notice of any such work which may reasonably be foreseen by AT&T to impact County's or other users' operations at the Property. The notice required under this Section shall describe in detail the type of work to be performed. AT&T shall cooperate with County and other users to devise a plan to permit such work and minimize the impact of such work to County and other users. AT&T 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 and AT&T shall endeavor to provide as much advance notice as reasonably practical given the nature of the emergency or as a result of undertaking any immediate work necessary to remedy such emergency, or shall provide notice as soon as possible thereafter. For purposes of this Section 5.01, an "emergency" shall be defined as the occurrence of an event which threatens immediate harm to persons, equipment, or property.

Section 5.02 County's Right to Inspect. County or County's agents shall have the right to visually inspect the Property, Tower, Equipment Storage Facility, Premises, Communications Equipment and AT&T's Alterations. County shall conduct such inspections in a manner which does not unreasonably interfere with or disrupt AT&T's

operations.

ARTICLE VI INSURANCE

Section 6.01 Insurance. AT&T shall, at its sole expense, maintain in full force and effect at all times during the term of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by AT&T are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by AT&T under this Agreement. Where applicable, required coverage shall be provided on a primary and non-contributory basis.

Section 6.02 Commercial General Liability. AT&T shall maintain Commercial General Liability Insurance, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate for bodily injury, personal injury and property damage liability. The policy shall include coverage for damage to the Premises including fire legal liability with a minimum limit of \$100,000. Commercial General Liability policy shall be endorsed to include "Palm Beach County" as an Additional Insured with a "CG 2026 - Additional Insured - Managers or Lessors of Premises", or similar endorsement.

Section 6.03 Business Automobile Liability. AT&T shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 combined single limits for property damage and bodily injury per occurrence; for all owned, non-owned and hired automobiles. In the event AT&T does not own any automobiles, the Business Auto Liability requirement shall be amended allowing AT&T to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

Section 6.04 Worker's Compensation Insurance & Employers Liability. AT&T shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

Section 6.05 Waiver of Subrogation. AT&T by entering into this Agreement, agrees to a Waiver of Subrogation for each required policy; provided, however, County acknowledges and agrees that AT&T does not agree to a waiver of subrogation for incidents that arise from the acts or omissions of County or its agents, employees or contractors. When required by the insurer, or should a policy condition not permit an Insured to enter into a preloss agreement to waive subrogation without an endorsement, then AT&T shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or voids coverage should AT&T enter into such an agreement on a preloss basis.

Section 6.06 Certificate(s) of Insurance. Immediately following execution of this Agreement by AT&T, AT&T shall deliver to County a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. The Certificate (s) of Insurance should be mailed to and reference in the "CERTIFICATE HOLDER" box (ACCORD FORM or its equivalent) the following: Palm Beach County, Property & Real Estate Management, Attention Director, 2633 Vista Parkway, West Palm Beach, FL 33411.

Section 6.07 Umbrella or Excess Liability. If necessary, AT&T may satisfy the minimum limits required above for either Commercial General Liability, Business Auto

Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit of not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Section 6.08 Right to Review. County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to periodically (i) review, reject or accept any required Certificates of Insurance, including limits of coverage noted thereon, to the extent said Certificates of Insurance are not in compliance with this Article VI, and (ii) reasonably adjust the limits of coverage required hereunder from time to time throughout the term of this Agreement.

ARTICLE VII INDEMNIFICATION OF COUNTY

AT&T shall indemnify, defend and save harmless the County, from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement or any renewal hereof for any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Property or Premises, Equipment Storage Facility or Tower by reason or as a result of the use and occupancy of the Property, Premises, Equipment Storage Facility or Tower by AT&T, its agents, employees, and contractors, and from and against any orders, judgements, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees at trial and on appeal, expenses and liabilities incurred in and about the defense of any such claim. In the event County shall be made a party to any litigation commenced against AT&T as a result of AT&T's use of the Property, Premises, Equipment Storage Facility or Tower or by AT&T against any third party relating to AT&T's use of the Property, Premises, Equipment Storage Facility or Tower, then AT&T shall indemnify, defend, and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Notwithstanding the foregoing, AT&T shall have no obligation pursuant to the immediately preceding sentence relating to claims or damages which are judicially determined to be solely attributable to County's negligent or intentional acts or omissions. AT&T recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the County in support hereof according to the laws of the State of Florida. This section shall survive the termination of this Agreement.

ARTICLE VIII DAMAGE OR DESTRUCTION

In the event the Equipment Storage Facility or Tower are destroyed or so damaged or injured by fire or other casualty during the Term of this Agreement or any extension thereof, whereby the same are rendered untenable, in whole or in part, AT&T shall commence restoration thereof within sixty (60) days and thereafter diligently pursue the restoration to completion, or alternatively, County may, at its sole option, elect not to allow AT&T to restore the Equipment Storage Facility or Tower and terminate this Agreement; in this event, County shall retain all insurance proceeds payable on account of such casualty loss associated with the Equipment Storage Facility or Tower as County's sole property and AT&T shall be entitled to collect all insurance proceeds payable to AT&T for casualty loss associated with its Communications Equipment and any other personal property at the Premises. In the event the Equipment Storage Facility or Tower are damaged during the Term of this Agreement and County does not exercise its right to terminate this Agreement, AT&T shall promptly commence restoration thereof or alternatively may remove the damaged equipment from the Premises and terminate this Agreement. Notwithstanding anything herein to the contrary, in the event of damage by fire or other casualty that cannot reasonably be expected to be repaired within ninety (90) days following same or, if the

Equipment Storage Facility or Tower or Property or Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt AT&T's operations for more than ninety (90) days, then AT&T may at any time following such fire or other casualty terminate this Agreement upon fifteen (15) days written notice to County; in this event, County shall retain all insurance proceeds payable on account of such casualty loss associated with the Equipment Storage Facility or Tower as County's sole property and AT&T shall be entitled to collect all insurance proceeds payable to AT&T for casualty loss associated with its Communications Equipment and any other personal property at the Premises. Notwithstanding the foregoing, in the event such casualty is caused by the negligent or intentional acts of AT&T or its employees, contractors or agents, AT&T shall not have the right to terminate this Agreement and shall be responsible for all costs to remedy the damage caused by such casualty not covered by AT&T's insurance. In the event either County or AT&T elects to terminate this Agreement pursuant to this Article VIII, AT&T shall vacate and surrender the area occupied by AT&T as required by Section 4.06.

ARTICLE IX ASSIGNMENT AND SUBLETTING

AT&T may not assign, mortgage, pledge, collaterally assign, or encumber this Agreement, in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Property, without prior written consent of County, which may be granted or withheld at County's sole and absolute discretion. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary. Notwithstanding the foregoing or anything in this Agreement to the contrary, AT&T may sell, assign, or transfer this Agreement or sublet the area occupied by AT&T, subject to Section 4.02 above, without any approval or consent of County to AT&T's principal, affiliates, subsidiaries of its principal or affiliates, or to any entity which acquires all or substantially all of AT&T's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition, or other business reorganization. Upon receipt of the prior written consent of County or notification to Owner where assignment is permitted without first obtaining the County's approval or consent, all in accordance with this Article IX, AT&T will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment. County may assign, mortgage, pledge, collaterally assign, or encumber this Agreement, in whole or in part, without the prior written consent of AT&T.

ARTICLE X UTILITIES

AT&T is responsible for obtaining, and paying for all costs and charges for, all utilities, whether through submetering or not, that it may require and use for the operation of AT&T's Communications Equipment at the Premises. AT&T shall pay Florida Power & Light and any other utility or service company for any and all respective charges incurred by AT&T based on its consumption of electricity or other utility associated with its Communication Equipment at the Premises. AT&T shall also be responsible for and pay for exterior lighting of the Equipment Storage Facility and Tower as may be required as a result of AT&T's operation and use at the Premises. AT&T shall be responsible for all costs incurred by County in repairing any damage to the meters and appurtenances caused by the negligent or intentional acts of AT&T or AT&T's employees, agents or contractors, and AT&T shall reimburse County for all said costs within thirty (30) days after demand therefor. Said demand shall include an invoice detailing the repair costs. Notwithstanding anything herein to the contrary, in no event shall County be liable for any interruption of power or other utility service to the Premises.

ARTICLE XI ACCESS

AT&T shall have the right to enter upon the Property at all times twenty-four (24) hours a day, seven (7) days a week in order to gain vehicular and pedestrian access to its Communications Equipment. AT&T shall comply with any reasonable security procedures established by County to prevent unauthorized access to the Communications Equipment and the Property generally. AT&T and County shall each designate emergency contact personnel as listed in Section 16.02 below to notify in case of an emergency requiring access to the Communications Equipment.

ARTICLE XII DEFAULT

Section 12.01 Default by AT&T. The occurrence of any one or more of the following shall constitute an Event of Default by AT&T under this Agreement: (i) AT&T's failure to pay any sum due hereunder within fifteen (15) days after the due date for said payment; (ii) AT&T's failure to perform or observe any other term, covenant, or condition of this Agreement on AT&T's part to be performed hereunder and such failure continues for a period of more than thirty (30) days after the date AT&T receives written notice from County notifying AT&T of the specific failure, provided, however, AT&T 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 AT&T commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion within sixty (60) days; or (iii) AT&T's leasehold estate being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to pursue such remedies as may be available to County under the law, including, without limitation, the right to give AT&T notice that County intends to terminate this Agreement upon a specified date not less than three (3) days after the date notice is received by AT&T, 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 three (3) day period and the County is so notified, this Agreement will continue.

Section 12.02 Default by County. County shall not be in default unless County fails to perform obligations required of County within a reasonable time, but in no event later than thirty (30) days after written notice by AT&T to County, specifying wherein County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, AT&T shall have the right to pursue such remedies as may be available to AT&T under the law.

ARTICLE XIII ANNUAL BUDGETARY FUNDING/CANCELLATION

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. County may terminate this Agreement, with or without cause upon three hundred sixty-five(365) days written notice to AT&T.

ARTICLE XIV QUIET ENJOYMENT

Section 14.01 Upon the observance and performance of all the covenants, terms and conditions on AT&T's part to be observed and performed, AT&T shall peaceably and

quietly hold and enjoy the rights granted hereunder for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Agreement.

ARTICLE XV CONDEMNATION

If the Property or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, any award relating to both the Equipment Storage Facility and the Tower as County's sole property. Notwithstanding the foregoing, AT&T shall be entitled to pursue in such condemnation proceeding such award as may be allowed for the value and relocation of its Communications Equipment and personal property of AT&T at the Premises, moving expenses and business damages. In the event of a total taking of the Property, this Agreement shall terminate upon the date title vests in the condemning authority. Thereafter, the parties shall be relieved of all further obligations hereunder. Notwithstanding such termination, AT&T shall remain liable for all matters arising under this Agreement prior to such termination. County shall have no obligation to restore the Property or Premises or improvements or otherwise perform any work upon same as a result of any such taking.

In the event of condemnation of the Equipment Storage Facility or Tower or any portion thereof, and, if such condemnation may reasonably be expected to disrupt AT&T's operations at the Premises for more than forty-five (45) days, AT&T may terminate this Agreement upon fifteen (15) days written notice to County. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. Termination of this Agreement shall not affect AT&T's obligations under this Agreement arising prior to such termination.

ARTICLE XVI MISCELLANEOUS

Section 16.01 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part hereof, as if fully set forth herein, constitute all agreements, conditions and understandings between County and AT&T. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or AT&T unless reduced to writing and signed by them.

Section 16.02 Notices. All notices, consents, approvals, demands and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designed the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the AT&T at:
New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation

Attn: Network Real Estate Administration
RE: Cell Site #: ANW, Cell Site Name: ANW
FA No. 10023514
1025 Lenox Park Blvd. 5th Floor
Atlanta, GA 30319

with copies to:

New Cingular Wireless PCS, LLC
Attn: Legal Department,
Attn: Network Real Estate Administration
RE: Cell Site #: ANW, Cell Site Name: ANW
FA No. 10023514
208 S. Akard Street
Dallas, TX 75202-4206

AT&T Contact for Emergency Situations:
AT&T Network Operations Center (NOC) - 1-800-638-2822

- (b) If to the County at:
Property and Real Estate Management
Attn.: Director
2633 Vista Parkway
West Palm Beach, FL 33411

with copies to:

Palm Beach County
County Attorney
Attn: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
County's Contact for Emergency Situations:
24 Hour County Warning Point: 561-712-6428

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon thirty (30) days prior written notice to the other parties.

Section 16.03 Severability. If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this 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.

Section 16.04 Broker's Commission. AT&T represents and warrants that AT&T has not dealt with any real estate salesperson, agent, finder or broker in connection with this Agreement and agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with AT&T. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 16.05 Waiver. The waiver by either party of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant

herein contained. The consent or approval by County to or of any act by AT&T requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by AT&T. No waiver of any provision of this Agreement shall be effective against any party hereto 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.

Section 16.06 Waiver of Jury Trial. THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS AGREEMENT.

Section 16.07 Governing Law. This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

Section 16.08 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

Section 16.09 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.

Section 16.10 Non-exclusivity of Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 16.11 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.

Section 16.12 Effective Date of Agreement. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

Section 16.13 Force Majeure. Any party delayed by a Force Majeure Event, as defined herein, in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Agreement. "Force Majeure Event" shall mean any act of God, fire, flood, earthquake, explosion, hurricane, riot, sabotage, terrorist attack, windstorm, failure of utility service, or labor dispute.

Section 16.14 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and assigns.

Section 16.15 Recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.

Section 16.16 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.

Section 16.17 Amendment. This Agreement may be modified and amended only by written instrument executed by the parties hereto.

Section 16.18 Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.

Section 16.19 Public Entity Crimes. As provided in Florida Statutes 287.132-133, AT&T hereby certifies that, to its knowledge, neither it, nor its affiliates, agents, contractors, employees, or suppliers who will perform work 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 Commencement Date of the Term of this Agreement. This certification provided in the preceding sentence is required pursuant to Florida Statute 287.133(3)(a).

Section 16.20 AT&T's Property. County agrees and acknowledges that all of the Communications Equipment and personal property of AT&T shall remain the personal property of AT&T, and, upon expiration or earlier termination of this Agreement, shall be removed by AT&T as set forth in section 4.06.

Section 16.21 Independent Contractor Relationship. AT&T is, and shall be, in the performance of all work, services, and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to AT&T's sole direction, supervision, and control. AT&T shall exercise control over the means and manner in which it and its employees perform the work, and in all respects AT&T's relationship, and the relationship of its employees, to the County shall be that of an independent contractor and not as employees or agents of the County.

AT&T does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

Section 16.22 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.

Section 16.23 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 AT&T.

Section 16.24 Criminal History Records Check. AT&T, AT&T's employees, subcontractor of AT&T and employees of subcontractor shall comply with Palm Beach

County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance (“Ordinance”), for unescorted access to critical facilities (“Critical Facilities”) or criminal justice information facilities (“CJI Facilities”) as identified in Resolution R2013-1470 and R2015-0572, as amended. AT&T is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. AT&T shall bear any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County.

This Agreement may include sites and/or buildings which have been designated as either “critical facilities” or “criminal justice information facilities” pursuant to the Ordinance and above reference Resolutions. County staff representing the Department of Facilities, Development and Operations will contact AT&T(s) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. AT&T shall make every effort to collect the badges of its employees and its subcontractors’ employees upon conclusion of the contract and return them to the County. If AT&T or its subcontractor(s) terminates an employee who has been issued a badge, AT&T must notify the County within forty-eight (48) hours. At the time of termination, AT&T shall retrieve the badge and shall return it to the County in a timely manner.

The County reserves the right to suspend AT&T if AT&T 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the County regarding a terminated AT&T employee or sub employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy

Section 16.25 Public Records. Notwithstanding anything contained herein, as provided under Section 119.0701, Florida Statutes, if AT&T: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) Florida Statutes, AT&T shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time AT&T is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Agreement.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. AT&T further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement, if AT&T does not transfer the records to the public agency.
- D. Upon completion of this Agreement AT&T shall transfer, at no cost to the County, all public records in possession of AT&T unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If AT&T transfers all public records to the County upon completion of this Agreement, AT&T shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If AT&T keeps and maintains public records upon completion of this Agreement, AT&T shall meet all applicable requirements for retaining public records. All records stored electronically by AT&T must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of AT&T to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. AT&T acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF AT&T HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AT&T'S DUTY TO PROVIDE PUBLIC RECORDS IN ACCORDANCE WITH THIS SECTION 16.25, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@pbcgov.org OR BY TELEPHONE AT 561-355-6680.

Section 16.26 E-Verify – Employment Eligibility. AT&T warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. No later than January 1, 2021, AT&T shall: (1) register with and use the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the AT&T's subcontractors/subconsultants performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

AT&T shall obtain from each of its subcontractors/subconsultants an affidavit stating that the subcontractor/subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. AT&T shall maintain a copy of any such affidavit from a subcontractor/subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

County shall terminate this Agreement if it has a good faith belief that AT&T has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If County has a good faith belief that AT&T's subcontractor/subconsultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, County shall notify AT&T to terminate its contract with the subcontractor/subconsultant and AT&T shall immediately terminate its contract with the subcontractor/subconsultant.

If County terminates this Agreement pursuant to the above, AT&T shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, AT&T shall also be liable for any additional costs incurred by County as a result of the termination.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

WITNESS:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

(Witness Signature)

By: _____
(Signature)

(Print name of witness)

Name

(Witness Signature)

Title

(Print name of witness)

Date: _____

ATTEST:
Joseph Abruzzo, CLERK

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

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

(Seal)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Assistant County Attorney

By: _____
Isamí Ayala-Collazo, Director
Facilities Development & Operations

SCHEDULE OF EXHIBITS

- EXHIBIT "A" - LEGAL DESCRIPTION**
- EXHIBIT "B" - THE PREMISES**
- EXHIBIT "C" - COMMUNICATIONS EQUIPMENT
EQUIPMENT LOCATIONS /
ARCHITECTURAL ELEVATIONS**
- EXHIBIT "D" - FREQUENCIES**

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

A PORTION OF THE SOUTHEAST ONE QUARTER (SE $\frac{1}{4}$) OF SECTION 22, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, AND RUN ON AN ASSUMED BEARING OF $N88^{\circ}24'07''W$ ALONG THE SOUTH LINE OF SAID SECTION 22, TOWNSHIP 42 SOUTH, RANGE 42 EAST FOR 322.15 FEET TO A POINT LYING ON THE WEST RIGHT-OF-WAY LINE OF THE SUNSHINE STATE PARKWAY (A.K.A. FLORIDA'S TURNPIKE), THENCE RUN $N01^{\circ}35'15''E$ ALONG SAID WEST RIGHT-OF-WAY LINE OF THE SUNSHINE STATE PARKWAY FOR 79.43 FEET TO A POINT LYING ON THE SOUTH RIGHT-OF-WAY LINE OF THE S.A.L. RAILROAD, THENCE RUN $N33^{\circ}41'05''W$ ALONG SAID SOUTH RIGHT-OF-WAY LINE OF THE S.A.L. RAILROAD FOR 1360.18 FEET TO THE POINT OF BEGINNING, THENCE CONTINUE $N53^{\circ}41'05''W$ ALONG THE LAST DESCRIBED COURSE FOR 664.41 FEET TO A POINT LYING ON THE EAST RIGHT-OF-WAY LINE OF PROPOSED JOG ROAD AS DESCRIBED IN THAT CERTAIN SKETCH PREPARED BY THE FIRM OF HELLER-WEAVER AND CATO, INC. UNDER FILE NO. 87-9863-881, 2, 3, & 4 DATED 6-10-87, THENCE RUN $S16^{\circ}18'55''W$ ALONG SAID EAST RIGHT-OF-WAY LINE OF PROPOSED JOG ROAD FOR 563.61 FEET, THENCE RUN $S73^{\circ}41'05''E$ FOR 501.19, THENCE RUN $N36^{\circ}18'55''E$ FOR 360.08 FEET TO THE POINT OF BEGINNING.

CONTAINING 6.000 ACRES MORE OR LESS.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA.

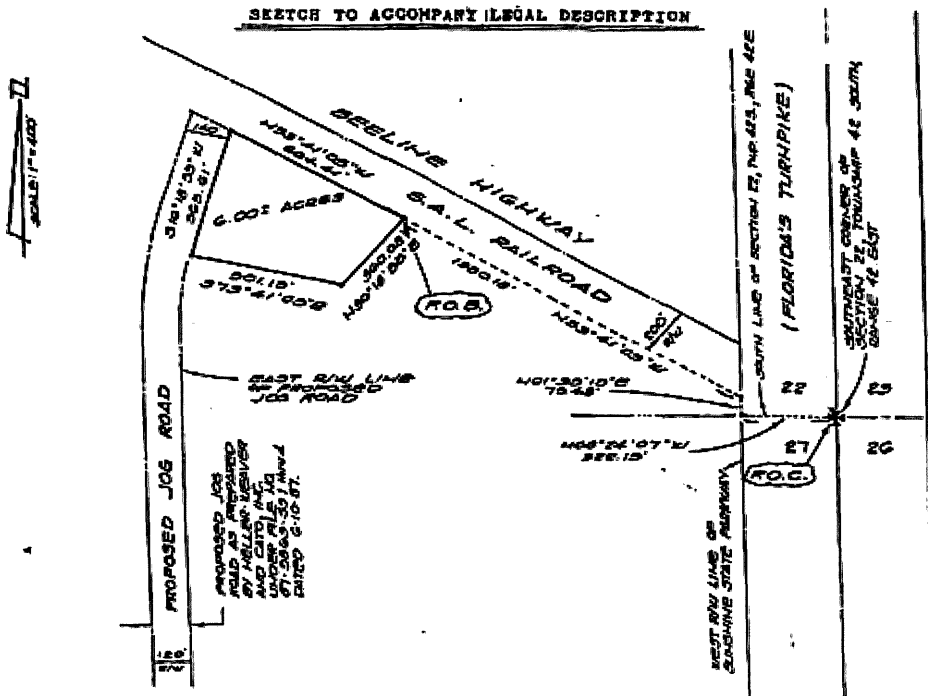


EXHIBIT "B"
THE PREMISES

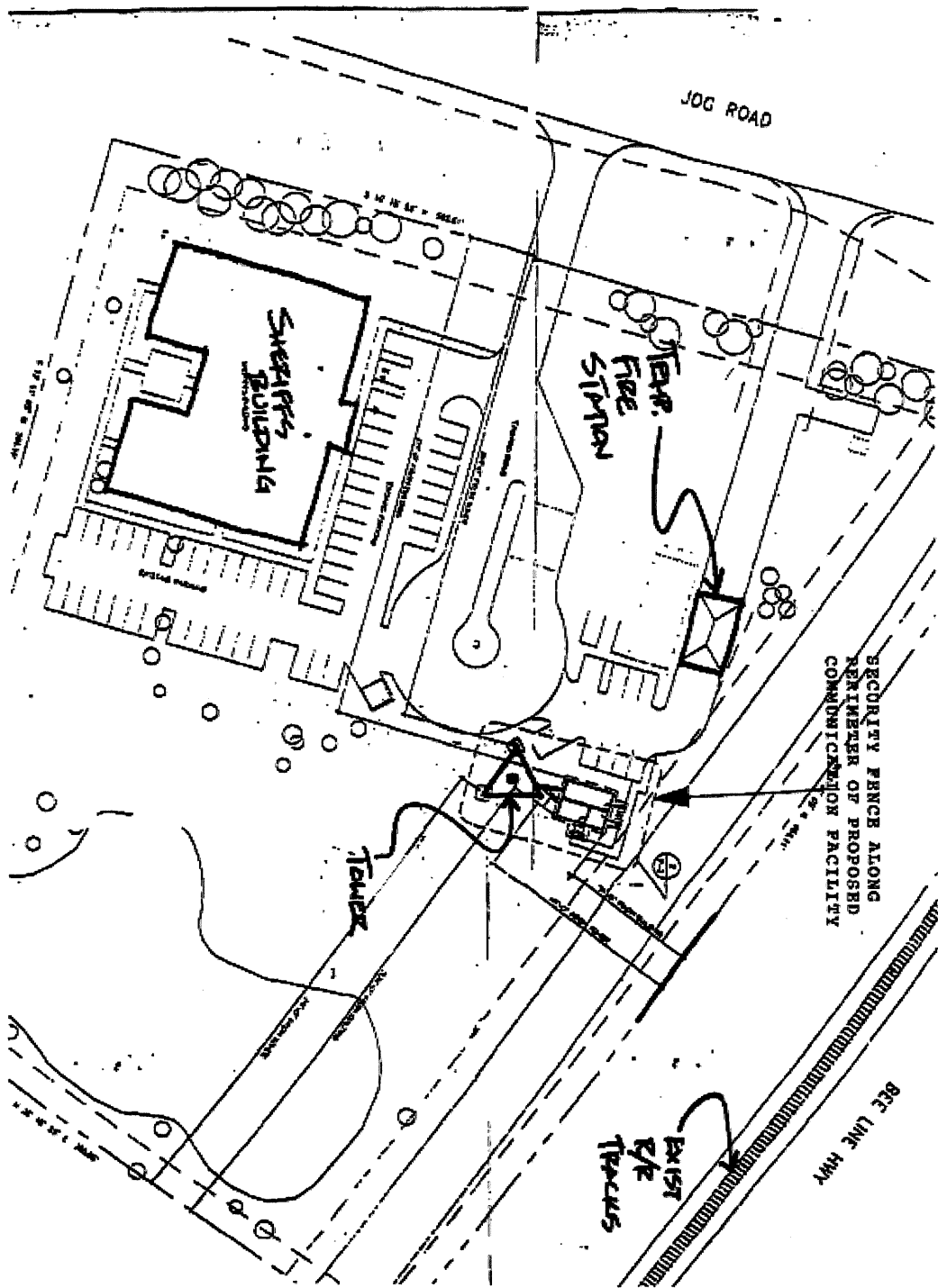


EXHIBIT "C"
**DESCRIPTION OF COMMUNICATIONS EQUIPMENT/
EQUIPMENT LOCATIONS/ARCHITECTURAL ELEVATIONS**

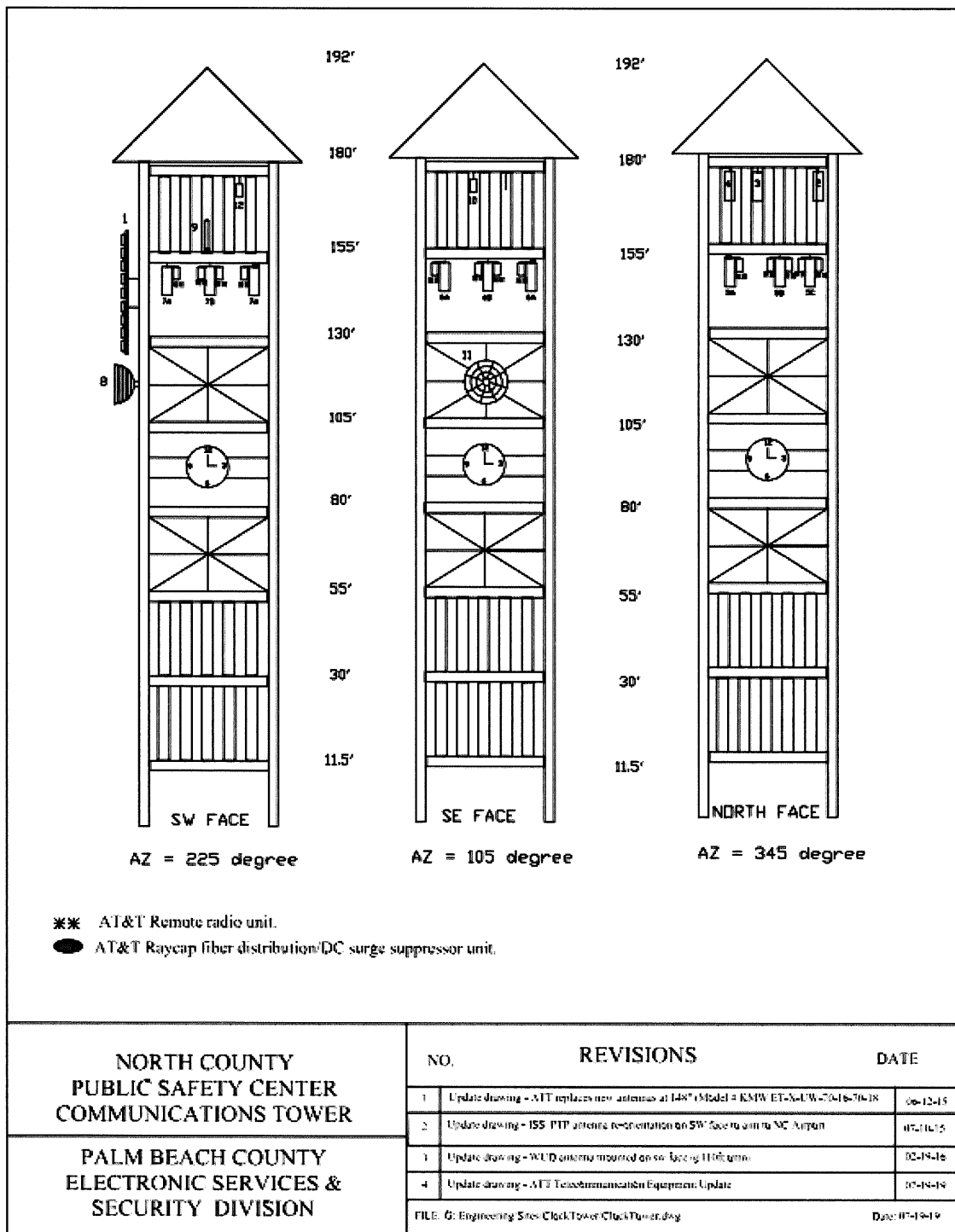
ANT #	ANTENNA TYPE	MFGR	MOUNTING HEIGHT	TOWER LEG	AZIMUTH	TX FREQ	RX FREQ	USE
1	DB268	DECIBEL	110'	SW	OMNI	146.8800	146.2800	RACES - EOC
2,3 & 4	800-10122	KATHREIN	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	ATM19801712-0T MA	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	ATM19801712-0T MA	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	FDGW5504/3C-3	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	FDGW5504/3C-3	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	FDGW5504/3C-3	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	FDGW5504/3C-3	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
5A	ET-X-UW-70-16-70-18	KMW	148'	SE	105	698-894 MHz; 1710-2170 MHz	698-894 MHz; 1710-2170 MHz	AT&T Wireless
5B	ET-X-UW-70-16-70-18	KMW	148'	SE	105	698-894 MHz; 1710-2170 MHz	698-894 MHz; 1710-2170 MHz	AT&T Wireless
6	840-370966K	KATHREIN	148'	N	345	698-894 MHz; 1710-2170 MHz	698-894 MHz; 1710-2170 MHz	AT&T Wireless
7	840-370966K	KATHREIN	148'	SE	105	698-894 MHz; 1710-2170 MHz	698-894 MHz; 1710-2170 MHz	AT&T Wireless
8	800-372965	KATHREIN	148'	SW	225	698-894 MHz; 1710-2170 MHz	698-894 MHz; 1710-2170 MHz	AT&T Wireless
9A	800-10966K	KATHREIN	148'	N	345	698-894 MHz; 1710-2170 MHz	698-894 MHz; 1710-2170 MHz	AT&T Wireless
9B	800-10866	KATHREIN	148'	N	345	698-894 MHz; 1710-2170 MHz	698-894 MHz; 1710-2170 MHz	AT&T Wireless
"	RRU-449 B5/B 12	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless
"	RRU-449 B5/B 12	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless
"	RRU-449 B5/B 12	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless
"	RRUS-32	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless

ANT #	ANTENNA TYPE	MFGR	MOUNTING HEIGHT	TOWER LEG	AZIMUTH	TX FREQ	RX FREQ	USE
**	RRUS-32	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless
10A	ET-X-UW-68-14-65-18	KMW	148'	SW	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
10B	ET-X-UW-68-14-65-18	KMW	148'	SW	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
**	RRUS-32	ERICSSON	148'	N	105	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	148'	SE	105	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	148'	SE	105	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	148'	SE	105	743.0000	743.0000	AT&T Wireless
**	DC6-48-60-18-8F	RAYCAP	148'	SW	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
**	DC6-48-60-18-8F	RAYCAP	148'	SE	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
**	DC6-48-60-18-8F	RAYCAP	148'	N	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
**	RRUS-32	ERICSSON	148'	SW	225	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	148'	SW	225	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	148'	SW	225	743.0000	743.0000	AT&T Wireless
11	PL6-65D (1)	ANDREW	105'	SW	190	6595.0000	5755.0000	AT&T Wireless
12	AU-Ant-5G-17-90	Alvarion	180'	SE	Directional	5.310 GHz	5.310 GHz	PBC ISS PTP
13	PL6-65D (1)	ANDREW	120'	SE	TBD			PBC
14	AU-Ant-5G-17-90	Alvarion	180'	N	Directional	5.310 GHz	5.310 GHz	PBC ISS PTP
15	460-470MHz Omni FG4505W	Laird Technologies	155'	SW	OMNI	456.8625	456.8625	PBC Water Utilities

* Future use

(1) not use

** Remote Radio Units



DISCLOSURE WARNING. THIS DOCUMENT IS EXEMPT AND/OR CONFIDENTIAL UNDER SEC. 119.071, FLORIDA STATUTES. ANY ENTITY OR PERSONS RECEIVING SUCH INFORMATION SHALL MAINTAIN THE EXEMPT STATUS OF THE INFORMATION UNLESS OTHERWISE AUTHORIZED BY THE COUNTY. THESE DOCUMENTS SHALL NOT BE DISTRIBUTED, LOANED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE COUNTY IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF FLORIDA LAW. THE COUNTY MUST BE ADVISED IMMEDIATELY AS TO ANY CHANGES IN CUSTODIAN FROM THOSE PERSONS LISTED IN CORRESPONDENCE FOR ORIGINAL DISTRIBUTION, IF THE DOCUMENTS ARE LOST OR STOLEN, OR IF THERE IS IMPROPER DISCLOSURE OR UNAUTHORIZED USE OF THE INFORMATION IN THE DOCUMENT. UPON COMPLETION OF USE, WORK, PROJECT, OR CONTRACT, THE CONTRACTOR OR CONSULTANT SHALL SHRED OR BURN ANY DUPLICATE RECORDS.

EXHIBIT "D"
FREQUENCIES

TRANSMIT	RECEIVE	USER	NOTE
758 thru 763	788 thru 793	PBC 700MH Broadband	(2)
456.86250	456.86250	PBC Water Utilities	(2)
5.3100	5.3100	PBC ISS PTP	1
146.8800	146.2800	PBC RACES	1
875.5000		AT&T Mobility	1
876.5000		AT&T Mobility	1
881.5000		AT&T Mobility	1
886.5000		AT&T Mobility	1
1942.5000		AT&T Mobility	1
1947.5000		AT&T Mobility	1
889.1 Thru 893.9		AT&T Mobility	1
743		AT&T Mobility	1

Note 1: currently used; Note (2) future use.

Based upon future utilization and design changes to the existing microwave system.

Attachment #3
Amended and Restated Agreement
27 Pages / 2 Copies

**PALM BEACH COUNTY
AMENDED AND RESTATED COMMUNICATION TOWER JOINT USE
AGREEMENT**

between

**PALM BEACH COUNTY
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA,
BY AND THROUGH ITS BOARD OF COUNTY COMMISSIONERS**

and

**NEW CINGULAR WIRELESS PCS, LLC
a Delaware limited liability company**

G:\PREM\PM\In Lease\BellSouth Mobility Tower\Amended and Restated 2020\Drafts\REDLINES FLF 6.14.21 - 10023514_Clock Tower Agreement_(002) CLEAN.docx

**AMENDED AND RESTATED COMMUNICATION TOWER JOINT USE
AGREEMENT**

THIS AMENDED AND RESTATED COMMUNICATION TOWER JOINT USE AGREEMENT (“Agreement”) made and entered into on _____, 2021, by and between PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as “County” and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company licensed to do business in the State of Florida, with FEI/EIN number 22-3330080 ; hereinafter referred to as “AT&T.”

RECITALS:

WHEREAS, on August 20, 1996, the County and AT&T (or its predecessors) entered into an Agreement R96-1077D, that was subsequently amended by the First Amendment to Agreement (R2006-0351) on February 28, 2006, by the Second Amendment to Agreement (R2012-0890) on June 19, 2012, and by the Third Amendment to Agreement (R2015-1703) on December 1, 2015 (collectively, the “1996 Agreement”) setting forth the terms and conditions by which AT&T constructed a 192-foot free standing communication tower (“Tower”) and an Accessory Equipment Building (“Equipment Storage Facility”), the ownership of which has since been transferred to the County; and

WHEREAS, to set forth the terms and conditions for AT&T to maintain equipment placement and operations of the Tower and Equipment Storage Facility, this Agreement amends and restates, in its entirety, and replaces the 1996 Agreement; and

WHEREAS, County is the owner of certain real property situated in Palm Beach County, Florida, legally described in Exhibit “A” attached hereto (hereinafter “the Property”); and

WHEREAS, AT&T operates and maintains its communications equipment within the Equipment Storage Facility and Tower on the Property;

WHEREAS, AT&T has maintained, at its own expense, the Tower and Equipment Storage Facility; and

WHEREAS, AT&T has requested to continue occupying a user space within the Equipment Storage Facility and the footprint of the Tower depicted in Exhibit “B” attached hereto and in accordance with the equipment locations and architectural elevations described and identified in Exhibit “C” attached hereto (the certain user space within the Equipment Storage Facility, footprint of the Tower designated for AT&T’s exclusive use, and Cabling Space as defined in Section 1.01 below are hereinafter collectively referred to as the “Premises”); and

WHEREAS, AT&T will be able to better serve the public in providing mobile cellular service in the general area and County will benefit as a result of such improved service.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I
BASIC AGREEMENT PROVISIONS**

Section 1.01 Terms and Conditions. The County hereby grants to AT&T the right to continue with the operation of its communications equipment, the component parts of which are set forth in Exhibit "C", said communications equipment being hereinafter referred to as the "Communications Equipment", in the locations indicated on Exhibit "C", attached hereto. AT&T shall have the right to install, operate and maintain the Communications Equipment for the purpose of providing mobile telephone service to the public, in accordance with the specific terms and conditions hereinafter set forth. AT&T shall have the right to occupy approximately three hundred forty-five (345) square feet of floor space within the Equipment Storage Facility and said space shall be used exclusively for the installation of Communications Equipment and attendant facilities necessary to the operation and maintenance of AT&T's Communication Equipment; the surplus space in the Equipment Storage Facility may be used by County or by other users under separate agreements to be issued by County. County shall be entitled to retain all rents from such separate agreements. In addition, AT&T shall be allowed, subject to the provisions of Section 3.01 (a), to install and maintain underground wires, cables, conduits and pipes connecting the component parts of AT&T's Communications Equipment and running from AT&T's Communications Equipment to telephone service and electrical power sources ("Cabling Space"). AT&T specifically acknowledges that the rights granted hereby are non-exclusive and that County reserves the right to utilize the Equipment Storage Facility and Cabling Space without constraint or interruption by AT&T and to grant additional parties the right to utilize any portion of the Equipment Storage Facility and Cabling Space that in County's sole discretion it deems appropriate, subject to the non-interference provisions in Section 4.02 below.

Section 1.02 Length of Term and Commencement Date. The term of this Agreement shall commence on August 20, 2021 at the expiration of the 1996 Agreement (the "Commencement Date") and shall extend for a term of five (5) years thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Agreement or extended pursuant to Section 1.03.

Section 1.03 Option to Extend Term of Agreement. Provided that AT&T is not in default under the terms of this Agreement, AT&T shall have the option of extending this Agreement for four (4) additional terms of five (5) years each, under the same terms and conditions of this Agreement. AT&T shall be deemed to have exercised its then current option unless AT&T provides notice to the County of its election not to exercise its option, which notice must be received by the County on or before sixty (60) days prior to any renewal thereof. Notwithstanding the rights granted to AT&T under this Section 1.03, County may, at any time terminate this Agreement, with or without cause, upon three hundred sixty-five (365) days prior written notice to AT&T; in this event, the parties shall be relieved of all further obligations under this Agreement arising subsequent to the expiration of such three hundred sixty-five (365) days.

Section 1.04 Acceptance by AT&T. AT&T certifies that AT&T currently occupies the Property and Premises and accepts same "As Is," in its existing condition, as of the Commencement 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. AT&T further acknowledges that the County has made no warranties or representations of any nature whatsoever regarding the Property or Premises including, without limitation, any relating to the physical condition thereof or of any improvements located therein, or the suitability of the Property or Premises for AT&T's intended use thereof. County shall not be required to perform any repair work, alterations, or remodeling of the Property or Premises as a condition of this Agreement.

Section 1.05 Inability to Operate. In the event AT&T (i) is unable to obtain or

maintain in full force and effect through no fault of AT&T, any permit, license or other governmental approval necessary or required for the continued operation of AT&T's Communications Equipment, or (ii) is unable to obtain the coverage required to service AT&T'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 AT&T can prove that such inability results from interference with a signal emanating from an off-site location, AT&T shall have the right to terminate this Agreement upon thirty (30) days prior written notice to County. Thereafter the parties shall be relieved of all further obligation arising subsequent to the date of such termination.

Section 1.06 Termination In the event of termination of this Agreement the parties shall be relieved of all further obligations hereunder arising after the date of such termination, except for the provisions of this Agreement which explicitly or by their very nature survive termination of this Agreement. Any such termination shall be in writing. Termination of this Agreement shall not affect AT&T's obligations under this Agreement arising prior to such termination.

ARTICLE II RENT

Section 2.01 Rent. In consideration of AT&T installing, operating and maintaining the Tower and Equipment Storage Facility, AT&T shall have the right to operate and maintain its Communication Equipment on the Tower, have access thereto, and shall otherwise inure to the benefits of this Agreement, without payment of rent during the entire term of this Agreement.

ARTICLE III INSTALLATION OF COMMUNICATIONS EQUIPMENT

Section 3.01. AT&T's Work.

(a) **Current Communications Equipment.** Attached hereto as Exhibit "C" and "D" are exhibits describing the Equipment Storage Facility, Tower and Communications Equipment and conceptual plans and specifications for the equipment currently located on the Premises.

(b) **Alterations.** Other than routine and necessary repairs to AT&T's Communications Equipment AT&T shall not at any time construct or install any additional antennas or equipment or make any improvements, additions, modifications or alterations other than those approved by County pursuant to Section 3.01(a) hereof without the prior written consent of County, which consent may be withheld in the sole discretion of County. Notwithstanding the foregoing, AT&T acknowledges that the condition of the Property and Premises, and the compatibility of AT&T's Communications Equipment therewith is a major factor in County's review and approval of AT&T's Communications Equipment and that County shall have sole and exclusive discretion in approving or denying the installation of additional communications equipment or modification of the existing Communications Equipment based solely on aesthetics. In the event AT&T proposes to construct any installation, alteration, improvement, or modification of its antennas or equipment other than those currently installed, AT&T shall submit to the County Radio Administrator conceptual plans and specifications for such proposed antennas and/or equipment (the "Alterations"). In the event the County Radio Administrator approves such Alterations, AT&T shall prepare and submit to the County Radio Administrator for approval detailed plans (such conceptual plans and specifications to reflect at a minimum AT&T's requirements regarding the number and location of antennas, equipment, cabling and cable runs, power, and backup power) and otherwise comply with the terms of this Article III. All approved Alterations, including improvements, additions and modifications constructed by AT&T shall be deemed a part of the Communications Equipment.

Upon approval by the County Radio Administrator of the Alterations, Exhibit "C" of this Agreement will be revised to include the details of the Alterations approved by the County Radio Administrator. The revised document will be sent to all parties as set forth on Article XVI section 16.02 and it will be automatically incorporated into this Agreement on the effective date of said notice.

(c) Governmental Approvals. AT&T shall obtain and maintain, at AT&T's sole cost and expense, all other approvals, including but not limited to County, state and federal permits and consents necessary for installation of AT&T's Communications Equipment and shall further be responsible for all conditions which may be imposed in connection with such approvals. AT&T also acknowledges that it will not use this Agreement, or the requirements of this Agreement, as a basis for argument that AT&T should be relieved of, or have modified conditions and/or interpretations of any regulatory requirements. Nothing contained herein 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.

(d) General Installation Guidelines. All work performed by AT&T pursuant to this Agreement shall be performed by AT&T at AT&T'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 all applicable governmental laws, regulations, rules, codes and orders. AT&T, its contractors, subcontractors, laborers, materialmen, suppliers and professionals shall exercise diligent care and caution in the maintenance, and repair of the Communications Equipment or any appurtenances thereto, in order to avoid damage to the Equipment Storage Facility and Tower. In the event of such damage, AT&T shall promptly repair said damage using materials of like kind and quality, restoring it to its condition prior to damage by AT&T, reasonable wear and tear excepted, at AT&T's sole cost and expense. Notwithstanding anything in this Agreement to the contrary, AT&T shall have the right at any time during the Term of this Agreement to make routine and necessary repairs (including like for like replacements if necessary) to AT&T's Communications Equipment. AT&T agrees and acknowledges that all work performed by AT&T pursuant to this Agreement is performed and accomplished solely for the benefit and convenience of AT&T and not for the benefit of County, such work being nonetheless subject to each and every provision of this Agreement and shall be performed to the reasonable satisfaction of County. Additionally, all such work shall be performed in a manner which avoids damage to other communication users in the Equipment Storage Facility or on the Tower.

(e) Construction Bonds. AT&T, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements, a bond, in the same amount as the estimated cost of the proposed improvements when the cost of the improvements exceeds twenty-five thousand dollars (\$25,000.00), drawn in a form and issued by a company approved by County, guaranteeing compliance by AT&T of its obligations arising under this Section 3.01(e).

(f) Contractor Requirements. AT&T shall also require contractors to furnish County a payment and performance bond for the benefit of County equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. AT&T shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, commercial general liability insurance, commercial automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County may reasonably require. County may require additional insurance for any alterations or improvements approved hereunder, in such amount as County reasonably determines to be necessary.

(g) No Liens. AT&T covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to

liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. AT&T shall notify any and all parties or entities performing work or providing materials relating to any improvements made by AT&T of this provision of this Agreement. If so requested by County, AT&T shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that County's interest shall not be subject to liens for improvements made by AT&T. In the event that a construction lien is filed in connection with any work performed by or on behalf of AT&T, AT&T shall satisfy such claim, or transfer same to security, within ten (10) days from the date AT&T received notice of such filing. In the event that AT&T fails to satisfy or transfer such claim within said ten (10) day period, County may do so and thereafter charge AT&T, and AT&T shall promptly pay to County upon demand, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, AT&T agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE IV CONDUCT OF BUSINESS AND USE OF BY AT&T

Section 4.01 Use. AT&T shall exercise the rights granted hereunder solely and exclusively for operation and maintenance of the Equipment Storage Facility, Tower and Communications Equipment. AT&T shall not use, or suffer the use of the Premises for any other use, business, or purpose other than those specifically permitted hereby. County reserves the right to use the Tower, so long as County does not interfere with AT&T or any other communication user as set forth in Section 4.02 below.

Section 4.02 Interference. The parties mutually agree not to cause any interference with the communications equipment of the other party or any third party using the Equipment Storage Facility or Tower for purposes of operating communications equipment ("Third Party Communications User"). County, AT&T and Third Party Communications Users are collectively referred to herein as "Communications Users". No Communications User shall modify its communications equipment, including, without limitation, any antenna or associated combined multicoupler, cross band couplers, or other components of said party'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 Communications User. For purposes of this Section 4.02, which shall be referred to herein as the "Interference Provision", a Communications User will be deemed an "Interfering Party" if it introduces any activity or change, modification, or addition to its communications equipment, or its use of the Equipment Storage Facility or Tower or power supply, that interferes with the then existing communications equipment or effective operation thereof of any other Communications User ("Affected Communications User"), or otherwise interferes with a frequency not allocated to such party, as long as the Affected Communications User operates and continue to operates within their respective frequencies and in accordance with all applicable laws and regulations.

In the event of any such interference, the Interfering Party, upon receipt of written notice of a violation of the Interference Provision ("Interference Notice"), 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. In the event the Interfering Party is unable to cure such interference within forty-eight (48) hours after receipt of an Interference Notice, the Interfering Party shall immediately shut down power to its communications equipment causing the interference, or otherwise stop the activity causing the interference, until such time as the interference has been cured to the reasonable satisfaction of the Affected Communications User(s); provided, however, after expiration of the initial forty-eight (48) hours, the Interfering Party shall be allowed to temporarily turn on power to the communications equipment which caused the interference for intermittent testing purposes only. The Interfering Party's failure to comply with this Interference Provision shall constitute a material default under this Agreement (or in the

case of a Third Party Communications User, under its agreement with County).

a) Alterations of Frequencies. Prior to installation of any communications equipment in the Equipment Storage Facility or Tower utilizing a frequency other than that originally assigned to said user, as identified in Exhibit "D", the party proposing such installation shall obtain, at its sole cost and expense, an intermodulation study performed by a licensed engineer to determine the compatibility of the communications equipment to be installed and frequencies to be utilized with the communications equipment then existing in the Equipment Storage Facility or Tower and the frequencies allocated to any Communications Users other than the party proposing such installation. Copies of said intermodulation studies shall be provided to all Communications Users not less than sixty (60) days prior to installation of the communications equipment utilizing such additional frequencies. Any Communications User shall be entitled to respond with any comments or objections they may have with respect to the proposed installation within thirty (30) days of receipt of the intermodulation study. The failure to timely respond with objections to the proposed installation will operate as an absolute waiver of the right to subsequently object to the frequencies and equipment identified in the intermodulation study. In the event the intermodulation study indicates that said communications equipment will interfere or is likely to interfere with a then existing Communications User's communications equipment or any of the equipment identified in a Communications User's agreement with County and/or their assigned frequencies, or any communications equipment then being operated at the Equipment Storage Facility or Tower, then such party shall not proceed with said installation unless a plan to mitigate the interference is agreed upon by the affected Communications User(s).

b) Approval of Alterations After Change in Frequency. Upon receipt of the intermodulation study evidencing that the additional communications equipment/frequencies will not cause interference and expiration of the time-frame for responding with objections, or having received objections, upon satisfactory resolution of those objections, Exhibits "C" and "D" of this Agreement (or in the case of a Third Party Communications User, its agreement with County) will be revised by the County Radio Administrator. The revised document will be sent to all parties as set forth on Article XVI section 16.02 and it will be automatically incorporated into this Agreement on the effective date of said notice.

c) Notwithstanding anything contained in Article XII to the contrary, violation by a Communications User of the provisions of this Interference Provision (provided this Interference Provision is included in such Communications Users' agreement with County) shall constitute an immediate event of default under its agreement with County enforceable in equity by injunction and/or specific performance. County hereby agrees to include the provisions of this Interference Provision in any future agreement granting Third Party Communications Users the right to install communications equipment on or within the Equipment Storage Facility and Tower and AT&T shall be deemed a third party beneficiary of said provisions and shall have the same rights to enforce said provisions as County, at AT&T's sole cost and expense. County shall have no liability or obligation to AT&T to seek to enforce the terms of this Interference Provision against any Third Party Communications User (other than to include this Interference Provision in any future agreements with Third Party Communications Users) and AT&T releases County from and waives any and all claims against County with respect thereto (except that this release and waiver shall not apply in the event of County's failure to include this Interference Provision in any future Third Party Communications User's agreement with County) and agrees to pursue enforcement of this Interference Provision directly against such Third Party Communications User as a result of being a third party beneficiary, without joinder of or naming County as a party to any such proceeding, unless required to do so by a court of competent jurisdiction. AT&T hereby acknowledges and agrees that Third Party Communications Users shall be deemed to be third party beneficiaries hereof entitled to enforce the provisions of this Interference Provision directly against AT&T. In the event of interference with another party's use of the Equipment Storage Facility or Tower

unrelated to the operation of Communications Equipment, the Interfering Party shall take immediate steps to remedy the interference. Nothing contained in this Interference Provision shall be construed to alter AT&T's obligation to obtain County's approval pursuant to Article III of any installations, improvements or alterations to the current Communications Equipment at the Premises.

Section 4.03 Waste or Nuisance. AT&T shall not commit or suffer to be committed any waste upon or within the Property or Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which interferes with County's or any third parties' quiet enjoyment of the Property or Premises or results in damage to the Equipment Storage Facility or Tower or which may affect County's fee interest in the Property or results in an unsightly condition. AT&T shall cause any and all trash or discarded materials, including but not limited to construction materials used and/or generated by AT&T, to be removed from the Property and Premises at AT&T's sole cost and expense immediately.

Section 4.04 Governmental Regulations. AT&T shall, at AT&T's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to AT&T's use of the Premises, or the Property generally. AT&T shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from AT&T's failure to perform its obligations in this Section, unless AT&T's failure results from the acts or omissions of County or its agents, employees or contractors.

Section 4.05 Non-Discrimination. The County is committed to assuring equal opportunity in the award of agreements and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, AT&T warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all individuals shall be treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information with respect to any activity occurring at the Premises or conducted pursuant to this Agreement. Failure to meet this requirement shall be considered default of this Agreement. AT&T warrants that in the event the facilities operated upon the Premises are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Premises are located.

Section 4.06 Surrender. Upon termination or expiration of this Agreement, AT&T, at its sole cost and expense shall remove the Communications Equipment and AT&T's personal property, removable fixtures, equipment and Alterations from the Equipment Storage Facility and Tower and shall restore the Premises to its condition at the commencement of this Agreement, reasonable wear and tear and loss by casualty or other causes beyond AT&T's control excepted and repair any damage caused by the installation, use, maintenance or removal of the same, using materials of like kind and quality. Upon termination or expiration of this Agreement, County has the right to require AT&T to remove the Equipment Storage Facility and/or Tower. If County requires AT&T to remove the Tower, AT&T shall remove the foundation, footings, and concrete to a depth of one foot (1') below grade.

Section 4.07 Hazardous Substance. For purposes hereof, "Hazardous Materials" shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions. "Disposal" shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. AT&T shall not use, maintain, store or dispose of any Hazardous Materials, chemicals or

other agents used or produced in AT&T's operations, at the Property, in any manner not permitted by Environmental Laws. Furthermore, AT&T shall not cause or permit the disposal of Hazardous Materials upon the Property or Premises or upon adjacent lands and shall operate and occupy the Property in compliance with all Environmental Laws.

Any disposal of a Hazardous Material brought onto the Property, whether by AT&T or any third party, shall be reported to County immediately upon the knowledge thereof by AT&T. AT&T shall be solely responsible for the entire cost of remediation and cleanup of any Hazardous Materials disposed of or discovered upon the Property, or emanating from the Property, or onto adjacent lands, as a result of AT&T's, or AT&T's agents, contractors or employees exercise of the rights granted by this Agreement.

AT&T hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgements, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs at trial and on appeal, which may arise directly, indirectly or proximately as a result of any violation of Environmental Laws or the disposal of any Hazardous Materials by AT&T, or AT&T's agents, contractors or employees. AT&T's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of AT&T, it shall not be deemed to alter or diminish any statutory or common law liability of AT&T.

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

ARTICLE V REPAIRS AND MAINTENANCE

Section 5.01 Responsibility of AT&T. AT&T shall keep and maintain the Property, Communications Equipment, the Equipment Storage Facility and Tower, and all Alterations, in good condition and repair excluding reasonable wear and tear, and in a clean condition, free of refuse, trash, and rubbish, at AT&T's sole cost and expense. County shall maintain and repair the Property and access thereto, the Tower, and all areas of the Equipment Storage Facility where AT&T does not have exclusive control, in good and tenable condition, subject to reasonable wear and tear and damage from the elements. AT&T shall be responsible for any repairs to the Premises or Property caused by the negligent or intentional acts of AT&T or AT&T's employees, agents, or contractors. In the event that the aforementioned repairs are required, County shall have sole discretion to determine the manner in which such repairs will be made, including but not limited to when and what maintenance, repairs and/or renovations AT&T shall perform. AT&T shall provide County and other users with sixty (60) days advance notice of any such work which may reasonably be foreseen by AT&T to impact County's or other users' operations at the Property. The notice required under this Section shall describe in detail the type of work to be performed. AT&T shall cooperate with County and other users to devise a plan to permit such work and minimize the impact of such work to County and other users. AT&T 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 and AT&T shall endeavor to provide as much advance notice as reasonably practical given the nature of the emergency or as a result of undertaking any immediate work necessary to remedy such emergency, or shall provide notice as soon as possible thereafter. For purposes of this Section 5.01, an "emergency" shall be defined as the occurrence of an event which threatens immediate harm to persons, equipment, or property.

Section 5.02 County's Right to Inspect. County or County's agents shall have the right to visually inspect the Property, Tower, Equipment Storage Facility, Premises, Communications Equipment and AT&T's Alterations. County shall conduct such

inspections in a manner which does not unreasonably interfere with or disrupt AT&T's operations.

ARTICLE VI INSURANCE

Section 6.01 Insurance. AT&T shall, at its sole expense, maintain in full force and effect at all times during the term of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by AT&T are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by AT&T under this Agreement. Where applicable, required coverage shall be provided on a primary and non-contributory basis.

Section 6.02 Commercial General Liability. AT&T shall maintain Commercial General Liability Insurance, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate for bodily injury, personal injury and property damage liability. The policy shall include coverage for damage to the Premises including fire legal liability with a minimum limit of \$100,000. Commercial General Liability policy shall be endorsed to include "Palm Beach County" as an Additional Insured with a "CG 2026 - Additional Insured - Managers or Lessors of Premises", or similar endorsement.

Section 6.03 Business Automobile Liability. AT&T shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 combined single limits for property damage and bodily injury per occurrence; for all owned, non-owned and hired automobiles. In the event AT&T does not own any automobiles, the Business Auto Liability requirement shall be amended allowing AT&T to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

Section 6.04 Worker's Compensation Insurance & Employers Liability. AT&T shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

Section 6.05 Waiver of Subrogation. AT&T by entering into this Agreement, agrees to a Waiver of Subrogation for each required policy; provided, however, County acknowledges and agrees that AT&T does not agree to a waiver of subrogation for incidents that arise from the acts or omissions of County or its agents, employees or contractors. When required by the insurer, or should a policy condition not permit an Insured to enter into a preloss agreement to waive subrogation without an endorsement, then AT&T shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or voids coverage should AT&T enter into such an agreement on a preloss basis.

Section 6.06 Certificate(s) of Insurance. Immediately following execution of this Agreement by AT&T, AT&T shall deliver to County a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. The Certificate (s) of Insurance should be mailed to and reference in the "CERTIFICATE HOLDER" box (ACCORD FORM or its equivalent) the following: Palm Beach County, Property & Real Estate Management, Attention Director, 2633 Vista Parkway, West Palm Beach, FL 33411.

Section 6.07 Umbrella or Excess Liability. If necessary, AT&T may satisfy the

minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit of not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Section 6.08 Right to Review. County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to periodically (i) review, reject or accept any required Certificates of Insurance, including limits of coverage noted thereon, to the extent said Certificates of Insurance are not in compliance with this Article VI, and (ii) reasonably adjust the limits of coverage required hereunder from time to time throughout the term of this Agreement.

ARTICLE VII INDEMNIFICATION OF COUNTY

AT&T shall indemnify, defend and save harmless the County, from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement or any renewal hereof for any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Property or Premises, Equipment Storage Facility or Tower by reason or as a result of the use and occupancy of the Property, Premises, Equipment Storage Facility or Tower by AT&T, its agents, employees, and contractors, and from and against any orders, judgements, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees at trial and on appeal, expenses and liabilities incurred in and about the defense of any such claim. In the event County shall be made a party to any litigation commenced against AT&T as a result of AT&T's use of the Property, Premises, Equipment Storage Facility or Tower or by AT&T against any third party relating to AT&T's use of the Property, Premises, Equipment Storage Facility or Tower, then AT&T shall indemnify, defend, and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Notwithstanding the foregoing, AT&T shall have no obligation pursuant to the immediately preceding sentence relating to claims or damages which are judicially determined to be solely attributable to County's negligent or intentional acts or omissions. AT&T recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the County in support hereof according to the laws of the State of Florida. This section shall survive the termination of this Agreement.

ARTICLE VIII DAMAGE OR DESTRUCTION

In the event the Equipment Storage Facility or Tower are destroyed or so damaged or injured by fire or other casualty during the Term of this Agreement or any extension thereof, whereby the same are rendered untenable, in whole or in part, AT&T shall commence restoration thereof within sixty (60) days and thereafter diligently pursue the restoration to completion, or alternatively, County may, at its sole option, elect not to allow AT&T to restore the Equipment Storage Facility or Tower and terminate this Agreement; in this event, County shall retain all insurance proceeds payable on account of such casualty loss associated with the Equipment Storage Facility or Tower as County's sole property and AT&T shall be entitled to collect all insurance proceeds payable to AT&T for casualty loss associated with its Communications Equipment and any other personal property at the Premises. In the event the Equipment Storage Facility or Tower are damaged during the Term of this Agreement and County does not exercise its right to terminate this Agreement, AT&T shall promptly commence restoration thereof or alternatively may remove the damaged equipment from the Premises and terminate this Agreement. Notwithstanding anything herein to the contrary, in the event of damage by fire or other casualty that cannot

reasonably be expected to be repaired within ninety (90) days following same or, if the Equipment Storage Facility or Tower or Property or Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt AT&T's operations for more than ninety (90) days, then AT&T may at any time following such fire or other casualty terminate this Agreement upon fifteen (15) days written notice to County; in this event, County shall retain all insurance proceeds payable on account of such casualty loss associated with the Equipment Storage Facility or Tower as County's sole property and AT&T shall be entitled to collect all insurance proceeds payable to AT&T for casualty loss associated with its Communications Equipment and any other personal property at the Premises. Notwithstanding the foregoing, in the event such casualty is caused by the negligent or intentional acts of AT&T or its employees, contractors or agents, AT&T shall not have the right to terminate this Agreement and shall be responsible for all costs to remedy the damage caused by such casualty not covered by AT&T's insurance. In the event either County or AT&T elects to terminate this Agreement pursuant to this Article VIII, AT&T shall vacate and surrender the area occupied by AT&T as required by Section 4.06.

ARTICLE IX ASSIGNMENT AND SUBLETTING

AT&T may not assign, mortgage, pledge, collaterally assign, or encumber this Agreement, in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Property, without prior written consent of County, which may be granted or withheld at County's sole and absolute discretion. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary. Notwithstanding the foregoing or anything in this Agreement to the contrary, AT&T may sell, assign, or transfer this Agreement or sublet the area occupied by AT&T, subject to Section 4.02 above, without any approval or consent of County to AT&T's principal, affiliates, subsidiaries of its principal or affiliates, or to any entity which acquires all or substantially all of AT&T's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition, or other business reorganization. Upon receipt of the prior written consent of County or notification to Owner where assignment is permitted without first obtaining the County's approval or consent, all in accordance with this Article IX, AT&T will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment. County may assign, mortgage, pledge, collaterally assign, or encumber this Agreement, in whole or in part, without the prior written consent of AT&T.

ARTICLE X UTILITIES

AT&T is responsible for obtaining, and paying for all costs and charges for, all utilities, whether through submetering or not, that it may require and use for the operation of AT&T's Communications Equipment at the Premises. AT&T shall pay Florida Power & Light and any other utility or service company for any and all respective charges incurred by AT&T based on its consumption of electricity or other utility associated with its Communication Equipment at the Premises. AT&T shall also be responsible for and pay for exterior lighting of the Equipment Storage Facility and Tower as may be required as a result of AT&T's operation and use at the Premises. AT&T shall be responsible for all costs incurred by County in repairing any damage to the meters and appurtenances caused by the negligent or intentional acts of AT&T or AT&T's employees, agents or contractors, and AT&T shall reimburse County for all said costs within thirty (30) days after demand therefor. Said demand shall include an invoice detailing the repair costs. Notwithstanding anything herein to the contrary, in no event shall County be liable for any interruption of power or other utility service to the Premises.

ARTICLE XI ACCESS

AT&T shall have the right to enter upon the Property at all times twenty-four (24) hours a day, seven (7) days a week in order to gain vehicular and pedestrian access to its Communications Equipment. AT&T shall comply with any reasonable security procedures established by County to prevent unauthorized access to the Communications Equipment and the Property generally. AT&T and County shall each designate emergency contact personnel as listed in Section 16.02 below to notify in case of an emergency requiring access to the Communications Equipment.

ARTICLE XII DEFAULT

Section 12.01 Default by AT&T. The occurrence of any one or more of the following shall constitute an Event of Default by AT&T under this Agreement: (i) AT&T's failure to pay any sum due hereunder within fifteen (15) days after the due date for said payment; (ii) AT&T's failure to perform or observe any other term, covenant, or condition of this Agreement on AT&T's part to be performed hereunder and such failure continues for a period of more than thirty (30) days after the date AT&T receives written notice from County notifying AT&T of the specific failure, provided, however, AT&T 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 AT&T commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion within sixty (60) days; or (iii) AT&T's leasehold estate being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to pursue such remedies as may be available to County under the law, including, without limitation, the right to give AT&T notice that County intends to terminate this Agreement upon a specified date not less than three (3) days after the date notice is received by AT&T, 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 three (3) day period and the County is so notified, this Agreement will continue.

Section 12.02 Default by County. County shall not be in default unless County fails to perform obligations required of County within a reasonable time, but in no event later than thirty (30) days after written notice by AT&T to County, specifying wherein County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, AT&T shall have the right to pursue such remedies as may be available to AT&T under the law.

ARTICLE XIII ANNUAL BUDGETARY FUNDING/CANCELLATION

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. County may terminate this Agreement, with or without cause upon three hundred sixty-five(365) days written notice to AT&T.

ARTICLE XIV QUIET ENJOYMENT

Section 14.01 Upon the observance and performance of all the covenants, terms and conditions on AT&T's part to be observed and performed, AT&T shall peaceably and quietly hold and enjoy the rights granted hereunder for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions

of this Agreement.

ARTICLE XV CONDEMNATION

If the Property or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, any award relating to both the Equipment Storage Facility and the Tower as County's sole property. Notwithstanding the foregoing, AT&T shall be entitled to pursue in such condemnation proceeding such award as may be allowed for the value and relocation of its Communications Equipment and personal property of AT&T at the Premises, moving expenses and business damages. In the event of a total taking of the Property, this Agreement shall terminate upon the date title vests in the condemning authority. Thereafter, the parties shall be relieved of all further obligations hereunder. Notwithstanding such termination, AT&T shall remain liable for all matters arising under this Agreement prior to such termination. County shall have no obligation to restore the Property or Premises or improvements or otherwise perform any work upon same as a result of any such taking.

In the event of condemnation of the Equipment Storage Facility or Tower or any portion thereof, and, if such condemnation may reasonably be expected to disrupt AT&T's operations at the Premises for more than forty-five (45) days, AT&T may terminate this Agreement upon fifteen (15) days written notice to County. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. Termination of this Agreement shall not affect AT&T's obligations under this Agreement arising prior to such termination.

ARTICLE XVI MISCELLANEOUS

Section 16.01 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part hereof, as if fully set forth herein, constitute all agreements, conditions and understandings between County and AT&T. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or AT&T unless reduced to writing and signed by them.

Section 16.02 Notices. All notices, consents, approvals, demands and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designed the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the AT&T at:
New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Attn: Network Real Estate Administration
RE: Cell Site #: ANW, Cell Site Name: ANW
FA No. 10023514

1025 Lenox Park Blvd. 5th Floor
Atlanta, GA 30319

with copies to:

New Cingular Wireless PCS, LLC
Attn: Legal Department,
Attn: Network Real Estate Administration
RE: Cell Site #: ANW, Cell Site Name: ANW
FA No. 10023514
208 S. Akard Street
Dallas, TX 75202-4206

AT&T Contact for Emergency Situations:
AT&T Network Operations Center (NOC) - 1-800-638-2822

- (b) If to the County at:
Property and Real Estate Management
Attn.: Director
2633 Vista Parkway
West Palm Beach, FL 33411

with copies to:

Palm Beach County
County Attorney
Attn: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

County's Contact for Emergency Situations:
24 Hour County Warning Point: 561-712-6428

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon thirty (30) days prior written notice to the other parties.

Section 16.03 Severability. If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this 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.

Section 16.04 Broker's Commission. AT&T represents and warrants that AT&T has not dealt with any real estate salesperson, agent, finder or broker in connection with this Agreement and agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with AT&T. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 16.05 Waiver. The waiver by either party of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by County to or of any act by AT&T requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by AT&T. No waiver of any

provision of this Agreement shall be effective against any party hereto 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.

Section 16.06 Waiver of Jury Trial. THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS AGREEMENT.

Section 16.07 Governing Law. This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

Section 16.08 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

Section 16.09 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.

Section 16.10 Non-exclusivity of Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 16.11 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.

Section 16.12 Effective Date of Agreement. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

Section 16.13 Force Majeure. Any party delayed by a Force Majeure Event, as defined herein, in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Agreement. "Force Majeure Event" shall mean any act of God, fire, flood, earthquake, explosion, hurricane, riot, sabotage, terrorist attack, windstorm, failure of utility service, or labor dispute.

Section 16.14 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and assigns.

Section 16.15 Recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.

Section 16.16 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.

Section 16.17 Amendment. This Agreement may be modified and amended only by written instrument executed by the parties hereto.

Section 16.18 Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.

Section 16.19 Public Entity Crimes. As provided in Florida Statutes 287.132-133, AT&T hereby certifies that, to its knowledge, neither it, nor its affiliates, agents, contractors, employees, or suppliers who will perform work 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 Commencement Date of the Term of this Agreement. This certification provided in the preceding sentence is required pursuant to Florida Statute 287.133(3)(a).

Section 16.20 AT&T's Property. County agrees and acknowledges that all of the Communications Equipment and personal property of AT&T shall remain the personal property of AT&T, and, upon expiration or earlier termination of this Agreement, shall be removed by AT&T as set forth in section 4.06.

Section 16.21 Independent Contractor Relationship. AT&T is, and shall be, in the performance of all work, services, and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to AT&T's sole direction, supervision, and control. AT&T shall exercise control over the means and manner in which it and its employees perform the work, and in all respects AT&T's relationship, and the relationship of its employees, to the County shall be that of an independent contractor and not as employees or agents of the County.

AT&T does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

Section 16.22 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.

Section 16.23 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 AT&T.

Section 16.24 Criminal History Records Check. AT&T, AT&T's employees, subcontractor of AT&T and employees of subcontractor shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in

Resolution R2013-1470 and R2015-0572, as amended. AT&T is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. AT&T shall bear any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County.

This Agreement may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above reference Resolutions. County staff representing the Department of Facilities, Development and Operations will contact AT&T(s) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. AT&T shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the County. If AT&T or its subcontractor(s) terminates an employee who has been issued a badge, AT&T must notify the County within forty-eight (48) hours. At the time of termination, AT&T shall retrieve the badge and shall return it to the County in a timely manner.

The County reserves the right to suspend AT&T if AT&T 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the County regarding a terminated AT&T employee or sub employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy

Section 16.25 Public Records. Notwithstanding anything contained herein, as provided under Section 119.0701, Florida Statutes, if AT&T: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) Florida Statutes, AT&T shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time AT&T is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Agreement.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. AT&T further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement, if AT&T does not transfer the records to the public agency.
- D. Upon completion of this Agreement AT&T shall transfer, at no cost to the County, all public records in possession of AT&T unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If AT&T transfers all public records to the County upon completion of this Agreement, AT&T shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If AT&T keeps and maintains public records upon completion of this Agreement, AT&T shall meet all applicable requirements for retaining public records. All records stored electronically by AT&T must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of AT&T to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. AT&T

acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF AT&T HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AT&T'S DUTY TO PROVIDE PUBLIC RECORDS IN ACCORDANCE WITH THIS SECTION 16.25, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@pbcgov.org OR BY TELEPHONE AT 561-355-6680.

Section 16.26 E-Verify – Employment Eligibility. AT&T warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. No later than January 1, 2021, AT&T shall: (1) register with and use the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the AT&T's subcontractors/subconsultants performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

AT&T shall obtain from each of its subcontractors/subconsultants an affidavit stating that the subcontractor/subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. AT&T shall maintain a copy of any such affidavit from a subcontractor/subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

County shall terminate this Agreement if it has a good faith belief that AT&T has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If County has a good faith belief that AT&T's subcontractor/subconsultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, County shall notify AT&T to terminate its contract with the subcontractor/subconsultant and AT&T shall immediately terminate its contract with the subcontractor/subconsultant.

If County terminates this Agreement pursuant to the above, AT&T shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, AT&T shall also be liable for any additional costs incurred by County as a result of the termination.

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

WITNESS:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

Documented by
Amy Miley

(Witness Signature)

Amy Miley

(Print name of witness)

Documented by
Kimberly Williams

(Witness Signature)

Kimberly Williams

(Print name of witness)

Documented by
John Heggy

By: _____
(Signature)

John Heggy

Name Area Manager Network
Engineering

Title

Date: 7/1/2021

ATTEST:
Joseph Abruzzo, CLERK

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

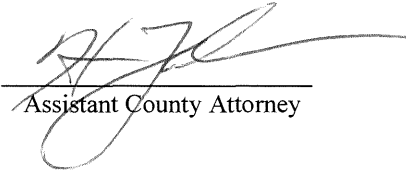
By: _____
Deputy Clerk

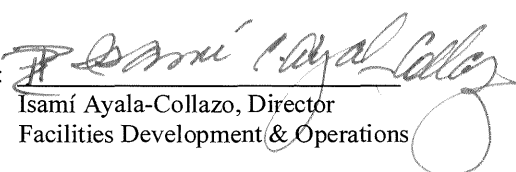
By: _____
Dave Kerner, Mayor

(Seal)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: 
Assistant County Attorney

By: 
Isami Ayala-Collazo, Director
Facilities Development & Operations

SCHEDULE OF EXHIBITS

- EXHIBIT "A" - **LEGAL DESCRIPTION**
- EXHIBIT "B" - **THE PREMISES**
- EXHIBIT "C" - **COMMUNICATIONS EQUIPMENT
EQUIPMENT LOCATIONS /
ARCHITECTURAL ELEVATIONS**
- EXHIBIT "D" - **FREQUENCIES**

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

A PORTION OF THE SOUTHEAST ONE QUARTER (SE $\frac{1}{4}$) OF SECTION 22, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, AND RUN ON AN ASSUMED BEARING OF $N88^{\circ}21'07''W$ ALONG THE SOUTH LINE OF SAID SECTION 22, TOWNSHIP 42 SOUTH, RANGE 42 EAST FOR 322.15 FEET TO A POINT LYING ON THE WEST RIGHT-OF-WAY LINE OF THE SUNSHINE STATE PARKWAY (A.K.A. FLORIDA'S TURNPIKE); THENCE RUN $N01^{\circ}35'15''E$ ALONG SAID WEST RIGHT-OF-WAY LINE OF THE SUNSHINE STATE PARKWAY FOR 79.43 FEET TO A POINT LYING ON THE SOUTH RIGHT-OF-WAY LINE OF THE S.A.L. RAILROAD; THENCE RUN $N53^{\circ}41'05''W$ ALONG SAID SOUTH RIGHT-OF-WAY LINE OF THE S.A.L. RAILROAD FOR 1380.18 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE $N53^{\circ}41'05''W$ ALONG THE LAST DESCRIBED COURSE FOR 664.41 FEET TO A POINT LYING ON THE EAST RIGHT-OF-WAY LINE OF PROPOSED JOG ROAD AS DESCRIBED IN THE CERTAIN SKETCH PREPARED BY THE FIRM OF BELLER-WEAVER AND CATO, INC. UNDER FILE NO. 87-9863-88, 2, 3, & 4 DATED 6-10-87; THENCE RUN $S16^{\circ}18'55''W$ ALONG SAID EAST RIGHT-OF-WAY LINE OF PROPOSED JOG ROAD FOR 565.61 FEET; THENCE RUN $S73^{\circ}41'05''E$ FOR 501.19; THENCE RUN $N36^{\circ}18'55''E$ FOR 360.08 FEET TO THE POINT OF BEGINNING.

CONTAINING 6.000 ACRES MORE OR LESS.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA.

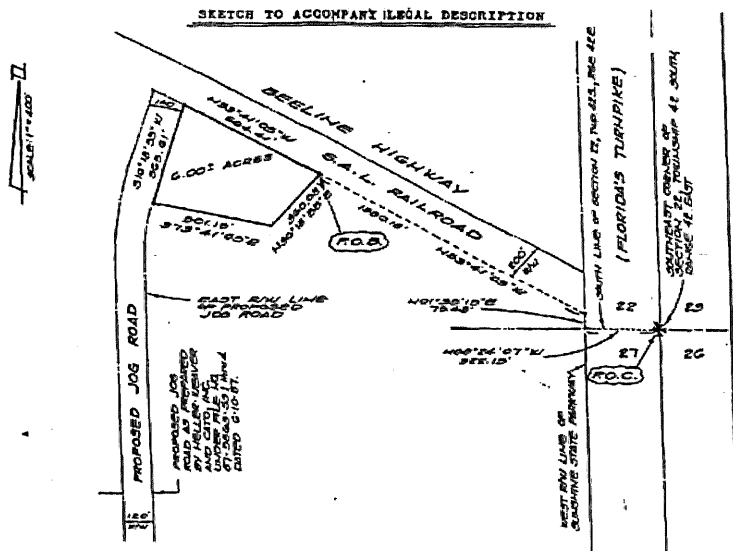


EXHIBIT "B"
THE PREMISES

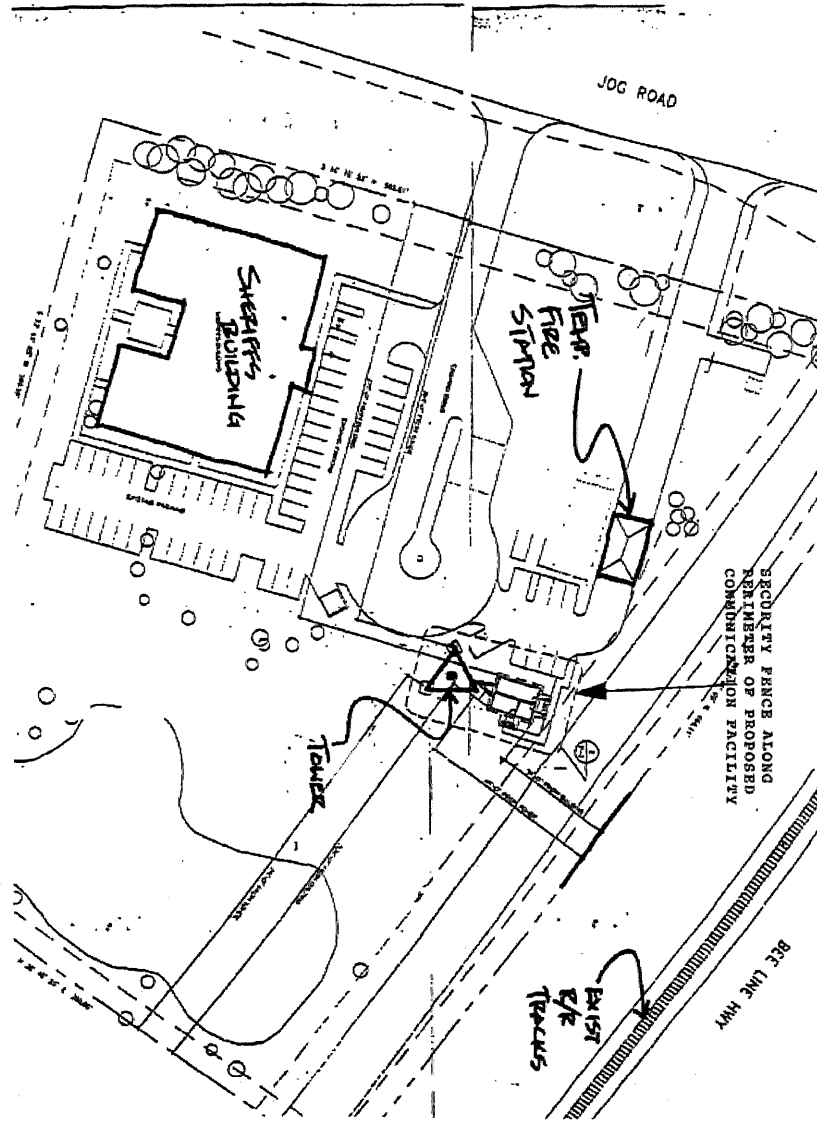


EXHIBIT "C"
**DESCRIPTION OF COMMUNICATIONS EQUIPMENT/
EQUIPMENT LOCATIONS/ARCHITECTURAL ELEVATIONS**

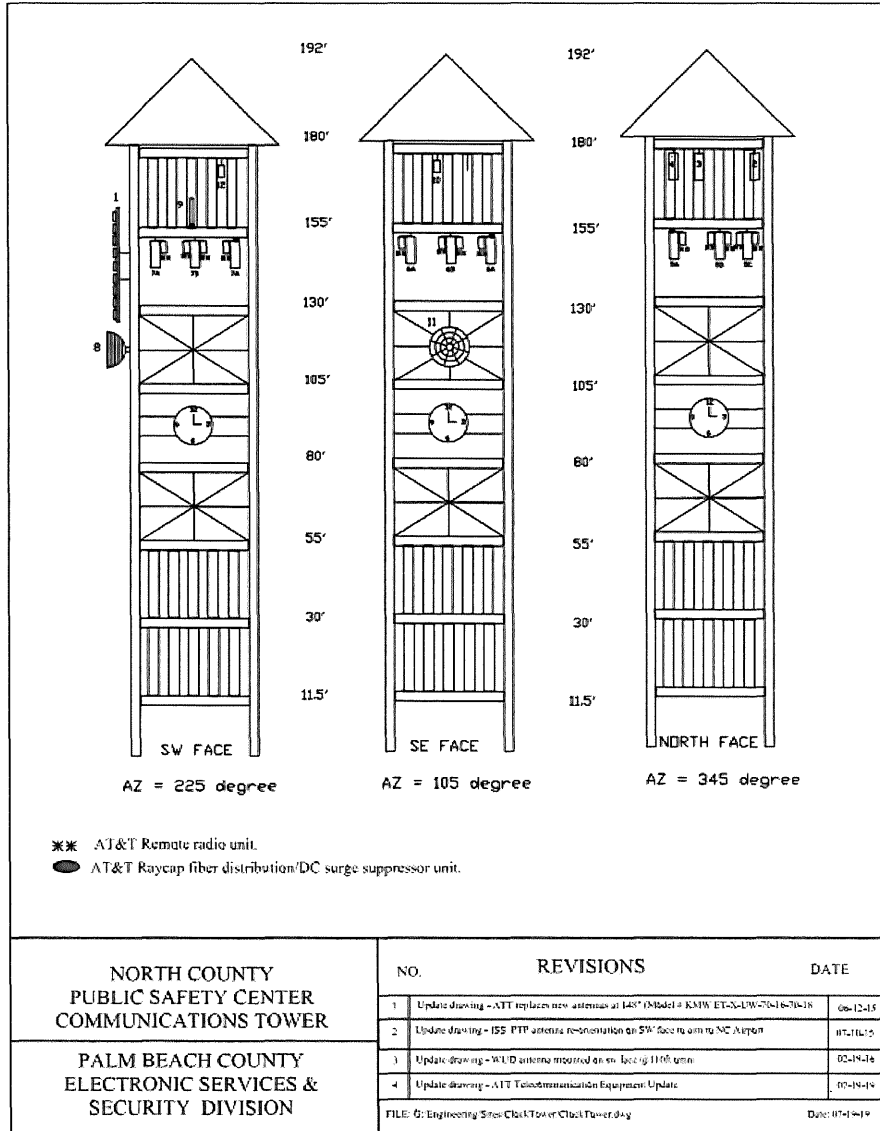
ANT #	ANTENNA TYPE	MFGR	MOUNTING HEIGHT	TOWER LEG	AZIMUTH	TX FREQ	RX FREQ	USE
1	DB268	DECIBEL	110'	SW	OMNI	146.8800	146.2800	RACES - EOC
2, 3 & 4	800-10122	KATHREIN	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	ATM19801712-0TMA	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	ATM19801712-0TMA	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	FDGW5504/B-C-3	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	FDGW5504/B-C-3	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	FDGW5504/B-C-3	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
"	FDGW5504/B-C-3	RFS	175'	N	345	869-891 MHz & 1848-1948 MHz	824-848 MHz & 1848-1948 MHz	AT&T Wireless
5A	ET-X-UW-70-16-70-18	KMW	148'	SE	105	698-894MHz; 1710-2170MHz	698-894MHz; 1710-2170MHz	AT&T Wireless
5B	ET-X-UW-70-16-70-18	KMW	148'	SE	105	698-894MHz; 1710-2170MHz	698-894MHz; 1710-2170MHz	AT&T Wireless
6	840-370966K	KATHREIN	148'	N	345	698-894MHz; 1710-2170MHz	698-894MHz; 1710-2170MHz	AT&T Wireless
7	840-370966K	KATHREIN	148'	SE	105	698-894MHz; 1710-2170MHz	698-894MHz; 1710-2170MHz	AT&T Wireless
8	800-372965	KATHREIN	148'	SW	225	698-894MHz; 1710-2170MHz	698-894MHz; 1710-2170MHz	AT&T Wireless
9A	800-10966K	KATHREIN	148'	N	345	698-894MHz; 1710-2170MHz	698-894MHz; 1710-2170MHz	AT&T Wireless
9B	800-10866	KATHREIN	148'	N	345	698-894MHz; 1710-2170MHz	698-894MHz; 1710-2170MHz	AT&T Wireless
"	RRU-449 B5/B12	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless
"	RRU-449 B5/B12	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless
"	RRU-449 B5/B12	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless
"	RRUS-32	ERICSSON	148'	N	345	743.0000	743.0000	AT&T Wireless

ANT #	ANTENNA TYPE	MFGR	MOUNTING HEIGHT	TOWER LEG	AZIMUTH	TX FREQ	RX FREQ	USE
**	RRUS-32	ERICSSON	14'	N	345	743.0000	743.0000	AT&T Wireless
10A	ET-X-UW-68-14-65-18	KMW	14'	SW	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
10B	ET-X-UW-68-14-65-18	KMW	14'	SW	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
**	RRUS-32	ERICSSON	14'	N	105	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	14'	SE	105	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	14'	SE	105	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	14'	SE	105	743.0000	743.0000	AT&T Wireless
**	DC6-48-60-18-8F	RAYCAP	14'	SW	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
**	DC6-48-60-18-8F	RAYCAP	14'	SE	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
**	DC6-48-60-18-8F	RAYCAP	14'	N	225	608-960MHz; 1710-2180MHz	608-960MHz; 1710-2180MHz	AT&T Wireless
**	RRUS-32	ERICSSON	14'	SW	225	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	14'	SW	225	743.0000	743.0000	AT&T Wireless
**	RRUS-32	ERICSSON	14'	SW	225	743.0000	743.0000	AT&T Wireless
11	PL6-65D (1)	ANDREW	105'	SW	190	6595.0000	5755.0000	AT&T Wireless
12	AU-Ant-5G-17-90	Alvarion	180'	SE	Directional	5.310 GHz	5.310 GHz	PBC ISS PTP
13	PL6-65D (1)	ANDREW	120'	SE	TBD			PBC
14	AU-Ant-5G-17-90	Alvarion	180'	N	Directional	5.310 GHz	5.310 GHz	PBC ISS PTP
15	460-470MHz Omni FG4505W	Laird Technologies	155'	SW	OMNI	456.8625	456.8625	PBC Water Utilities

* Future use

(1) not use

** Remote Radio Units



DISCLOSURE WARNING. THIS DOCUMENT IS EXEMPT AND/OR CONFIDENTIAL UNDER SEC. 119.071, FLORIDA STATUTES. ANY ENTITY OR PERSONS RECEIVING SUCH INFORMATION SHALL MAINTAIN THE EXEMPT STATUS OF THE INFORMATION UNLESS OTHERWISE AUTHORIZED BY THE COUNTY. THESE DOCUMENTS SHALL NOT BE DISTRIBUTED, LOANED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE COUNTY IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF FLORIDA LAW. THE COUNTY MUST BE ADVISED IMMEDIATELY AS TO ANY CHANGES IN CUSTODIAN FROM THOSE PERSONS LISTED IN CORRESPONDENCE FOR ORIGINAL DISTRIBUTION, IF THE DOCUMENTS ARE LOST OR STOLEN, OR IF THERE IS IMPROPER DISCLOSURE OR UNAUTHORIZED USE OF THE INFORMATION IN THE DOCUMENT. UPON COMPLETION OF USE, WORK, PROJECT, OR CONTRACT, THE CONTRACTOR OR CONSULTANT SHALL SHRED OR BURN ANY DUPLICATE RECORDS.

EXHIBIT "D"
FREQUENCIES

TRANSMIT	RECEIVE	USER	NOTE
758 thru 763	788 thru 793	PBC 700MH Broadband	(2)
456.86250	456.86250	PBC Water Utilities	(2)
5.3100	5.3100	PBC ISS PTP	1
146.8800	146.2800	PBC RACES	1
875.5000		AT&T Mobility	1
876.5000		AT&T Mobility	1
881.5000		AT&T Mobility	1
886.5000		AT&T Mobility	1
1942.5000		AT&T Mobility	1
1947.5000		AT&T Mobility	1
889.1 Thru 893.9		AT&T Mobility	1
743		AT&T Mobility	1

Note 1: currently used; Note (2) future use.

Based upon future utilization and design changes to the existing microwave system.