

Meeting Date
October 21, 2014



AGENDA	
Section	New Business
Item No.	V.E.1

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	Authorization to establish a ground lease and revenue sharing agreement with the City of Indian Harbour Beach for a County RF tower site to be located on City property and execute the resulting agreement(s)
DEPT/OFFICE:	Emergency Management

**Requested Action:**

It is requested that the Board of County Commissioners authorize the County Manager or his designee to negotiate and establish a ground lease and revenue sharing agreement with the City of Indian Harbour Beach for the County to locate a County RF tower off Osceola Drive on City property that will become part of the 800 MHz Public Safety Radio Network administered by Emergency Management. It is further requested that the County Manager or his designee be authorized to sign/execute any documents and renewals on behalf of the Board as may be required to execute/administer any new lease agreements and any subsequent extensions of leases. Such agreements/renewals shall be subject to approval by the County Attorney's Office.

**Summary Explanation & Background:**

**HISTORY & CURRENT SITUATION:** In 2007 Tusa Consulting completed an internal audit of the Public Safety Radio System and concluded that *"The Program is responsible and therefore the County, for providing signal coverage to mobile and hand-held radio units operated by various police, fire and emergency responders for both the cities and Brevard County. Per discussions with management, representatives of agencies utilizing the system frequently report failures in signal coverage. We note there is a significant potential liability to the County given the critical nature of work performed by the agency members."* Since then Brevard County Emergency Management has been working on a plan for the enhancement and expansion of the Radio System.

In 2013, the Board of County Commissioners authorized the network enhancement project for the infrastructure of the 800 MHz Public Safety Radio Network administered by Emergency Management. In order for Emergency Management to proceed with the implementation, this location within the City of Indian Harbour Beach area is required; otherwise the County will fail to complete the project on time and within budget.

**COST/BENEFIT ANALYSIS:** To adequately provide radio coverage for the entire beach community, a dedicated beach area simulcast cell containing two sites with 12-channel ProVoice GPS needs to be added to the Brevard County Public Safety Radio System: one located in Indian Harbour Beach, and one at Port Canaveral. These new sites will not only serve to enhance the coverage area of the public safety radio network, but will create additional opportunities for future revenue to help support the network, through the leasing of available space on the tower to other tenants.

**Fiscal impact:** There will be no impact to the General Fund. The cost of tower construction and site development is covered under the 800 MHz expansion and enhancement project.

**Contact:** Kimberly Prosser, Director of Emergency Management, 321-637-6670, Kimberly.prosser@brevardcounty.us

**Clerk to the Board instruction:** Send Clerk Memorandum to Emergency Management along with one set of copies, please.

**Exhibits Attached:**

<b>Contract /Agreement (If attached):</b> Reviewed by County Attorney		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Deputy County Manager		Department Director			
Stockton Whitten		Assistant County Manager		Kimberly Prosser, Emergency Management Director, ext 56670 			



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

October 22, 2014

MEMORANDUM

TO: Kimberly Prosser, Emergency Management Director

RE: Item V.E.1., Authorization to Establish Ground Lease and Revenue Sharing Agreement with the City of Indian Harbour Beach for County RF Tower Site to be Located on City Property

The Board of County Commissioners, in regular session on October 21, 2014, authorized the County Manager, or his designee, to negotiate and establish a ground lease and revenue sharing agreement with the City of Indian Harbour Beach for the County to locate a County RF tower off Osceola Drive on City property that will become part of the 800 MHz Public Safety Radio Network administered by Emergency Management; and authorized the County Manager, or his designee, to sign/execute any documents and renewals on behalf of the Board as may be required to execute/administer any new lease agreements and any subsequent extensions of leases, subject to approval by the County Attorney's Office.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

cc: Finance  
Budget



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32761-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

October 22, 2014

*file*

MEMORANDUM

TO: Kimberly Prosser, Emergency Management Director

RE: Item V.E.1., Authorization to Establish Ground Lease and Revenue Sharing Agreement with the City of Indian Harbour Beach for County RF Tower Site to be Located on City Property

The Board of County Commissioners, in regular session on October 21, 2014, authorized the County Manager, or his designee, to negotiate and establish a ground lease and revenue sharing agreement with the City of Indian Harbour Beach for the County to locate a County RF tower off Osceola Drive on City property that will become part of the 800 MHz Public Safety Radio Network administered by Emergency Management; and authorized the County Manager, or his designee, to sign/execute any documents and renewals on behalf of the Board as may be required to execute/administer any new lease agreements and any subsequent extensions of leases, subject to approval by the County Attorney's Office.

Your continued cooperation is greatly appreciated.

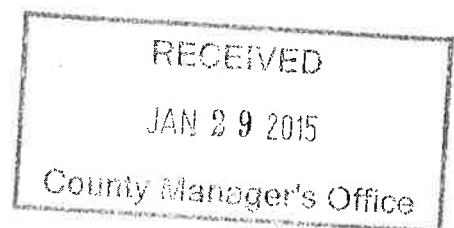
Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Etheridge*

Tammy Etheridge, Deputy Clerk

cc: Finance  
Budget



**INTERLOCAL AGREEMENT REGARDING CONSTRUCTION, LOCATION AND USE  
OF A PUBLIC SAFETY COMMUNICATIONS TOWER**

This is an agreement, made and entered into by and between BREVARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

the CITY OF INDIAN HARBOUR BEACH, a municipal corporation of the State of Florida hereinafter referred to as "CITY."

**WHEREAS**, the City has been approached by Brevard County concerning the use of the City property described herein (the "Property") for the construction of a Public Safety Communications Tower Site; and,

**WHEREAS**, a Public Safety Communications Tower is considered a public utility facility and allowable in the P-1 zoning district; and,

**WHEREAS**, the Property is currently zoned P-1, Institutional and there is a thirty-five (35) foot maximum height restriction for structures located in the P-1 zoning category; and,

**WHEREAS**, representatives of Brevard County appeared before the City and presented substantial evidence justifying the need for such a tower due to gaps in public safety communications putting City and County residents and emergency service personnel at risk; and,

**WHEREAS**, the current Brevard County public safety radio system is a 4-tower multi-site system and is being expanded and enhanced to become a 9- tower simulcast system, including the construction and installation of a tower in the City of Indian Harbour Beach to aid in relieving this gap in public safety communications service; and,

**WHEREAS**, it promotes the public welfare of the residents located in the City and the County if the two entities work together to provide adequate public safety communications, and

**WHEREAS**, the Property is the only public location that could support the proposed tower by Brevard County and provides enough separation from property lines and is considered the best location on public property to enhance the proposed 9 tower simulcast system; and,

**WHEREAS**, the proposed monopole tower is 250 feet and includes a 25 foot antenna for a total of 275 feet; and,

**WHEREAS**, on August 6, 2014, The City of Indian Harbour Beach Planning and Zoning Board recommended approval of the requested variance to the City of Indian Harbour Beach Zoning Board of Appeals and recommended approval of Site Plan No. SP-2014-2 to the City Council; and,

**WHEREAS**, on August 12, 2014 the City of Indian Harbour Beach Zoning Board of Appeals approved the requested variance and the City Council adopted Resolution No. 653 formally approving the variance; and,

**WHEREAS**, on August 12, 2014 the City of Indian Harbour Beach City Council approved Site Plan No. SP-2014-2; and,

**WHEREAS**, it is the purpose and intent of this Agreement for COUNTY and CITY to provide for a means by which each governmental entity may exercise cooperatively its respective powers and privileges in order to further a common goal; and

**WHEREAS**, the CITY covenants and agrees that the County's emergency communications system is the primary function of this telecommunications facility and shall take precedence over any other use of the Property; and

**WHEREAS**, this Agreement is an interlocal agreement entered into pursuant to Section 163.01, Florida Statutes, and the Florida Intergovernmental Cooperation Act of 1969, amended. Prior to the effectiveness of any provisions of this Agreement and any amendments hereto, this Agreement including any amendments shall be filed as provided by Section 163.01; and

**WHEREAS**, the COUNTY has requested the use of CITY property for the installation of a Public Safety Communications Tower Site; and,

**WHEREAS**, the CITY wishes to participate in the project by providing the property necessary for the installation of the tower and associated facilities, and

**WHEREAS**, the facilities to be located on the Property are to be administered by the Office of Emergency Management on behalf of the County for the purpose of supporting the county-wide public safety radio communications network; and

**WHEREAS**, the facilities and related structures at this location shall remain solely property of Brevard County; and

**WHEREAS**, the CITY is willing to permit the COUNTY to use the Property as a site for a Public Safety Communications Tower Site pursuant to the terms and conditions hereinafter set forth;

**NOW, THEREFORE, IN CONSIDERATION** of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, CITY and COUNTY agree to perform the following acts and to be bound by the following statements:

**ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS**

The following terms are defined as set forth herein unless the context affirmatively dictates to the contrary.

1.1 “Agreement” – means this document, articles 1 through 7 inclusive. Other terms and conditions are included in the attachments and documents that are expressly incorporated by reference.

1.2 “Board” – The Brevard County Board of County Commissioners.

1.3 “City Contract Administrator” – The City of Indian Harbour Beach City Manager will be the City Contract Administrator. The primary responsibilities of the City Contract Administrator are to coordinate and communicate with COUNTY and to manage and supervise execution and completion of the Scope of Agreement and terms and conditions of this Agreement as set forth herein.

1.4 “County Contract Administrator” – The Brevard County Manager, his/her designee, is the County Contract Administrator. The primary responsibilities of the County Contract Administrator are to coordinate and communicate with CITY and to manage and supervise the execution and completion of the Scope of Agreement and terms and conditions of this Agreement as set forth herein.

## **ARTICLE 2**

### **SCOPE OF AGREEMENT**

2.1 COUNTY LEASE OF PROPERTY. The CITY and COUNTY agree that the COUNTY shall lease the Property described in **Attachment A** attached hereto and made a part hereof. The term of the lease shall be 20 years (“Initial Term”) commencing upon the date the Tower Facilities (as defined later on herein) are completed and the annual lease payment from the COUNTY to the CITY shall be one dollar (\$1.00) paid on January 1<sup>st</sup> of each year and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged. Unless terminated and as long as the COUNTY is not in breach of this Agreement the lease term shall automatically renew (“Renewal Term or Renewal Terms”) for the same duration as the Initial Term unless a different term is agreed upon by the parties. All Renewal Terms shall be governed by the provisions of this agreement unless modified by the parties. Nothing herein is intended to prohibit successive Renewal Terms.

2.2 SITE PLAN. The Site Plan attached hereto as **Attachment B** includes the detailed site plans and plans and specifications setting forth the proposed tower and antenna and other equipment, the height and location of such equipment, the equipment shelters related to the use of the equipment on the portion of the Property so designated for such placement and other work performed on the Tower and Property. Any deviation from the referenced Equipment to be installed as set forth in Attachment B may be made only with the prior written consent of the CITY.

2.3 TITLE AND QUIET POSSESSION. The CITY represents and agrees (a) that it is the owner of the Property ; (b) that it has the right to enter into this Agreement; and (c) that the person signing this Agreement for the CITY has the authority to sign.

2.4 OWNERSHIP AND REMOVAL OF IMPROVEMENTS. Landscaping installed by, and all other similar improvements made by the COUNTY, including those described in 2.6 (b-d) and 2.9 shall become the property of the CITY upon expiration or termination of this Agreement. The tower, building, antennas, equipment, conduits, fixtures and personal property shall remain the property of the COUNTY.

The COUNTY shall, upon expiration or termination of this Agreement, remove its building, antennas, equipment, conduits, fixtures and all personal property. In the event that the CITY requires removal of such improvements upon expiration or earlier termination of this Agreement, such removal shall be accomplished at the sole expense of the COUNTY and shall be completed within 90 days after receiving written notice from the CITY that it requires removal of the improvements. In the event that the equipment is not removed by the COUNTY as required by this paragraph, such equipment/facilities shall become the property of the CITY upon the expiration of the ninety (90) calendar days.

2.5 USE. The CITY hereby grants the COUNTY the non-exclusive right to use the Property for the transmission and receipt of wireless communication signals in any and all frequencies and the construction, operation, and maintenance of the tower, antennas, buildings, and related facilities and activities, except guy wires, and all other uses permitted under applicable zoning regulations ("Intended Use"). Provided; however, that the CITY grants to the COUNTY the exclusive right to use that portion of the Property described in Attachment A for the actual site of the Tower. The COUNTY intends to construct, as part of the improvements, a telecommunication tower of a height not to exceed the total height of two hundred seventy five feet (275'). All such construction shall be in accordance with EIA/TIA222G, Category III standards for government emergency radio communications specifications. CITY agrees to cooperate with COUNTY in obtaining, at COUNTY'S expense, all licenses and permits required for COUNTY'S use of the Property (the "Governmental Approval"). COUNTY may construct additional improvements, demolish and reconstruct improvements, or restore, replace and reconfigure improvements at any time during the Initial Term or any Renewal Term of this Lease, with prior written notice to and subsequent written consent from the CITY. All such improvements and/or reconstruction shall conform to all applicable federal, state, agency and local codes, regulations, rules and the provisions of this agreement. Nothing herein shall be deemed a waiver of any City of Indian Harbour Beach code requirements, including but not limited to, permitting requirements and previously approved plans. COUNTY shall have no right to create or cause a lien or encumbrance on the Property and that the interest of the CITY shall not be subject to liens for improvements made by the COUNTY, and that the COUNTY shall notify any contractor making such improvements of this provision of the Agreement.

## 2.6 IMPROVEMENTS UTILITIES: ACCESS.

(a) COUNTY shall have the right at COUNTY's sole cost and expense, to erect and maintain on the Property improvements, personal property and facilities, including without limitation, one tower, and one structural tower base, radio transmitting and receiving antennas, communications equipment, equipment cabinet and/or shelters and related facilities, except guy wires (collectively the "Tower Facilities"). CITY grants COUNTY the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed and cut all tree limbs to the Property necessary to construct the Tower Facilities which may interfere with or fall upon COUNTY's tower or COUNTY's other improvements, communications equipment or easement rights. CITY grants COUNTY a non-exclusive easement (as described in subsection (d) below) in, over, across and through other real property owned by CITY as reasonably required for construction, installation, maintenance, and operation of the Tower Facilities.

(b) COUNTY shall have the right to install utilities, at COUNTY's expense, and to improve present utilities on the Property (including but not limited to the installation of emergency power generators). COUNTY shall have the right to permanently place utilities on (or to bring utilities across or under) the Easement(s) to service the Leased Premises and the Tower Facilities. All utilities shall be installed underground. In the event that utilities necessary to serve the equipment of COUNTY or the equipment of COUNTY's licensee(s) or sublessee(s) cannot be located within existing easement(s) for ingress and egress, CITY agrees to cooperate with COUNTY and grant such easements as are reasonably necessary to provide utility services to the Property. CITY shall, upon COUNTY's request, execute a separate written easement to the utility company providing the service for COUNTY in a form which may be filed of record evidencing this right.

(c) CITY represents and warrants to COUNTY that COUNTY, and its employees, agents, subcontractors and licensees shall, at all times during this Agreement, enjoy ingress, egress, and access from the Property to an open and improved public road which presently exists, and which easement(s) shall be adequate to service the Property and the Tower Facilities. If no such public road exists, or ceases to exist in the future, CITY will grant an appropriate easement to COUNTY, COUNTY's sublessees and licensees so that COUNTY may, at its own expense, construct a suitable private access drive to the Property and the Tower Facilities. To the degree such access is across other property owned by CITY, CITY shall execute an easement evidencing this right and CITY shall maintain access to the easement(s) in a free and open condition. CITY, other lessees, licensees, invitees or agents of the CITY which may utilize the easement(s) shall cause no interference to the easement(s). CITY shall provide such access to the Property across CITY's adjacent property, and over all paved or unpaved roads owned or controlled by CITY, to allow COUNTY, or its sublessees, to use, maintain and repair the improvements located on the Leased

Premises. Such access shall be provided twenty-four (24) hours per day, seven (7) days per week.

(d) INGRESS/EGRESS EASEMENT. The CITY hereby grants the COUNTY a non-exclusive ingress and egress easement to the Property as depicted on Attachment A attached hereto. COUNTY agrees to construct the easement at its sole cost and the maintenance and repair of the easement shall, be the responsibility of the CITY. A copy of the easement is attached hereto as **Attachment C**.

2.7 IMPROVEMENTS: LANDSCAPING. COUNTY shall maintain perimeter landscaping in compliance with Indian Harbour Beach Land Development Regulations. In addition, COUNTY shall adhere to any and all applicable land development regulations.

2.8 SITE SUITABILITY. COUNTY shall be solely responsible for determining the suitability of the Property for the uses defined herein.

2.9 ADDITIONAL COUNTY IMPROVEMENTS. In addition to the other improvements required of the COUNTY, the COUNTY agrees to clear a 400 foot by 300 foot portion of the Algonquin Sports Complex for future park development as depicted on **Attachment D**. The COUNTY also agrees, at its cost, to bring in fill dirt in an amount determined after the area is cleared. The CITY shall be responsible for distributing the fill on the site. The COUNTY shall install a fire hydrant on the Property no less than 100 ft. south of the proposed accessory building for the tower on the west side of the entry road. Other required improvements shall include the following:

- (a) Diesel fuel storage not to exceed 372 gallons and shall include an approved containment system.
- (b) Security fence shall be 8 ft. in height with an additional 2 ft. offset for a total height of 10 feet. No barbed wire will be utilized.

2.10 CO-LOCATE/PAYMENTS. In the event that the COUNTY leases or issues licenses for tower/ground space to wireless communications service providers, then the COUNTY shall pay to the CITY a share of the net income from the tenants/licensees as follows:

- (a) For the first five-year term, 15% from the first tenant and 25% from the second tenant and all tenants thereafter; with a 5% increase from each tenant/licensee every five years.
- (b) The City's percentage shall be calculated on the sum remaining (net sum) each year after property taxes, insurance costs, maintenance costs, repair costs, reconstruction costs, and other costs of operation, and that portion of the County's annual construction cost of the tower (as amortized over a period of twenty (20) years) are deducted from the lease payments/licensee payments.

(c) The COUNTY shall remit any payment due to the CITY at the end of each quarter of the fiscal year (December 31, March 31, June 30 and September 30).

**ARTICLE 3**  
**EFFECTIVENESS; TERM AND TIME OF PERFORMANCE**

3.1 This Agreement shall become effective only upon execution by all parties and filing with the Clerk of Courts as required by Section 163.01(11), Florida Statutes.

3.2 Time shall be deemed of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

3.3 Neither the CITY nor the COUNTY may terminate this agreement for any reason whatsoever until after the Initial Term. After the Initial Term either party may terminate this Agreement with at least 90 days prior written notice of termination to the other party.

**ARTICLE 4**  
**CHANGE IN SCOPE OF SERVICES**

Any change of the Scope of Services must be by a written amendment, executed by CITY and COUNTY in accordance with Section 7.10 below. Notwithstanding the forgoing, the CITY Contract Administrator and the COUNTY Contract Administrator may from time to time in writing jointly agree to procedures to implement this Agreement.

**ARTICLE 5**  
**GOVERNMENTAL IMMUNITY**

CITY is a municipality as defined in Section 768.28, Florida Statutes, and agrees to be responsible for acts and omissions of its agents or employees when required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by CITY to the extent sovereign immunity may be applicable. Nothing herein shall be construed as consent by CITY to be sued by third parties in any matter arising out of this Agreement or any other contract. Likewise, COUNTY is a political subdivision of the State of Florida, as defined in Section 768.28, Florida Statutes, and agrees to be responsible for acts and omissions of its agents or employees when required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by COUNTY to the extent sovereign immunity may be applicable. Nothing herein shall be construed as consent by COUNTY to be sued by third parties in any matter arising out of this Agreement or any other contract.

**ARTICLE 6**  
**TERMINATION**

6.1 This Agreement may be terminated for cause by vote of the COUNTY or CITY'S governing body if, after written notice from the contract administrator of the aggrieved party, the party in breach has not corrected the breach within thirty (30) days of receiving such notice;

provided, however, that if the nature of the breach is such that it cannot be corrected within thirty (30) days, the aggrieved party may terminate this Agreement pursuant to this provision only if the party in breach has failed to commence action to correct the breach within thirty (30) days of receiving such notice and thereafter diligently pursues action to promptly correct the breach.

6.2 Any written notice given pursuant to this Article shall be provided in accordance with the "NOTICES" section of this Agreement. A notice of termination for breach shall specifically identify the breach and such notice shall be provided in accordance with the "NOTICES" section of this Agreement.

## **ARTICLE 7 MISCELLANEOUS**

7.1 UNLAWFUL DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES. Neither CITY nor COUNTY shall unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CITY and COUNTY shall comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by this Agreement including, without limitation, Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. CITY and COUNTY decisions regarding the delivery of services under this Agreement shall be made without unlawful regard to or unlawful consideration of race, age, religion, color, gender, national origin, marital status, physical or mental disability, political affiliation, and without regard to or consideration of any other factor which cannot be lawfully used as a basis for service delivery.

7.2 INDEPENDENT CONTRACTOR. CITY and COUNTY are independent contractors under this Agreement. Service provided by CITY pursuant to this Agreement shall be subject to the supervision of CITY and services provided by COUNTY pursuant to this Agreement shall be subject to the supervision of COUNTY. In providing such services, the CITY, its officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of COUNTY and the COUNTY, its officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of CITY. This Agreement shall not constitute or make the parties hereto a partnership or joint venture.

7.3 THIRD PARTY BENEFICIARIES. Neither CITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. The parties expressly acknowledge that it is not their intent to create any right in or obligations to any third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

7.4 NOTICES. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall

remain as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

County Manager  
2725 Judge Fran Jamieson Way  
Building "C"  
Viera, Florida 32940

With a copy to

Director, Emergency Management  
Brevard County Board of County Commissioners  
1746 Cedar Street  
Rockledge, FL 32955

FOR CITY:

City Manager  
2055 South Patrick Drive  
Indian Harbour Beach, FL 32937

7.5 COMPLIANCE WITH LAWS. CITY and COUNTY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement.

7.6 ASSIGNMENT. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party without the written consent of the contract administrator of the other party.

7.7 SEVERANCE. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

7.8 GOVERNING LAW AND VENUE. This Agreement shall be governed, interpreted, and construed according to the laws of the State of Florida. Venue for any legal action by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

7.9 ATTORNEY'S FEES. In the event of any legal action to enforce the terms of this contract, each party shall bear its own attorney's fees and costs.

7.10 MODIFICATIONS TO CONTRACT. This Agreement, together with any Attachments, constitutes the entire contract regarding the listed municipal services between the COUNTY and CITY and supersedes all oral understandings regarding these services. This Agreement and any Attachments may only be amended, supplemented, or canceled by a written instrument duly executed by the parties hereto.

7.11 CITY'S LAWS. Nothing contained in this Agreement shall constitute a waiver of CITY'S legislative, governmental, or police powers nor shall this Agreement prohibit or restrict CITY in promoting and protecting the health, safety, and welfare of CITY and its inhabitants.

7.12 RECORDING. This Agreement shall be recorded in the Official Records of Brevard County, Florida.

7.13 RECORDS

(a) The CITY and COUNTY shall maintain at all times, complete detailed records with regard to work performed under this Agreement. The CITY and COUNTY will maintain complete file(s) on all projects, available for inspection by the each other or the general public, at City Hall or the Brevard County Emergency Operations Center containing documentation of records related to this Agreement, the Services performed pursuant to this Agreement, and individual work or permits considered pursuant to this Agreement. Said records are classified as "public records" as that term is defined herein. With regard to any records maintained by the CITY and/or COUNTY relating to this Agreement or the Services performed pursuant to this Agreement, each shall have the right to inspect said records with reasonable notice to the other. All such records shall be maintained according to applicable law.

(b) Any public records created by either party for accounting purposes, management of this Agreement, or otherwise, which documents would be classified as a public record will be open to the each party hereto for inspection and copying during regular business hours. The reasonable cost of preparing and photocopying the documents is waived.

7.14 GOVERNMENTAL IMMUNITY. The city is a municipality as defined in Section 768.28, Florida Statutes, and agrees to be responsible for acts and omissions of its agents or employees when required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by the CITY to the extent sovereign immunity may be applicable. Nothing herein shall be construed as consent by the CITY to be sued by third parties in any matter arising out of this Agreement or any other contract. Likewise, the COUNTY is a political subdivision of the State of Florida, as defined in Section 768.28, Florida Statutes, and agrees to be responsible for acts and omissions of its agents or employees when required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by the COUNTY to the extent sovereign immunity may be applicable. Nothing herein shall be construed as consent by COUNTY to be sued by third parties in any matter arising out of this Agreement.

**IN WITNESS WHEREOF**, the parties have made and executed this Agreement on the respective dates under each signature:

ATTEST:



Clerk of the Board of County  
Commissioners of Brevard County,  
Florida. Scott Ellis

BREVARD COUNTY, FLORIDA on behalf of its  
Board of County Commissioners



Stockton Whitten, County Manager  
As approved by the Board on \_\_\_\_\_, 2014

Approved as to legal form and content

  
County Attorney

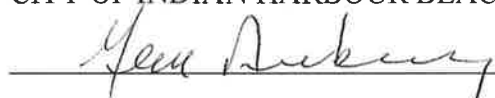
ATTEST:



Deborah Maliska, CMC, City Clerk

(seal)

CITY OF INDIAN HARBOUR BEACH



Gene Newberry, Mayor JANUARY 13, 2015

As approved by the Council on: JANUARY 13, 2015

Approved as to legal form and content



City Attorney Karl Bohne

ATTACHMENT "A"

LEGAL DESCRIPTION - TOWER LEASE PARCEL:

A PART OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE SOUTHEAST CORNER OF O.R.B. 3416, PAGE 116, ALSO BEING THE NORTHEAST CORNER OF LOT 83, INDIAN HARBOUR BEACH - SECTION 9, AS RECORDED IN PLAT BOOK 16, PAGE 53, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, RUN S89°25'53"W ALONG THE NORTH LINE OF SAID PLAT OF INDIAN HARBOUR BEACH - SECTION 9 AND A WESTERLY EXTENSION THEREOF A DISTANCE OF 520.56 FEET; THENCE N01°20'01"W A DISTANCE OF 349.04 FEET; THENCE N89°24'15"E A DISTANCE OF 5.45 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N0°35'45"W A DISTANCE OF 50.00 FEET; THENCE N89°24'15"E A DISTANCE OF 50.00 FEET; THENCE S0°35'45"E A DISTANCE OF 50.00 FEET; THENCE S89°24'15"E A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 2,500 SQUARE FEET, MORE OR LESS.





2725 JUDGE RAY JAMESON WAY, BLDG. C  
DELA, FL 32840

**Kimley»Horn**

635 NORTH FRANKLIN STREET, SUITE 130  
TAMPA, FL 33602  
PHONE (813) 830-1160  
WWW.KIMLEY-HORN.COM

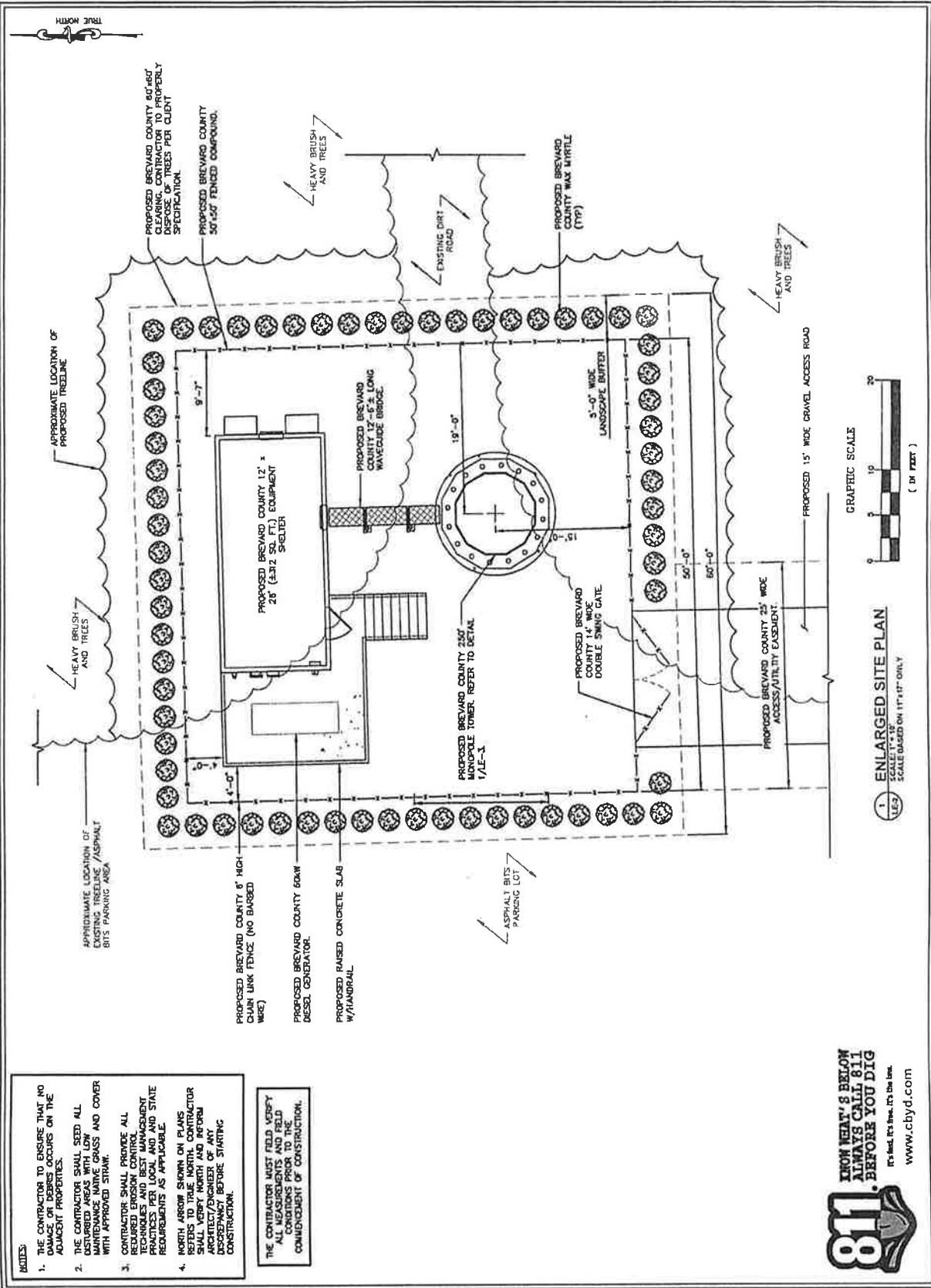
REV	DATE	DESCRIPTION
1	07/27/14	ISSUED FOR PERMITS
2	08/14/14	ISSUED FOR REVIEW
3	08/14/14	ISSUED FOR REVIEW
4	08/14/14	ISSUED FOR REVIEW
5	08/14/14	ISSUED FOR REVIEW
6	08/14/14	ISSUED FOR REVIEW
7	08/14/14	ISSUED FOR REVIEW
8	08/14/14	ISSUED FOR REVIEW
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100	08/14/14	ISSUED FOR REVIEW

**NOT FOR CONSTRUCTION**

INDIAN HARBOUR BEACH  
100 CREEPING COURT  
INDIAN HARBOUR BEACH, FL 32937  
BREVARD COUNTY

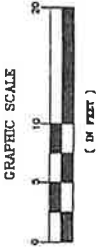
ENLARGED SITE PLAN

LE-2



- NOTES:**
1. THE CONTRACTOR TO ENSURE THAT NO ADJACENT PROPERTIES ON THE PROPERTY ARE AFFECTED BY ANY OF THE PROPOSED CONSTRUCTION.
  2. THE CONTRACTOR SHALL SEED ALL EXPOSED AREAS WITH TURF GRASS AND COVER WITH APPROVED STRAW.
  3. CONTRACTOR SHALL PROVIDE ALL NECESSARY EROSION CONTROL TECHNIQUES AND BEST MANAGEMENT PRACTICES PER LOCAL AND STATE REQUIREMENTS AS APPLICABLE.
  4. NORTH ARROW SHOWN ON PLANS REFERS TO TRUE NORTH. CONTRACTOR SHALL VERIFY NORTH AND INFORM ARCHITECT/ENGINEER OF ANY DISCREPANCY BEFORE STARTING CONSTRUCTION.

THE CONTRACTOR MUST FIELD VERIFY ALL MEASUREMENTS AND FIELD CONDITIONS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.



1 ENLARGED SITE PLAN  
SCALE 1/4" = 1'-0"  
SCALE BASED ON 11'x17'-0" ONLY  
LE-2



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KNOW WHAT'S BELOW  
ALWAYS CALL 811  
BEFORE YOU DIG  
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www.cityd.com



**Brevard COUNTY**  
 2725 JUDIC FRANK JAMESON WAY, BLDG. C  
 BUDA, FL 32810

**Kimley»Horn**  
 655 NORTH FRANKLIN STREET, SUITE 150  
 TAMPA, FL 33602  
 PH: 813.251.1600  
 WWW.KIMLEY-HORN.COM

REV.	DATE	DESCRIPTION
1	07/27/14	ISSUED FOR REVIEW
2	08/14/14	ISSUED FOR REVIEW
3	08/14/14	ISSUED FOR REVIEW
4	08/14/14	ISSUED FOR REVIEW
5	08/14/14	ISSUED FOR REVIEW
6	08/14/14	ISSUED FOR REVIEW
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10	08/14/14	ISSUED FOR REVIEW

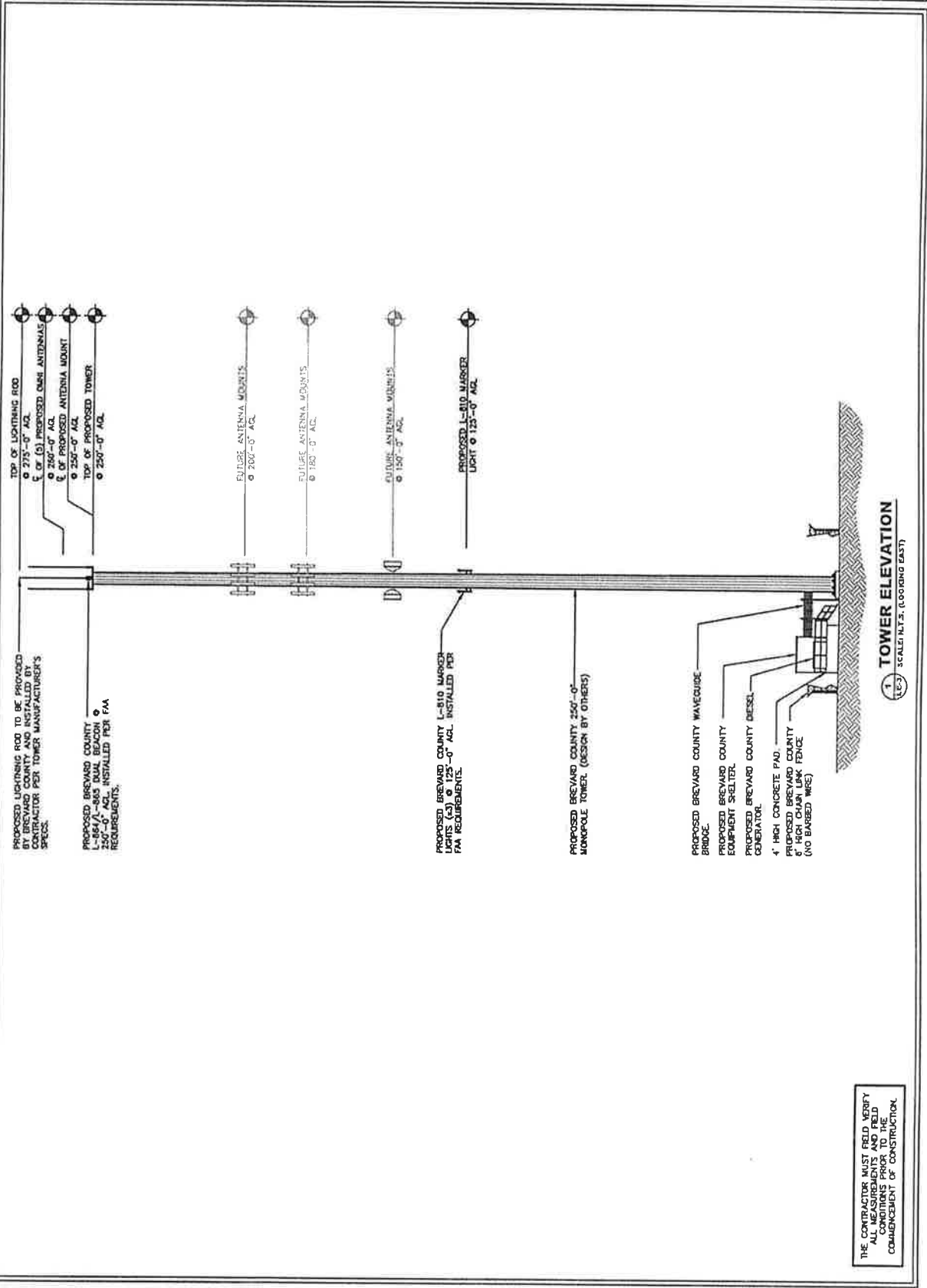
DESIGN BY: JPH  
 CHECKED BY: AMG  
 IWA PROJECT NUMBER: 146411004  
 DRAWING SCALE: 1/8" = 1'-0"

**NOT FOR CONSTRUCTION**

PROJECT INFORMATION  
 INDIAN HARBOUR BEACH  
 100 CRESSING COURT  
 INDIAN HARBOUR BEACH, FL 32937  
 BREVARD COUNTY

SHEET TITLE  
**TOWER ELEVATION AND DETAILS**

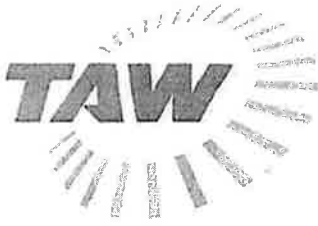
SHEET NUMBER  
**LE-3**



THE CONTRACTOR MUST FIELD VERIFY ALL DIMENSIONS AND CONDITIONS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.



ATTACHMENT "B"



TAW POWER SYSTEMS, INC.  
3400 Bartlett Blvd  
Orlando, FL 33811  
Ph (407) 855-0974 (800) 662-6675  
Fax (866) 239-0801

Kohler Generator Systems Distributors

KOHLER POWER SYSTEMS DISTRIBUTOR FOR ALABAMA, SOUTH GEORGIA, FLORIDA, LOUISIANA AND MISSISSIPPI

Project: 50kW Generator

\*\*\*\*\*  
One (1) New KOHLER Model 50REOZJD, EPA Certified Diesel Engine Driven Generator Set, 50kW, @ 1.0 PF., 60 Hz, 1 Phase, 120/240 Volt with the following:

CONTROLLER:

Digital NFPA110, Level 1 Controller  
Backlit LCD Display  
Supports ModBus Protocol  
Built-in Alternator Thermal Overload Protection  
Run Relay  
Common Failure Relay

Vibration Isolators - Internal  
Three (3) Engine, Generator Parts, Maintenance Manuals  
Two Year Warranty  
Initial Start Up and Check Out of System,  
Not to Exceed 8 Hours  
Certified Factory Test @ 0.8 P.F.  
Load Bank Test @ 2 Hours (on site)  
(during regular business hours)

ENCLOSURE:

Kohler Enclosure  
Sound / Aluminum  
150 MPH Wind Rated  
Critical Silencer; Installed  
Tailpipe and Rain Cap

AUTOMATIC TRANSFER SWITCH:

1 Kohler Automatic Transfer Switch  
120/240 Volt, 200 Amp., 1 Phase, 2 Pole, in a  
NEMA 1 Enclosure  
MODEL: KCT-AFNA-0200S

COOLING:

Unit Mounted Radiator  
Low Coolant Level Shutdown  
Radiator Duct Flange  
Block Heater 120 Volt, 1 Phase

FUEL SYSTEM:

Flexible Fuel Lines  
Fuel Water Separator  
372 Gallon Sub-Base Fuel Tank

GOVERNOR ACCESSORIES:

Electronic Isochronous

GENERATOR ACCESSORIES (Electrical):

Line Circuit Breaker 3 Pole, 200 Amp.  
with Shunt Trip/Wire to Engine Safeties  
Voltage Regulator (Dec3000) .5%

ENGINE ELECTRICAL ACCESSORIES:

Battery Rack and Cables  
Starting Battery, Lead/Acid  
Battery Charger: Automatic Float with Alarm contacts

ADDITIONAL ACCESSORIES:

Oil Drain Extension  
Lot of Oil and Antifreeze  
Corrosion Inhibitor for Radiator

## ATTACHMENT "C"

PREPARED BY AND RETURN TO:

### INGRESS / EGRESS EASEMENT AGREEMENT

THIS INGRESS / EGRESS EASEMENT AGREEMENT ("Easement") made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Indian Harbour Beach, a Florida municipal corporation, whose address is 2055 S. Patrick Drive, Indian Harbour Beach, Fl. 32937 the party of the first part and Brevard County, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940, the party of the second part.

#### RECITALS:

1. Party of the first part desires to grant and convey to the party of the second part a certain easement commencing on the effective date, over and across the real property described in Attachment "C-1" identified as LEGAL DESCRIPTION – INGRESS/EGRESS EASEMENT and as shown on Attachment "C-2" Map of Survey by Smith Surveying and Mapping, Inc., dated April 15, 2014, Certificate of Authorization L.B. 7426 and depicted as INGRESS/EGRESS EASEMENT attached hereto and incorporated herein ("Easement Area") in accordance with the terms set forth herein.

**NOW, THEREFORE**, for the sum of Ten Dollars \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The above Recitals are true and correct and are expressly incorporated herein.

2. Easement. The party of the first part hereby grants, bargains, conveys, transfers and assigns in and to the party of the second part, its successors and assigns, a perpetual, non-exclusive easement, over the Easement Area for the purposes of construction, installation, maintenance, and operation of the Tower Facilities described in the INTERLOCAL AGREEMENT REGARDING CONSTRUCTION, LOCATION AND USE OF A PUBLIC SAFETY COMMUNICATIONS TOWER.

3. The first party does hereby covenant with the second party that it is lawfully seized and possessed of the lands above described and that it has a good and lawful right to convey any part thereof.

IN WITNESS WHEREOF the parties hereto have set their hand and seal as of the date set forth below:

ATTACHMENT "C-1"

**LEGAL DESCRIPTION – INGRESS/EGRESS EASEMENT**

A PART OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE SOUTHEAST CORNER OF PROPERTY DESCRIBED IN O.R.B. 3416, PAGE 116, ALSO BEING THE NORTHEAST CORNER OF LOT 83, INDIAN HARBOUR BEACH - SECTION 9, AS RECORDED IN PLAT BOOK 16, PAGE 53, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, RUN S89°25'53" W ALONG THE NORTH LINE OF SAID PLAT OF INDIAN HARBOUR BEACH - SECTION 9 AND A WESTERLY EXTENSION THEREOF, A DISTANCE OF 520.56 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N01°20'01" W A DISTANCE OF 329.04 FEET; THENCE N89°24'15" E A DISTANCE OF 5.45 FEET; THENCE N0°35'25" W A DISTANCE OF 50.00 FEET; THENCE S89°24'15" W A DISTANCE OF 31.09 FEET; THENCE S01°20'01" E A DISTANCE OF 399.03 FEET TO A POINT ON THE NORTH LINE OF THE PLAT OF INDIAN HARBOUR BEACH - SECTION 3, AS RECORDED IN PLAT BOOK 13, PAGE 97, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE N89°25'53" E ALONG AFORESAID NORTH LINE A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING.

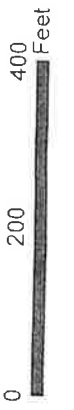



Figure 1  
Gopher Tortoise Survey Area  
Additional Site Clearing  
Alconquin Athletic Fields  
Indian Harbor Beach



Attest:

  
\_\_\_\_\_  
Deborah Maliska, CMC, City Clerk  
(seal)

CITY OF INDIAN HARBOUR BEACH

By:  \_\_\_\_\_

Name/Title: MAYOR

Date: 1/13/15