



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.8.

11/10/2020

Subject:

Permission to execute lease agreement with NOAA on County-owned property

Fiscal Impact:

NOAA will pay an annual rent of \$6,000 (\$500 per month) to the Utility Services Department to cover maintenance and operation of the property.

Dept/Office:

Utility Services/Emergency Management

Requested Action:

It is requested that the Board of County Commissioners authorize the County Manager to execute a short-term, eighteen (18) month, lease agreement with the National Oceanic and Atmospheric Administration (NOAA) for the transmission and reception of weather and emergency broadcast communications on the FAA-owned tower located at the Brevard County Wastewater Treatment Plant, 10001 North Wickham Rd., Viera, Florida. It is further requested that the County Manager or his designee be authorized to execute the lease and any additional changes, documents, or amendments to the lease, subject to approval by the County Attorney's Office & Risk Management. It is also requested that the payments made to the County will be directed to the Brevard County Utility Services Department to cover maintenance and operation of the Property and approve any associated budget changes.

This will require a Super Majority Vote.

Summary Explanation and Background:

On September 7, 2010 the Board executed a ten (10) year Lease Agreement with the National Oceanic and Atmospheric Administrations (NOAA) for housing a weather station on County-owned property at the Brevard County Wastewater Treatment Plant located at 10001 North Wickham Rd., Viera, Florida. The staff is proposing a short-term lease agreement at this time. The Director of Utility Services through Emergency Management is in conversation with the owner of the tower, the Federal Aviation Authority (FAA), regarding necessary improvements and/or a relocation of the structure. After a final determination from the FAA, a new lease agreement will be executed between the County and NOAA.

The lease agreement serves a public purpose as NOAA's antennas and equipment are instrumental in providing service to a significant portion of the population in this area. The rental payments made to the County will assist the County in paying for maintenance and operation of the Property.

Clerk to the Board Instructions:

Send Clerk Memorandum to Utility Services Department and copy to Emergency Management



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

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Kimberly.Powell@brevardclerk.us

November 12, 2020

M E M O R A N D U M

TO: Edward Fontanin, Utility Services Director

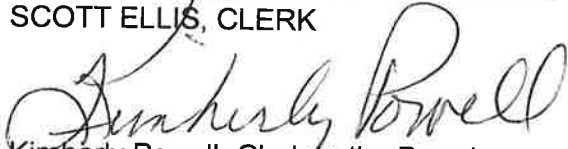
RE: Item F.8., Permission to Execute Lease Agreement with NOAA on County-Owned Property

The Board of County Commissioners, in regular session on November 10, 2020, approved and authorized the County Manager to execute a short-term, 18-month, lease agreement with the National Oceanic and Atmospheric Administration (NOAA) for the transmission and reception of weather and emergency broadcast communications on the FAA-owned tower located at the Brevard County Wastewater Treatment Plant, 10001 N. Wickham Rd., Viera; authorized the County Manager, or his designee, to execute the lease and any additional changes, documents, or amendments to the lease, subject to approval by the County Attorney's Office and Risk Management; authorized the payments made to the County be directed to the Brevard County Utility Services Department to cover maintenance and operation of the property; and approved any associated Budget Change Requests.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK


Kimberly Powell, Clerk to the Board

/sm

cc: County Attorney
County Manager
Finance
Budget
Emergency Management



U.S. GOVERNMENT LEASE FOR REAL PROPERTY



DATE OF LEASE:

LEASE NO: 20EKW0077C

This Lease, under the authority of 40 U.S.C. § 585, and as delegated under 41 C.F.R. § 102-73.155, is made and entered into between: BREVARD, COUNTY OF. d.b.a. UTILITY SERVICE DEPARTMENT

whose address is: 2725 JUDGE FRAN JAMIESON WY BLDG A, VIERA, FL 32940-6605

hereinafter called the "Lessor", and the United States of America, hereinafter called the "Government".

Witnesseth: The parties hereto, for consideration hereinafter mentioned, covenant and agree as follows:

1. **Premises.** Lessor leases to the Government a portion of its property located at 10001 N. Wickham Road, Melbourne, Florida 32940 [Brevard County] with the geographic coordinates of Latitude 28.228361 Longitude -80.7565, ("Property"), more commonly known to Lessor as South Central Wastewater Treatment Plant. Lessor leases to the Government and the Government leases from the Lessor a certain portion of the Property, as well as the provision of incidental services, consisting of: (a) antenna attachment space on a FAA Tower approximately 310 feet above ground level ("AGL") for mounting a Government-owned antenna; (b) shelter floor space of approximately 64 square feet in an onsite climate controlled equipment shelter for the placement of a Government-owned transmitter in a cabinet, plus 14 inches of unobstructed space on the front, back and one side of the cabinet; and ((a)and (b)collectively, hereinafter called the "Premises" or "Antenna Facility"). Exhibit "A" further describes the Property and Premises.
2. **Term.** The term of this Lease begins on October 1, 2020 and ends on March 31, 2022, subject to the termination and other rights as may be hereinafter set forth.
3. **Rent.** The Government shall pay the Lessor an annual rent of \$6,000.00, payable at the rate of \$500.00 per month in arrears. If the term of this Lease includes any partial month, rent for the partial month shall be prorated. Rent shall be made via electronic funds transfer and based on the information provided in the System for Award Management (SAM) database (available at: <https://www.sam.gov>), or successor Government database.

A one-time, lump-sum payment bringing the rent current will be made subsequent to the execution of this lease.

The Government's obligation to pay rent to a new owner or assignee (Transferee), as well as recognize a Transferee as the new lessor, shall not commence until the 4 required actions in Paragraph 14 (Novation and Change-of-Name Agreements (Change of Ownership and Change of Name)) have occurred.
4. **Termination.** Either the Government or the Lessor may terminate this Lease at any time by giving at least 30 calendar days' notice in writing to the Lessor, and no rent shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.
5. **Permitted Use.** (a) The Government may use the Premises for the transmission and reception of weather broadcast communications and emergency broadcast communications along with the associated installation, construction, maintenance, operation and subsequent repair(s), replacement and upgrade of its communications antenna and related equipment, cables, accessories and/or improvements. (b) The Government may install, operate, maintain and replace transmission cables from the transmitters to the antenna(s) and electric lines from the main feed to the transmitters. (c) The Government's equipment is provided on Exhibit "B". Lessor's execution of this Lease shall signify Lessor's acknowledgement of the Government's equipment and use of the Premises. (d) The Government may take appropriate means to secure the Government's equipment. The Government has the right to modify, supplement, replace, or upgrade its equipment on the Premises at any time during the term of this Lease. (e) At any time during the term of this Lease, the Government shall have the right to perform maintenance, repairs, replacement, and upgrades to its equipment on the Premises as per Section 7.
6. **Interference.** (a) The Government represents and warrants that its use of the Premises will not interfere with existing radio frequency(ies) used on the Property, as disclosed by the Lessor, and as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws

and regulations. (b) After the date of this Lease, the Lessor shall not grant a lease, license or any other right or encumbrance to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Antenna Facility, the radio frequency, the operations, or the rights of the Government under this Lease. Further, at the Government's request, the Lessor shall provide the Government with a list of all existing radio frequency user(s) on the Property to allow the Government to evaluate the potential for interference. (c) Lessor shall not use, nor shall Lessor permit its employees, lessees, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the Antenna Facility, the radio frequency, the operations or the rights of the Government under this Lease. In the event of such interference, Lessor shall work with the Government to correct and/or eliminate such interference within -30 days after receipt of a notice of interference from the Government. In the event any such interference does not cease within the aforementioned cure period, then the Government shall have the right to terminate this Lease. The Lessor will not be responsible for interference that is beyond the reasonable control of the Lessor.

The radio frequency utilized by the Government equipment governed by this Lease is listed below.

Lessor's Site Name	NOAA's Transmitter & (Site) Name	FCC Antenna Structure Registration (ASR) Number	Call Sign	Frequency Range	Weather Forecast Office (WFO)
South Central Wastewater Treatment Plant	Melbourne (Viera), FL	N/A	WXJ70	162.4 – 162.55 MHz	MLB

7. **Access.** For the duration of this Lease, and at no additional cost to the Government, the Lessor is responsible for ensuring the Government, including the Government's employees, contractors, subcontractors, authorized representatives, and licensees shall have access (rights of ingress and egress) to the Premises during ordinary business hours (8:00 a.m. to 5:00 p.m. Monday through Friday) for regular maintenance and repairs, which does not require heavy equipment to be deployed. In the event the Government needs access after ordinary business hours, neither the Government nor anyone acting on behalf of the Government shall commence any non-emergency work in or about the Property or upon the Tower without three (3) business days advance written notice to the Brevard County Utility Services Department. County agrees to allow the Government twenty-four (24) hours a day, seven (7) days a week for emergency repairs which does not require heavy equipment to be deployed, with Lessor notifying Brian Sorensen, Water/Wastewater Manager via a phone call to 321-633-2091 or 321-302-5579, within four (4) hours from the moment the emergency is identified. The Lessor shall be responsible for securing any easement, right of entry, or other access agreement necessary to ensure the Government's access to the Premises from a nearby public roadway. When applicable, the Lessor shall provide the Government one key or the combination or code for any security fencing.
8. **Government Property.** Lessor covenants and agrees that none, nor any part, of the Government's property (e.g., equipment, buildings, fixtures, improvements) placed in, on, upon or affixed to the Premises shall become, or be considered part of, the Premises. The Government's property shall remain the property of the Government, unless disposed of or abandoned by the Government in accordance with applicable federal laws and regulations.
9. **Operations, Maintenance & Utilities.** (a) The Government will keep and maintain the Government's equipment in good condition, reasonable wear and tear excepted. (b) The Lessor shall maintain, repair, and keep in good and tenantable condition the Premises, including the equipment building along with its air conditioning and the access to the Premises, reasonable wear and tear excepted. In no event shall the Lessor be required to repair/improve the road to a greater standard or to a better condition than exists as of the date of execution of this Lease. (c) The Lessor shall provide the Government with electricity, trash removal, pest control, and, as needed, seasonal maintenance (e.g., landscaping, lawn mowing, snow removal) as part of the rent.
10. **Taxes and Assessments.** The rent includes all taxes, assessments, and fees levied on the Property. The Government shall not be responsible for the payment of any taxes, assessments, or fees levied on the Property or on the Government's property (e.g., equipment).
11. **Hazardous Materials.** The Premises shall be free of hazardous materials according to applicable environmental laws and regulations.
12. **Authority to Lease.** Lessor covenants that Lessor's interest in the Property is sufficient to enter into this Lease and Lessor's signatory has full authority to bind the Lessor to all terms and conditions of this Lease; the Government may reasonably request evidence of said interest and authority.
13. **Successors Bound.** This Lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.
14. **Novation and Change-of-Name Agreements (Change of Ownership and Change of Name).** If the Lessor desires

to transfer this Lease or ownership of the Premises, or change its name, compliance with Federal Acquisition Regulation (FAR) subpart 42.12 (48 C.F.R. subpart 42.12) is required. The Government's obligation to pay rent to a new owner or assignee (Transferee), as well as recognize a Transferee as the new lessor, shall not commence until the following actions have occurred: (1) the Government determines that recognizing the Transferee as the new lessor is in the Government's interest; (2) the Government, the original Lessor (Transferor), and the Transferee execute a Government provided novation agreement, based on the FAR and GSA templates, providing for the transfer of Transferor's rights and obligations under the Lease to the Transferee; (3) the Transferee properly registers in the SAM database, or successor Government database, and completes all required representations and certifications (e.g., those within SAM); and (4) a lease amendment is executed by the Government and the Transferee that memorializes the above actions.

- 15. Claims.** For the purposes of this Lease, the Government is considered to be self-insured. The Government agrees to promptly consider and adjudicate any claims which may arise out of use of the Lessor's Property/Premises by the Government or duly authorized representatives or contractors of the Government and to pay for any damage or injury as may be required by applicable law. Such adjudication may be pursued under the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, the Federal Employees' Compensation Act, 5 U.S.C. § 8101 *et seq.*, or such other legal authority as may be pertinent. The Lessor is provided the protection of Section 768.28, Florida Statutes and nothing herein shall be construed as an indemnity or waiver of sovereign immunity provided by that protection. All Government personal property placed or housed on the Lessors premises shall be at the risk of the Government, and the Lessor shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Government agrees and understands that the Lessor does not and shall not carry liability, fire, or theft insurance on the operation of this complex to cover the Governments interest therein.

16. Correspondence.

Correspondence to the Lessor shall be sent to:	Correspondence to the Government shall be sent to:
The Brevard County Co., Emergency Management 1746 Cedar Street, Rockledge Florida 32955-3133	United States Department of Commerce NOAA Real Property Management Division Bolling Federal Building, 601 E 12 th Street – S1705 Kansas City, MO 64106 Attn: Contracting Officer

- 17. Exhibits and Attachments.** The following are attached and made a part hereof:

- A. Exhibit "A", Description of the Property and Premises (1 page(s))
- B. Exhibit "B", Description of Equipment (1 page(s))
- C. General Clauses, DOC NOAA (Aug 2020) (2 page(s))
- D. FAR clause 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020) (3 page(s))
- E. ADDENDUM to the System for Award Management (SAM) REPRESENTATIONS AND CERTIFICATIONS, 3518-SAM (REV Jan 2016) (2 pages plus screenshot of SAM)

- 18. Prior Transaction.** This Lease succeeds Lease number 10EKW0063X.

In Witness Whereof, the parties to this Lease evidence their agreement to all terms and conditions set forth herein by their signatures below.

LESSOR:

BY _____
Signature Name (Print), Title, & Date

IN THE PRESENCE OF:

BY _____
Signature Name (Print), Title, & Date

UNITED STATES OF AMERICA:

Signature _____

Department of Commerce
Real Property Contracting Officer

Name of Contracting Officer (Print) & Date

DRAFT