



**AGENDA REPORT**  
**February 20, 2018**

**SUBJECT:**

Permission to advertise Invitation to Bid for cellular co-location licensee(s) at the Sarno Road tower, execute the resulting agreement(s), and direct the resulting revenue to EOC funding.

**FISCAL IMPACT:**

There will be no impact to the General Fund. This is a revenue source that can be directed to funding a new EOC, leveraging State and Federal funds.

**DEPT/OFFICE:**

Emergency Management

**REQUESTED ACTION:**

It is requested that the Board of County Commissioners approve advertisement of an Invitation to Bid for future cellular co-location assignments on the County-owned tower located at 1515 Sarno Rd., Melbourne. 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 license agreements and any subsequent extensions of license, subject to approval by the County Attorney's Office and Risk Management; and authorize any associated budgetary changes. It is also requested that this revenue source be directed to funding a new Emergency Operations Center, allowing these funds to be leveraged against State and Federal grants and/or appropriations that require local match.

**SUMMARY EXPLANATION and BACKGROUND:**

This tower belongs to Brevard County, is located on County property and is not currently in use. It offers the County the opportunity to create additional revenue through the licensing of available space on the tower from tenants. Emergency Management proposes offering a 25-year license, five terms of 5 years each, with the baseline annual fee for tenants initially established at \$39,750 with a minimum 3% annual increase -- or the CPI-Urban increase for the Brevard area annually -- whichever is greater, and tenants constructing their own 20' X 12' compound adjacent to the tower. The proposed license includes a renewal clause for an additional term, by the end of the 25 years, with a renegotiation clause per both parties' discretion.

A new Emergency Operations Center is in the process of being designed, and dedicating a revenue stream will allow those funds to be identified as a local match for any State or Federal grants or appropriations.

**CLERK TO THE BOARD INSTRUCTIONS:**

Send Clerk Memorandum to Emergency Management.

**ATTACHMENTS:**

- | Description   |
|---|
| <input type="checkbox"/> Steps and technical requirements |
| <input type="checkbox"/> Initial Form                     |
| <input type="checkbox"/> Draft Contract                   |

**REVIEWERS:**

Department	Reviewer
Emergency Management	Prosser, Kimberly
Central Services	Camarata, Teresa
County Manager	Abbate, Frank

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# INITIAL CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b> TBD	
<b>2. Fund/Account #:</b> 0031/220720	<b>3. Department Name:</b> Emergency Management
<b>4. Contract Description:</b> License - Sarno Rd.	
<b>5. Contract Monitor:</b> Lisa Morgan	<b>7. Contract Type:</b>  LEASE/RENTALS
<b>6. Dept/Office Director:</b> Kimberly Prosser	

## SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Prosser, Kimberly <small>Digitally signed by Kimberly Prosser, DN: cn=Kimberly Prosser, o=Emergency Management, ou=County, c=Florida, email=KProsser@brevard.net, Date: 2018.01.24 15:00:00Z</small>	01/24/2018
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Matt Lairsey, DN: cn=Matt Lairsey, o=Department of Public Works, ou=County, c=Florida, email=MLairsey@brevard.net, Date: 2018.01.24 15:00:00Z</small>	01/24/2018
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Valliere, Christine <small>Digitally signed by Christine Valliere, DN: cn=Christine Valliere, o=Department of Public Works, ou=County, c=Florida, email=CValliere@brevard.net, Date: 2018.01.17 14:22:40Z</small>	01/17/2018

## SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<u>CM DATABASE REQUIRED FIELDS</u>	<u>Complete</u> ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

February 21, 2018

**MEMORANDUM**

**TO:** Kimberly Prosser, Emergency Management Director

**RE:** Item II.C.3., Permission to Advertise Invitation to Bid and Direct the Resulting Revenue to Emergency Operations Center (EOC) for Cellular Co-Location Licensee(s) at the Sarno Road Tower

The Board of County Commissioners, in regular session on February 20, 2018, approved advertisement of an Invitation to Bid for future cellular co-location assignments on the County-owned tower located at 1515 Sarno Road, Melbourne; authorized County Manager or his designee to execute any documents or renewals on behalf of the Board as may be required to administer any new license agreements and any subsequent actions of license, subject to approval by the County Attorney's Office and Risk Management; revenue source be directed to funding a new Emergency Operations Center, allowing these funds to be leveraged against State and Federal grants and/or appropriations that require local match; and authorized any budgetary changes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

cc: Budget  
Finance

**The selected vendor shall:**

1. Submit a rigorous tower and foundation analysis of the tower, sealed by a Professional Engineer registered in the State of Florida and acceptable to the County, including the existing load(s) and proposed additional loading.
2. Identify ground space required for equipment, within existing compound and submit plans and specification for design and construction to Brevard County Emergency Management ([lizzet.ruiz@brevardfl.gov](mailto:lizzet.ruiz@brevardfl.gov)) for approval.
3. Complete the Building Permit Package and go for the permits to the City of Melbourne.
4. Execute the License with Brevard County to use ground and tower space.
5. Submit the approved CD and building permit to Brevard County Emergency Management ([lizzet.ruiz@brevardfl.gov](mailto:lizzet.ruiz@brevardfl.gov)) requesting Notice to Proceed.
6. Provide contractor's point of contacts and coordinate with Brevard County Emergency Management ([lizzet.ruiz@brevardfl.gov](mailto:lizzet.ruiz@brevardfl.gov)) scope of work and schedule.
7. Submit certificate of completion to Brevard County Emergency Management ([lizzet.ruiz@brevardfl.gov](mailto:lizzet.ruiz@brevardfl.gov)).

**As part of the contract the Licensee will have to submit:**

1. Attachment B: "Land Space": site plan and description of their facility.
2. Attachment C: FCC Licenses applicable to the property.
3. Insurance certificate (see section 24).
4. A performance bond (see section 26).
5. An unconditional letter of credit (see section 26).

**As part of the contract the County will have to submit:**

1. Attachment A: Legal Description of the Property plan and description of their facility.
2. Attachment D: Potential Regulated Equipment and Constituents.

**Tower Information for Structural Analysis Report**

Site Address: 1515 Sarno Rd.  
Melbourne, FL 32935

ASR: 1209015

Zoning: City of Melbourne



**Analysis criteria**

Load Case: proposed load

## License for Telecommunications Facilities

**This License for Telecommunications Facilities** (this "License") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the Brevard County Board of County Commissioners, a Political subdivision of the State of Florida, (hereinafter the "County") and \_\_\_\_\_ (hereinafter "Licensee") with its principal offices at \_\_\_\_\_.

### **BACKGROUND**

**Whereas**, the County owns that certain plot, parcel or tract of County land (hereinafter referred to as the "**Property**") more particularly described on **Attachment A** attached hereto and incorporated herein upon which a telecommunications tower ("Tower") and related structures are located. The address of the Property is \_\_\_\_\_ and the Property and facilities on the Property are administered/controlled by the Office of Emergency Management on behalf of the County for the purpose of supporting the county-wide public safety radio communications network;

**Whereas**, Licensee desires to continue its operations at the Property in connection with its federally licensed communications business and therefore would like to enter into a license with the County for the continued use of the Property;

**Whereas**, the County agrees to grant to Licensee the right to continue to use the Property in accordance with this License so long as Licensee's use does not interfere with the operation of the County's emergency communications system. Licensee covenants and agrees that the County's emergency communications system is the primary function of the Tower and shall take precedence over Licensee's use of the Property; and

**Whereas**, this License serves a public purpose as Licensee's antennas and equipment are instrumental in providing telecommunications service to a significant portion of the population in this area and the License rental payments made to the County assist the County in paying for maintenance of the Tower.

**Now therefore**, in consideration of the covenants here contained, it is mutually agreed between the parties as follows:

#### **Section 1 - Description of the Premises**

A. The County hereby grants to the Licensee:

(i) Approximately \_\_\_\_\_ ( ) square feet of ground space (the "**Land Space**") as described in **Attachment B**, attached hereto and incorporated by reference, including the air space above such Land Space for the placement of Licensee's radio cabinets or other improvements to support Licensee's equipment;

(ii) That certain space on the Tower, as generally depicted on Attachment B, where the

Licensee shall have the right to install and operate its antennas and associated equipment (collectively, the “**Antenna Space**”); and

(iii) Those certain areas where Licensee’s conduits, wires, cables, cable trays and other necessary connections are located between the Land Space and the Antenna Space, and between the Land Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the “**Connection Space**”), and that certain right to pedestrian and vehicular access to and from the Property, by the access way or public road designated by the County, \_\_\_\_\_, \_\_\_\_\_. Notwithstanding the foregoing, Licensee, to the extent feasible, shall locate all lines, wires, conduits and cables on existing poles extending from the roadway into the County’s Property. The Land Space, Antenna Space, the Connection Space and the Right of Way are hereinafter collectively referred to as the “**Premises**,” and

(iv) The Licensee shall abide by all terms and conditions set forth in this License.

B. **Attachment B** shall include a detailed site plan and a description of the Licensee’s facilities installed or to be installed on the Property. Licensee shall provide, prior to execution of this License, detailed plans and specifications setting forth a description and location of any proposed or existing antennas and other equipment, the height and location of such equipment, the equipment shelters related to the use of the Licensee’s equipment on the portion of the Property so designated for such placement and other work to be performed on the Tower and Property. The same information shall be provided to the County if the Licensee is extending or replacing an existing License (or prior Lease) with this License.

C. Licensee shall not install any equipment or commence any work on the Tower until the County has approved, in writing, Licensee’s plans and specifications, structural analysis, which approval will not be unreasonably withheld, delayed or conditioned. The parties agree that the County’s execution hereof shall indicate its approval of Licensee’s plans and specifications, if any.

D. Licensee’s installation of the Licensee’s equipment on the Tower and the Property shall be limited to the Premises and Licensee shall not have the right to use the County’s equipment or other portions of the Tower or Property.

**Section 2 - Title: Authority**

The County represents and agrees (a) that it is the owner of the Property; (b) that it has the right to enter into this License; and (c) that the person signing this License for the County has the authority to sign.

**Section 3 - Nonexclusive License**

A. This License is nonexclusive and does not preclude the County from granting a similar lease, right, license, or franchise, to other carriers or other persons for telecommunications or any purpose on other parts of Property not licensed to Licensee. Notwithstanding the foregoing, Licensee shall have exclusive use of the Antenna Space and the Land Space, as set forth in this License.

B. The County agrees it will not grant any right, interest, lease, license, or franchise in the Premises covered by this License (excluding access ways to and from the Tower location) that interferes with Licensee's rights under this License through or during any subsequent mutually agreed to extensions of this License.

C. Should Licensee exercise any right to cancel or terminate this License or the parties otherwise agree to terminate this License, the County shall not be further prohibited from executing a license of the space previously licensed to Licensee to another party.

**Section 4 - Term**

The initial term of this License shall be for a period of five (5) years commencing on \_\_\_\_\_, 20\_\_\_\_ (the "**Commencement Date**"). Licensee shall have the right to renew this License for two (4) additional terms of five (5) years each. Unless other terms are mutually agreed to by the parties, any extensions are subject to the same terms and conditions of this License, subject to other provisions of this License related to license payment increases.

**Section 5 - Acceptance**

Within thirty (30) calendar days after Licensee executes this License, Licensee shall provide the County's designee (below) with any certificates of insurance which may be required by this License.

Designee: Brevard County Emergency Management Director  
Address: 1746 Cedar St., Rockledge, Florida 32955

**Section 6 - Renewal**

A. The renewal terms shall automatically occur unless Licensee indicates its desire to terminate this License at the end of the then current term by giving the County written notice of the intent to terminate at least ninety (90) calendar days prior to the end of the then current term. Except as otherwise agreed to by the parties or in accordance with the terms hereof, this License may not be renewed in excess of the renewal terms as listed above in Section 4.

B. The Brevard County Director of Emergency Management is authorized to execute any documentation necessary to administer this License.

**Section 7 - Ownership and Removal of Improvements**

All landscaping and other similar improvements to the Property made by Licensee shall become the property of the County upon expiration or termination of this License. In the event that the County requires removal of such improvements upon expiration or earlier termination of this License, the County shall provide Licensee with written notice. Such removal shall be accomplished at the sole expense of the Licensee and shall be completed within ninety (90) calendar days after receiving written notice from the County that it requires removal of the improvements. In the event that such improvements are not removed by Licensee as required by this paragraph, such improvements shall become the property of the County upon the expiration of the ninety (90) calendar days.

Licensee shall, within ninety (90) calendar days after the expiration or earlier termination of this License, remove its building(s), antenna(s), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. The County agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of Licensee shall remain the personal property of Licensee and Licensee shall have the right to remove the same at any time during the term of this License, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes Licensee to remain on the Premises after expiration or termination of this License, Licensee shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed. The County expressly waives all rights of levy, distraint or execution with respect to Licensee's property, including without limitation any statutory or common law security interest or "landlord's" lien for rent

**Section 8 - Compensation to the County**

A. The rental for the initial term of this License shall be paid annually in advance and in full for the upcoming year. Within thirty (30) days of the Commencement Date, Licensee shall pay the County annual rent of \_\_\_\_\_ (\$ \_\_\_\_\_) for the first year of initial term.

B. Commencing on the first day of the month that contains the first annual anniversary of the Commencement Date and on each anniversary of the Commencement Date thereafter during the term of this License (including all extension terms), annual rent shall increase by an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the annual rent or the CPI-Urban increase for the Brevard County area, whichever is the greater, due for the immediately preceding License year.

C. Rent for each term shall be paid each year within thirty (30) days of the anniversary of the Commencement Date except as otherwise provided under this Section.

D. Rent shall be paid to the County in care of the Office of Emergency Management at 1746 Cedar Street, Rockledge, FL, 32955, Attn: Director of Emergency Management.

**Section 9 - Licenses, Fees, and Taxes**

A. Prior to constructing any improvements upon the Premises, Licensee shall obtain any business license or permit required by federal, state or local law (including zoning approvals) and pay all license/permit fees and public utility charges related to the conduct of the Licensee's business on the Property. The County authorizes Licensee to prepare, execute and file all required applications to obtain all licenses or approvals for Licensee's use of the Premises and agrees to reasonably assist Licensee with such applications and with obtaining and maintaining the required licenses and approvals.

B. Licensee shall be responsible for payment and pay promptly, and before delinquent, all taxes on personal property and real property and improvements owned or placed by (or caused to be placed by) Licensee on the County Property, excluding the Tower. Licensee shall pay all applicable utility taxes and business license fees imposed by the County or state. Licensee shall be responsible for the payment of any sales tax that may be determined to be owed or incurred,

now or in the future, as a result of the parties entering into this License. If the County's personal and/or real property taxes increase as a result of the Licensee's equipment or improvements constructed by the Licensee on the Tower or Property (including, but not limited to structural enhancements), the Licensee shall be responsible for payment of the increase in the County's personal and real property taxes, provided that the County provide Licensee with documentation supporting such increase and its cause, and provide Licensee the opportunity to dispute same with the appropriate authorities. The Licensee shall be responsible for payment of all personal property and any other taxes assessed directly upon and arising from the Licensee's equipment and or the Licensee's use the Licensee's equipment on or about the Tower or the Property.

#### **Section 10 – Utilities**

A. Licensee shall arrange for its own utility services, either by agreement between Licensee and existing user or users, or, if permitted by the local utility company servicing the Property, by obtaining a separate meter for electricity or other utilities which shall be billed to an account placed in Licensee's name. Licensee shall be responsible for paying for such account. Licensee shall be permitted at any time during the term of this License, to install, and maintain (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by the County. Such approval shall not be unreasonably withheld, conditioned or delayed. Licensee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

B. In the event any public utility is unable to use the Right of Way, the County hereby agrees to grant an additional right of way(s) either to Licensee or to the public utility at no cost to Licensee only if there is no cost to the County.

#### **Section 11 – Permitted Frequency and Interference**

A. The Licensee is only authorized to use its equipment to transmit and receive on the frequencies for which it is authorized to operate by the FCC. The Licensee warrants and represents that Licensee is licensed to transmit and receive such frequencies it will use on and through this Tower by the FCC. A copy of Licensee's current FCC Licenses applicable to the Property are attached hereto as **Attachment C**. Licensee shall notify County immediately upon any change in the status of its FCC Licenses applicable to the Property. Licensee shall be permitted to transmit and receive frequencies as it needs, without County's approval, provided said alterations do not violate this License, including, but not limited to, the provisions of Paragraph 12.B. The Licensee agrees to provide the County written notification of Licensee's frequencies if requested by the County in order to resolve interference issues or related to issues of public safety or homeland security. Licensee shall also notify the County that changes to frequencies will be occurring prior to the actual changes in frequencies.

B. The County has previously entered into leases/licenses with other tenants/licensees for their equipment and antennae facilities. Licensee acknowledges that the County is also leasing/licensing other portions of the Property to other tenants/licensees for the purpose of transmitting and receiving telecommunication signals.

C. Licensee agrees that the installation, maintenance and operation of its communication

facility will not interfere with any equipment of the County or other lessees/licensees within the Property that existed as of \_\_\_\_\_, 20\_\_\_\_. In the event Licensee's installations interfere with such equipment, Licensee will, upon written notice by the County staff or its designee, correct and eliminate such interference, including but not limited to, at Licensee's option, powering down such equipment and later powering up such equipment for intermittent testing. If the interference relates to the County's emergency operations, Licensee shall immediately halt such interference upon written notice by the County staff or its designee. If the interference relates to other operations, Licensee will halt the interference within a reasonable period of time not more than one calendar day or twenty-four (24) hours from the date of notification. If the interference cannot be resolved, either the County or the Licensee shall be entitled to terminate this License and the other party agrees to such termination.

D. The County will not use, nor will the County permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property which interferes with Licensee's communication facility, the operations of Licensee or the rights of Licensee under this License unless such interference relates to a matter of emergency operations or homeland security. The County will cause such interference to cease within twenty-four (24) hours after receipt of the written notice of interference from Licensee unless such interference is otherwise justified based on a matter of emergency operations or homeland security. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Licensee will have the right, with respect to third party tenants/licensees (in addition to any other rights that it may have at law or in equity) to elect to enjoin such interference, or with respect to the County or to third party tenants/licensees, to terminate this License upon notice to the County.

E. In addition, Licensee agrees to eliminate any radio or television interference its operations causes to County-owned facilities or surrounding residences at the expense of Licensee and without installation of extra filters on County-owned equipment. The County agrees to work with Licensee to try to resolve interference as may be received from County-operated telecommunications; however, if the interference cannot be resolved without affecting or impeding the purpose of the County's operations, Licensee agrees to accept such interference if it chooses to continue operating under this License.

### **Section 12 - Police Power**

A. In accepting this License, Licensee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the County to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable and enforceable general laws enacted by the County pursuant to such power.

B. In the event that the County adopts an ordinance which affects Licensee's obligations hereunder, County shall give Licensee immediate written notice of such ordinance. The parties shall consult with each other to determine the effect of the ordinance upon the Licensee's operations and the needed changes to Licensee's operations.

C. After Licensee's receipt of written notice, Licensee shall make any changes required by the ordinance within thirty (30) days when the changes are mandated or necessary in order to address an emergency public safety or health situation or circumstance. If such changes are

needed to address such emergency and are not made within the thirty (30) days, such inaction shall be considered a breach of this License by Licensee. For any other changes required by the ordinance, Licensee shall have one hundred twenty (120) days in order to comply with the new ordinance before any enforcement action is taken.

D. If the County deems the Licensee has acted in good faith to bring about the changes under either situation set out above, but has been unable to complete the changes as a result of circumstances beyond the Licensee's control, the County, at its option, authorizes the Director of Emergency Management to agree to an extension of time of the above time frames no greater than sixty (60) days. No enforcement action will occur during such authorized extension of time provided Licensee continues to proceed with the work.

### **Section 13 - Rules and Regulations**

A. In addition to the inherent powers of the County to regulate and control any license it issues, the authority granted to it by state and federal laws, and those powers expressly reserved by the County, or agreed to and provided for in this License, the right and power is hereby reserved by the County to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers. This Section does not allow the County to amend the terms of this License without the consent of Licensee. The County hereby delegates its authority for administering this License to the Director of Emergency Management.

B. The County and Licensee shall comply with all applicable present and future laws, regulations, and requirements of all federal and state entities and their agencies as they relate to the use, operation, maintenance, repair, replacement and occupancy of the Tower and the Property by Licensee as the case may be. Without limiting the foregoing, Licensee shall at all times use, operate, maintain, repair, replace, and occupy the Tower, the Property, and Licensee's equipment, as the case may be, in accordance with all applicable requirements of the Federal Communications Commission.

### **Section 14 - Notice of Work**

A. Unless otherwise provided in this License, neither Licensee nor anyone acting on behalf of Licensee 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 Emergency Management Office.

B. Licensee's installation of Licensee's equipment on the Tower, and Licensee's structural enhancement of the Tower, if any (now or in the future) shall be performed on dates and at times and within time frames approved by the County in writing and shall not interrupt or interfere with the operation on the County's communications system or the County's equipment unless the County agrees to such interruption or interference. The County's approval of the dates/times/time frames shall not be unreasonably withheld, conditioned or delayed.

C. The County shall have the right to have a representative present during the Licensee's installation of Licensee's equipment on and/or for any structural enhancement to the Tower.

### **Section 15 - Repair and Emergency Work**

In the event of an unexpected repair or emergency, Licensee may commence such repair and emergency response work as required under the circumstances, provided that Licensee shall notify the County as promptly as possible before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

**Section 16 - Access**

A. At all times throughout the term of this License, and at no additional charge to Licensee, Licensee and its employees, agents, and subcontractors, will have twenty-four (24) hours per day, seven (7) days per week pedestrian and vehicular access to its facilities and equipment on the Property using the access way or public road designated by the County, for the installation, maintenance and operation of its facilities and any utilities serving the facilities.

B. Licensee understands that the existing road condition is such that weather conditions and events can impact the condition of the road and accessibility. The County will work to provide any access impeded by the road conditions with due diligence. In no event shall the County 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 License.

**Section 17 - Notice of Entry on Private Property**

A. If directed by the County, at least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted by Licensee, at no expense to the County, upon the affected property. A door hanger may be used to comply with the notice and posting requirements of this Section.

B. Licensee shall make a good faith effort to comply with such property owner/resident's preferences, if any, on location or placement of underground installations (excluding installations utilizing existing poles or existing cable paths), consistent with sound engineering practices, provided, however, that nothing in this License shall permit Licensee to unlawfully enter or construct improvements upon the property or premises of another.

**Section 18 - Maintenance of Facility**

A. Licensee shall maintain its equipment and structure(s) co-located on the Premises in accordance with all applicable Federal, State, and local laws. Licensee shall be responsible for making any changes to its equipment or facilities required by changes in applicable state or federal law and for bearing the costs required to make such changes. Licensee further has the right to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to the County.

B. The County shall be responsible for the maintenance, repair and replacement of the Tower and the County's equipment during the term of this License as required by all applicable Federal, State, and local laws. The County shall also comply with all rules and regulations enforced by the Federal Communications Commission, the Federal Aviation Administration or

other applicable laws or regulation with regard to the lighting, marking and painting of towers. The County will maintain and repair the Property and access thereto and all areas of the Property where Licensee does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

**Section 19 - Relocation or Removal of Facility**

A. Within ninety (90) calendar days of written notice from the County and no more than once every five (5) years, Licensee shall, at its own expense, temporarily remove, relocate, change or alter the position of this facility and/or equipment (as applicable) whenever the County Emergency Management Director shall have determined that such removal, relocation, change or alteration is necessary to perform maintenance, repair or similar work at the Property or on the Tower; provided, however, that: (i) such relocation will be performed exclusively by Licensee or its agents; (ii) such relocation will not unreasonably result in any interruption of the communications service of Licensee on the Property; and (iii) such relocation will not substantially impair the quality of communications service provided by Licensee on and from the Property.

B. The notice from the County shall specify the reason for the relocation or removal as determined by the Director.

C. Except as otherwise provided herein, Licensee shall not be required to relocate or remove its facility unless the Director has determined that such relocation or removal is necessary. Licensee is allowed, if necessary in Licensee's reasonable determination, to place a temporary installation on the Property during any such relocation, if the County determines that such space is available.

**Section 20 - Removal of Unauthorized Facilities**

A. Within sixty (60) calendar days following written notice from the County, Licensee shall, at its own expense, remove any unauthorized facility or appurtenances from the Tower as provided for herein. A Tower facility or appurtenance is unauthorized and subject to removal in the following circumstances:

- i. Upon abandonment of the facility. Any property of Licensee shall be deemed abandoned if left in place ninety (90) calendar days after expiration or termination of this License.
- ii. If the Tower facility or appurtenance was constructed or installed without the prior issuance of any required construction permit in accordance with applicable law.
- iii. If the Tower facility or appurtenance was constructed or installed at a location not permitted by this License or was not the system or facility as previously represented by Licensee and approved by the County.

B. The County may, in its sole discretion, allow Licensee to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the County. Any plan for abandonment or removal of Licensee's facilities must first be approved by the Director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of facilities in place of such persons/entities, the property shall become that of the County, and such persons/entities shall submit to the County an instrument in writing, to be

approved by the County Attorney, transferring the ownership of such property to the County.

C. The provisions of this Section shall survive the expiration, revocation, or termination of this License.

**Section 21 - Emergency Removal or Relocation of Facility**

The County retains the right and privilege to cut or move any cable or telecommunications facilities located within the public right of ways of the County, as the County may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The County shall not be liable to the Licensee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the County's actions under this provision; however, it is provided that Licensee shall be permitted to operate a temporary facility at the Property during such emergency in order to maintain uninterrupted telecommunications service.

**Section 22 - Damage to Property**

A. Neither Licensee nor any person acting on behalf of Licensee shall take any action or authorize any action to be taken which may impair or damage any County property, or other property, whether publicly or privately owned, located in, on or adjacent to the Property.

B. Licensee shall not alter, tamper, remove, or destroy the Tower or the County's equipment or enter into any equipment building or shelter belonging to the County on the Property except as provided for under the terms of this License.

C. Except as otherwise permitted under the terms of this License, neither the County nor any person acting on behalf of the County shall take any action or authorize any action to be taken which may damage any Licensee property located in, on or adjacent to the Property.

D. The County shall not alter, tamper, remove, or destroy the Licensee's equipment or enter into any equipment building or shelter belonging to Licensee on the Property except as provided for under the terms of this License.

**Section 23 - Restoration of County Property**

A. When Licensee or any person acting on the behalf of Licensee does any work on or affecting the Tower or the Property, it shall, at its own expense, promptly remove any obstructions caused by such work and restore such property to as good a condition as existed before the work was undertaken, unless otherwise directed by the County.

B. If weather or other conditions do not permit the restoration required by this Section, Licensee shall temporarily restore the affected property. Such temporary restoration shall be at the sole expense of Licensee, and Licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. The Licensee shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to

any person, vehicle or property by reason of such work in or affecting such public right of ways or property.

D. The Director or his/her designee shall be responsible for inspection and final approval of the condition of the Tower or the Property following any construction and restoration activities as contemplated by this License. Further, the provisions of this paragraph shall survive the expiration or termination of this License.

#### **Section 24 - Insurance**

A. The Licensee shall procure and maintain for the duration of this License, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Licensee, its agents, contractors, representatives or employees.

B. The Licensee shall provide an insurance certificate, evidencing the insurance policies required below together with a copy of the blanket endorsement extending commercial general liability to the County, its officers, elected officials, employees, agents, representatives, and volunteers as additional insured, to the County for its inspection prior to the commencement of any work or installation of any facilities pursuant to this License. The County's additional insured status shall (i) be limited to bodily injury, property damage (including loss of use) or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of the County, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of the County, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this License, if any. Such insurance certificate shall evidence:

i. Commercial general liability insurance, written, with limits of not less than \$1,000,000 per occurrence to include premises-operations; "XCU"-explosion, collapse, underground hazard, personal injury, and products and completed operations;

ii. Automobile liability for owned, non-owned and hired vehicles with limit of not less than \$1,000,000.00 combined single limit for each occurrence;

iii. Workers' Compensation within statutory limits and employer's liability insurance with limits of \$1,000,000.00.

Notwithstanding the forgoing, Licensee may, self-insure any of the required insurance under the same terms as required by this License. However, this option to self-insure is subject to the approval by the County. The County will evaluate any large deductible(s) of self-insured exposures on a case-by-case basis. Any self-insurance program/plan or deductible(s) of \$25,000 or greater must be disclosed in writing to the County for its review and approval. In the event Licensee elects to self-insure its obligation under this License to include the County as an additional insured, the following conditions apply:

(i) County shall promptly and no later than thirty (30) days after notice thereof provide

Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) County shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and

(iii) County shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.

C. The insurance policies required by this Section shall also be maintained by the Licensee throughout such other period of time during which the Licensee is operating without a Facilities Lease/License, or is engaged in the removal of its telecommunications facilities. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Licensee. The insurance certificate required by this Section shall reference that a separation of insureds provision applies to the required policies, except for workers' compensation. The Licensee's required insurance shall be the primary insurance with respect to the County, its officers, elected officials, employees, agents, and volunteers. Any insurance maintained by the County, its officers, elected officials, employees, consultants, agents, and volunteers shall be in excess of the Licensee's required insurance and shall not contribute with it.

D. In addition to the coverage requirements set forth in this paragraph, Licensee will give the County thirty (30) days written notice, in advance of cancellation/~~nonrenewal~~, in the event a policy is cancelled or not renewed and not replaced.

E. Subject to Section 25, all personal property and equipment housed or placed on the County's Property and/or Tower shall be at the risk of the Licensee and the County shall not be liable for any loss or damage to the Licensee's personal property and/or equipment located thereon for any cause whatsoever. Licensee agrees and understands that the County does not and shall not carry liability, theft or property insurance to cover the Licensee's interest.

F. The County shall provide the Licensee with information regarding how it maintains coverage for general liability upon request of the Licensee.

#### **Section 25 - General Indemnification**

A. Licensee Indemnification of County.

- i. Licensee shall indemnify the County and hold the County (including its officers, elected officials, employees, agents, representatives, engineers, consultants, and volunteers, etc.) harmless from and against all claims, causes of action, damages, losses, and expenses (including attorneys' fees and costs), arising out of or resulting from the performance of any work by Licensee under this License in connection with or associated with its facilities, equipment or services, when such claim, damage, loss, or expense is caused, in whole or in part, by the negligence or willful misconduct of Licensee, or anyone directly or indirectly employed by Licensee, except to the extent such claims or damages may be due to or caused by the

negligence or willful misconduct of the County, or its employees, contractors or agents.

- ii. In any and all claims against the County (including its officers, elected officials, employees, agents, representatives, engineers, consultants, and volunteers, etc.), resulting from the action or inaction of anyone directly or indirectly employed by Licensee, the indemnification obligation of Licensee to the County under this Section shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for Licensee under workers' compensation acts or other related policies of insurance.
- iii. The Licensee hereby releases and covenants not to bring suit against the County (including its officers, elected officials, employees, agents, representatives, engineers, consultants, and volunteers, etc.) for any and all claims, causes of action, costs, judgments, awards or liability provided for in this indemnification and hold harmless provision.
- iv. Inspection or acceptance by the County of any work performed by the Licensee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a lawsuit and any claims which may be settled or resolved prior to the culmination of any litigation or the institution of any litigation, provided that the Licensee has been given prompt written notice by the County of any such claim, has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or resolution of any such claim.
- v. In the event that the County submits a cause of action, claim, etc. (as set forth above) to the Licensee for the Licensee to undertake the County's defense as set forth herein, and the submission is made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Licensee, then the Licensee shall pay all of the County's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees and the reasonable costs of the County. The attorneys' fees shall include those reasonable attorneys' fees expended in order to recover attorneys' fees authorized under this indemnification clause.
- vi. Notwithstanding any other provisions of this Section, the Licensee assumes the risk of damage to its telecommunications facilities and equipment located in the public rights of ways and upon County-owned property from activities conducted by the County, its officers, agents, employees, engineers, consultants and volunteers, etc. The Licensee releases and waives any and all claims against the County, its officers, agents, employees, engineers, consultants and volunteers, etc., for the destruction of the Licensee's facilities and equipment caused by or arising out of activities conducted by the County, its officers, agents, employees, engineers, consultants,

volunteers, etc., in the public right of ways and upon County owned property subject to this License, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious action on the part of the County, its officers, agents, employees or contractors.

- vii. Except for the indemnity obligations set forth in this License, and otherwise notwithstanding anything to the contrary in this License, County and Licensee each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.
- viii. The provisions of this Section shall survive the expiration, revocation, or termination of this License.
- ix. The Licensee acknowledges specific consideration for this indemnification provision.

**B. County Sovereign Immunity.**

Nothing contained herein is intended to be a waiver of the sovereign immunity extended to the County through Sec.768.28.

**Section 26 - Performance Bond and Letter of Credit**

A. A performance bond, written by a corporate surety acceptable to the County, equal to at least 100% of the estimated cost of removing the Licensee's telecommunications equipment and facilities and restoring the public right of ways of the County and/or County-owned property to its pre-construction condition, and loss due to casualty beyond Licensee's control excepted, shall be delivered to the County with in ninety (90) days of the execution of this License, if such bond has not already been provided. Said bond shall be required to remain in full force until sixty (60) days after the termination of the final term of this License and shall warrant all such restoration work for a period of one (1) year.

B. The purpose of this bond is to guarantee removal of the Licensee's telecommunications facilities and to fully restore the public rights of ways of the County and County owned property to its pre-construction condition and loss due to casualty beyond Licensee's control excepted, when conditions are met under this License which authorize the County to require the Licensee to remove the facilities and equipment. In addition, an unconditional letter of credit has been or will be made out to the County in the amount of ten thousand dollars (\$10,000.00) to secure performance under this License.

C. Should the Licensee upgrade, expand, or otherwise change its facilities and/or equipment which are subject to this License, the County reserves the right to require an additional or amended performance bond and letter of credit as part of the authorization.

**Section 27 - Assignments or Transfers of Grant**

A. This License shall run with the Property and shall be binding on and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

B. Licensee will not assign or transfer this License or sublet all or any portion of the Premises without the prior written consent of the County, which consent will not be unreasonably withheld, delayed or conditioned; provided, however, Licensee may assign or sublet without the County's prior written consent to any party controlling, controlled by or under common control with the Licensee or to any party which acquires substantially all of the assets of Licensee 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. Only upon written notification to the County of the completion of any assignment or transfer of this License will the Licensee be relieved of all future performance, liabilities and obligations under this License. No change of stock ownership, partnership interest or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute an assignment hereunder.

**Section 28 - Termination by Licensee**

This License is contingent upon Licensee holding and maintaining all necessary permits, approvals, and licenses for the proposed facility. In the event that (i) Licensee is unable to obtain all such permits, approvals, and licenses; (ii) any permits, approvals, and licenses issued to Licensee expire, lapse, or are otherwise canceled, withdrawn or terminated by governmental authority; (iii) Licensee determines that the Premises is no longer technically or structurally compatible for its use; then the Licensee may terminate/cancel this License by giving prior written notice to the County as set forth below.

If the termination is for the reason in (i) or (ii) above, Licensee may obtain a pro rata refund for any rents paid, by giving thirty (30) calendar days prior written notification of the effective date of the termination to the County.

If the termination is for the reason in (iii) above, Licensee must provide the County with no less than sixty (60) days prior written notification of the effective date of such termination; however, the County shall be entitled to keep all rents paid or due and owed to the County prior to the effective date of the termination.

Upon termination/cancellation, the License issued hereunder shall become null and void on the effective date of the termination/cancellation and neither party shall have any further rights or duties under this License except as set forth in Section 7.

**Section 29 - Revocation, Forfeiture, and Termination**

Either party may elect, in lieu of any right to terminate this License, without any prejudice to any of its other legal rights and remedies, to obtain an order from a court, having jurisdiction of the cause, compelling the other party to comply with the provisions of this License and to recover damages and costs incurred by such party by reason of the other party's failure to comply with the this License.

**Section 30 - Default and Right to Cure**

A. The following will be deemed a default of this License:

- i. Non-payment of Rent by Licensee if such Rent remains unpaid for more than thirty

(30) calendar days after receipt of written notice from County of such failure to pay;  
or

- ii. Either party's failure to perform any other term or condition under this License within forty-five (45) calendar days after receipt of written notice from the other party specifying the failure. No such failure, however, will be deemed to exist if the defaulting party has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of the defaulting party. If the defaulting party remains in default beyond any applicable notice and cure period, the non-defaulting party will have the right to exercise any and all rights and remedies available to it under law and equity.
- iii. Interference with the County's equipment, communication facilities, or signals as provided for under Section 11 herein.

### **Section 31 - Safety Requirements**

A. Licensee shall comply with all applicable federal, state, and local safety laws and, at all times, use ordinary care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or create a nuisance to or for the public and workers.

B. All of Licensee's structures and lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public rights of ways or places of the licensed area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair by Licensee.

C. The County reserves the general right to see that the Licensee's facilities are in compliance with all applicable federal, state, and local safety laws. If a violation of any applicable federal, state, and local safety laws is found to exist by the County, the County will, after discussions with Licensee, establish a reasonable time (not less than thirty (30) days) for Licensee to make necessary repairs and provide Licensee with written notice of such time frame. If the repairs are not made within the established time frame, it shall be breach of this License and the County shall be entitled to all rights and remedies hereof.

### **Section 32 - Hazardous Substances**

A. The County represents that it has no actual knowledge of any substance, chemical or waste (collectively, "substance") on the Property that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation, except as may be identified in Attachment D.

B. The County and Licensee agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

C. Licensee agrees to hold harmless and indemnify the County and to assume all duties, responsibilities and liabilities at Licensee's sole cost and expense for payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("Claims"), to the extent arising from Licensee's breach of its obligations or representations under this Section, except to the extent attributable to the negligent or intentional act or omission of the County, its employees, agents or independent contractors, or third parties in or on the Property.

### **Section 33 - Business Purpose**

A. All supporting structures, buildings, or facilities not licensed to Licensee shall, to the extent technology and space permits, be available for joint use by existing or future users of the site, including the County.

B. The County shall have the authority to permit such use by a new licensee/tenant without compensation to Licensee. Said use shall not prevent Licensee from using its equipment, nor cause interference with Licensee's communications facilities. The County will use best efforts to provide Licensee with thirty (30) days' notice in advance of a new joint licensee/tenant.

C. Licensee shall not use the facilities for any additional or illegal purposes. Licensee agrees that no stock of goods will be carried or anything done in or about the facilities which will increase the present rate of insurance unless the Licensee obtains approval from the County and agrees to be responsible for paying the cost of any additional insurance.

### **Section 34 - Holdover**

A. At such time as this License expires, or is terminated for any cause, Licensee shall remove its equipment and personal property from the Premises in accordance with Section 20. If Licensee shall holdover after the expiration of the term of this License, the holdover license shall be for a period of time on a month to month basis, which license may be terminated by the provision of thirty (30) days advance written notice by the party seeking termination of the license to the other party.

B. During such license, Licensee agrees to pay the County the annual rate of rental in accordance with the provisions of Section 8 hereof and further agrees to be bound by all the terms, covenants, agreements and conditions as set out in this License.

### **Section 35 - Fire and Other Casualty**

In the event any part of the Property or the Tower is destroyed or damaged by fire, earthquake or other casualty to such an extent as to render the same untenable by the Licensee in whole or in a substantial part, Licensee shall have the option to terminate this License immediately without further liability or obligation to the County upon written notice. If more than six (6) months remain in the License year, the County shall refund to Licensee the annual rental paid for the remaining unexpired portion of such License year. Upon such termination, Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof. In the event the this License is terminated or if the County determines to repair or rebuild such portion of the Property and or the Tower, the County agrees to use its reasonable efforts to permit Licensee to place temporary transmission and reception facilities on the County's property at no additional

rent until such time Licensee is able to activate a replacement facility at another location or the repair and or reconstruction of such portion of the Property and or the Tower is completed. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Licensee's use of the Premises is impaired.

### **Section 36 - Condemnation**

A. Except as to any condemnation by the County or any entity derived therefrom, in the event of the taking of any part of the Property or the Tower by condemnation or otherwise by any governmental, state or local authority, this License shall be deemed canceled as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If a partial condemnation of the Premises or Tower, results in the Licensee, being unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Licensee's operations at the Premises for more than forty-five (45) days, Licensee may notify the County in writing within fifteen (15) days after the County has given Licensee written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) Licensee is terminating the License.

B. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, provided that any award to Licensee will not diminish County's recovery. If Licensee does not terminate this License in accordance with the foregoing, this License shall remain in full force and effect.

### **Section 37 - Signs**

A. All signs or symbols placed on the Property by the Licensee shall be subject to the prior approval of the County which approval shall not be unreasonably withheld, delayed or conditioned. The Licensee will not place any signs or symbols upon the Property which are visible to the public which could be construed or viewed as advertising. In the event the Licensee shall place signs or symbols on the Property where they are visible from the street and not acceptable to the County, the County may demand the immediate removal of such signs or symbols, and the refusal of the Licensee to comply with such demand within a period of twenty-four (24) hours will constitute a breach of this License, thereby entitling the County to exercise any available legal remedy and to remove the sign or symbol.

B. Any signs placed upon the Property shall be placed subject to the understanding and agreement that Licensee will remove the same at the termination of this License and repair any resulting damage or injury to the Property. If such signs are not so removed by Licensee upon termination, then the County may have the same removed at Licensee's expense.

C. Notwithstanding other provisions in this Section, any sign mandated by state or federal law or regulation will be approved by the County given reasonable size and dimension.

### **Section 38 - Non-Waiver of Breach**

The failure of either party to insist upon strict performance of any of the provisions of this License, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any right to require strict performance in the future.

**Section 39 - Cancellation of Prior Leases/Licenses and Agreements**

The County and Licensee acknowledge that notwithstanding the termination of any prior Agreement and the commencement of this License, Licensee may continue to make, and the County may continue to receive, rental and other payments pursuant to the Prior Agreement. In such event, any rental or other payments made pursuant to the Prior Agreement after its termination shall be applied and credited against any rentals or other payments due under this License.

**Section 40 – Reimbursement of County Expenses**

A. The Licensee shall be subject to all permit fees associated with activities undertaken through the authority granted in this License or under the laws of the County. Where the County incurs costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this License or any ordinances relating to the subject for which a permit fee is not established, the Licensee shall reimburse the County directly for any and all reasonable costs.

B. In addition to the above, the Licensee shall promptly reimburse the County for any and all costs the County reasonably incurs in response to any emergency involving the Licensee's facilities or equipment, except in the event the emergency is caused by the negligence or misconduct of the County, its employees, or agents.

C. The Licensee shall reimburse the County, upon submittal by the County of an itemized billing of costs, for the Licensee's proportionate share of all actual, identified expenses incurred by the County in planning, constructing, installing, repairing or altering any County facility as the result of the presence of Licensee's facilities. Such costs and expenses shall include, but not be limited to, the Licensee's proportionate cost of County personnel assigned to oversee or engage in any work as the result of the presence of the Licensee's facility on the Property. Such costs and expenses shall also include a proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of the Licensee's facilities or the routing or rerouting of any utilities so as not to interfere with the Licensee's facilities.

D. The time of County employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the County claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis, but the County shall provide Licensee with the County's itemization of costs at the conclusion of each project for information purposes.

**Section 41 – Dangerous Conditions. Authority for County to Abate**

A. Whenever construction, installation, or excavation of telecommunications facilities authorized by this License has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or the Property, the Director may direct the Licensee in writing, at the Licensee's own expense, to take action to protect the public,

adjacent public places, the Property, streets, utilities, and public ways. Such action may include compliance within a reasonable prescribed time.

B. In the event that the Licensee fails or refuses to promptly take the actions directed by the County, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the County may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public right of ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Licensee shall be liable to the County for the reasonable costs thereof. The provisions of this Section shall survive the expiration or termination by other means of this License.

#### **Section 42 - Radon Gas**

In accordance with Florida Law, the following statement is hereby made: 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 the county health department.

#### **Section 43 - Right of First Refusal**

If the County elects, during the term of the License (i) to sell or otherwise transfer all or any portion of the Property, whether separately or as part of a larger parcel of which the Property is a part, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by Licensee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this License to such third party, Licensee shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If Licensee fails to meet such bona fide offer within thirty (30) days after written notice thereof from the County, the County may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

#### **Section 44 - Rights of Sale**

Should the County, at any time during the term of the License decide (i) to sell or transfer all or any part of the Property or the Tower thereon to a purchaser other than Licensee, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by Licensee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this License and any such purchaser or transferee shall recognize Licensee's rights hereunder under the terms of this License. To the extent that the County grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by Licensee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this License to said third party, the County shall not be released from its obligations to Licensee under this License, and Licensee shall have the right to look to the County and the third party for the full performance of this License.

**Section 45 - Quiet Enjoyment**

The County covenants that Licensee, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises

**Section 46 - Employment of County Employees**

Licensee shall not engage the services of any person or persons now employed by the County, including any department, agency, board, or commission thereof, to provide any work or service under this License without the written consent from the County.

**Section 47 - Compliance with Statutes**

It shall be Licensee's responsibility to be aware of and comply with all applicable federal, state and local laws.

**Section 48 - Severability**

If any section, sentence, clause or phrase of this License should be held to be invalid or unconstitutional by a court of competent jurisdiction, it shall be considered deleted from this License and shall not invalidate the remaining provisions of this License.

**Section 49 - Merger/Modification**

This License constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this License. This License may only be amended or modified by a written instrument duly executed by both parties hereto.

**Section 50 - Governing Law**

This License shall be governed, interpreted and construed according to the ordinances of Brevard County and the laws of the State of Florida.

**Section 51 – Venue**

Any action brought to enforce the terms or litigate the terms of this License shall be brought in the venue of Brevard County, Florida. Any Federal action may only be initiated in the Middle District Court, Orlando Division.

**Section 52 – Nonjury Trial/Attorneys' Fees**

The parties agree to waive any right to jury trial in any action brought to enforce the terms of this License and any trial shall be nonjury.

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

**Section 53 - Notices**

All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Licensee:

With a copy to:

If to the County:     Brevard County Emergency Management Director  
                              1746 Cedar Street  
                              Rockledge, FL 32955

Either party hereto may change the place/person for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein

**Section 54 - Construction of Agreement**

The parties hereby acknowledge that they have fully reviewed this License, its attachments and had the opportunity to consult with legal counsel of their choice, and that this License shall not be construed against either party as if it were the drafter of this License.

**Section 55 - Memorandum**

The County agrees to execute a memorandum of this License which Licensee may record with the appropriate recording officer. The date set forth in the Memorandum of License is for recording purposes only and bears no reference to commencement of either the term of the License or rent payments.

**Section 56 – Non-Revocable**

Notwithstanding the fact that this License is a license and that a license is normally revocable at will by the grantor, the parties hereto agree that the license granted by this License is not revocable at will and that this License can only be terminated in accordance with the provisions of this License or as a result of a default that is not cured within any applicable notice and cure period set forth above or otherwise as ordered by a court of competent jurisdiction.

**Section 57 - Cancellation of Prior Leases and Agreements**

This License, upon full execution, supersedes all previous licenses, leases and agreements, whether verbal or in writing or otherwise, between the parties. Any such prior leases or agreements are hereby cancelled.

[THE REST OF THIS PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**THE COUNTY**

Brevard County Board of County Commissioners,  
A Political subdivision of the State of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST/AUTHENTICATED:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

OFFICE OF THE COUNTY ATTORNEY:

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

**LICENSEE**

By:  
Its:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Print Name