

July 2, 2013

**Regular Public Meeting
6:00 p.m.**

**Commission Chamber
City Hall
Port St. Joe, Florida**



City of Port St. Joe

Mel Magidson, Mayor-Commissioner
William Thursbay, Commissioner, Group I
Bo Patterson, Commissioner, Group II
Phil McCroan, Commissioner, Group III
Rex Buzzett, Commissioner, Group IV

[All persons are invited to attend these meetings. Any person who decides to appeal any decision made by the Commission with respect to any matter considered at said meeting will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The Board of City Commission of the City of Port St. Joe, Florida will not provide a verbatim record of this meeting.]

BOARD OF CITY COMMISSION

Regular Public Meeting

6:00 p.m.

City Hall

Commission Chamber

Tuesday July 2, 2013

Call to Order

Consent Agenda

Minutes

- Regular Meeting 6/18/13
- Joint City/County Workshop 6/18/13
- Workshop Meeting 6/27/13

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City Attorney

- Soccer Field Deed- Update
- Planning Grant- Update
- Marina Pennington Contract

Old Business

- Lighthouse- Update
- Centennial Celebration- Update
- Chipola Pump Station Motor Replacement- Update
- Commission Chambers Upgrades-Update
- Tree Removal- Frank Pate Park & Gulf Pines Hospital- Update
- County Interlocal Agreement & Welcome Center Request- Update
- CDBG Grant- Update

New Business

- Broadband Contract Request
- Regions Bank Loan- Update
- League of Cities Annual Conference- Comm. Buzzett
- Water Rescue Training- Comm. Thursbay
- Buck Griffin Lake & George Core Park- Comm. Patterson
- 2013/2014 Budget- Update

Pages 8-29

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Public Works

- Marvin Ave Water Line Replacement- Update
- First Street Lift Station- Update

Surface Water Plant

- Update

Waste Water Plant

- Update

City Engineer

- Traffic Study- Update

- **Water Distribution Phase II- Update**
- **Water Study- Update**

Code Enforcement

- **Update**

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Police Department

- **Update**

PSJRA

-

City Clerk

- **Update**

Citizens to be Heard

Discussion Items by Commissioners

Motion to Adjourn

MINUTES OF THE REGULAR MEETING OF THE BOARD OF CITY COMMISSIONERS FOR THE CITY OF PORT ST. JOE, FLORIDA, HELD IN THE COMMISSION CHAMBER AT CITY HALL, June 18, 2013 AT 6:00 P.M.

The following were present: Mayor Magidson, Commissioners Buzzett, McCroan, Patterson and Thursbay. City Manager Jim Anderson, City Clerk Charlotte Pierce and City Attorney Tom Gibson were also present.

CONSENT AGENDA

Swearing In Ceremony – Judge Tim McFarland

Newly elected Commissioner, William P. Thursbay, was administered the Oath of Office by Gulf County Judge Tim McFarland. Mrs. Thursbay held the Bible for Commissioner Thursbay to repeat the Oath of Office.

Gulf County Judge, Tim McFarland, administered the Oath of Office to re-elected Commissioner James “Bo” Patterson. Mrs. Patterson held the Bible for Commissioner Patterson to repeat the Oath of Office.

Mayor Mel C. Magidson, Jr., recently re-elected to the office of Mayor / Commissioner, was administered the Oath of Office by Gulf County Judge Tim McFarland. Mrs. Magidson held the Bible for Mayor / Commissioner Magidson to repeat the Oath of Office.

Minutes

A Motion was made by Commissioner McCroan, second by Commissioner Patterson, to approve the Minutes of the Regular Meeting of June 4, 2013. All in Favor; Motion carried 5-0.

CITY ATTORNEY – Tom Gibson

Soccer Field Deed Update

Mr. Gibson reported that the legal description issues have been resolved and he is ready to send the deed to the Gulf County School Board. A Motion was made by Commissioner Patterson, second by Commissioner Buzzett, to forward the deed to the Gulf County School Board. All in Favor; Motion carried 5-0.

CITY MANAGER’S REPORT

Old Business

Lighthouse Update

Clay Smallwood, III, of Preble Rish (PRI) shared that soil borings have been completed, PRI is waiting on the results and the project will be ready for bid shortly.

Centennial Celebration Update

Dana Boyer, Port St. Joe Centennial Celebration Committee member, updated the Commission on the 100th Birthday Celebration for the City of Port St. Joe. She noted that a lot of work by various citizens has made the event possible and plans are coming together well.

There will be a 4th of July special edition of the Star and the City will be purchasing an ad for the edition.

A Motion was made by Commissioner Thursbay, second by Commissioner Buzzett, to provide \$1,000 to the Port St. Joe Centennial Celebration Committee for City decorations for the event. All in Favor; Motion carried 5-0.

Chipola Pump Station Motor Replacement Update

Mr. Anderson shared that work is progressing and it is anticipated that the motor will be in place Friday.

Commissioner Buzzett asked that the Commission consider rebuilding and upgrading the second motor before too long.

Commission Chambers Upgrades Update

Mr. Anderson noted that technology upgrades are progressing, doors and chair have been ordered and all improvements should be completed shortly.

Tree Removal – Frank Pate Park and Gulf Pines Hospital

Mr. Anderson is working with H & H Tree Service to have the trees removed prior to the Port St. Joe Centennial Celebration.

Rate Study Workshop Reminder – June 27, 2013, at 12:00 Noon

Mr. Anderson reminded the Commission that Burton and Associates will be here on Thursday, June 27, 2013, to review the rate structure.

County Interlocal Agreement and Welcome Center Request

The City and County Commissioners met in a joint work shop today to discuss the Interlocal Agreement. Staff and the attorneys for both entities will meet and present their revisions to their respective entity.

A “good faith” Motion was made by Commissioner Buzzett, second by Commissioner Patterson, for the Port St. Joe Redevelopment Agency to vacate the Tourist Development Council Building. The Motion carried 4-1 with Commissioner Thursbay voting no.

Financial Disclosures

Mr. Anderson reminded the Commissioners that their Financial Disclosures are due by July 1, 2013.

City Hall Grounds Maintenance

Mr. Anderson noted improvements in the City Hall grounds.

Commissioner Buzzett did not have anything new to report on the landscape design.

Alamo Tractor

Mr. Anderson has spoken with a company representative and due to new emission requirements, it will September before the new tractor will be available.

Gulf Coast Workforce Board Lease Agreement (GCWB)

Mr. Anderson shared that he, Kim Bodine of GCWB and Charlotte Pierce had met to discuss details in the lease agreement. Mr. Anderson recommended a two month extension of the lease to avoid disrupting the summer program at the Washington Gym. A Motion was made by Commissioner Buzzett, second by Commissioner Patterson, to extend the Gulf Coast Workforce Board Lease for two months. All in Favor; Motion carried 5-0.

New Business

Summer Recreation Programs

The STAC House and Washington Gym programs are up and running. Mr. Anderson shared that approximately 50 children are attending each site daily.

Vehicle Seizure – Permission to Title

Mr. Anderson advised the Commission that a vehicle seized and later forfeited under Florida Statute is available to be titled to the City. The vehicle would replace the KIA currently used by City Hall employees.

A Motion was made by Commissioner McCroan, second by Commissioner Thursbay, to declare the KIA at City Hall surplus and available for sale; title the seized vehicle and place it in operation. All in Favor; Motion carried 5-0.

STAC House AC Unit – Request to Bid

A Motion was made by Commissioner Buzzett, second by Commissioner McCroan, to request bids to replace the AC Unit at the STAC House. The unit is approximately 15 years old, has been repaired several times, has limped along for a number of summers and is subject to failure at any time. The Motion carried 4-1 with Commissioner Patterson voting no.

EDC Representative

The City needs to select an EDC Representative. The appointee does not have to be City Staff. Applications will be requested for volunteers to serve.

Public Works – John Grantland

Marvin Avenue Water Line Replacement Update

Mr. Grantland anticipates the project will be finished next week. Final drive way repairs will be made this week and next to complete the project.

First Street Lift Station Update

Mr. Grantland reported that all equipment has been installed and the lift station is running.

Commissioner Patterson asked if there had been any reports of bad water on Avenue B. Mr. Grantland replied that some had been received last week but none this week.

Surface Water Plant – Larry McClamma

Mr. McClamma reminded the Commission that the contract expires shortly to have the trees around the fresh water canal removed.

Wastewater Plant – Lynn Todd

Ms. Todd anticipates that the Northwest Florida Water Management District (NFWMD) will approve the City's Consumptive Use Permit at their next meeting. This is a ten year permit and discussions with NFWMD indicate that all questions have been resolved.

The 30" Valve Vaults have been closed as much as possible and need to be permanently sealed.

The #1 Grit King has gone out again and the #2 Grit King is currently in service.

City Engineer – Clay Smallwood

Mayor Magidson congratulated Clay Smallwood, III, on the successful completion of his Professional Engineer exam.

Traffic Study

Mr. Smallwood is waiting to hear from FDOT on the pre-application meeting.

Water Distribution Phase II

All revisions have been completed and PRI is in the process of preparing the advertisement for the project. This will be a 30 day advertisement. All paper work has been provided to USDA and Department of Economic Opportunity (CDBG) for the project.

Water Study Update

The coupon harvesting protocol and map was received today. Mr. Smallwood anticipates having the sampling report from Dave Kosan of CDM-Smith in a few days.

Commissioner Patterson asked the status of the Safe Route to School Grant. Mr. Smallwood responded that all paper work had been submitted.

Code Enforcement

Mr. Burkett's report was reviewed but it did not require any action by the Commission.

Police Department – Chief Barnes

Chief Barnes advised the Commission that the 100th Birthday Celebration parade route and other activities have been reviewed and his department is ready for the event.

Chief Barnes noted that Commissioner Smiley is responsible for security for the Street Dance on July 3, 2013.

Sheriff Harrison and Chief Barnes have been reviewing Department of Homeland Security Grants for opportunities to benefit both departments.

Chief Barnes noted that the Port St. Joe Police Department has the only K-9 Unit in Gulf County as the county has retired their unit. He does not have any problems with the mutual aid agreement with the county.

Port St. Joe Redevelopment Association (PSJRA) – Gail Alsobrook

Ms. Alsobrook did not have anything to report at this time.

Mayor Magidson shared that he had received a letter from DEP confirming the award of the Coastal Partnership Initiative Grant in the amount of \$30,000 for the lighthouse foundation.

City Clerk – Charlotte Pierce

Mrs. Pierce requested that times for the Frank Pate Park Boat Ramp to close on June 28 and July 4 be determined. Staff will post the notices advising boaters of these times.

Citizens to be heard

No one wished to address the Commission.

Discussion Items by Commissioners

Commissioner Thursbay expressed his appreciation to the voters for the opportunity to serve on the City Commission and stated he was looking forward to working with the City the next two years.

Commissioner Patterson encouraged citizens to clean up their property and take pride in their City. He also asked about the possibility of a Code Enforcement Workshop. Mr. Anderson and Code Enforcement Office Burkett will meet with Commissioner Patterson.

Commissioner McCroan did not have anything to discuss at this time.

Commissioner Buzzett noted that lighting on the walking trail has become an issue and he would like to see funds designated to correct the problem. He also suggested that a list be prioritized to use the BP money including City debt reduction and items that have been let slide around the City.

Mayor Magidson did not have anything to discuss at this time.

A Motion was made by Commissioner Patterson, second by Commissioner McCroan, to adjourn the Meeting at 7:17 P.M.

Approved this _____ day of _____ 2013.

Mel C. Magidson, Jr., Mayor

Charlotte M. Pierce, City Clerk

**MINUTES OF THE WORKSHOP FOR THE JOINT CITY / COUNTY
COMMISSION MEETING OF THE BOARD OF CITY COMMISSIONERS FOR
THE CITY OF PORT ST. JOE FLORIDA AND THE GULF COUNTY BOARD OF
COUNTY COMMISSIONERS HELD IN THE GULF COUNTY EMERGENCY
OPERATIONS CENTER BUILDING ON June 18, 2013 at 10:30 A.M.**

The following were present: Mayor Magidson, Commissioners Buzzett, Patterson and Thursbay. City Manager Jim Anderson, Attorney Tom Gibson and City Clerk Charlotte Pierce were also present. Commissioner McCroan was absent. Representing the Gulf County Board of County Commissioners were Commissioners Tan Smiley, Ward McDaniel, Warren Yeager and Joanna Bryan. County Administrator Don Butler, Attorney Jeremy Novak, Staff Joe Danford, Lynn Lainer and Denise Manual were also present. Commissioner McLemore was absent.

The purpose of the meeting was to discuss the Interlocal Agreement, Section 6.16 Prior Agreements, to remove issues that have been resolved and move forward with the items that still need to be addressed.

The meeting was called to order by Commissioner Smiley. He expressed his appreciation for the joint meeting of the Boards and welcomed those present to the meeting.

Attorney Novak noted that the meeting was publicly noticed and was being recorded. He stated that there were 15 points in the Section 6.16 dated, November of 2005, to be addressed to day and the points have been reviewed by the County Commission.

Discussion ensued with all Commissioners sharing ideas on various points of the agreement. The general consensus was that staff and both attorneys would review the information, formulate a new draft and share the compiled information with each Board.

Approved this _____ day of _____ 2013.

Mel C. Magidson, Jr., Mayor

Charlotte M. Pierce, City Clerk

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MINUTES OF THE WORKSHOP MEETING OF THE BOARD OF CITY COMMISSIONERS FOR THE CITY OF PORT ST. JOE FLORIDA, HELD IN THE COMMISSION CHAMBER AT CITY HALL, JUNE 27, 2013 at 12:00 Noon.

The following were present: Mayor Magidson, Commissioners Buzzett, Patterson and Thursbay. City Manager Jim Anderson and City Clerk Charlotte Pierce were also present. City Attorney Tom Gibson and Commissioner McCroan were absent.

The purpose of the Workshop was for the Water and Sewer Rate Study Review with Burton and Associates. Andrew Burnham of Burton and Associates presented a power point presentation to the Commission on their study of the City of Port St. Joe Water and Sewer Rates.

Discussion was held on the presentation and questions were asked by the Commissioners.

The conclusions and recommendations of Burton and Associates are:

A multi-year plan of rate adjustments continues to be required to address annual operating, capital, debt, and reserve requirements comparable to national and local trends.

Optimization strategies can reduce required rate adjustments to 3.5% on both Water and Sewer rates by applying impact fees to the expansion portion of debt service and utilize grinder pump revenues for general operating expenses.

The financial update will be critical in FY 2015, to reflect and support refinancing of the Regions Bank loan. Refinancing options / market conditions may change during the next two years, potentially requiring larger future rate requirements.

The workshop was adjourned at 1:00 P.M.

Approved this _____ day of _____ 2013.

Mel C. Magidson, Jr., Mayor

Charlotte M. Pierce, City Clerk

**LICENSE AGREEMENT FOR
WIRELESS COMMUNICATION EQUIPMENT FACILITIES
(FRH-053b Port St. Joe Water Tower)**

This License Agreement is entered into this _____ day of _____, 2013 ("Agreement"), by and between City of Port St. Joe, Florida, a political subdivision of the State of Florida, whose address is P.O. Box 278, Port St. Joe, FL 32457, Port St. Joe, Florida 32320 ("Licensor"), and the Florida Rural Broadband Alliance, LLC, a limited liability company, whose local business address is 4636 Highway 90 Suite K, Marianna, FL 32446 ("FRBA" or "Licensee") (collectively, the "Parties").

RECITALS

WHEREAS, Licensor is the fee simple owner of the real property located at Main Street N Parcel in Port St. Joe, Florida (see **Exhibit "A"**), Florida which includes tower(s) ("Tower") and other real property and improvements described in **Exhibit "A"** attached hereto and made a part hereof ("Premises").

WHEREAS, Licensee was created by and made up of two Florida not-for-profit corporations representing the Northwest Florida Rural Area of Critical Economic Concern, which includes Holmes, Washington, Jackson, Gadsden, Liberty, Franklin, Gulf, and Calhoun counties, and the South Central Florida Rural Area of Critical Economic Concern, which includes DeSoto, Hardee, Hendry, Glades, Highlands, and Okeechobee counties, and the community of Immokalee in unincorporated Collier County, for the purpose of applying for federal stimulus grant funding to design, deploy and operate a fixed wireless broadband middle mile network to serve the two regions (the "Network").

WHEREAS, Licensee obtained federal stimulus grant funding pursuant to award #NT10BIX5570122 from the BTOP program (the "Grant") and will use such funds to establish a fixed wireless broadband middle mile network to serve its 15 county service area.

WHEREAS, the federal grant program required all applicants to provide matching funds in the amount of 30% of the total project cost in the form of cash or "in kind" contributions.

WHEREAS, many of the local governments within the FRBA territory agreed to commit the use of towers, buildings and land owned by the members as in kind assets to Licensee to assist in satisfying the matching funds requirement.

WHEREAS, Licensor committed to provide use of space on the Tower for installation of communications facilities by Licensee for a 5 year term without charge, subject to renewal. Licensor is entering into this Agreement to document its intent to make space on the Tower available to Licensee as an in kind asset.

WHEREAS, Licensee desires to obtain a license to the Premises from Licensor in order to locate, install, operate, remove, replace and maintain thereon wireless data communications equipment and enclosures ("Equipment Facilities") as more fully described herein.

WHEREAS, Licensor is willing to license the herein described portion of the Premises to Licensee so that Licensee may install, locate, operate, remove, replace and maintain the Equipment Facilities pursuant to the terms and conditions set forth herein.

WHEREAS, in furtherance thereof, Licensee desires to enter into this Agreement with Licensor pursuant to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement the same as if fully set forth herein.

2. **Premises.** Licensor hereby grants a license to Licensee and Licensee hereby accepts a license from Licensor, a portion of the Premises for use as follows:

- (a) 7 feet by 10 feet = 70 Total Sq. Ft. of ground space (the "Ground Space") for placement of an equipment cabinet or shelter
- (b) Together with space on the Tower for Equipment Facilities as follows:
 - up to four (4) panel antennas, each not to exceed 36" x 13" (L x W), plus one (1) feed line for each antenna, each not to exceed 1/2" in diameter
 - up to three (3) microwave dishes, with a combined diameter not to exceed 11', plus one (1) feed line for each dish, each not to exceed 1/2" in diameter
 - All tower-mounted equipment shall installed at the same centerline on the tower at approximately 110 feet as described in **Exhibit "B"**.
- (c) Tower space required for cable runs to connect equipment and antennas to one another and to ground facilities.
- (d) Together with a right of access over, across, through, and under the property and improvements for so long as this Agreement remains in existence.

3. **Term.** The initial term ("Initial Term") of this Agreement shall, for in-kind grant valuation purposes, begin retroactively on the grant award date of August 1, 2010, the date when all in kind assets were committed by their owners and held for use by FRBA, (the "Commencement Date") and extend until April 30, 2018 ("Expiration Date"), unless sooner terminated, modified or extended under the terms of this Agreement or by the mutual consent of the parties.

Upon expiration of the Initial Term, by mutual written agreement of the parties, the Agreement may be renewed for an additional five year term subject to the terms, including any proposed fees or exchange of service, agreed upon by the parties at that time ("Renewal Term").

4. **Consideration.**

(A) **In-Kind Donation for Initial Term of Agreement.** The Parties acknowledge that for the Initial Term of this Agreement, Licensor has agreed to donate the use of the Ground Space and Tower Space on the Premises, as identified herein, to Licensee as an in-kind asset contribution (the "In Kind Contribution"). The Parties hereby agree that the current market value of the In Kind Contribution is valued at \$2,250 per month. The parties acknowledge that for the period from the Commencement Date through July 31, 2013 this Agreement shall be included

within the Matching Inventory for the FRBA grant funded project and shall be subject to all restrictions associated with such grant.

(B) Licensee agrees to pay its pro-rata share of any common expenses shared by Licensor, Licensee, and any other entities leasing space on the Tower or adjacent grounds, such as common costs associated with operation of the Tower.

5. **Use of Premises.** Licensee is authorized to locate, install, replace, operate, repair, maintain, and remove all of Licensee's Equipment Facilities located within the Premises, both on the Ground Space and on the Tower, as provided herein:

(A) **Ground Space Facilities.** Licensee is authorized to construct, install, replace, upgrade, operate, repair, maintain, and remove Licensee's Equipment Facilities located on the Ground Space within the Premises for the transmission, reception and operation of Licensee's wireless communications system and uses incidental thereto. All Equipment Facilities located on the Ground Space shall be constructed or installed on a concrete pad to be constructed within the Premises at Licensee's sole cost and expense.

(B) **Tower Equipment Facilities.**

(i) Licensee is authorized to install, replace, upgrade, operate, repair, maintain, and remove such equipment and facilities as described and specified in Section 2, on the Tower for the purposes of transmitting and receiving wireless data communication signals.

(ii) Licensee's Equipment Facilities located on the Tower shall be installed on the Tower at the location agreed upon by the parties. If, however, installation at such location becomes impossible for any reason, the Parties may agree to an alternate, equivalent location, so long as such location is no less than 100 feet above the ground.

(iii) All Equipment Facilities located on the Tower shall be attached or installed in the same manner as other equipment installed on the Tower.

(C) All Equipment Facilities, whether installed on the Ground Space or on the Tower, shall be and remain Licensee's personal property throughout the Initial Term and any renewal Terms of this Agreement.

6. **Improvements.**

(A) Licensee shall improve the Premises by constructing on the Ground Space a concrete pad with dimensions of no more than 7 feet by 10 feet, upon which Licensee will locate its ground Equipment Facilities. In addition, Licensee shall have access to an additional area necessary to provide installation of a grounding ring 10 inches around the concrete pad. As part of the construction and continuing maintenance of the Ground Space, Licensee shall ensure that such facilities are properly installed.

After completion of installation of the Equipment Facilities, should Licensee desire to make any material changes to the facilities, Licensee shall obtain the approval of Licensor. A material change does not include additions to, replacements, upgrades or alterations of, any Equipment Facilities in whole or in part (a) within the confines of the licensed space or (b) to the extent attached to the Tower, if the resulting replacement, upgrade or alteration is of substantially the

same or lesser size, weight, wind and structural loading. All additions, replacements, upgrades, material and non-material alterations remain subject to all other provisions of this Agreement. Notice of any non-material alterations of any Equipment Facilities will be provided by Licensee to Licensor within 5 days of commencing installation or repair.

(B) Licensee shall obtain all licenses, permits, and approvals from applicable governmental and/or regulatory authorities having jurisdiction, as may be required for the construction, installation, and operation of its improvements and Equipment Facilities. In the event zoning approval is necessary from a governmental authority, Licensor agrees to work with Licensee as necessary to obtain such zoning approval.

(C) Licensee shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by Licensee.

(D) Licensee may update or replace the Equipment Facilities from time to time, in accordance with the terms of the Agreement.

(E) Licensor shall not be required to make any repairs or improvements to the Premises. Licensee shall be responsible for all costs associated with its use and operation of the Premises.

7. **Fitness for Use**. Licensor makes no representations or warranties as to (i) the fitness of the Premises for the use intended by Licensee; (ii) the use or zoning of surrounding properties and its suitability for Licensee's use; or (iii) any other matters related to the use of the Premises.

8. **Interference**.

(A) **Interference by Licensee's Equipment Facilities**.

(i) Licensee's Equipment Facilities shall not cause interference with any of Licensor's communication facilities, including facilities used for providing public safety services, or any prior user's facilities. If Licensee or Licensor determines, using reasonable discretion based on standard and accepted engineering practices, that Licensee's Equipment Facilities are causing interference to the installations of Licensor or a prior user, Licensee shall, within 5 business days of notification from Licensor, commence such actions as are necessary to mitigate or eliminate the interference, with the exception of ceasing Licensee's operations, so long as such interference does not impact Licensor's communication systems, in which case Licensee shall immediately cease operations until the interference is resolved. If Licensee cannot mitigate or eliminate such interference within the 5 business-day period, Licensor may require that Licensee turn off or power down its interfering Equipment Facilities and only power up or use such Equipment Facilities during off-peak hours specified by Licensor in order to test whether such interference continues or has been satisfactorily eliminated. If Licensee is unable to resolve or eliminate, to the satisfaction of Licensor, such interference within 30 days from Licensee's initial notification thereof, Licensee will immediately remove or cease operations of the interfering Equipment Facilities.

(B) **Interference with Licensee's Equipment Facilities**.

(i) Licensors agree to take reasonable efforts to prohibit a subsequent user of the Tower from causing interference with the operations of Licensee. If Licensors determine, in its reasonable discretion based on standard and accepted engineering practices, that a subsequent user's equipment is causing interference to the installations of Licensee, upon Licensee's request, Licensors shall within 48 hours commence such actions as are necessary to mitigate or eliminate the interference, with the exception of ceasing subsequent user's operations.

(ii) Notwithstanding the foregoing, if another user of the Tower is a governmental entity, Licensors shall give such governmental entity written notice of the interference within 5 business days of Licensors' determination that such action is reasonably necessary. Licensors shall have the right to give the governmental entity 5 business days, or more as specified in the governmental site or occupancy agreement or as required by applicable law, from the receipt of such notice prior to Licensors being required to take any actions to cure such interference.

(C) Priority. The Parties acknowledge that priority with regard to protection from interference shall be based on priority of occupancy. Prior users of the Tower shall be protected from interference by Licensors subject to the terms of this section, whereas users in place subsequent to Licensee shall not be protected. Licensee recognizes that in the event it modifies, replaces, or upgrades its Equipment Facilities in such a manner that the frequencies authorized herein are modified, it shall lose its priority position with respect to other users in place as of the date it modifies, replaces, or upgrades the Equipment Facilities and frequencies.

(D) AM Detuning. The parties acknowledge that the FCC Rules and Regulations govern the obligations of Licensee with respect to the operation of the Equipment Facilities. Consequently, the provisions set forth in this Agreement are expressly subject to the FCC Rules and Regulations. Licensee agrees, at Licensee's sole cost, to comply with the foregoing as well as any and all other FCC Rules, Regulations and public guidance relating to AM detuning as such provisions currently exist or are hereafter modified. Licensee shall be fully responsible for any pre- or post-installation testing for AM interference at the Tower and for the installation of any new detuning apparatus or the adjustment of any existing detuning apparatus that may be necessary to prevent adverse effects on the radiation pattern of any AM station caused by the installation of the Equipment Facilities. Licensee shall provide Licensors with written proof of such compliance. In the event that Licensee determines that pre- or post-installation testing for AM interference is not required at the Tower, such a determination shall be at Licensee's sole risk. If Licensee or Licensors receive a complaint of interference from an AM broadcast station after the Equipment Facilities are added to the Tower or the Tower is modified to accommodate Licensee, Licensee shall eliminate such interference within 30 calendar days of the receipt of such complaint. Licensee's failure to eliminate the interference within such 30 day period shall constitute a default under this Agreement and Licensors shall have the right to eliminate the interference at Licensee's expense. Licensee further agrees to indemnify Licensors in the event that Licensee's failure to comply with the FCC Rules and Regulations prior to installation or modification of the Equipment Facilities results in any administrative investigation, proceeding or adjudication with respect to Licensors.

9. Emissions. If antenna power output ("RF Emissions") is presently or hereafter becomes subject to any restrictions imposed by the FCC or other governmental agency for RF Emissions standards on Maximum Permissible Exposure ("MPE") limits, or if the Tower otherwise becomes subject to federal, state or local rules, regulations, restrictions or ordinances, Licensee shall comply with Licensors' reasonable requests for modifications to the

Equipment Facilities which are reasonably necessary for Licensor to comply with such limits, rules, regulations, restrictions or ordinances and Licensor shall use commercially reasonable efforts to cause all other Licensees of the Tower to promptly comply. If Licensor requires an engineering evaluation or other power density study be performed to evaluate RF Emissions compliance with MPE limits, then all reasonable costs of such an evaluation or study shall be paid proportionately by Licensee and all other Licensees of the Tower within 30 days of Licensor's request therefor. If said study or a study sponsored by any governmental agency indicates that RF Emissions at the Tower do not comply with MPE limits, then Licensee and Licensor, each for itself, shall immediately take any and all steps necessary to ensure that it is individually in compliance with such limits, up to and including cessation of operation, until a maintenance program or other mitigating measures can be implemented to comply with MPE and in addition, Licensor shall use commercially reasonable efforts to cause all other licensees of the Tower to take similar steps necessary to ensure that they are individually in compliance with such limits. Modifications to Licensee's Equipment Facilities required to address RF Emission standards, shall have no effect on Licensee's priority with regard to interference.

10. Repairs and Maintenance to Premises.

(A) Except as otherwise provided herein, Licensee shall have sole responsibility for the maintenance, repair and security of the Equipment Facilities and Ground Space, and shall keep the same in good repair and condition during the Initial Term of the Agreement and any renewal terms.

(B) Licensee shall keep the Premises free of debris and any dangerous, noxious or offensive matter that would create a hazard or undue vibration, heat, noise or signal interference.

(C) In order to minimize disruption to the surrounding area, normal maintenance and repair to the Equipment Facilities shall be restricted to the hours of 7:00 a.m. to 8:00 p.m., Monday through Friday, excluding legal holidays. Emergency maintenance and repairs to the Equipment Facilities may be conducted at any reasonably necessary time. Licensee shall notify Licensor as soon as reasonably practicable regarding off-hour emergency maintenance and repair activities on the Premises.

11. Replacement or Removal of Tower and Relocation or Removal of Equipment Facilities.

(A) Replacement of Tower. Licensor may, in its sole discretion, replace or rebuild the Tower or a portion thereof. Such replacement will be at Licensor's cost and not result in an interruption of Licensee's wireless communications services beyond that which is necessary to replace the new Tower. If Licensee, in Licensee's reasonable discretion, cannot operate the Equipment Facilities from the existing Tower during such replacement or rebuild of the Tower, Licensee may establish, at Licensee's sole cost, a temporary facility on the Tower to provide such services as Licensee deems necessary during any such construction by Licensor so long as adequate space is then available. The location of such temporary facilities shall be subject to Licensor's approval. Rent due, if any, shall be abated for any period during which Licensee is prevented from broadcasting from the existing Tower due to such replacement or relocation. At the request of either Party, Licensor and Licensee shall enter into an amendment to this Agreement to clarify the rights of each Party to the new Tower Facility.

(B) Removal of Tower. If, during the term of this Agreement, Licenser determines based on engineering structural standards generally applied to communications towers that the Tower is or has become structurally unsound such that pursuant to generally accepted industry safety standards the Tower or a portion thereof must be removed, then, upon 90 days prior written notice to Licensee, Licenser may, in its sole discretion either remove the Tower and terminate this Agreement effective as of the date of such removal, or modify the Tower and relocate Licensee's Equipment Facilities to an alternate location on the modified Tower. If Licensee and Licenser are not able to agree on an alternate location on the modified Tower for the installation of Licensee's Equipment Facilities within the 90 day notice period, then Licensee or Licenser may elect to terminate the Agreement.

(C) Relocation of Equipment Facilities. In the event another Licensee of the Tower and adjacent real property desires to occupy the space on the ground or Tower (which includes any necessary vertical separation as determined by Licenser) where Licensee's Equipment Facilities are then located, Licenser reserves the right to require Licensee to relocate the Equipment Facilities located on the Tower or adjacent real property to another mutually agreeable location, if available, at Licensee's cost and expense. If no mutually agreeable location is available, Licenser agrees that no relocation of Licensee's Equipment Facilities will be required, during the Initial Term of the Agreement. Subsequent to the Initial Term, Licenser may notify Licensee in writing that the relocation is necessary, and if other spaces on the ground or space or antenna mount heights on the Tower are available to accommodate Licensee's Equipment Facilities (without the requirement of any improvements to the Tower by Licenser), indicate which other spaces or antenna mount heights are available whether or not such spaces are agreeable to Licensee.

(D) Removal of Equipment Facilities upon Termination. Upon the expiration or earlier termination of this Agreement as provided herein Licensee shall remove the Equipment Facilities from the Premises and the licensed area on the Tower at its sole cost and expense. Upon Licensee's removal of the Equipment Facilities, Licensee shall restore the affected portion of the Premises to the condition as it existed prior to the Commencement Date, subject to normal wear and tear. In the alternate Licenser may request that Licensee leave the Equipment Facilities and Ground Space pad, less Licensee's personal property, including moveable equipment, "AS IS" for Licenser's use, in which case ownership of the Equipment Facilities and Ground Space area pad shall become the property of Licenser upon expiration of the Agreement, without further action on the part of either party.

12. Taxes and Fees.

(A) To the extent any utility fees, assessments, or other governmental charges related to the Premises and Equipment Facilities are validly imposed, Licensee will pay to the appropriate entity all such fees, assessments, or other charges that may arise or are incurred for or during the Initial Term and any renewal terms, in a timely manner, before they are delinquent.

(B) Licensee shall have the right to contest the validity or the amount of any charges, assessments, or fees by appellate or other proceedings as may be appropriate in the jurisdiction, and may, if applicable, defer payment of such obligations if payment would operate as a bar to contest, and, if applicable, pay same under protest, or take such other steps as Licensee may deem appropriate, provided, however, that Licensee indemnifies and holds harmless Licenser from any expense (including reasonable attorney's fees for trial, appellate, bankruptcy and administrative proceedings) liability and loss arising out of such contest and

pursues such contest in good faith with due diligence, posting any bond or security required by law in connection with the contest, giving Licensor written notice of its intention to contest, taking no action which shall cause or allow the institution of any foreclosure proceedings or similar action against the Premises or Equipment Facilities. Licensor shall cooperate in the institution and prosecution of any proceedings initiated by Licensee and shall execute any documents reasonably required to be executed and make any appearances, which Licensor may reasonably be required to make in connection with such proceedings. Licensee shall be entitled to receive all refunds from the appropriate governmental entities attributable to the Premises, the Ground Space or Equipment Facilities for any period for which Licensee has paid such fees, assessments, or charges. If no refund shall be secured in any proceeding, the party instituting the proceeding shall bear the entire cost, or if Licensor institutes the proceeding at Licensee's request, Licensee shall bear the entire cost.

(C) Should, during the Initial Term or any renewal term of this Agreement, a new or otherwise modified tax, fee, charge, or assessment be imposed on, or for the use of or otherwise related to the Premises or Equipment Facilities, or should Licensee's tax-exempt status change, Licensee shall also pay those taxes when due to the appropriate taxing authority, as required by law.

(D) Should Licensee fail, refuse or neglect to pay any required tax or other charges under this section, after receipt of written notice that same have not been paid, Licensor may pay them. On Licensor's demand, Licensee will repay Licensor all amounts thus paid, plus expenses and attorneys' fees reasonably incurred in connection with such payments, plus interest on all amounts at the highest rate allowed by law. On the day Licensor demands repayment or reimbursement from Licensee, Licensor is entitled to collect or enforce these payments in the same manner as a payment of Base Rent. Licensee's election to pay the taxes will not act as a waiver of a default for failure to pay same.

13. **Utilities**. Licensee shall, at its expense, separately meter charges for the consumption of electricity and other utilities associated with its Equipment Facilities, and shall timely pay all costs associated therewith. Licensee shall have the right to obtain separate utility service from any licensed utility company that will provide such service to the Premises. Licensee may also provide power to the Premises through a standby power generator for Licensee's exclusive use. Licensee covenants that it shall use its best effort to cause the utilities to be installed underground. Licensor agrees to grant utility easements to such utility companies as may be needed to operate and maintain the utility facilities serving the Equipment Facilities.

14. **Permits**. Licensee's use of the Premises is contingent upon its obtaining all certificates, permits, zoning and other approvals that may be required by any federal, state or local authority. Licensor, as the owner of the Premises and not in its capacity as a governmental or regulatory body, agrees to cooperate with Licensee, at Licensee's expense, in applying for and obtaining all licenses, permits, and other necessary approvals required for Licensee's installation and operation of the Equipment Facilities on the Premises. Licensee shall erect, maintain and operate the Equipment Facilities in accordance with site standards, state statutes, ordinances, rules and regulations issued by the FCC or any other governing bodies. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be Licensee's responsibility.

15. **Signs/Graffiti**. Licensee may place signs on the Premises designating the owner of the improvements and wireless communication facilities within the Premises, subject to applicable governmental regulations, including any applicable signage requirements relating to

Licensee's federal grant included in the Federal Grant Restrictions section of this Agreement. Licensee shall remove any unauthorized signs or graffiti within a reasonable time, but no later than five (5) days after receipt of written notice from Licensor requesting such removal. If Licensee fails to remove such signs or graffiti after such notice, then Licensor may enter the Premises and undertake any activities necessary to abate or remove graffiti or any unauthorized signage located therein. Licensee shall reimburse Licensor all costs incurred by Licensor for the abatement or renewal of such graffiti or unauthorized signage within thirty (30) days of Licensor's presenting Licensee with a statement of such costs.

16. **Access.** Beginning on the Commencement Date, subject to Licensee's faithful performance of Licensee's covenants and conditions herein contained, Licensor shall deliver to Licensee the right to enter the Premises, subject to the easements, covenants and restrictions of record. Licensor and Licensor's agents are entitled, however, to enter the Premises at all reasonable times to inspect and examine their condition and use.

17. **Default and Remedies.**

(A) Each of the following events shall be an event of default hereunder by Licensee ("Licensee's Default") and shall constitute a default of this Agreement:

(i) Whenever Licensee shall fail to pay any installment of a required payment, if any, within fifteen (fifteen) days after it comes due or whenever Licensee shall fail to pay any other sum payable by Licensee to Licensor or other appropriate governmental entity within fifteen (15) days after receipt of written notice from Licensor that same is due;

(ii) If Licensee fails to comply with the insurance requirements contained herein, and if such failure to pay or comply with the insurance requirements shall continue for fifteen (15) days after Licensor delivers to Licensee a written Notice of Licensee's Default specifying same;

(iii) Whenever Licensee shall do, or permit anything to be done, whether by action or inaction, contrary to any covenant or agreement on the part of Licensee herein contained or contrary to any of Licensee's obligations under this Agreement, or shall fail in the keeping or performance of any of Licensee's obligations under this Agreement, and Licensee shall fail to remedy the same within thirty (30) days after Licensor shall have given Licensee a written Notice of Licensee's Default specifying same; provided, however, that if the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, Licensee shall have such time as is reasonably necessary to remedy the default, provided Licensee promptly takes and diligently pursues such actions as are necessary therefore;

(B) Upon the occurrence of any Licensee's Default, which is not cured within any applicable notice and cure period, Licensor shall have all remedies allowed by law or in equity, from time to time during the Initial Term or any renewal term, and also Licensor may give to Licensee a notice of Licensor's intent to end the Term on a day not less than thirty (30) days after Licensee's receipt of such notice ("Licensor's Termination Date"), and this Agreement and the term and estate hereby granted shall expire and terminate upon Licensor's Termination Date as fully and completely and with the same force and effect as if the day so specified were the Agreement Expiration Date, and all rights of Licensee under this Agreement shall expire and terminate, or in the alternative Licensor may take possession of the Premises without

terminating the Agreement, in which event Licensee shall remain liable for damages as allowed by law.

(C) It shall be an event of default by Licensors ("Licensor's Event of Default") whenever Licensor shall do, or permit anything to be done, whether by action or inaction, contrary to any covenant or agreement on the part of Licensor herein contained or contrary to any of Licensor's obligations under this Agreement, or shall fail in the keeping or performance of any of Licensor's obligations under this Agreement, which Licensor fails to remedy within thirty (30) days after Licensee has given Licensor written notice specifying the same.

(D) Upon the occurrence of a Licensor's Event of Default, which is not remedied within thirty (30) days of receipt of notice from Licensee, Licensee may (i) give to Licensor a notice of Licensee's intent to end the Term on a day not less than thirty (30) days after Licensor's receipt of such notice ("Licensee's Termination Date"), and this Agreement and the term and estate hereby granted shall expire and terminate upon the Licensee's Termination Date as fully and completely and with the same force and effect as if the day so specified were the Agreement Expiration Date, and all rights of Licensor under this Agreement shall expire and terminate or Licensee may institute proceedings for specific performance of this Agreement.

18. **Termination.**

(A) In addition to the other termination rights of the parties otherwise provided herein, this Agreement may be terminated (i) by either Party if Licensee is unable to obtain or maintain any license, permit or other governmental approval necessary for the construction, installation or operation of the Equipment Facilities within one hundred eighty (180) days from the execution of this Agreement; (ii) by Licensee upon thirty (30) days prior, written notice to Licensor if the Premises are not appropriate for Licensee's operations for economic or technological reasons, including, but not limited to signal interference; (iii) by Licensee upon thirty (30) days prior, written notice to Licensor if Licensee is unable to operate the Equipment Facilities on the Premises either due to the action of any regulatory agency which results in Licensee's inability to utilize the Tower; (iv) by Licensee if it determines, in its sole discretion, that the Tower is structurally unsound or otherwise not suitable for Licensee's use, including, but not limited to, consideration of age of the structure, damage or destruction of all or part of the Tower from any source, or factors relating to condition of the Tower, however, Licensor shall first be afforded an opportunity to improve the Tower; (v) by Licensor if it determines, in its sole discretion, that continued use of the Tower by Licensee is a threat to the public health, safety or welfare or violates applicable laws or ordinances, or; (vi) as otherwise provided in this Agreement.

(B) Upon the termination of this Agreement, removal of the Equipment Facilities shall be governed by Section 7 hereof.

(C) Notice of termination pursuant to this section shall be given in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice. In the event of termination, Licensor shall prorate and return to Licensee any unearned Rent paid prior to the Termination Date.

(D) The Parties acknowledge that the License granted pursuant to this Agreement is irrevocable for the term of the Agreement so long as both parties perform their obligations in accordance with the provisions herein.

19. **Condemnation or Destruction.**

(A) **Condemnation.** In the event the Premises are taken by eminent domain, this Agreement shall automatically terminate as of the date title to the Premises vests in the condemning authority. In the event of any taking under the power of eminent domain, Licensee shall not be entitled to any portion of the award paid for the taking, and Licensee hereby expressly waives any right or claim to any portion thereof and all such damages shall belong to Licensor. Although all damages, whether awarded as compensation for diminution in value of the license or to the fee of the Premises, shall belong to Licensor, Licensee shall have the right to claim and recover from the condemning authority, but not from Licensor, such compensation as may be separately awarded or recoverable by Licensee for diminution in value of the Equipment Facilities, any and all damage to Licensee's business and any costs or expenses incurred by Licensee in moving or removing the Equipment Facilities. Licensor will inform Licensee of the commencement of any eminent domain proceedings by any governmental authority.

(B) **Destruction.** In the event the Premises, including the Tower, are destroyed or damaged so as to materially interfere with Licensee's effective use thereof through no fault of the Licensee, Licensor shall have the option of restoring or repairing the damaged portions of the Premises. If Licensor fails to take steps to repair the damages within thirty (30) days or such other reasonable time, Licensee will be entitled to terminate this Agreement as of the date the Premises became unusable, and Licensee shall be entitled to a return of any unearned Basic Payments. If Licensor opts to repair or restore the Premises, any applicable Consideration due from Licensee shall be abated on a pro rata basis per day during such repair or reconstruction. Licensor shall have no obligation to reconstruct or repair any damage to the Equipment Facilities.

20. **Indemnification.**

(A) Neither Party shall be liable for injury or damage occurring to any person or property arising out of the other Party's use of the Premises.

(B) The following indemnification shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from the sole negligence or intentional misconduct of either Party, and shall survive termination of this Agreement. The indemnifying Party shall, at its sole cost and expense, indemnify, defend and hold harmless the other Party, its representatives, agents, employees and elected and appointed officials from and against:

(i) Any and all liability, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the party being indemnified by reason of any act or omission of the indemnifying Party, its personnel, employees, agents, contractors or subcontractors, resulting in property damage, bodily injury or death to any person, or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Premises and Equipment Facilities, or any failure to comply with any federal, state, or local statute, ordinance or regulation.

(ii) Any and all liabilities, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of

attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the indemnified Party by reason of any claim or lien arising out of work, labor, materials, or supplies provided or supplied to the indemnifying Party, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises or Equipment Facilities, which the indemnified Party, upon written request, shall cause to be discharged within thirty (30) days following such request.

(C) Nothing in this Agreement shall be construed to affect in any way the Licensor's or Licensee's rights, privileges and immunities as set forth in Section 768.28, Florida Statutes. Provided, however, such rights shall only extend to Licensor and Licensee as political subdivisions of the State of Florida and shall not be extended to any non-governmental sub-Licensee, successor or assign of either Party.

(D) In the event any action or proceeding shall be brought against Licensor by reason of any matter for which Licensor is indemnified hereunder, Licensee shall, upon notice from Licensor, at Licensee's sole cost and expense, defend the same; provided however, that Licensee shall not admit liability in any such matter on behalf of Licensor without the written consent of Licensor and provided further that Licensor shall not admit liability for, nor enter into any compromise or settlement of, any claim for which it is indemnified hereunder, without the prior written consent of Licensee.

(E) Licensor shall give Licensee prompt notice of any claim or the commencement of any action, suit or other proceeding related to or described in paragraph (B) above. Nothing herein shall be deemed to prevent Licensor from participating in the defense of any litigation by Licensor's own counsel. Licensee shall pay all expenses incurred by Licensor in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Licensor's attorney, and the actual expenses of Licensor's agents, employees or expert witnesses, and disbursements and liabilities assumed by Licensor in connection with such suits, actions or proceedings but shall not include attorneys fees for services that are unnecessarily duplicative of services provided Licensor by Licensee.

21. **Insurance.** During the term of the Agreement, Licensee shall maintain in full force and effect and at its sole cost and expense, the following types and limits of insurance:

(A) Commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability.

(B) Automobile liability insurance covering all owned, hired and non-owned vehicles in use by Licensee, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law.

(C) Workers' compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident.

(D) At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering the

antennae facilities and other Equipment Facilities. Upon completion of the installation of the Equipment Facilities, Licensee shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance thereon. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

(E) As an alternative to the foregoing liability insurance requirements, Licensee may provide such insurance through a self-insurance fund sufficient to cover the liabilities mentioned above provided that Licensee shall furnish Licensor with a copy of the self-insurance plan and an independent expert opinion that the self-insurance plan and funding are actuarially sound.

22. Insurance Administration.

(A) All policies other than those for Workers' Compensation shall be written on an occurrence and not on a claims-made basis.

(B) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

(C) Licensor shall be named as an additional insured on all Licensee insurance policies to the fullest extent allowed by the insurers.

(D) Certificates of insurance evidencing that all required insurance coverage shall be filed and maintained with Licensor annually during the Term of the Agreement, and must be received by Licensor at least fifteen (15) days prior to the Initial Term and any renewal terms. Licensee shall immediately advise Licensor of any claim or litigation that may result in liability to Licensor.

(E) All insurance shall be evidenced by valid and enforceable policies, issued by insurers licensed to do business by the State of Florida or surplus line carriers on the State of Florida Insurance Commissioner's approved list of companies qualified to do business in the State of Florida. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company.

(F) The insurance certificates shall specify the deductibles for each type of insurance required by this Agreement, except Workers' Compensation insurance. Licensee agrees to indemnify and save harmless Licensor from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Agreement.

(G) Licensee shall require each and every contractor and its subcontractors who install the Equipment Facilities or any other components of its wireless communication facilities, or perform work thereon, to carry, in full force and effect, workers' compensation, commercial general liability and automobile liability insurance coverage of the types, which Licensee is required to obtain under the terms of this section, with appropriate limits of insurance, and which name Licensor as an additional insured.

(H) If Licensee fails to obtain or maintain insurance coverage sufficient to meet the terms and conditions of this Agreement, then Licensor may immediately terminate this Agreement.

23. **Hazardous Material Indemnification.**

(A) Licensee represents and warrants that it will not generate, use, transport, store or dispose of any Hazardous Material, on or about the Premises in violation of any applicable statute, regulation, rule, law or ordinance.

(B) "Hazardous Material" shall mean any petroleum or petroleum products, asbestos, any substance known to cause cancer and/or reproductive toxicity, and/or any substance, material, chemical or waste defined or designated as hazardous, toxic, dangerous, radioactive or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

(C) Licensors represents and warrants that it will not generate, use, transport, store or dispose of any Hazardous Material, on or about the Premises in violation of any applicable statute, regulation, rule, law or ordinance.

24. **RF Exposure.** Licensee agrees to reduce power or suspend operation of its Equipment Facilities if necessary and upon reasonable notice to prevent exposure of workers or the public to RF radiation in excess of the then-existing regulatory standards.

25. **Acceptance of Premises.** By execution of this Agreement, Licensee accepts the Premises in the condition existing as of the Commencement Date. Licensors makes no representation or warranty with respect to the condition of the Premises and Licensors shall not be liable for any latent or patent defect in the Premises.

26. **Estoppel Certificate.** Either Party shall at any time and from time to time upon not less than ten (10) days prior request by the other party delivery to the requesting party a statement in writing certifying that (i) the Agreement is unmodified and in full force (or if there have been modifications, that the Agreement is in full force as modified and identifying the modifications); (ii) the dates to which any applicable Rent has been paid; (iii) the party requesting the estoppel certificate is not in default under any provisions of the Agreement; and (iv) such other matters as the party may reasonably request.

27. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to Licensors, to:

City of Port St. Joe
1 Bay Avenue
Port St. Joe, Florida 32320

with a copy to:

Michael Shuler, County Attorney
44th Street
Port St. Joe, Florida 32320

If to Licensee, to:

Jim Brook Managing Member
Florida Rural Broadband Alliance, LLC
4636 Highway 90, Suite K
Marianna, Florida 32446

28. **Assignment, Sublicensing and Third-Party Use.** Licensee shall not assign this Agreement in whole or in part, or sublicense all or any part of the Premises or otherwise allow any third parties to use any part of the Premises without Licensor's prior written consent, not to be unreasonably withheld, conditioned or delayed. If Licensor approves an assignment, sublicense, or third-party use, Licensor shall be a party to such assignment, sublicense, or use agreement between Licensee and third party.

29. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, successors and assigns.

30. **Force Majeure.** If a Party is delayed or prevented from the performance of its obligations under this Agreement by reason of earthquakes, landslides, strikes, lockouts, power failure, riots, war, acts of God or other reasons of similar nature, not the fault of the Party delayed in performing its obligations, such Party is excused from such performance of the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

31. **Holding Over.** Any holding over after the expiration of the final renewal term hereof, with the consent of Licensor, shall be construed to be an annual tenancy, rented at a rate equal to the annual rental rate provided for herein.

32. **Miscellaneous.**

(A) The Parties represent that each, respectively, has full right, power and authority to execute this Agreement.

(B) This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all offers, negotiations and other agreements of any kind. There are no representations or understandings of any kind not set forth herein with respect to the subject matter hereof. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

(C) This Agreement shall be construed in accordance with the laws of the State of Florida. The location for the settlement of any disputes arising from this Agreement shall be Leon County, Florida. The prevailing party in any action to enforce the provisions of this Agreement shall be entitled to recover reasonable attorney's fees.

(D) If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

(E) Licenser warrants that it owns the Premises in fee simple free and clear of any liens, encumbrances and restrictions that would prevent Licenser from leasing the Premises to Licensee subject to the terms of this Agreement, and upon Licensee's compliance with all terms, conditions and obligations of this Agreement imposed upon Licensee, Licensee shall be entitled to quiet and peaceful enjoyment of the Premises.

(F) By execution of this Agreement, the parties acknowledge that this Agreement is subject to and agree to comply with all applicable terms and conditions of Grant #NT10BIX5570122. Licenser further acknowledges that it is subject to the special grant award conditions outlined herein.

33. **Federal Grant Restrictions.**

(A) **Debarment.** Licenser certifies that it is eligible to receive state and federally funded contracts. Licenser also certifies that no party, which is debarred from such contracts, will be subcontracted to perform services under this Agreement.

(B) **Signage.** As required by the terms of the Stimulus Act and the Grant, Licensee shall have the right to erect signage at the Site to comply with the stimulus act signage requirements.

(C) **Covenant of Purpose, Use and Ownership and UCC Filings.** In compliance with the requirements of the Grant, Licenser consents to the recording of a Covenant of Purpose, Use and Ownership for the Site in the Public Records of the County. The Covenant of Purpose, Use and Ownership will be in substantially the form of **Exhibit "C"** attached hereto. In addition, Licensee shall record any other documents, such as UCC Financing Statements as may be required to comply with the Grant. All such filings shall apply only to Equipment owned by Licensee and shall not be an encumbrance on the land or other equipment installed on the tower.

(D) **Federal Audits and Inspections.** Licenser will cooperate in any audit or inspection of Licensee's network, assets, equipment installation or operations required for or on behalf of Licensee, the Department of Commerce, the NTIA, NOAA, the Office of the Inspector General or any other state or federal agency with jurisdiction over the BTOP grant. Licenser understands that such audits and inspections may include contracts paid with grant funds such as the Agreement. Licenser understands it is responsible for maintaining documentation pursuant to this Agreement. All access rights to the Site granted to Licensee hereunder shall also extend to any such federal inspectors or auditors.

SIGNATURES APPEAR ON FOLLOWING PAGE

Port St. Joe, FLORIDA

Van Johnson, Mayor

Date:

Attest:

Clerk

Approved as to form and substance by:

Attorney

FLORIDA RURAL BROADBAND ALLIANCE, LLC

Name: Jim Brook
Title: Managing Partner

WITNESSES:

Print Name: _____

Print Name: _____

EXHIBIT A

PROPERTY DESCRIPTION(s)

Municipal Water Tower

Gulf County Florida Parcel # 06072-050R

S 12 T 8 R 11

2201 Long Avenue

S 12 T 8 R 11 7.02 AC M/L ORB 60/445 FR SJPC (BEING BASEBALL FIELD)

EXHIBIT B

Tower and Equipment Detail

Latitude: 29° 47' 30"

Longitude: -85° 17' 35"

Frequency and dish sizes: 11 GHz 4' & 6 GHz 6'

Equipment Height: 100

EXHIBIT C

PREPARED BY AND RETURN TO:
Crystalyn R. Voehl, P.A.
2324 Limerick Drive
Tallahassee, FL 32309

COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this ____ day of _____ by and between the Florida Rural Broadband Alliance, LLC, a Florida limited liability corporation, whose address is 4636 Highway 90, Suite K, Marianna, Florida 32446 (hereinafter with its successors and assigns called "Recipient"); and the NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, UNITED STATES OF AMERICA DEPARTMENT OF COMMERCE, whose address is Herbert C. Hoover Building (HCHB), U.S. Department of Commerce / NTIA, 1401 Constitution Avenue, N.W., Washington, D.C. 20230 (hereinafter with successors and assigns called "NTIA");

RECITALS:

WHEREAS, Recipient submitted an application, designated as BTOP Award No. #NT10BIX5570122, for financial assistance pursuant to the Broadband Technology Opportunities Program created pursuant to the American Recovery and Reinvestment Act of 2009 (hereinafter the "Act"); and

WHEREAS, by offer of Award, dated August 1, 2010, NTIA offered to Recipient a financial assistance award in the amount of \$23,693,665 (hereinafter called "Award Amount") to assist in financing the design and deployment of a broadband middle mile infrastructure network to serve counties throughout the Northwest Florida Rural Area of Critical Economic Concern and the South Central Rural (hereinafter called "Project"); and

WHEREAS, said Project included the contribution of licensed space on the communications tower located on the real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements called "Property") as an in kind asset by City Of Port St. Joe, Florida, the owner of the Property through January 31, 2017 (the "In Kind Agreement"), subject to renewal; and

WHEREAS, said Project also included the purchase of wireless broadband communications equipment to be installed pursuant to the In Kind Agreement on the tower by Recipient (the "Equipment"); and

WHEREAS, Recipient accepted the Offer Of Award (hereinafter called "Award Agreement") subject to terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable requirements of 15 C.F.R. part 14; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Equipment and In Kind Agreement, or use the Equipment or In Kind Agreement for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereinafter called "Project Purposes"), such alienation and use being prohibited by 15 C.F.R. part 14; and

WHEREAS, under the authority of the Act, NTIA is not authorized to permit Recipient to use the In Kind Agreement or Equipment for purposes other than Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from NTIA, unless NTIA is repaid its share of the market value of the Project, as set forth below;

WHEREAS, Recipient, as Licensee pursuant to the In Kind Agreement and owner of the Equipment and City of Port St. Joe, Florida, as owner of the real property described in Exhibit "A", attached hereto, have agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A", attached hereto.

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by NTIA and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both NTIA and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the project is 10 years.
2. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the In Kind Agreement or the Equipment acquired or improved in whole or in part with funds made available through this Award, nor shall Recipient use the In Kind Agreement or Equipment for purposes other than the Project Purposes without the prior written approval of the NTIA Grants Officer, or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to NTIA the Federal share of the Property as provided in 15 C.F.R. part 14. The Federal share of the value of the Property is that percentage of the current fair market value of the Property attributable to the NTIA's participation in the Project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the Property attributable to acquisition or improvements before or after NTIA's participation in the Project and not included in Project costs.
3. Recipient further covenants that in the event the In Kind Agreement or the Equipment is used for purposes other than Project Purposes, or is sold, leased, transferred, conveyed, or mortgaged without the prior written approval of the Grants Officer, Recipient will compensate the Federal Government for the Federal share of the Property as described above and in 15 C.F.R. part 14.

4. Recipient further agrees that, as a prerequisite to accepting the disbursement of any Award funds by NTIA, Recipient shall execute and place on record against the In Kind Agreement and Equipment acquired or improved in whole or in part with the funds made available through this Award, this Covenant of Purpose, Use and Ownership. Recipient further agrees that whenever the property is sold, leased, or otherwise conveyed pursuant to 15 C.F.R. part 14, Recipient or the transferor shall add to the document conveying such interest a Covenant of Purpose, Use and Ownership. NTIA will in its sole discretion determine whether the Covenant is satisfactory. NTIA may require an opinion of counsel for recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the In Kind Agreement and the Equipment given the Federal Interest expressed herein.

6. This covenant shall run with the land.

IN WITNESS WHEREOF, the recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to NTIA. (The appropriate acknowledgment must be included for recording in Recipient's jurisdiction.)

FLORIDA RURAL BROADBAND ALLIANCE, LLC

Name: _____
Title: _____

Witnessed by:

Print Name: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, the _____ of Florida Rural Broadband Alliance, LLC, a Florida limited liability company, who is known to me personally or provided _____ as proof of identification.

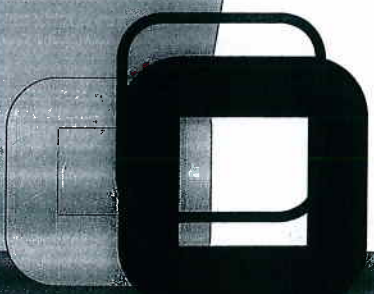
Notary Public: _____
Commission Expires: _____

Registration Information

A large, stylized silhouette of a city skyline is positioned behind the main title. It includes various building shapes, some with windows, and a prominent tower on the left side.

Great Cities Make a Great State

FLORIDA LEAGUE OF CITIES 87TH ANNUAL CONFERENCE

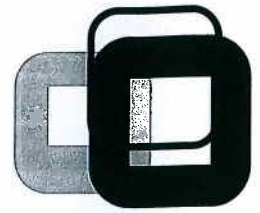
A stylized icon of a briefcase or folder is located on the left side of the page, below the main title. It is a simple, bold graphic with a handle on top and a rectangular body.

August 15-17, 2013

World Center Marriott | Orlando

*Paid registration is required to receive housing information,
so sign up early! See page 9 for details.*

General Information



The League's 2013 Conference will focus on how Florida's cities make our state a great place to live and work.

The conference schedule is packed with an informative line-up of topical workshops, engaging speakers and chances to network and share ideas with your colleagues from throughout the state.

Location/Dates

World Center Marriott, Orlando, Fla.
Thursday, August 15 - Saturday, August 17, 2013

Registration Hours

| | |
|---------------------|-----------------------|
| Thursday, August 15 | 8:00 a.m. - 7:00 p.m. |
| Friday, August 16 | 7:00 a.m. - 5:00 p.m. |
| Saturday, August 17 | 8:00 a.m. - 4:00 p.m. |

Deadlines

Registration: Conference registration forms must be postmarked on or before **Wednesday, July 31, 2013**. If you are unable to meet this deadline please register on-site. **Registration fees will increase to \$405 for government and \$575 for corporate registrants for all registrations done on-site**, so we encourage you to register in advance.

Hotel Reservations: The cut-off date for reservations at the Marriott is **July 24, 2013**. Reservations must be made via an FLC-provided security code only; no one will receive housing information until **after** their **paid** registration is received. Please see page 9 for more details.

Registration Fees

City/County/Government (\$375), Corporate (\$545) and Guest (\$125): These fees cover your name badge, admission to all conference sessions and the exhibit hall, refreshment breaks, Friday's membership networking event, Saturday's Past Presidents' Luncheon and the "Viva Florida 500" closing night event. **Registrants** are defined as any elected government official, or any employee of governments, organizations or corporations. **Guests** are defined as spouses, partners or other non-professional relations of conference delegates. Guest registration **may not** be used for other elected government officials, staff or company representatives.

Teen Guest 13-18 years (\$20) and Child Guest 3-12 years (\$15): These fees cover your name badge, admission to the exhibit hall, Friday's membership networking event and refreshment breaks. **Teen and child guest registration does not include Saturday's Past Presidents' Luncheon or closing night event.**

Exhibit Hall Pass (\$20): This pass allows family members and guests who are not registered for the conference to visit our vendors on Thursday and Friday. Passes permit access to the exhibit hall on Thursday afternoon, Thursday evening and Friday morning. The pass allows access to all events in the exhibit hall, as well as Friday's membership networking

»»»



Richard Burkett
Code Enforcement Insepctor

Code Enforcement
2013 Activity

Activity As of 6-28-13
City Of Port St. joe

| | Open | Closed | Total | Increase Since 6/10/2013 |
|------------------------------|------|--------|-------|--------------------------------|
| Unlawful Accumulation | 23 | 62 | 85 | 11 |
| Substandard Structure | 7 | 10 | 17 | 1 |
| Abandoned Vechicle | 0 | 5 | 5 | |
| Unlawful Sewer | | | | |
| Land regulation Violation | 3 | 3 | 6 | |
| Business Lic. Violation | 0 | 1 | 1 | |
| Special Master Hearings | | 1 | 1 | |
| Building Demolition | 0 | 3 | 3 | |
| Waste Violation | 8 | 122 | 130 | 5 |
| Sign Violation | 3 | 30 | 33 | 14 |

| | | | | | | | |
|-------|----|-------|-----|-----------|-----|-------|----|
| Total | 44 | Total | 237 | Total | 281 | Total | 31 |
| | | | | 2013 Year | | | |
| | | | | Cases | | | |