

**SCHOOL DISTRICT OF PALM BEACH COUNTY  
PURCHASING DEPARTMENT  
3300 Forest Hill Boulevard, Suite A-323  
West Palm Beach, FL 33406-5813  
(561) 434-8216**

October 27, 2004

**ADDENDUM NO. 1**

**INVITATION TO NEGOTIATE NO. 05C-002R**

**TITLE: COMMUNICATIONS TOWER LEASE AT WESTERN PINES MIDDLE SCHOOL**

**RETURN DATE: November 10, 2004, 2:00 p.m.**

This addendum answers all written questions received per section 7.0 - ITN Inquiries.

Question: Would the District consider a municipal lease purchase?

Answer: The District will not consider any type of sale or purchase related to this Invitation to Negotiate.

Question: What are the longitude/latitude coordinates of Western Pines Middle School general site?

Answer: The coordinates are 26 degrees, 45 minutes, 42 seconds North and 80 degrees, 16 minutes, 09 seconds west.

This addendum is for information only and need not be returned with your RFP.

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Robert Bruno, Purchasing Agent

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Sharon Swan, Purchasing Director

# SCHOOL DISTRICT OF PALM BEACH COUNTY

## PURCHASING DEPARTMENT INVITATION TO NEGOTIATE (ITN)

### REQUIRED RESPONSE FORM

ITN-05C-002R

DATE: October 13, 2004

TITLE: ITN FOR COMMUNICATIONS TOWER LEASE AT WESTERN PINES MIDDLE SCHOOL

This information package must be submitted to the School District of Palm Beach County, Purchasing Department, 3300 Forest Hill Boulevard, Suite A-323, West Palm Beach, Florida 33406-5813, no later than 2:00 PM on November 10, 2004, and plainly marked ITN-05C-002R. Information packages are due and will be opened at this time.

#### Anti-Collusion Statement / Public Domain

I, the undersigned respondent have not divulged, discussed, or compared this information package with any other respondent and have not colluded with any other respondent in the preparation of this information package in order to gain an unfair advantage in the award of this information package.

I acknowledge that all information contained herein is part of the public domain as defined in the Public Records Act, Chapter 119, F.S.

#### Information package Certification

I hereby certify that I am submitting the following information as my company's information package. Information package must be signed by an officer or employee having authority to legally bind the respondent.

RESPONDER (firm name): \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY & STATE: \_\_\_\_\_

PRINT NAME OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

SIGNATURE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

CONTACT PERSON'S ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ TOLL FREE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_ INTERNET URL: \_\_\_\_\_

RESPONDENT TAXPAYER IDENTIFICATION NUMBER: \_\_\_\_\_

NOTE: Entries must be completed in ink or typewritten. An original manual signature is required.

**INVITATION TO NEGOTIATE NO. ITN-05C-002R**

**SCHOOL DISTRICT OF PALM BEACH COUNTY, FLORIDA**

**INVITATION TO NEGOTIATE FOR COMMUNICATIONS TOWER LEASE AT WESTERN PINES MIDDLE SCHOOL**

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- A. M/WBE Subcontractor Participation Letter of Intent
- B. M/WBE Subcontractor Participation Summary
- C. Drug-Free Workplace Certification
- D. Beneficial Interest and Disclosure of Ownership Affidavit
- E. Statement of No Response
- F. Sample Contract
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- I. Invitation to Negotiate Commission Schedule

**SCHOOL DISTRICT OF PALM BEACH COUNTY**

**INVITATION TO NEGOTIATE FOR**

**COMMUNICATIONS TOWER LEASE AT WESTERN PINES MIDDLE SCHOOL**

**1.0 INTRODUCTION**

- 1.1 This is an INVITATION TO NEGOTIATE (ITN) with the School District of Palm Beach County, Florida (the District) for the land lease and right to construct, install, operate and maintain a communications tower and attendant facilities on a designated portion of the Western Pines Middle School campus. Contract negotiations may take place as a result of this ITN, to create a pool of qualified firms to provide services described in this ITN. The District reserves the right to negotiate with the number of responders it deems appropriate.
- 1.2 The District reserves the right to use the Tower, (i.e. School Police communications needs) at no charge to the District, so long as the District does not interfere with Tenant or any other communication user as set forth in the Sample Lease Agreement, Section 4.02. (Attachment G)
- 1.3 The District has determined that the use of an Invitation to Bid or a Request for Proposal will not result in the best value to the District. Therefore, it is using this Invitation to Negotiate, which will allow the District to select the most qualified firm(s) and negotiate commissions along with other issues as needed, resulting in the best value for this service.
- 1.1 All terms and conditions of this ITN, any addenda, respondent's submissions and negotiated terms and commissions, are incorporated into the contract / lease agreement by reference as set forth herein.
- 1.2 Document files may be examined, during normal working hours, ten days after information packages have been opened.

**2.0 INSTRUCTIONS TO RESPONDENT**

- 2.1 All information packages should be received no later than 2:00 PM, **on November 10, 2004**. If an information package is transmitted by US Mail or other delivery medium, the respondent(s) will be responsible for its timely delivery to the Department of Purchasing, Suite A-323, 3300 Forest Hill Boulevard, West Palm Beach, Florida 33406-5813.
- 2.2 Any information package received after the stated time and date may not be considered. Packages not considered will be returned unopened to the respondent(s) after the negotiated contract has been awarded by the School Board.
- 2.3 One manually signed and clearly marked original, and EIGHT (8) photocopies of the information package must be sealed in one package and clearly labeled "INVITATION TO NEGOTIATE FOR COMMUNICATIONS TOWER LEASE" on the outside of the package. The legal name, address, respondent's contact person, and telephone number must also be clearly annotated on the outside of the package.
- 2.4 All information packages must be signed by an officer or employee having authority to legally bind the respondent(s).
- 2.5 Information packages not conforming to the instructions provided herein will be subject to disqualification at the sole option of the District.

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

- 2.6 **DELIVERY OF ITNS:** When hand delivering your ITN, responders must follow the School District's security access procedures. The procedures are as follows:

- A. Park in visitors' parking area.
- B. Enter building through the front door.
- C. Sign-in at the front desk and receive visitor's pass.
- D. Proceed to the Purchasing Department located in A-wing, third floor, Room A-323.
- E. Present ITN to the Purchasing receptionist for official date/time stamping.

**RESPONDENTS SHOULD ALLOW AT LEAST 30 MINUTES TO FOLLOW THE ABOVE PROCEDURES AND SUBMIT THEIR ITN TO THE PURCHASING DEPARTMENT RECEPTIONIST, NO LATER THAN THE DATE AND TIME DESIGNATED IN THE ITN.**

### **3.0 TIME SCHEDULE**

- 3.1 The District will attempt to use the following time schedule which will result in selection of a respondent(s) firm or firms to enter into negotiations:

October 20, 2004	Site Inspection 9:00 AM.
October 22, 2004	All written questions and inquiries are due by 5:00 PM.
November 10, 2004	Information packages due no later than 2:00 PM.
November 15, 2004	* Evaluation Committee Meeting – Thurber A, 8:00 AM
November 16, 2004	* Oral Presentation (If Needed) Thurber B, 8:00 AM
November 19, 2004	Begin Negotiations
To Be Determined	Recommend negotiated agreement to the School Board for approval.

\* This is an open, public meeting.

- 3.2 Notification of any changes to the time schedule will be made to respondents by US certified mail, e-mail or fax.

### **4.0 AWARD**

- 4.1 The District reserves the right to waive any irregularities and technicalities and may, at its sole discretion, request a clarification or other information to evaluate any or all information packages.
- 4.2 The District reserves the right, before negotiating the contract, to require responder(s) to submit evidence of qualifications or any other information the District may deem necessary.
- 4.3 The District reserves the right, prior to Board approval, to cancel the ITN or portions thereof, without penalty.
- 4.4 The District will negotiate with the highest ranking firm(s) in order to secure the most qualified vendors to provide the service described herein.

### **5.0 TERM OF CONTRACT / RENEWAL**

- 5.1 The term of this lease/contract shall be for 10 years from date of award, with the option of two (2) five year renewals. The renewals may be renegotiated prior to the expiration of the preceding term. If needed, the contract will be extended 90 days beyond the contract expiration date. The awardee will be notified when the Board has acted upon the recommendation.

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

### **6.0 SITE INSPECTION**

- 6.1 There will be a site inspection at the Western Pines Middle School campus, 5949 140<sup>th</sup> Avenue North, Royal Palm Beach, on October 20, 2004 at 9:00 A.M. Interested parties shall meet with Ray Walter at the main office.

### **7.0 ITN INQUIRIES**

- 7.1 Any questions concerning conditions and specifications should be submitted in writing and received no later than 5:00 p.m. EST, October 22, 2004. Questions received in writing by the time and date specified will be answered in writing. Mr. Bruno is authorized only to direct the attention of prospective respondents to various portions of the ITN so that they may read and interpret such for themselves. Neither Mr. Bruno, nor any employee of the District is authorized to interpret any portion of this ITN or give information as to the requirements of the ITN in addition to that contained in the written documents.

Send all inquiries to attention:

Robert Bruno, Purchasing Agent  
Purchasing Department, Suite A-323  
School District of Palm Beach County  
3300 Forest Hill Boulevard  
West Palm Beach, FL 33406  
(561) 434-8209 FAX (561) 434-8185  
brunor@palmbeach.k12.fl.us

- 7.2 If necessary, an addendum will be mailed or delivered to all who are known by the Purchasing Department to have received a complete set of information package documents.
- 7.3 Copies of addendum will be made available for inspection at the District's Purchasing Department where information package documents will be kept on file.
- 7.4 No verbal or written information which is obtained other than by information in this document or by addendum to this ITN will be binding on the District.

### **8.0 BENEFICIAL INTEREST AND DISCLOSURE OF OWNERSHIP AFFIDAVIT**

- 8.1 The School District is requesting this affidavit to include a list of every "person" (as defined in Section 1.01(3), Florida Statutes to include individuals, children, firms, associates, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups and combinations) holding 5% or more of the beneficial interest in the disclosing entity. The affidavit must be returned to the Purchasing Department with the ITN or within three days of request. See ATTACHMENT D.

### **9.0 LOBBYING**

- 9.1 RESPONDENTS ARE HEREBY ADVISED THAT LOBBYING IS NOT PERMITTED WITH ANY DISTRICT PERSONNEL OR BOARD MEMBERS RELATED TO OR INVOLVED WITH THIS ITN UNTIL THE ADMINISTRATION'S RECOMMENDATION FOR AWARD HAS BEEN POSTED AT THE PURCHASING DEPARTMENT RECEPTION CENTER. ALL ORAL OR WRITTEN INQUIRIES MUST BE DIRECTED THROUGH THE PURCHASING DEPARTMENT.

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

- 9.2 LOBBYING IS DEFINED AS ANY ACTION TAKEN BY AN INDIVIDUAL, FIRM, ASSOCIATION, JOINT VENTURE, PARTNERSHIP, SYNDICATE, CORPORATION, AND ALL OTHER GROUPS WHO SEEK TO INFLUENCE THE GOVERNMENTAL DECISION OF A BOARD MEMBER OR DISTRICT PERSONNEL AFTER ADVERTISEMENT AND PRIOR TO THE POSTED RECOMMENDATION ON THE AWARD OF THIS CONTRACT.
- 9.3 ANY BIDDER WHO IS ADVERSELY AFFECTED BY THE RECOMMENDED AWARD MAY FILE A PROTEST WITHIN THE TIME PRESCRIBED IN SECTION 120.57(3), FLORIDA STATUTES. FAILURE TO POST BOND WITH THE SCHOOL BOARD OR TO ADHERE STRICTLY TO THE REQUIREMENTS OF STATUTES AND STATE BOARD RULES PERTAINING TO PROTESTS WILL RESULT IN SUMMARY DISMISSAL BY THE PURCHASING DEPARTMENT. ADDITIONALLY, ANY BIDDER WHO IS ADVERSELY AFFECTED BY THE RECOMMENDED AWARD MAY ADDRESS THE SCHOOL BOARD AT A REGULARLY SCHEDULED BOARD MEETING.
- 9.4 ANY RESPONDENT OR ANY INDIVIDUALS THAT LOBBY ON BEHALF OF RESPONDENT DURING THE TIME SPECIFIED WILL RESULT IN REJECTION / DISQUALIFICATION OF SAID INFORMATION PACKAGE.

### **10.0 SCOPE OF SERVICES**

- 10.1 The lease of space and the right to construct, install, operate, and maintain a communications tower and attendant facilities on a designated portion of the Western Pines Community Middle School campus.
- 10.2 The District reserves the right to use the Tower, and attendant facilities (i.e. School Police communications needs) at no charge to the District, so long as the District does not interfere with Tenant or any other communication user as set forth in Section 4.02, Sample Lease Agreement. (Attachment G)
- 10.3 Attendant facilities would include, but may not be limited to, an electronics cabinet or storage/equipment building at the base of the tower, and other necessary non-tower facilities to support the tower. The specifics of location of the tower within the campus, architectural review, etc. can be handled during negotiations and contracting. There is a site plan of the school attached to this document. (See Attachment H)

### **11.0 EVALUATION COMMITTEE MEETINGS**

- 11.1 As stated in Section 3.1 and Section 14.2 a committee will be convened to review and evaluate responsive information packages, for the purposes of making a decision as to which firm(s) to negotiate with. Per F.S. 286.011, this is an open public meeting. Notification will also be posted for review by interested parties at the School District Purchasing Department, 3300 Forest Hill Boulevard, Suite A-323, West Palm Beach, FL 33406.

### **12.0 PREPARATION AND SUBMISSION**

- 12.1 In order to maintain comparability and enhance the review process, it is requested that information packages be organized in the manner specified below. Include all information in your information package. It is required that EIGHT (8) copies of the information package be submitted with the original information package, refer to Instructions to Respondent 2.3.
- 12.2 Title Page: Show the ITN number, subject, name of the respondent, address, telephone number, email address and the date.

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

- 12.3 Table of Contents: Include a clear identification of the material by section and by page number.
- 12.4 Letter of Transmittal: Give the names of the persons who will be authorized to make representations for the respondent, their titles, addresses and telephone numbers.
- 12.5 Invitation to Negotiate: Required Response Form (page 1 of ITN) with all required information completed and all signatures as specified.
- 12.6 Commission Negotiations: Complete the Invitation to Negotiate Commission Sheet. (Attachment I) **The original signed document must be included with your information package; no additional copies are requested / required.** The original must be placed in a sealed envelope, and marked "Commission Schedule", and will be opened after the ranking process is complete.
- 12.7 Experience and Qualifications of the Firm: Provide specific information regarding the length of time the firm has been in business, experience of employees of the firm and specific information regarding experience your firm has had in the construction, installation, and maintenance of revenue generating communications towers.
- 12.8 Ability of the Firm to maximize revenue for the District: Provide a strategic plan that will enable your firm to maximize the cell tower to generate maximum revenue for the District.
- 12.9 Minority/Women Business Participation: Respondents are to indicate the extent and nature of the M/WBE's scope of work with specificity as it relates to the services described in the ITN. Respondents shall provide certification with the District, or the State of Florida, Office of Supplier Diversity, or its successors. Respondents that are District, or State of Florida Office of Supplier Diversity, or its successors certified minority, women, or disadvantage business enterprises, at the time of submittal, will be awarded a maximum of ten points. Maximum points will be awarded for 15% or greater minority participation. Points will be pro-rated for less than 15% minority participation. Respondents that do not meet the above requirement may sub-contract minority business participation in accordance with Section 28.0 and receive participation points

Points for utilization of certified M/WBE subcontractors shall be assigned as follows:

15% and over	10 points
9% - 14%	8 points
4% - 8%	6 points
1% - 3%	4 points
0%	0 points

- 12.10 Insurance: Provide proof of your company's insurance as required in Section 18.0 of this ITN or submit a letter of your intention to have the required insurance within ten days of notification by the District.

### **13.0 ORAL PRESENTATIONS:**

- 13.1 Firms who submit information packages in response to this ITN and are selected by the Evaluation Committee **may** be required to give an oral presentation of their information package to the Evaluation Committee on November 16, 2004. This will provide an opportunity for firms to highlight their information packages. This is only a fact-finding and explanation session to assist staff in recommending the successful firm and does not include contract award or negotiations. The presentation is to be based upon the written information packages received. The presentations will be held at the School District office, 3300 Forest Hill Blvd. West Palm Beach.



## INVITATION TO NEGOTIATE NO. ITN-05C-002R

### **14.0 INFORMATION PACKAGE EVALUATION PROCESS:**

- 14.1 ITNs are received and publicly opened. Only names of respondents are read at this time.
- 14.2 An Evaluation Committee, consisting of District personnel, will convene, review and discuss all information packages submitted.
- 14.3 The Evaluation Committee will assign points in the evaluation and recommendation process in accordance with the evaluation criteria listed in Evaluation Criteria, Section 15.0.
- 14.4 The Evaluation Committee reserves the right to interview any or all respondents and to require a formal presentation with the key people who will administer and be assigned to work on the contract before recommendation of award. This interview is to be based upon the written information package received.
- 14.5 The Evaluation Committee will evaluate and rank responsive replies against all evaluation criteria and shall select, based on the ranking, one or more vendors with which to commence negotiations. The Evaluation Committee or their designees shall negotiate and recommend award of the contract to the responsible and responsive firm that will provide the best value to the District.
- 14.6 The Purchasing Department will prepare and submit an agenda item to the Superintendent of Schools, Palm Beach County, Florida.
- 14.7 The Superintendent will recommend to the School Board, the award or rejection of any and/or all information package(s).

### **15.0 EVALUATION CRITERIA**

The Evaluation Committee shall rank all responses received which meet the submittal requirements. The following factors will be considered in ranking the received:

	<b>MAXIMUM POINTS</b>
A. Experience and Qualifications of the Firm	30
B. Ability of the Firm to maximize revenue for the District	60
C. Minority/Women Business Participation	10
	<hr/>
Total	100

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

### **16.0 LEGAL REQUIREMENTS**

- 16.1 It shall be the responsibility of the contractor to be knowledgeable of all federal, state, county and local laws, ordinances, rules and regulations and School Board Policy that in any manner affect the items covered herein which may apply. Specifically, respondent(s) is to adhere to School Board Policies 3.12 and 3.13, pursuant to the following, with respect to any criminal arrests and convictions, and is on notice thereto that any employees involved in any Chapter 435, Florida Statutes offenses are precluded from continuing to work on the project and must be replaced. Failure to comply may result in the immediate termination of the vendor's contract at the sole discretion of the School District. Lack of knowledge by the respondent(s) will in no way be a cause for relief from responsibility.
- 16.2 Respondent(s) doing business with the District are prohibited from discriminating against any employee, applicant, or client because of race, creed, color, national origin, religion, sex or age with regard to but not limited to the following: employment practices, rates of pay or other compensation methods, and training selection.

### **17.0 CONFLICT OF INTEREST**

- 17.1 All respondents must disclose the name of any officer, director, or agent who is also an employee of the District. All respondents must disclose the name of any District employee who owns, directly or indirectly, any interest in the respondents' business or any of its branches.

### **18.0 INSURANCE REQUIREMENTS**

- 18.1 Proof of the following insurance will be furnished by the awarded respondents/bidders to the School District of Palm Beach County by Certificate of Insurance. All insurance must be issued by a company or companies approved by the School District.
- 18.2 Original Certificates of Insurance meeting the specific required provision specified within this contract/agreement shall be forwarded to the Palm Beach County School District's Purchasing Department, ATTN: Robert Bruno, Purchasing Agent, and approved prior to the start of any work or the possession of any school property. Renewal certificates must be forwarded to the same department prior to the policy renewal date.
- 18.3 Thirty days written notice must be provided to the Palm Beach County School District via certified mail in the event of cancellation. The notice must be sent to the Purchasing Department.
- 18.4 The awarded bidders shall provide complete copies of any insurance policy for required coverage within seven days of the date of request by the Purchasing Department but in any respect at least 30 days prior to the commencement of any term. For all contracts with a bid amount of \$500,000 or more the actual INSURANCE POLICY must be included with the Certificate of Insurance.
- A. **WORKERS' COMPENSATION:** Respondent(s) must comply with FSS 440, Workers' Compensation and Employees' Liability Insurance with minimum statutory limits.

INVITATION TO NEGOTIATE NO. ITN-05C-002R

- B. COMMERCIAL GENERAL LIABILITY:** Awarded respondents/bidders shall procure and maintain, for the life of this contract/agreement, Commercial General Liability Insurance. This policy shall provide coverage for death, bodily injury, personal injury, products and completed operations liability and property damage that could arise directly or indirectly from the performance of this agreement. It must be an occurrence form policy. **THE SCHOOL DISTRICT OF PALM BEACH COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR COMMERCIAL GENERAL LIABILITY INSURANCE.**

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined, Single Limit for Bodily Injury Liability and Property Damage Liability.

- C. BUSINESS AUTOMOBILE LIABILITY:** Awarded respondents/bidders shall procure and maintain, for the life of the contract/agreement, Business Automobile Liability Insurance. **THE SCHOOL DISTRICT OF PALM BEACH COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR BUSINESS AUTOMOBILE LIABILITY INSURANCE.**

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" form policy. The insurance must be an occurrence form policy.

In the event the contractor does not own any vehicles, we will accept hired and non-owned coverage in the amounts listed above. In addition, we will require an affidavit signed by the contractor indicating the following:

\_\_\_\_\_ (Company Name) does not own any vehicles. In the event we acquire any vehicles throughout the term of this contract/agreement, \_\_\_\_\_ (Company Name) agrees to purchase "Any Auto" coverage as of the date of acquisition.

- D. PROFESSIONAL LIABILITY:** The awarded respondent/bidder shall procure and maintain Professional Liability Insurance for the life of this contract/agreement, plus two years after completion. This insurance shall provide coverage against such liability resulting from this contract. The minimum limits of coverage shall be \$1,000,000 with a deductible not to exceed \$5,000. The deductible shall be the responsibility of the insured. Professional liability policies shall include an endorsement whereby the awarded bidder holds harmless the Palm Beach County School District and each officer, agent and employee of the Palm Beach County School District against all claims, against any of them, for personal injury or wrongful death or property damage arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the awarded bidder or anyone employed by the awarded bidder.

This policy must be continued or tail coverage provided for two years after completion of the project.

**19.0 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

- 19.1 The awarded responder(s) shall be required to furnish a separate Performance Bond and Labor and Material Payment Bond, each in the amount of one hundred percent (100%) of the estimated cost of the Improvements. All required premiums shall be paid for by the awarded responder(s) and the amount of the premium shall not be credited or deducted from the Rent due under the lease.

**20.0 INDEMNIFICATION / HOLD HARMLESS AGREEMENT**

- 20.1 Awarded respondents/bidders shall, in addition to any other obligation to indemnify the Palm Beach County School District and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School District, their agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged;
- A. bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of the contractor, subcontractor, anyone directly or indirectly employed by any of them, of anyone for whose acts any of them may be liable in the performance of the work; or
  - B. violation of law, statute, ordinance, governmental administration order, rule or regulation by contractor in the performance of the work; or
  - C. liens, claims or actions made by the contractor or any subcontractor or other party performing the work.
- 20.2 The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for the contractor of any subcontractor under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar.
- 20.3 This article will survive the termination of this contract.

**21.0 PUBLIC RECORDS LAW**

- 21.1 All information package documents or other materials submitted by the respondent in response to this ITN will be open for inspection by any person and in accord with Chapter 119, Florida Statutes.

**22.0 PERMITS AND LICENSES**

- 22.1 The respondent(s) will be responsible for obtaining any necessary permits and licenses and will comply with laws, rules, and regulations whether state or federal and with all local codes and ordinances without additional cost to the District.

**23.0 INTELLECTUAL PROPERTY RIGHTS**

- 23.1 The respondent(s) will indemnify and hold harmless, the District from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, service marked, trademarked, patented or un-patented invention, process, article or work manufactured or used in the performance of the contract, including its use by the District. If the respondent(s) uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exception that the information package prices will include all royalties of costs arising from the use of such design, device, or materials in any way involved in the work.

This article will survive the termination of any contract with the School District.

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

### **24.0 COST INCURRED IN RESPONDING**

- 24.1 All costs directly or indirectly related to information package preparation, representation or clarification shall be the sole responsibility of and be borne by the respondent.

### **25.0 SUB-CONTRACTS**

- 25.1 Nothing contained in this specification will be construed as establishing any contractual relationship between any sub-respondent(s) and the District.
- 25.2 The respondent(s) will be fully responsible to the District for the acts and omissions of the sub-respondent(s) and their employees.
- 25.3 After award of contract, any changes in subcontractors or sub-respondents requires prior School District written approval.

### **26.0 INDULGENCE**

- 26.1 Indulgence by the District on any non-compliance by the respondent does not constitute a waiver of any rights under this ITN.

### **27.0 JOINT INFORMATION PACKAGE**

- 27.1 In the event multiple respondents submit a joint information package in response to the ITN, a single respondent shall be identified as the Prime Vendor. If offering a joint information package, Prime Vendor must include the name and address of all parties of the joint information package. Prime Vendor shall provide all bonding and insurance requirements, execute any Contract, complete the **REQUIRED RESPONSE FORM** shown herein, have overall and complete accountability to resolve any dispute arising within this contract. Only a single contract with one respondent shall be acceptable. Prime Vendor responsibilities shall include, but not be limited to, performing of overall contract administration, preside over other respondents participating or present at District meetings, oversee preparation of reports and presentations, and file any notice of protest and final protest as described herein. Prime Vendor shall also prepare and present a consolidated invoice(s) for services performed. The District shall issue only one check for each consolidated invoice to the Prime Vendor for services performed. Prime Vendor shall remain responsible for performing services associated with response to this ITN.

### **28.0 SUB-CONTRACTING/MINORITY BUSINESS PARTICIPATION**

- 28.1 The District strongly encourages the use of Minority/Woman owned business enterprises for participation as associates, joint-venturers, prime respondents, and sub-respondents in contracting opportunities.
- 28.2 In order to receive evaluation credit for M/WBE participants, the respondent or firm(s) to be utilized by the respondent must be certified by the District or the State of Florida at the time that the information packages are due. In order to receive evaluation credit for M/WBE participation, the information package must identify the specific certified M/WBE firm or firms upon which evaluation credit is sought, shall indicate the extent and nature of the M/WBE's work, and shall include the percentage of the total engagement which will be received by the M/WBE firm in connection with the information package. M/WBE participation in auxiliary services (e.g., graphics, printing and other services) is acceptable but will only be given evaluation credit if it augments the primary service of this ITN. ALL RESPONDENTS MUST COMPLETE THE M/WBE SUBCONTRACTOR PARTICIPATION LETTER OF INTENT (FORM 1525). **ATTACHMENT A.**

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

- 28.3 Inquiries regarding listings of District and State Certified Minority, Woman and Disadvantaged Business Enterprises can be made to the District's Office of Diversity in Business Practices, 3300 Forest Hill Boulevard, Suite A-106, West Palm Beach, FL 33406, (561) 434-8508 or on our web site at <http://www.palmbeach.k12.fl.us/mwbe>. All companies using minority, woman, or disadvantaged sub-respondents will complete the M/WBE SUBCONTRACTOR PARTICIPATION SUMMARY (FORM 1526) – **ATTACHMENT B**. This form must be submitted with all requests for payment.
- 28.4 Minority Business Enterprise (MBE) indicates a business entity which is owned and operated by a minority. In this instance, minority or handicapped group members are citizens of the United States or lawfully admitted permanent residents who are African American, Hispanics, Women, Native Americans, Asian-Pacific, Asian-Indian, and eligible others as outlined in Administrative Order 1-18.
- 28.5 The Palm Beach County School District only recognizes as acceptable for certification as minority/woman business enterprises those firms, vendors, and consultants that have successfully completed the certification requirements of the State of Florida Office of Supplier Diversity or the Palm Beach County School District's Office of Diversity in Business Practices. In the case of those firms or small business enterprises that are certified with the State of Florida Office of Supplier Diversity the firm shall be required to include a copy of their certification letter or certificate. The letter or certificate will only be deemed valid if the dates for certification have not expired. Any pending application with the Palm Beach County School District or the State of Florida Office of Supplier Diversity shall not be considered as certification of the vendor making application for consideration as a M/WBE firm.
- 28.6 The Palm Beach County School District does not currently by implication or direct means have reciprocity with any governmental or non-governmental entity, with the exception of the State of Florida Office of Supplier Diversity for the purpose of sharing and/or acceptance of M/WBE vendors, consultants, small business enterprises for certification.
- 29.0 PUBLIC ENTITY CRIMES**
- 29.1 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/ITN on a contract to provide any goods or services to a public entity, may not submit a bid/ITN on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/ITNs on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 29.2 The respondent(s) certifies by submission of this ITN, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal department/agency.

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

### **30.0 USE OF OTHER CONTRACTS**

- 30.1 The District reserves the right to utilize any other District contract, any State of Florida Contract, any contract awarded by any other city or county governmental agencies, any other school board, any other community college/state university system cooperative bid agreement, or to directly negotiate/purchase per School Board policy and/or State Board Rule 6A-1.012(6) in lieu of any offer received or award made as a result of this bid, if it is in the best interest to do so. The District also reserves the right to separately bid any single order or to purchase any item on this bid if it is in its best interest to do so.

### **31.0 ASSIGNMENT OF CONTRACT AND/OR PAYMENT**

- 31.1 The respondent shall not enter into subcontracts, or assign, transfer, convey, sublet, or otherwise dispose of the ensuing contract, or any or all of its right, title or interest herein, or its power to execute such contract to any person, company, or corporation without prior written consent of the District.
- 31.2 The respondent will be prohibited from publishing or releasing any information related to the requested services without the prior written permission of the School District. All reports and other documents resulting from the ensuing contract will remain the sole property of the District.

### **32.0 REQUIREMENTS FOR PERSONNEL ENTERING DISTRICT PROPERTY**

- 32.1 Possession of firearms will not be tolerated on School District property; nor will violations of Federal and State laws and any applicable School Board policy regarding Drug Free Workplace be tolerated. Violations will be subject to the immediate termination provision heretofore stated in Section 16.1.
- 32.2 "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive device; or any machine gun.
- 32.3 No person who has a firearm in their vehicle may park their vehicle on School District property. Furthermore, no person may possess or bring a firearm on School District property.
- 32.4 If any employee of an independent contractor or sub-contractor is found to have brought a firearm on School District property, said employee will be terminated from the School Board project by the independent contractor or sub-contractor. If the sub-contractor fails to terminate said employee, the sub-contractor's agreement with the independent contractor for the School Board project shall be terminated. If the independent contractor fails to terminate said employee or fails to terminate the agreement with the sub-contractor who fails to terminate said employee, the independent contractor's agreement with the School Board shall be terminated.
- 32.5 Respondents are advised that they are responsible to ensure that no employee, agent or representative of their company who has been convicted or who is currently under investigation for a crime against children in accordance with FS 435.04 will enter onto any school site.

**33.0 AGREEMENT**

- 33.1 A purchase order and/or a contract will be released, after award, for any work to be performed as a result of this ITN. The information package, response to the information package, all attachments, any addendum released, negotiated agreement, and the corresponding purchase order will constitute the complete agreement between responder(s) and the District. Should there be any conflict between the terms of the ITN, response to the ITN, and the terms of the agreement (Sample Contract), the terms of the agreement shall be final and binding and the ITN shall control where in conflict with the information package.



INVITATION TO NEGOTIATE NO. ITN-05C-002R

Minority Certification applications are available through the Minority Business Enterprise located at:

Office of Diversity in Business Practices  
School District of Palm Beach County  
3300 Forest Hill Boulevard, Suite A-106  
West Palm Beach, FL 33406-5871  
Phone: (561) 434-8508  
<http://www.palmbeach.k12.fl.us/mwbe>

**Are you a minority vendor certified by:** (Check if appropriate)

Palm Beach County School District \_\_\_\_\_

State of Florida \_\_\_\_\_

If yes, expiration date \_\_\_\_\_

Minority Classification \_\_\_\_\_

If you are not a certified minority vendor and intend to sub-contract with a certified minority firm(s), please list the vendors and the estimated dollar value below:

<u>Vendor</u>	<u>Estimated Dollar Value</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____

For information on other bids currently being solicited for the School District of Palm Beach County, please call the BID HOTLINE at (561) 434-8111.

Bids/ITNs are available to view and print at no charge on the Purchasing Department's Internet Hotline. Simply go to <http://www.palmbeach.k12.fl.us/bids> and click on those documents you are interested in. This will allow you to register, view and print the solicitation.

**9 ATTACHMENTS**



THE SCHOOL DISTRICT OF PALM BEACH COUNTY  
PURCHASING DEPARTMENT

3300 FOREST HILL BOULEVARD, A-323 • WEST PALM BEACH, FLORIDA 33406-5813 • (561) 434-8506

**Minority Women Business Enterprise (M/WBE)  
Subcontractor Participation Letter of Intent**

BID/ITN or Project Name **COMMUNICATIONS TOWER LEASE AT WESTERN PINES MIDDLE SCHOOL**

BID/ITN or Project Number **ITN-05C-002R**

Name of Bidder \_\_\_\_\_

The undersigned intends to perform work with the above project as *(check one)*

☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

*(NOTE: If a joint venture, attach letterhead or other documentation proving relationship.)*

The undersigned intends to perform work with the above BID/ITN or project as *(check one)*

☐ Subcontractor ☐ Manufacturer ☐ Supplier

The undersigned is:

☐ Certified with the School District of Palm Beach County M/WBE Coordinator  
☐ Certified with the State of Florida, Department of General Services

The undersigned is *(check only one in each applicable column)*:

**COLUMN 1**

**COLUMN 2**

**COLUMN 3**

☐ American Indian/Alaskan Native  
☐ Asian/Pacific Islander  
☐ Black, Non-Hispanic  
☐ Hispanic  
☐ Multiracial  
☐ White, Non-Hispanic

☐ Physically Disabled

☐ Female  
☐ Male

**PARTICIPATION:** The undersigned intends to perform the following work in connection with the above project.

ITEM NO.	CONTRACT (TRADE) ITEMS	AMOUNT

Name of MWBE Subcontracting Firm \_\_\_\_\_

Name and Position (type or print) \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

3300 FOREST HILL BOULEVARD, A-323 • WEST PALM BEACH, FLORIDA 33406-5813 • (561) 434-8506

## Minority Women Business Enterprise (M/WBE) Subcontractor Participation Summary

**Total Bid (Base and Alternatives)**

Those Subcontractors represented to me as M/WBE Certified by the M/WBE Coordinator are noted. Also noted are those Subcontractors not presently certified but representing themselves as M/WBE qualified for certification. For those Subcontractors, an identification Statement is attached to their Letter of Intent (PBSD 1525).

[illegible]

Total M/WBE Subcontractor Participation	\$
Percentage of Total Bid (Base & Alternates)	%

Name and Position (type or print) \_\_\_\_\_

DATE \_\_\_\_\_

## DRUG-FREE WORKPLACE CERTIFICATION

Preference must be given to vendors submitting a certification with their ITN/information package certifying they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. This requirement affects all public entities of the State and becomes effective January 1, 1991. The special condition is as follows:

IDENTICAL TIE ITN/BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

---

COMPANY NAME

---

VENDOR'S SIGNATURE

**ATTACHMENT D**

**Must be executed and returned with attached bid at time of bid opening to be considered.**

PBSD 0580 New 3/91

Project: COMMUNICATIONS TOWER LEASE AT WESTERN PINES MIDDLE SCHOOL ITN No. ITN-05C-002R

**INVITATION TO NEGOTIATE NO. ITN-05C-002R**

Corporation Name: \_\_\_\_\_ Tax FEIN Number: \_\_\_\_\_

**BENEFICIAL INTEREST AND DISCLOSURE OF OWNERSHIP AFFIDAVIT**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, personally appeared, \_\_\_\_\_, ("Corporate Representative") this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, who, first being duly sworn, as required by law, subject to the penalties prescribed for perjury, deposes and says:

- 1) Corporate Representative has read the contents of this Affidavit, has actual knowledge of the facts contained herein, and states that the facts contained herein are true, correct, and complete.
- 2) The following is a list of every "person" (as defined in Section 1.01(3), Florida Statutes to include individuals, children, firms, associates, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups and combinations) holding 5% or more of the beneficial interest in the disclosing entity: (If more space is needed, attach separate sheet)

**A. Persons or corporate entities owning 5% or more:**

Name	Address	Percentage

**B. Persons or corporate entities who hold by proxy the voting power of 5% or more:**

Name	Address	Percentage

**C. Stock held for others and for whom held:**

Name	Address	Percentage
For Whom Held		
For Whom Held		

**CORPORATE REPRESENTATIVE BY:** \_\_\_\_\_

SWORN TO and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_. Such person(s). (Notary Public must check applicable box):

[ ] is/are personally known to me. [ ] produced a current driver license(s). [ ] produced \_\_\_\_\_ as identification.

(NOTARY PUBLIC SEAL)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Print, Type or Stamp Name of Notary Public)

**STATEMENT OF NO RESPONSE**

If you are not responding on this service/commodity, please complete and return this form to: **Department of Purchasing, School District of Palm Beach County, 3300 Forest Hill Boulevard, West Palm Beach, FL 33406-5813.** (Please print or type, except signature)

Failure to respond may result in deletion of vendor's name from the qualified bidder's list for the School District of Palm Beach County.

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

We, the undersigned, have declined to respond on your ITN No. **ITN-05C-002R for COMMUNICATIONS TOWER LEASE AT WESTERN PINES MIDDLE SCHOOL** because of the following reasons:

\_\_\_\_\_ We do not offer this product or the equivalent.

\_\_\_\_\_ Insufficient time to respond to the invitation to respond.

\_\_\_\_\_ Remove our name from this commodity list only.

\_\_\_\_\_ Our product schedule would not permit us to perform.

\_\_\_\_\_ Unable to meet bond requirements.

\_\_\_\_\_ Other. (Specify below)

REMARKS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

SAMPLE CONTRACT

**ATTACHMENT F**

**CONTRACT BETWEEN**

**THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA**

**AND**

\_\_\_\_\_

This contract entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, between THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a political subdivision of the state of Florida, (hereinafter referred to as the "School Board") and \_\_\_\_\_, located at \_\_\_\_\_, (hereinafter referred to as the "Contractor") to construct, install, operate and maintain a communications tower and attendant facilities on a designated portion of the Western Pines Middle School campus, for the School District of Palm Beach County, Florida (the District).

**SECTION I - Term of Contract**

This contract shall be for the period beginning \_\_\_\_\_, 200\_\_ through \_\_\_\_\_, 200\_\_. The contract may be renewed for two additional five-year periods at the annual anniversary date. The contract will not extend beyond the \_\_\_\_\_ year.

**SECTION II – Services**

The Contractor shall provide construction, installation, operation and maintenance of a communications tower and attendant facilities per specifications in ITN NO. ITN-05C-002R and the corresponding information package submitted by the Contractor, which by reference herein becomes part of this contract. All addenda issued to ITN NO. ITN-05C-002R, if any, are also made a part of this contract.

INVITATION TO NEGOTIATE NO. ITN-05C-002R

SECTION III – Commission

The Contractor shall pay for services as listed in the ITN and awarded for COMMUNICATIONS TOWER LEASE AT WESTERN PINES MIDDLE SCHOOL for the School Board of Palm Beach County. In addition, commission of \_\_\_\_\_ shall be paid to the District \_\_\_\_\_ (see lease agreement also attached)

SECTION IV - Terms and Conditions

The Contractor shall have the option to terminate the contract upon written notice to the authorized representative of the School Board. Such notice must be received at least 90 days prior to the effective date of termination. The School Board shall have the option to terminate the contract without cause upon written notice to the authorized representative of the Contractor. Such notice must be received at least 30 days prior to the effective date of termination and the Contractor shall only be entitled to compensation up to the date of termination. The Contractor shall not be entitled to lost profits.

Early termination of the contract by the Contractor may prohibit the Contractor from submitting information packages for a period of three years from the date of completion of the contract. The School Board shall establish the expiration date of the contract for use thereof.

There shall be no assignment of the contract or compensation to be derived therefrom by the Contractor.

Included in this Agreement are the terms and conditions as described in the INVITATION TO NEGOTIATE, ITN NO. ITN-05C-002R, which are incorporated by reference herein and made a part hereof.

SECTION V – Indemnification/ Hold Harmless Agreement

Awarded respondents/bidders shall, in addition to any other obligation to indemnify the Palm Beach County School District and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School District, their agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged;



INVITATION TO NEGOTIATE NO. ITN-05C-002R

- A. bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of the contractor, subcontractor, anyone directly or indirectly employed by any of them, of anyone for whose acts any of them may be liable in the performance of the work; or
- B. violation of law, statute, ordinance, governmental administration order, rule or regulation by contractor in the performance of the work; or
- C. liens, claims or actions made by the contractor or any subcontractor or other party performing the work.

The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for the contractor of any subcontractor under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar.

This article will survive the termination of this contract.

**SECTION VI - Insurance**

Insurance will be required as stated in ITN NO. ITN-05C-002R. The School Board of Palm Beach County shall be named as additional insured.

**SECTION VII - Amendment**

This contract shall only be amended or modified in writing executed by both parties.

**SECTION VIII - Strict Performance**

The failure of either party to insist on strict performance of any covenant or conditions herein shall not be construed as a waiver of such covenants or conditions for any instance.

This contract shall be construed in accordance with the laws of the State of Florida.

If any litigation shall result from this agreement, venue shall lie in Palm Beach County, Florida.

This agreement shall not be construed against the party who drafted the same as both parties have had experts of their choosing review the same.

This agreement is binding on the parties hereto, their heirs, successor and/or assigns.

Section IX

Should either party breach this agreement, the non-breaching party shall be entitled to all remedies as provided by law and equity.

In witness whereof, this contract has been executed on the day and year first above written.

(CONTRACTOR NAME)

THE SCHOOL BOARD OF PALM BEACH COUNTY,  
FLORIDA

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Thomas E. Lynch, Chairman

WITNESS: \_\_\_\_\_

\_\_\_\_\_  
Date

WITNESS: \_\_\_\_\_

Attest: \_\_\_\_\_  
Arthur C. Johnson, Ph.D., Superintendent

Reviewed and Approved for Form and Legal Sufficiency:

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Attorney

# **SAMPLE DOCUMENT**

**SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA**

**LEASE AGREEMENT**

**between**

**SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA**

**(School Board)**

**and**

\_\_\_\_\_  
d/b/a \_\_\_\_\_

**(Tenant)**

LEASE AGREEMENT

**THIS LEASE** made and entered into, by and between SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a corporate body politic, existing under the laws of the State of Florida, hereinafter referred to as "School Board" and \_\_\_\_\_, a \_\_\_\_\_, doing business as \_\_\_\_\_ (EIN#: \_\_\_\_\_); hereinafter referred to as "Tenant."

**RECITALS:**

**WHEREAS**, School Board is the owner of certain real property situated in Palm Beach County, Florida, located at \_\_\_\_\_ upon which is situated the \_\_\_\_\_ School, which property is legally described in Exhibit "A" attached hereto (hereinafter "the School"); and

**WHEREAS**, Tenant was selected as the highest and best bidder for a lease granting Tenant the right to construct, install, operate and maintain its communications equipment within an Equipment Storage Facility ("Equipment Storage Facility") and communications tower ("Tower") to be constructed on the site by Tenant; the Equipment Storage Facility and Tower are hereinafter collectively referred to as the "Improvements" and depicted in Exhibit "B" attached hereto; and

**WHEREAS**, Tenant hereby agrees to construct the Improvements and has requested a lease to occupy a user space within the Equipment Storage Facility and the footprint of the Tower legally described in Exhibit "C" attached hereto and in accordance with the equipment locations and architectural elevations described and identified in Exhibit "D" attached hereto (the user space within the Equipment Storage Facility and footprint of the Tower are hereinafter collectively referred to as the "Leased Premises"); and

**WHEREAS**, Tenant will be able to better serve the public in providing mobile cellular service in the general area and School Board will benefit as a result of such improved service and by receiving annual rent revenues.

**WITNESSETH:**

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

**ARTICLE I**  
**BASIC LEASE PROVISIONS**

**Section 1.01 Terms and Conditions.** The School Board hereby grants to Tenant the right to and Tenant shall be obligated to construct the Equipment Storage Facility and Tower not to exceed xxx feet (xxx') in height as depicted on Exhibit "D" attached hereto and made a part hereof for installation of its communications equipment, the component parts of which are set forth in Exhibit "D", said communications equipment being hereinafter referred to as the "Communications Equipment", in the locations indicated on Exhibit "D", attached hereto. Tenant shall have the right to install, operate and maintain the Communications Equipment for the purpose of providing mobile telephone service to the public, in accordance with the specific terms and conditions hereinafter set forth. Tenant shall install the Communications Equipment, in the locations and in the manner identified in Exhibit "D" attached hereto. In addition, Tenant shall be allowed, subject to the provisions of Section 3.01

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

(a), to install and maintain underground wires, cables, conduits and pipes connecting the component parts of Tenant's Communications Equipment and running from Tenant's Communications Equipment to telephone service and electrical power sources ("Cabling Space"). Tenant shall construct the Equipment Storage Facility and Tower at its sole cost and expense. The Equipment Storage Facility shall contain three (3) separate user spaces. Tenant shall occupy one (1) user space; the other two (2) user spaces may be used by School Board (at no charge) or leased by School Board to other users under separate lease agreements to be issued by School Board. School Board shall be entitled to retain all rents from such separate leases. Tenant specifically acknowledges that the rights granted hereby are non-exclusive and that School Board reserves the right to utilize the Tower and Equipment Storage Facility without constraint or interruption by Tenant and to grant additional parties the right to utilize any portion of the Tower and Equipment Storage Facility that in School Board's sole discretion it deems appropriate, subject to the non-interference provisions in Section 4.02 below.

**Section 1.02 Length of Term and Commencement Date.** The term of this Lease shall commence upon the date of execution by all the parties hereto (the "Commencement Date") and shall extend for a term of ten (10) years thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Lease or extended pursuant to Section 1.03.

**Section 1.03 Option to Extend Term of Lease.** Provided that Tenant is not in default under the terms of this Lease Agreement, Tenant shall have the option of extending this Lease for two (2) successive period(s) of five (5) year(s) each under the same terms and conditions of this Lease. Tenant shall exercise such options by delivering written notice of Tenant's exercise of such options to School Board at least ninety (90) days but not more than one hundred fifty (150) days prior to expiration of the then current term. Failure of Tenant to duly and timely exercise its option to renew this Lease shall be deemed a waiver of Tenant's right to said option and all further options. Notwithstanding the rights granted to Tenant under this Section 1.03, School Board may, at any time after the fifteenth anniversary of the Commencement Date, terminate this Lease, with or without cause, upon sixty (60) days prior written notice to Tenant; in this event, the parties shall be relieved of all further obligations under this Lease. Rent shall be adjusted by mutual agreement of the parties at the beginning of each optional renewal term, however, it shall not be less than 105% of the previous year's Rent. In the event that the parties are unable to mutually agree on the Rent due during the either of the optional renewal terms, this Lease shall terminate upon the expiration of the current Term.

**Section 1.04 Acceptance by Tenant.** Tenant certifies that Tenant has inspected the Leased Premises upon which the Improvements will be constructed and accepts same "As Is," in its existing condition, as of the Commencement Date of this Lease, together with all defects, latent or patent, if any, and subject to all easements, encumbrances and restrictions and matters of record, including but not limited to the Memorandum of Series 1996A Ground Lease and Memorandum of Series 1996A Assignment Agreement between the School Board of Palm Beach County, Florida and Palm Beach County School Board Leasing Corp., which encumbers the School ("COPs Ground Lease"). School Board shall attempt, in good faith, to have the COPs Ground Leases subordinated to Tenant's interest in this Lease prior to the Rental Commencement Date as set forth in this Lease. In the event School Board is unable to obtain such a subordination prior to the Rental Commencement Date, the Tenant shall have the option of: (1) accepting the Lease interest subject and subordinate to the COPs Ground Lease; or (2) extending the Rental Commencement Date, for a period of up to ninety (90) days; or (3) terminating this Lease, and thereupon the Tenant and School Board shall be released of all further obligations under this Lease. Tenant further acknowledges that the School Board has made no warranties or representations of any nature whatsoever regarding the School, Improvements or Leased Premises including, without limitation, any relating to the physical condition thereof or of any improvements located therein, or the suitability of the

## INVITATION TO NEGOTIATE NO. ITN-05C-002R

School, Improvements or Leased Premises for Tenant's intended use thereof. School Board shall not be required to perform any repair work, alterations, or remodeling of the School, Improvements or Leased Premises as a condition of this Lease.

**Section 1.05 Inability to Operate.** In the event Tenant (i) is unable to obtain or maintain in full force and effect through no fault of Tenant, any permit, license or other governmental approval necessary or required for the continued operation of Tenant's Communications Equipment, or (ii) is unable to obtain the coverage required to service Tenant's customers due to construction of improvements upon the surrounding property which interferes with the provision of such service, or (iii) is unable to properly maintain its signal and Tenant can prove that such inability results from interference with a signal emanating from an off-site location, Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice to School Board. In the event of such termination, the Annual Rent shall be prorated to the date of termination and School Board shall refund any balance owing to Tenant upon demand. Thereafter the parties shall be relieved of all further obligation arising subsequent to the date of such termination.

## **ARTICLE II RENT**

**Section 2.01 Annual Rent.** Commencing upon the Rental Commencement Date as hereinafter defined, and the second and each subsequent anniversary thereof during the entire Term of this Lease, Tenant shall pay School Board an annual net rental of \_\_\_\_\_ and no/100 Dollars (\$\_\_\_\_\_) (the "Annual Rent"). Tenant's obligation to pay rent hereunder shall commence upon the date (the "Rental Commencement Date") which is the earlier of the following to occur: a) issuance of a building permit for the construction of the Equipment Storage Facility and Tower; or b) ninety (90) days following the Commencement Date. The parties shall acknowledge the Rental Commencement Date by separate Memorandum. Rent in the amount of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) for the first two (2) years of this Lease shall be payable in advance without notice, demand, deduction or setoff whatsoever within ninety (90) days of the Rental Commencement Date; in addition, Tenant shall make a one-time total capital contribution of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) which sum may be spent at the discretion of the School for the benefit of the School. This amount shall be included with Tenant's initial rental payment. Rent shall be made payable to the School Board and shall be delivered to the Real Estate Services Department, B246, West Palm Beach, Florida 33406. This Lease shall be what is commonly referred to as "triple net" to School Board, it being understood by the parties that School Board shall receive the rent payable hereunder free and clear of any and all impositions, taxes, liens, charges, and expenses of any nature whatsoever relating to this Lease or ownership or operation of the Improvements, Leased Premises or Communications Equipment, including without limitation those relating to taxes, if any, insurance, repair, maintenance, use, care, or operation.

**Section 2.02 Adjustment to Annual Rent.** Upon the second anniversary of the Rental Commencement Date (hereinafter referred to as the "Adjustment Date") and upon each anniversary of the Adjustment Date thereafter during the Term of this Lease or any renewal hereof, the Annual Rent shall be adjusted as hereinafter set forth in accordance with any increase in the Consumer Price Index for All Urban Consumers, All Items, U.S. City average (1982-1984=100) issued by the Bureau of Statistics of the U.S. Department of Labor hereinafter referred to as "C.P.I.". On the Adjustment Date, the annual gross rent payable for the then current Annual Rent shall be adjusted by multiplying the same by a fraction, the numerator of which shall be the CPI value for the month which is sixty (60) days prior to the Adjustment Date, and, the denominator of which shall be the CPI value for the month of the preceding year which is the month sixty (60) days prior to the Rental Commencement Date. In no event shall the annual Gross Rent after adjustment be less than One Hundred Five Percent (105%) of the annual Gross Rent for the

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immediately preceding period. In the event that during the Term of this Lease the CPI ceases to be published, or if a substantial change is made in the method of establishing or computing the CPI, then the determination of the adjustment in the annual Gross Rent shall be made with the use of such conversion factor, formula or table as may be published by the Bureau of Labor Statistics, or if none is available, by any other nationally recognized publisher of similar information chosen by the School Board.

**Section 2.03 Additional Rent.** Any and all sums of money or charges required to be paid by Tenant under this Lease other than the Annual Rent shall be considered "Additional Rent," whether or not the same is specifically so designated and School Board shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to School Board relating to the Annual Rent.

**Section 2.04 Sales, Use and Rent, Taxes, Assessments, Ad Valorem, Real and Personal Property Taxes.** Tenant shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent even though the applicable statute or ordinance may propose to impose such tax against School Board. Tenant shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Improvements, Leased Premises or Tenant's Communications Equipment, Tenant's leasehold interest or Tenant's Alterations and personal property attributable to Tenant's Lease.

**Section 2.05 Unpaid Fees, Holdover.** In the event Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the maximum rate permitted by law shall accrue against the delinquent payment(s) from the date due until the date payment is received by the School Board. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, School Board shall not be prevented from terminating this Lease for default in the payment of rentals, fees, charges, and payments due to School Board pursuant to this Lease, subject to applicable cure periods set forth in this Lease, or from enforcing any other provisions contained herein or implied by law. In the event Tenant shall holdover, refuse or fail to vacate and relinquish possession of the Leased Premises at the expiration or earlier termination of this Lease, Tenant shall be liable to pay to School Board during the entire period of such holdover, double rental, as provided for in Chapter 83.06, Florida Statutes.

**Section 2.06 Amount of Security Deposit.** Tenant, simultaneously with its execution of this Lease, has deposited with the School Board the sum of Ten Thousand Dollars (\$10,000) (the "Security Deposit"). The Security Deposit may be commingled with other funds of School Board, and School Board, shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Tenant to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Tenant beyond any applicable cure period(s), then the School Board, at its option, may appropriate and apply the Security Deposit, or so much thereof as School Board may deem necessary, to compensate the School Board for all actual loss or damage sustained or suffered by School Board due to such default or failure on the part of Tenant. Should any portion of the Security Deposit be so appropriated and applied by School Board, then Tenant shall, upon the demand from School Board, forthwith remit to School Board a sufficient amount in cash to restore said Security Deposit to the original sum deposited, and Tenant's failure to do so within thirty (30) days after receipt of such demand shall constitute a default of this Lease. At the expiration of this Lease, provided Tenant is not then in default of any terms, covenants, and conditions of this Lease and

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Tenant has paid all sums payable by Tenant to School Board hereunder, the Security Deposit shall be returned in full to Tenant within thirty (30) days of such expiration.

**Section 2.07. Transfer of Deposit.** School Board may deliver the Security Deposit to the purchaser of School Board's interest in the Leased Premises, in the event that such interest shall be sold, and thereupon School Board shall be discharged from any further liability with respect to such Security Deposit and this Lease.

**Section 2.08. Accord and Satisfaction.** In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The School Board may accept any check or payment without prejudice to School Board's right to recover the balance due or to pursue any other remedy available to School Board pursuant to this Lease or under the law.

### **ARTICLE III INSTALLATION OF COMMUNICATIONS EQUIPMENT**

#### **Section 3.01. Tenant's Work.**

(a) **Initial Installation.** Attached hereto as Exhibit "D" and "E" are exhibits describing the Equipment Storage Facility, Tower and Communications Equipment and conceptual plans and specifications for the proposed installation thereof by Tenant (such conceptual plans and specifications to reflect at a minimum Tenant's requirements regarding the number and location of antennas, equipment, cabling and cable runs, power, and backup power). Prior to commencing construction of the Equipment Storage Facility and Tower and installation of the Communications Equipment, Tenant shall submit detailed plans and specifications for the construction and installation of the Equipment Storage Facility, Tower, and Communications Equipment to the Real Estate Services Department of School Board for written approval prior to submission for building permits. Upon approval by School Board, the detailed plans and specifications approved by School Board shall be referred to as the "Approved Plans".

(b) **Alterations.** Tenant shall not at any time construct or install any additional antennas or equipment or make any improvements, additions, modifications or alterations other than those approved by School Board pursuant to Section 3.01(a) hereof without the prior written consent of School Board, which consent may be withheld in the sole discretion of School Board. Notwithstanding the foregoing, Tenant acknowledges that the condition of the Improvements and Leased Premises, and the compatibility of Tenant's Communications Equipment therewith is a major factor in School Board's review and approval of Tenant's initial Communications Equipment and that School Board shall have sole and exclusive discretion in approving or denying the installation of additional communications equipment or modification of the existing Communications Equipment based solely on aesthetics. In the event Tenant proposes to construct any installation, alteration, improvement, or modification of its antennas or equipment other than those permitted by the Approved Plans, Tenant shall submit to School Board conceptual plans and specifications for such proposed antennas and/or equipment (the "Alterations"). In the event School Board approves such Alterations, Tenant shall prepare and submit to School Board for approval detailed plans as required by Section 3.01(a) and otherwise comply with the terms of this Article III. All Alterations, including improvements, additions and modifications constructed by Tenant shall be deemed a part of the Communications Equipment, and, upon expiration or earlier termination of this Lease, shall, at the sole discretion of the School Board, be removed by Tenant and Tenant shall repair any damage caused by the installation, use, maintenance or removal of the Communications Equipment and Alterations, using



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materials of like kind and quality. If Tenant is required to remove the Tower, Tenant shall remove the foundation one foot (1') below grade. At the option of School Board, upon expiration or earlier termination of this Lease, Tenant shall leave the Equipment Storage Facility, Tower, improvements, additions and Alterations.

(c) **Governmental Approval.** Tenant shall obtain, at Tenant's sole cost and expense, all other approvals, including but not limited to School Board, state and federal permits and consents necessary for construction of the Equipment Storage Facility and Tower, and, installation of Tenant's Communications Equipment and shall further be responsible for all conditions which may be imposed in connection with such approvals. Tenant acknowledges that School Board's approval of the conceptual and detailed design and construction plans as aforesaid is for consistency with the terms, conditions and intent of this Lease only and in no way constitutes regulatory approval by the School Board thereof. Tenant also acknowledges that it will not use this Lease, or the requirements of this Lease, as a basis for argument that Tenant should be relieved of, or have modified conditions and/or interpretations of any regulatory requirements. Nothing contained herein shall be construed to alter, limit or eliminate the obligation of the parties to comply with applicable ordinances, statutes and laws relating to such approvals. School Board's Chief of Facilities Management ("CFM") shall execute such applications and/or consents as may be reasonably required to facilitate the issuance of permits and approvals for the Equipment Storage Facility, Tower and Tenant's installation of the Communications Equipment.

(d) **General Installation Guidelines.** All work performed by Tenant pursuant to this Lease shall be performed by Tenant at Tenant's sole cost and expense, shall be performed only by duly licensed contractors specializing in such work, shall be performed in a good and workmanlike manner and shall be diligently prosecuted to completion substantially in accordance with the plans and specifications attached hereto as Exhibits "D" and "E" and the Approved Plans, and all applicable governmental laws, regulations, rules, codes and orders. Tenant, its contractors, subcontractors, laborers, material men, suppliers and professionals shall exercise diligent care and caution in the installation, construction, maintenance, and repair of the Communications Equipment or any appurtenances thereto, in order to avoid damage to the School and School Board's improvements. In the event of such damage, Tenant shall promptly repair said damage using materials of like kind and quality, restoring it to its condition prior to damage by Tenant, at Tenant's sole cost and expense. Notwithstanding anything in this Lease to the contrary, Tenant shall have the right at any time during the Term of this Lease to make routine and necessary repairs (including replacements if necessary) to Tenant's Communications Equipment. Tenant agrees and acknowledges that all work performed by Tenant pursuant to this Lease is performed and accomplished solely for the benefit and convenience of Tenant and not for the benefit of School Board, such work being nonetheless subject to each and every provision of this Lease and shall be performed to the satisfaction of School Board. Additionally, all such work shall be performed in a manner which avoids damage to other communication users in the Equipment Storage Facility or on the Tower.

(e) **Construction Bonds.** Tenant shall ensure that construction of the Equipment Storage Facility and Tower and installation of the Communications Equipment and Alterations, and any other work performed by Tenant at the Leased Premises, is performed to completion in accordance with the Approved Plans and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, material men, suppliers and professionals, are paid in full for such services and materials. Tenant, at its sole cost and expense, shall cause to be made, executed and delivered to School Board prior to commencement of any improvements, a bond, drawn in a form and issued by a company approved by School Board in the amount of \$XXX, guaranteeing compliance by Tenant of its obligations arising under this Section 3.01(e).

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(f) **Contractor Requirements.** Tenant shall also require contractors to furnish School Board a payment and performance bond for the benefit of School Board equal to the cost of the Improvements and in the form required under Section 255.05, Florida Statutes. Tenant shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of School Board endorsed thereon, in such amounts and in such manner as School Board may reasonably require. School Board may require additional insurance for any alterations or improvements approved hereunder, in such amount as School Board reasonably determines to be necessary.

(g) **No Liens.** Tenant covenants and agrees that nothing contained in this Lease shall be construed as consent by School Board to subject the estate of School Board to liability under the Construction Lien Law of the State of Florida, it being expressly understood that School Board's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by School Board, Tenant shall file a notice satisfactory to School Board in the Public Records of Palm Beach County, Florida stating that School Board's interest shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within ten (10) days from the date Tenant received notice of such filing. In the event that Tenant fails to satisfy or transfer such claim within said ten (10) day period, School Board may do so and thereafter charge Tenant, and Tenant shall promptly pay to School Board upon demand, as Additional Rent, all costs incurred by School Board in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Tenant agrees to indemnify, defend, and save School Board harmless from and against any damage or loss incurred by School Board as a result of any such construction lien.

### **ARTICLE IV CONDUCT OF BUSINESS AND USE OF BY TENANT**

**Section 4.01 Use.** Tenant shall exercise the rights granted hereunder solely and exclusively for installation, operation and maintenance of the Equipment Storage Facility, Tower and Communications Equipment. The frequencies to be utilized at the Leased Premises by Tenant are set forth in Exhibit "F" attached hereto (hereinafter the "Frequencies"). Tenant shall not utilize any frequencies at the Leased Premises not designated on such exhibit for Tenant's use without the prior written consent of School Board, which shall not be unreasonably withheld and shall be subject to the provisions of Section 4.02 hereof. Tenant shall not use, or suffer the use of the Leased Premises for any other use, business, or purpose other than those specifically permitted hereby. School Board reserves the right to use the Tower, at no charge to School Board, so long as School Board does not interfere with Tenant or any other communication user as set forth in Section 4.02 below.

**Section 4.02 Interference.** The parties mutually agree not to cause any interference with the communications equipment of the other party or any third party using the Equipment Storage Facility or Tower for purposes of operating communications equipment ("Third Party Communications User"), and agree not to utilize or otherwise interfere with a frequency not allocated to such party on Exhibit "F" of this Lease (or in the case of a Third Party Communications User, a frequency not allocated to such party in its agreement with School Board), as the same may be amended from time to time. School Board, Tenant and Third Party Communications Users are collectively referred to herein as "Communications Users". No Communications User shall modify its communications equipment, including, without limitation, any

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antenna or associated combined multicoupler, cross band couplers, or other components of said party's receive and transmit antenna systems, in a manner which reduces either the reception capacity or transmission capability of the communications equipment of any other Communications User. For purposes of this Section 4.02, which shall be referred to herein as the "Interference Provision", a Communications User will be deemed an "Interfering Party" if it introduces any activity or change, modification, or addition to its communications equipment, or its use of the Equipment Storage Facility or Tower or power supply, that interferes with the then existing communications equipment or effective operation thereof of any other Communications User ("Affected Communications User"), or otherwise interferes with a frequency not allocated to such party on Exhibit "F" of this Lease (or in the case of a Third Party Communications User, a frequency not allocated to such party in its agreement with School Board), as the same is amended from time to time. In the event of any such interference, the Interfering Party, upon receipt of written notice of a violation of the Interference Provision ("Interference Notice"), shall immediately take all steps necessary at its sole cost to correct and eliminate such interference and to cause its communications equipment to operate within its designated frequencies. In the event the Interfering Party is unable to cure such interference within forty-eight (48) hours after receipt of an Interference Notice, the Interfering Party shall immediately shut down power to its communications equipment causing the interference, or otherwise stop the activity causing the interference, until such time as the interference has been cured to the reasonable satisfaction of the Affected Communications User(s); provided, however, after expiration of the initial forty-eight (48) hours, the Interfering Party shall be allowed to temporarily turn on power to the communications equipment which caused the interference for intermittent testing purposes only. The Interfering Party's failure to comply with this Interference Provision shall constitute a material default under this Lease (or in the case of a Third Party Communications User, under its agreement with School Board). Prior to installation of any communications equipment in the Equipment Storage Facility or Tower utilizing a frequency other than identified in Exhibit "F" of this Lease (or in the case of a Third Party Communications User as identified in its agreement with School Board), the party proposing such installation shall obtain at its sole cost and expense an intermodulation study performed by a licensed engineer to determine the compatibility of the communications equipment to be installed and frequencies to be utilized with the communications equipment then existing in the Equipment Storage Facility or Tower and the frequencies allocated to any Communications Users other than the party proposing such installation. Copies of said intermodulation studies shall be provided to all Communications Users not less than sixty (60) days prior to installation of the communications equipment utilizing such additional frequencies. Any Communications User shall be entitled to respond with any comments or objections they may have with respect to the proposed installation within thirty (30) days of receipt of the intermodulation study. The failure to timely respond with objections to the proposed installation will operate as an absolute waiver of the right to subsequently object to the frequencies and equipment identified in the intermodulation study. In the event the intermodulation study indicates that said communications equipment will interfere or is likely to interfere with a then existing Communications User's communications equipment or any of the equipment identified in a Communications User's agreement with School Board and/or the frequencies identified in Exhibit "F" of this Lease (or in the case of a Third Party Communications User, as identified in its agreement with School Board), or any communications equipment then being operated at the Equipment Storage Facility or Tower, then such party shall not proceed with said installation unless a plan to mitigate the interference is agreed upon by the Affected Communications User(s). Upon receipt of the intermodulation study evidencing that the additional communications equipment/frequencies will not cause interference and expiration of the time-frame for responding with objections, or having received objections, upon satisfactory resolution of those objections, this Lease (or in the case of a Third Party Communications User, its agreement with School Board) will be revised by School Board, in the form of an amendment to such Communications Users' agreement with School Board and submitted to all such parties for execution, which execution shall not be unreasonably delayed or withheld. Notwithstanding anything contained in Article XII to the contrary, violation by a

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Communications User of the provisions of this Interference Provision (provided this Interference Provision is included in such Communications Users' agreement with School Board) shall constitute an immediate event of default under its agreement with School Board enforceable in equity by injunction and/or specific performance. School Board hereby agrees to include the provisions of this Interference Provision in any future agreement granting Third Party Communications Users the right to install communications equipment on or within the Equipment Storage Facility and Tower and Tenant shall be deemed a third party beneficiary of said provisions and shall have the same rights to enforce said provisions as School Board, at Tenant's sole cost and expense. School Board shall have no liability or obligation to Tenant to seek to enforce the terms of this Interference Provision against any Third Party Communications User (other than to include this Interference Provision in any future agreements with Third Party Communications Users) and Tenant releases School Board from and waives any and all claims against School Board with respect thereto (except that this release and waiver shall not apply in the event of School Board's failure to include this Interference Provision in any future Third Party Communications User's agreement with School Board) and agrees to pursue enforcement of this Interference Provision directly against such Third Party Communications User as a result of being a third party beneficiary, without joinder of or naming School Board as a party to any such proceeding, unless required to do so by a court of competent jurisdiction. Tenant hereby acknowledges and agrees that Third Party Communications Users shall be deemed to be third party beneficiaries hereof entitled to enforce the provisions of this Interference Provision directly against Tenant. In the event of interference with another party's use of the Equipment Storage Facility or Tower unrelated to the operation of Communications Equipment, the interfering party shall take immediate steps to remedy the interference. Nothing contained in this Interference Provision shall be construed to alter Tenant's obligation to obtain School Board's approval pursuant to Article III of any equipment installations, improvements or alterations.

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

**Section 4.04 Governmental Regulations.** Tenant shall, at Tenant's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all School Board, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to Tenant's use of the School, Leased Premises, or the Improvements generally. Tenant shall indemnify, defend and save School Board harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section, unless Tenant's failure results from the acts or omissions of School Board or its agents, employees or contractors.

**Section 4.05 Non-Discrimination.** Tenant shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and School Board's Policy No. 7.081, and shall not discriminate against any individual on the basis of their religion, race, national origin, color, sex, marital status, parental status or handicap with respect to any activity occurring under this Lease.

**Section 4.06 Surrender.** Upon termination or expiration of this Lease, Tenant, at its sole cost and expense shall remove the Communications Equipment and Tenant's personal property, removable fixtures, equipment and Alterations from the Equipment Storage Facility and Tower and shall repair any damage

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caused by the installation, use, maintenance or removal of the same, using materials of like kind and quality. In accordance with Section 16.22 below, upon termination or expiration of this Lease, School Board has the right to require Tenant to remove the Equipment Storage Facility and/or Tower.

**Section 4.07 Hazardous Substance.** For purposes hereof, "Hazardous Materials" shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions. "Disposal" shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Tenant shall not use, maintain, store or dispose of any Hazardous Materials, chemicals or other agents used or produced in Tenant's operations, at the Leased Premises, in any manner not permitted by Environmental Laws. Furthermore, Tenant shall not cause or permit the disposal of Hazardous Materials upon the School or Leased Premises or upon adjacent lands and shall operate and occupy the Leased Premises in compliance with all Environmental Laws.

Any disposal of a Hazardous Material, whether by Tenant or any third party, shall be reported to School Board immediately upon the knowledge thereof by Tenant. Tenant shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Leased Premises, or emanating from the Leased Premises, or onto adjacent lands, as a result of Tenant's, or Tenant's agents, contractors or employees exercise of the rights granted by this Lease.

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

Tenant acknowledges that School Board would not have entered into this Lease without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive the expiration or termination of this Lease.

## ARTICLE V REPAIRS AND MAINTENANCE

**Section 5.01 Responsibility of Tenant.** Tenant shall keep and maintain the Leased Premises, Communications Equipment, the Improvements, and all Alterations, in good condition and repair and in a clean condition, free of refuse, trash, and rubbish, at Tenant's sole cost and expense. Tenant shall be responsible for any repairs caused by the negligent or intentional acts of Tenant or Tenant's employees, agents, or contractors. School Board shall have sole discretion to determine when and what maintenance, repairs and/or renovations Tenant shall perform. Tenant shall provide School Board and other users with sixty (60) days advance notice of any such work which may reasonably be foreseen by Tenant to impact Tenant's, School Board's or other users' operations at the Leased Premises. The notice required under this Section shall describe in detail the type of work to be performed. Tenant shall cooperate with School Board and other users to devise a plan to permit such work and minimize the impact of such work to School Board and other users. Tenant shall be responsible for all costs associated with preparation of and implementation

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of such plan. Notwithstanding the foregoing, in the event of an emergency, School Board and Tenant shall have no duty to provide such advance notice as a result of undertaking any work necessary as a result of such emergency. For purposes of this Section 5.01, an "emergency" shall be defined as the occurrence of an event that threatens immediate harm to persons or property.

**Section 5.02 School Board's Right to Inspect.** School Board or School Board's agents shall have the right to visually inspect the Improvements, Leased Premises, Communications Equipment and Tenant's Alternations. School Board shall conduct such inspections in a manner that does not unreasonably interfere with or disrupt Tenant's operations.

## ARTICLE VI INSURANCE

**Section 6.01 Insurance.** Tenant shall, at its sole expense, maintain in full force and effect at all times during the life of this Lease, insurance coverages, limits, including endorsements, as described herein. The requirements contained herein, as well as School Board's review or acceptance of insurance maintained by Tenant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under the Lease.

**Section 6.02 Commercial General Liability.** Tenant shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless approved by School Board's Employee Benefits and Risk Management Department. This coverage shall be provided on a primary basis.

**Section 6.03 Business Automobile Liability.** Tenant shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event Tenant does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Tenant to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. This coverage shall be provided on a primary basis.

**Section 6.04 Worker's Compensation Insurance & Employers Liability.** Tenant shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Chapter 440, Florida Statutes. This coverage shall be provided on a primary basis.

**Section 6.05 Additional Insured.** Tenant shall cause School Board to be provided Additional Insured coverage equivalent to that provided by a CG 2026 Additional Insured - Designated Person or Organization endorsement to the Commercial General Liability. This Additional Insured coverage shall extend to the interests of "School Board of Palm Beach County, Florida, a corporate body politic under the laws of the State of Florida, its Officers, Employees and Agents." The Additional Insured endorsements shall provide coverage on a primary basis.

**Section 6.06 Waiver of Subrogation.** Tenant by entering into this Lease, agrees to a Waiver of Subrogation for each required policy; provided, however, School Board acknowledges and agrees that Tenant does not agree to a waiver of subrogation for incidents that arise from the acts or omissions of School Board or its agents, employees or contractors. When required by the insurer, or should a policy condition not permit an Insured to enter into an pre-loss agreement to waive subrogation without an endorsement, then Tenant shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any

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policy, which specifically prohibits such an endorsement, or voids coverage should Tenant enter into such an agreement on a pre-loss basis.

**Section 6.07 Certificate(s) of Insurance.** Immediately following execution of this Lease by Tenant, Tenant shall deliver to School Board a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Lease have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate (s) of Insurance should be mailed to and reference in the "CERTIFICATE HOLDER" box (ACCORD FORM or its equivalent) the following:, Real Estate Services Department, 3300 Forest Hill Boulevard, B246, West Palm Beach, FL 33406.

**Section 6.08 Umbrella or Excess Liability.** If necessary, Tenant may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit of not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The School Board shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

**Section 6.09 Right to Review.** School Board, by and through its Employee Benefits and Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to periodically (i) review, reject or accept any required certificates of insurance, including limits of coverages noted thereon, to the extent said certificates of insurance are not in compliance with this Article VI, and (ii) reasonably adjust the limits of coverage required hereunder from time to time throughout the term of this Lease. School Board further reserves the right, but not the obligation, to review and reject any insurer providing coverage because said insurer fails to maintain a rating of at least "B++" by AM Best rating service or failure to operate legally.

## **ARTICLE VII INDEMNIFICATION OF SCHOOL BOARD**

Tenant shall, in addition to any other obligation to indemnify the School Board, and to the fullest extent permitted by law, protect defend, indemnify and hold harmless the School Board, their agents, officers, elected officials and employees from and against any and all claims, suits, actions, liabilities, losses (including economic losses), and costs arising during the Term of this Lease or any renewal hereof for any actual or alleged bodily injury, sickness, disease or death and/or damage to property, including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of Tenant, or anyone directly or indirectly employed by Tenant, sustained in or about the School, Improvements or Leased Premises, by reason or as a result of the use and occupancy of the School, Improvements, or Leased Premises by the Tenant, its agents, employees, and contractors, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees at trial and on appeal, expenses and liabilities incurred in and about the defense of any such claim. In the event School Board shall be made a party to any litigation commenced against the Tenant as a result of Tenant's use of the School, Improvements or Leased Premises, or by the Tenant against any third party relating to Tenant's use of the School, Improvements or Leased Premises, then Tenant shall indemnify, defend, and hold School Board harmless and pay all costs and attorney's fees incurred by School Board in connection with such litigation, and any appeals thereof. Notwithstanding the foregoing, Tenant shall have no obligation pursuant to the immediately preceding sentence relating to claims or damages that are judicially determined to be solely attributable to School

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Board's negligent or intentional acts or omissions. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for Tenant under workers' compensation acts; disability benefits acts, other employee benefit acts or any statutory bar. Any costs or expenses, including attorney's fees, incurred by the School Board to enforce this agreement shall be borne by Tenant. Tenant recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the School Board in support hereof according to the laws of the State of Florida. This section shall survive the termination of this Lease.

### **ARTICLE VIII DAMAGE OR DESTRUCTION**

In the event the Equipment Storage Facility or Tower are destroyed or so damaged or injured by fire or other casualty during the Term of this Lease or any extension thereof, whereby the same are rendered untenable, in whole or in part, Tenant shall commence restoration thereof within sixty (60) days and thereafter diligently pursue the restoration to completion, or alternatively, School Board may, at its sole option, elect not to allow Tenant restore the Equipment Storage Facility or Tower but to terminate this Lease; in this event, School Board shall retain all insurance proceeds payable on account of such casualty as School Board's sole property. In the event the Communications Equipment, Equipment Storage Facility or Tower are damaged during the Term of this Lease and School Board does not exercise its right to terminate this Lease, Tenant shall promptly commence restoration thereof or alternatively may remove the damaged equipment from the Leased Premises. Notwithstanding anything herein to the contrary, in the event of damage by fire or other casualty that cannot reasonably be expected to be repaired within ninety (90) days following same or, if the Improvements or Leased Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Tenant's operations for more than ninety (90) days, then Tenant may at any time following such fire or other casualty terminate this Lease upon fifteen (15) days written notice to School Board; in this event, School Board shall retain all insurance proceeds payable on account of such casualty as School Board's sole property. Notwithstanding the foregoing, in the event such casualty is caused by the negligent or intentional acts of Tenant or its employees, contractors or agents, Tenant shall not have the right to terminate this Lease and shall be responsible for all costs to remedy the damage caused by such casualty not covered by Tenant's insurance. In the event either School Board or Tenant elects to terminate this Lease, Tenant shall vacate and surrender the area occupied by Tenant as required hereby, whereupon the parties shall be relieved of all further obligations hereunder arising after the date of such termination. The termination herein mentioned shall be evidenced in writing. Annual Rent shall be prorated to the date of any such termination of this Lease and School Board shall refund any balance owing to Tenant promptly upon demand. Termination of this Lease shall not affect Tenant's obligations under this Lease arising prior to such termination.

### **ARTICLE IX ASSIGNMENT AND SUBLETTING**

Tenant may not assign, mortgage, pledge, collaterally assign, or encumber this Lease, in whole or in part, nor sublet or rent all or any portion of the Leased Premises nor grant any easements or enter into any management agreements affecting the Leased Premises, without prior written consent of School Board, which may be granted or withheld at School Board's sole and absolute discretion. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary. Notwithstanding the foregoing or anything in this Lease to the contrary, Tenant may sell, assign, or transfer this Lease or sublet



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the area occupied by Tenant without any approval or consent of School Board to Tenant's principal, affiliates, subsidiaries of its principal or affiliates, or to any entity which acquires all or substantially all of Tenant's assets in the market defined by the Federal Communications Commission in which the School is located by reason of a merger, acquisition, or other business reorganization. School Board may assign, mortgage, pledge, collaterally assign, or encumber this Lease, in whole or in part, without the prior written consent of Tenant.

### **ARTICLE X UTILITIES**

Tenant is responsible for obtaining, and paying for all costs and charges for, all utilities that it may require. Tenant shall construct and install at its sole cost and expense, a separate meter for each user, measuring the consumption of electricity associated with Tenant's/other users' use of the Communications Equipment. The meters shall be in a location which is accessible by School Board. Tenant and other users shall pay the utility provider for their respective utility charges. Tenant shall also be responsible for and pay for exterior lighting of the Equipment Storage Facility. Tenant shall be responsible for all costs incurred by School Board in repairing any damage to the meters and appurtenances caused by the negligent or intentional acts of Tenant or Tenant's employees, agents or contractors, and Tenant shall reimburse School Board for all said costs within thirty (30) days after demand therefore. Said demand shall include an invoice detailing the reasonable repair costs. Notwithstanding anything herein to the contrary, in no event shall School Board be liable for any interruption of power or other utility service to the Leased Premises.

### **ARTICLE XI ACCESS**

Tenant shall have the right to enter upon the Leased Premises at all times twenty-four (24) hours a day, seven (7) days a week in order to gain access to its Communications Equipment. Tenant shall comply with any reasonable security procedures established by School Board to prevent unauthorized access to the Communications Equipment and the School generally. Tenant and School Board shall each designate emergency contact personnel to notify in case of an emergency requiring access to the Communications Equipment.

### **ARTICLE XII DEFAULT**

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

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received by Tenant, in which event this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the three (3) day period and the School Board is so notified, this Lease will continue.

**Section 12.02 Default by School Board.** School Board shall not be in default unless School Board fails to perform obligations required of School Board within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to School Board, specifying wherein School Board has failed to perform such obligations; provided, however, that if the nature of School Board's obligations is such that more than thirty (30) days are required for performance then School Board shall not be in default if School Board commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

### **ARTICLE XIII ANNUAL BUDGETARY FUNDING/CANCELLATION**

This Lease and all obligations of School Board hereunder are subject to and contingent upon annual budgetary funding and appropriations by the School Board.

### **ARTICLE XIV QUIET ENJOYMENT**

**Section 14.01** Upon payment by the Tenant of the Annual Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the rights granted hereunder for the Term hereby demised without hindrance or interruption by School Board or any other person or persons lawfully or equitably claiming by, through or under the School Board, subject, nevertheless, to the terms and conditions of this Lease.

### **ARTICLE XV CONDEMNATION**

If the Leased Premises or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, School Board shall be entitled to the entire award therefore, including, without limitation, any award relating to both Tenant's leasehold estate and School Board's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Tenant. Tenant hereby assigns and relinquishes to School Board all right, title and interest in such award and, upon request, shall execute all documents required to evidence such result. Notwithstanding the foregoing, Tenant shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses and business damages. In the event of a total taking of the Leased Premises, this Lease shall terminate upon the date title vests in the condemning authority. In the event of such termination, the Annual Rent shall be prorated to the date of termination. School Board shall refund any remaining balance to Tenant after Tenant has vacated the Leased Premises and complied with all of its obligations arising hereunder prior to such termination, or as a result of such termination. Thereafter, the parties shall be relieved of all further obligations hereunder. Notwithstanding such termination, Tenant shall remain liable for all matters arising under this Lease prior to such termination. In the event of a partial taking, Annual Rent shall be abated on a pro rata basis. In the event of a temporary taking, Annual Rent shall be abated on a pro rata basis for the period of time Tenant is unable to use the portion of the Leased Premises temporarily

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taken. After such period, Annual Rent shall be restored to the Annual Rent, which would have been then due without regard to such taking. School Board shall have no obligation to restore the Improvements or Leased Premises or improvements or otherwise perform any work upon same as a result of any such taking.

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

### ARTICLE XVI MISCELLANEOUS

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

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

- (a) If to the Tenant at:

\_\_\_\_\_  
d/b/a \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

- (b) If to the School Board at:  
Real Estate Services Department  
Attn.: Director  
3318 Forest Hill Boulevard, B246  
West Palm Beach, FL 33406

with copies to:  
School Board of Palm Beach County, Florida

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Attn.: Chief Counsel  
3318 Forest Hill Boulevard, C302  
West Palm Beach, FL 33406

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

**Section 16.03 Severability.** If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

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

**Section 16.05 Waiver.** The waiver by either party of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by School Board to or of any act by Tenant requiring School Board's consent or approval shall not be deemed to waive or render unnecessary School Board's consent to or approval of any subsequent similar act by Tenant. No waiver of any provision of this Lease shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

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

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

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

**Section 16.09 Time of Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

**Section 16.10 Non-exclusivity of Remedies.** No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by

## **INVITATION TO NEGOTIATE NO. ITN-05C-002R**

statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 16.11 Construction.** No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

**Section 16.12 Effective Date of Agreement.** This Lease is expressly contingent upon the approval of the School Board, and shall become effective only when signed by Tenant duly authorized representatives of the School Board.

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

### **Section 16.14 Intentionally Deleted**

**Section 16.15 Binding Effect.** This Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and assigns.

**Section 16.16 Recording.** Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.

**Section 16.17 Headings.** The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

**Section 16.18 Amendment.** This Lease may be modified and amended only by written instrument executed by the parties hereto.

**Section 16.19 Incorporation by References.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference.

**Section 16.20 Public Entity Crimes.** As provided in Florida Statutes 287.132-133, Tenant hereby certifies that, to its knowledge, neither it, nor its affiliates, agents, contractors, employees, or suppliers who will perform work under this Lease have been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) month period immediately preceding the Commencement Date of the Term of this Lease. This certificate is required pursuant to Florida Statute 287.133(3)(a).

**Section 16.21 Tenant's Property.** School Board agrees and acknowledges that all of the Communications Equipment and personal property of Tenant shall remain the personal property of Tenant, and, upon expiration or earlier termination of this Lease, shall be removed by Tenant and Tenant shall repair any damage caused by the installation, use, maintenance or removal of the same, using materials of like kind and quality.

**Section 16.22 Ownership Of Equipment Storage Facility, Tower And Alterations.** All right, title and interest in and to the Tower, Equipment Storage Facility, Alterations and appurtenances thereto constructed by Tenant, excluding Tenant's Communication Equipment, cables, antennas and personal property, at the option of School Board, shall automatically vest in School Board upon the expiration or earlier termination of this Lease. Tenant shall, at its sole cost and expense, execute and deliver a bill of sale for the Tower, Equipment Storage Facility, Alterations and appurtenances, conveying all of Tenant's interest in same to School Board, prior to the expiration or earlier termination of this Lease. Notwithstanding the foregoing, School Board, at its sole option, may direct Tenant to remove, any or all of, the Equipment Storage Facility, Alterations and appurtenances and Tower upon the expiration or termination of this Lease. If Tenant is required to remove the Tower, Tenant shall remove the foundation one foot (1') below grade.

(The remainder of this page was left blank intentionally)

INVITATION TO NEGOTIATE NO. ITN-05C-002R

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

Signed in the Presence of:

Date of Execution: \_\_\_\_\_

WITNESS:

\_\_\_\_\_  
d/b/a \_\_\_\_\_

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name of witness)

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
(Print Name of Witness)

ATTEST:

SCHOOL BOARD OF PALM BEACH COUNTY,  
FLORIDA, a corporate body  
politic

By: \_\_\_\_\_  
Arthur C. Johnson, Ph.D., Superintendent

By: \_\_\_\_\_  
Thomas E. Lynch, Chairman

(Seal)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
School Board Attorney

**ATTACHMENTS FOR THIS SCHEDULE OF EXHIBITS WILL  
BE DETERMINED AFTER NEGOTIATIONS**

**SCHEDULE OF EXHIBITS**

EXHIBIT "A"	-	LEGAL DESCRIPTION OF SCHOOL
EXHIBIT "B"	-	THE IMPROVEMENTS
EXHIBIT "C"	-	THE LEASED PREMISES
EXHIBIT "D"	-	EQUIPMENT LOCATIONS/ARCHITECTURAL ELEVATIONS
EXHIBIT "E"	-	PHOTO SIMULATIONS
EXHIBIT "F"	-	FREQUENCIES





**INVITATION TO NEGOTIATE COMMISSION SCHEDULE**

**This information must be included in a sealed envelope with your proposal in order to be given consideration.**

Responder: \_\_\_\_\_