

# **Borough of Matawan**

**201 Broad Street, Matawan New Jersey 07747**

**(732) 566-3898**

**(732) 290-7585 Fax**



## **2015 Communication Site Lease Agreement**

## TABLE OF CONTENTS

	<u>Page No.</u>
<u>SECTION A</u> - NOTICE TO BIDDERS	2
<u>SECTION B</u> - BIDDER INFORMATION	5
<u>SECTION C</u> - SITE LEASE AGREEMENT	14
<u>SECTION D</u> - CHECKLIST	28
<u>SECTION E</u> - SPECIFICATIONS	30
<u>SECTION F</u> - FORMS	
1. Non-Collusion Affidavit	33
3. Affirmative Action Acknowledgment	34
4. Ownership Disclosure Statement	37
5. Mandatory Equal Employment Opportunity Language	38
5. Prevailing Wage Statement	40
6. Subcontractor Form	41
7. Acknowledgment of Receipt of Addenda Form	42
<u>SECTION G</u> - PROPOSAL	44

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY  
COMMUNICATIONS SITE LEASE AGREEMENT  
SECTION A  
NOTICE TO BIDDERS**

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**NOTICE TO BIDDERS**

**PUBLIC NOTICE**

Invitations are extended to bidders to bid for the following project:

**COMMUNICATIONS SITE LEASE AGREEMENT**

THE BOROUGH OF MATAWAN will accept bids by mail, recognized overnight carrier or in person for a "Communications Site Lease Agreement" for the rental of a portion of municipally owned property at Block 71, Lot 16, within the Borough of Matawan, New Jersey, until 10:00 a.m. on Thursday, April 23, 2015, at which time all bids will be publicly opened and read aloud. The Borough of Matawan shall not be responsible for any bid mailed which is lost in transit or delivered late by the postal service or recognized overnight carrier. Bids should be submitted in SEALED ENVELOPES, addressed to the Borough Clerk, Borough of Matawan, 201 Broad Street, Matawan, New Jersey 07747 and clearly marked on the outside "Communications Site Lease Agreement".

Contract Documents for the proposed lease are available at the office of the Borough Clerk, Borough of Matawan, 201 Broad Street, Matawan, New Jersey 07747, and may be inspected by prospective bidders during business hours, Monday through Thursday 7:30 AM to 5:00 PM. Bidders will be furnished with a copy of the Contract Documents by request.

After receipt of bids, no bids may be withdrawn within sixty (60) days after the date of the bid opening except as provided for herein. The bid of any bidder who consents to an extension may be held for consideration for a longer period as may be agreed upon between bidder and the Borough of Matawan. Bidders must use and fully complete proposal forms within the specifications and comply with all requirements attached thereto.

The Borough of Matawan reserves the right to reject any or all bids, to waive immaterial informalities, or to accept any bid which, in the opinion of the Borough of Matawan, will be in its best interest, all in accordance with the New Jersey Local Lands and Buildings Law, N.J.S.A. 40A:12-1, et. In the event of an equal or tie bid, the Borough of Matawan shall award the bid to the bidder which, in the Borough's sole discretion, best serves its interest.

The selected bidder or bidders will, within ten (10) business days of award of the bid, enter into a Communications Site Lease Agreement with the Borough of Matawan. Said lease will permit them to co-locate on the Borough water tower ("Water Tower") and locate their associated equipment within a designated ground lease area, as space permits, with each bidder given choice of antenna and equipment location based upon their bid price. Bidder shall be responsible for the design of its installation, as shall be directed and approved by the Borough as a municipal

capital improvement project. All costs of the municipality in relationship to the preparation of approvals of the project are to be borne by the successful bidder.

The Borough of Matawan requires a minimum rental bid of \$31,000 per year. Bidders are required to comply with the requirements of P.L. 1975, c. 127 and the Americans with Disabilities Act.

BY ORDER OF THE BOROUGH OF MATAWAN OF THE COUNTY OF MONMOUTH,  
STATE OF NEW JERSEY.

Karen Wynne, RMC  
Municipal Clerk

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

**SECTION B**

**BIDDERS INFORMATION**

## BIDDERS INFORMATION

### 1. SUBMISSION AND OPENING OF BIDS

Bids shall be submitted at the time and place indicated in the Notice to Bidders enclosed in a sealed envelope, bearing the name and address of the Bidder, addressed to the Borough of Matawan, ATTN.: Karen Wynn, Borough Clerk, 201 Broad Street, Matawan, NJ 07747 and endorsed "Communications Site Lease Agreement". Bids shall be accompanied by the documents required by the Bid Documents. On the date and at the time specified in the Notice to Bidders, the Bids will be publicly opened and, unless obviously non-responsive, read aloud. **NO BIDS WILL BE RECEIVED AFTER THE DATE AND TIME SPECIFIED.**

### 2. BID DOCUMENTS

Bid Documents are available at the office of the Borough Clerk, Borough of Matawan, 201 Broad Street, Matawan, New Jersey 07747, and may be inspected by prospective bidders during business hours, Monday through Thursday from 7:30 AM to 5:00 PM. Bidders will be furnished with a copy of the Contract Documents by request during business hours (7:30 AM to 5:00 PM), Monday through Thursday. A complete set of Bid Documents, including Addendum (if any), must be used in preparing bids. The BOROUGH assumes, no responsibility for errors or misinterpretations resulting from incomplete sets of Bid Documents.

Any supplemental instructions or requirements will be in the form of a written Addendum which will be forwarded to all prospective bidders on record by Fax and/or email.

Any questions regarding the Bid Documents should be directed to the Borough Wireless Communications Consultant, Declan O'Scanlon, at FSD Enterprises, 65 Mechanic Street, Suite 201, Red Bank, NJ 07701. Email: [Declan@FSDEnterprises.com](mailto:Declan@FSDEnterprises.com) - Phone: (732) 741-3246 between the hours of 9 AM – 5 PM, Monday through Friday.

### 3. DEFINITIONS

The terms "Bid Documents" and "Contract Documents" may, as applicable, be used interchangeably. The term "BOROUGH" refers to the Borough of Matawan, Monmouth County, New Jersey. The definitions of other terms used throughout the Bid Documents are provided in other Sections of this Request for Bids, including the Contract and Specifications, and include, in general, capitalized terms in the Bid Documents.

### 4. EXAMINATION OF CONTRACT DOCUMENTS

The intent of the Contract Documents is to obtain a complete project in a first-class workmanlike manner and it shall be understood that the Bidder has satisfied itself as to the complete requirements of the Contract Documents and has predicated its Bid upon such understanding.

It is the responsibility of each Bidder before submitting a Bid to:

- (a) examine the Contract Documents thoroughly;
- (b) visit the site(s) which is/are the subject of this Contract;
- (c) consider federal, state and local laws and regulations;
- (d) study and carefully correlate Bidder's observations with the Contract Documents; and
- (e) notify the BOROUGH in writing of all ambiguities, conflicts, errors, omissions, conflicting statements or discrepancies in the Contract Documents.

Each Bidder may, at Bidder's own expense, make or obtain any additional examinations, investigations, surveys, tests and studies and obtain any additional information and data which Bidder deems necessary to determine its Bid in accordance with the time, price and other terms and conditions of the Contract Documents. The failure or omission of Bidder to receive and examine any form, instrument or document, or make required inquiries and inspections, shall not relieve Bidder from any obligation contained in the Contract Documents. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with the requirements of this paragraph, that without exception the Bid is premised upon performing as required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey an understanding of all terms and conditions for performance.

## 5. ADDENDA AND INTERPRETATIONS

No interpretations of the meaning of the Contract Documents will be made to any Bidder orally. Any and all revisions, interpretations or clarifications will be in the form of written Addenda to the Contract Documents which, if issued, will be provided no later than seven (7) days (Saturday, Sunday or holidays excepted) prior to the date for acceptance of bids to any person who has submitted a Bid or who has received a bid package in writing by fax and/or email.

All Addenda so issued shall become part of the Contract Documents.

Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Each Bidder shall ascertain, prior to submitting its Bid that it has received all Addenda, if any, issued and shall acknowledge receipt of all such Addenda on the Acknowledgment of Receipt of Addenda Form provided by the BOROUGH or like form.



## 6. RIGHTS OF THE BOROUGH

- Subject to the requirements of the New Jersey Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et q., the BOROUGH reserves, holds, and may exercise, at its sole discretion, the following rights with respect to this Request for Bids.
- To reject any and all Bids.
- To waive any and all informalities.
- To supplement, amend or otherwise modify this Request for Bids or cancel this Request for Bids with or without substitution of another Request For Bids.
- To issue additional or subsequent solicitations for Bids.
- To conduct investigations of the Bidders to clarify the information provided pursuant to this Request for Bids.
- To choose not to enter into the Contract or not to proceed with the Request for Bids.
- To reject all Bids and re-advertise and award the Contract in the regular manner if, in its judgment, the best interest of the BOROUGH will be served.
- To reject all non-conforming, non-responsive or conditional Bids.
- To reject the Bid of any Bidder if, in the BOROUGH's judgment, it would not be in the best interest of the BOROUGH to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the BOROUGH.
- To accept the Bid which, in the BOROUGH's sole judgment, best serves the interests of the BOROUGH.
- In the event of an equal or tie Bid, to award the Contract to the Bidder which, in the BOROUGH's sole judgment, best serves the interest of the BOROUGH.

## 7. PREPARATION OF BID

Bids shall be submitted on the forms provided in this Request for Bids.

Each Bid must be signed in ink by a person authorized to do so.

All blanks on the Bid Forms, unless otherwise noted, shall be completed in ink or by typewriter. No change shall be made on the Bid Forms or the Items included on the Proposal Form. All erasures, interpolations or other physical changes on the Bid Forms shall be signed or initialed by the Bidder. Bids containing any conditions, omissions or irregularities of any kind may be rejected by the BOROUGH as incomplete.

The prices indicated in the Proposal Form shall be printed in ink or by typewriter in both words and figures. Any Bid which fails to name a price in both words and figures may be held to be informal and may be rejected by the BOROUGH.

In the event that there is a discrepancy between prices written in words and prices written in figures, prices written in words shall govern. In the event of a discrepancy between unit prices and computed totals, the unit price shall prevail. In the event of an error in the summation of the computed totals, the correct summation of the computed totals shall govern.

(a) Bids by a corporation shall:

1. Be executed in the corporate name by the president (or other corporate officer accompanied by evidence of authority to sign);
2. Contain the corporate seal;
3. Be attested by the secretary or an assistant secretary; and
4. Include (a) the corporate address, and (b) the state of incorporation.

(b) Bids by a partnership shall:

1. Be executed in the partnership name;
2. Be signed by a partner, whose name and title shall be shown under the signature; and
3. Include the official address of the partnership.

(c) Bids by a limited liability company shall:

1. Be executed in the limited liability company name;
2. Be signed by the managing member; and
3. Include the official address of the limited liability company.

(d) Bids by a sole proprietorship or an individual shall:

1. Be executed in the name of the sole proprietorship or business;
2. Be signed by the owner or individual whose name shall be shown under the signature; and
3. Include the address of the sole proprietorship or individual.

## 8. INSURANCE

Contract award and execution is contingent upon the Successful Bidder furnishing, prior to contract execution, Certificate(s) of Insurance and copies of required insurance policies with all required endorsements, and in a form satisfactory to the BOROUGH, evidencing that all insurance required by the Contract is in effect. Successful Bidder shall obtain and keep in effect through the Term an insurance policy or policies or, at the discretion of the Borough, an approved self-insurance program providing general public liability insurance against claims for personal injury (including death) and, at Borough's option, property damage in a blanket amount of not less than \$3,000,000.00 per occurrence. Successful Bidder may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Successful Bidder may maintain. Such insurance requirements shall be satisfied by Successful Bidder through a combination of primary and umbrella policies naming the Borough as an additional insured.

## 9. MATERIALS

All items, materials, supplies and/or equipment used to fulfill the requirements of the Contract shall comply in all respects to the standards and regulations established by federal and state laws, municipal ordinances, rules and regulations. All materials, supplies, or equipment furnished must be in accordance with the Specifications.

## 10. NON-COLLUSION AFFIDAVIT

Each bid must be accompanied by a completed Non-Collusion Affidavit on the form provided by the BOROUGH or like form.

## 11. OWNERSHIP DISCLOSURE STATEMENT

Each bid must be accompanied by a completed Ownership Disclosure Statement on the form provided by the BOROUGH or like form.

## 12. MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

Each bid must be accompanied by a completed Mandatory Equal Employment Opportunity Language on the form provided by the BOROUGH or like form.

## 12. NEW JERSEY STATE WAGE RATES

If applicable, the Successful Bidder and all subcontractors hired by the Successful Bidder shall fully comply with the Prevailing Wage Act, PL. 1963, c. 150. By submission of a Bid, the Bidder warrants that neither he/she nor any subcontractor employed hereunder is on record with the New Jersey Department of Labor as having previously failed to pay prevailing wages in accordance with said Act.

All Bids shall contain a statement to the effect that the Bidder and all subcontractors hired by the Bidder will, if applicable, pay any and all workers employed no less than the prevailing wage rate as determined pursuant to N.J.S.A. 34:11-56.25 et seq. by the Commissioner of Labor and Industry or duly authorized deputy or representative on the form provided by the BOROUGH or like form.

### 13. NON-DISCRIMINATION

The Successful Bidder shall comply with all applicable requirements of the New Jersey Law against Discrimination, N.J.S.A. 10:5-1, et seq., as well as all federal laws and Executive Orders prohibiting discrimination in the workplace. Bidders are also required to comply with the requirements of P.L. 1975, Chapter 127. NO BIDDER SHALL BE AWARDED THE CONTRACT, NOR SHALL ANY MONIES BE PAID THEREUNDER TO ANY CONTRACTOR, SUBCONTRACTOR OR BUSINESS FIRM WHICH HAS NOT AGREED AND GUARANTEED TO AFFORD EQUAL OPPORTUNITY IN THE PERFORMANCE OF THE CONTRACT IN ACCORDANCE WITH AN AFFIRMATIVE ACTION PLAN APPROVED UNDER THE TERMS ESTABLISHED IN N.J.A.C. 17:27-1, et seq.

All Bidders and all Contractors who are negotiating for a contract, as a precondition to entering into a valid and binding contract with the public agency, are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127) one of the following three documents:

- (a) Appropriate evidence that the Contractor is operating under an existing federally approved or sanctioned affirmative action program; or
- (b) A certificate of Employee Information Report Approval issued in accordance with N.J.A.C. 17:27-4; or
- (c) An initial Employee Information Report consisting of forms provided by the Affirmative Action Office and completed by the Contractor in accordance with N.J.A.C. 17:27-4; provided, however, that a Contractor shall not be eligible to submit an initial Employee Information Report unless the Contractor certifies and agrees as follows: “The Contractor, or subcontractor, where appropriate, certifies that he or she has never before applied for a certificate of employee information report in accordance with the rules promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time; and agrees to submit immediately to the Affirmative Action Office a copy of the initial employee information report.” The Contractor shall also submit a letter stating the form was completed and appropriate copies sent to the Affirmative Action Office for processing on the Contractor’s letterhead.

The Successful Bidder is required to submit one of the above within three (3) days of award the contract and prior to Contract execution.

No later than three (3) days after the signing of a contract the Contractor is required to submit to the public agency compliance officer and the affirmative action office an initial project manning table consisting of forms provided by the affirmative action office and completed by the Contractor in accordance with N.J.A.C. 17:27-7.

14. COMPLIANCE WITH LAW

The Successful Bidder shall comply with all federal, state, county and local regulations, laws and statutes which apply to this solicitation for bids, including those governing safety and health in particular.

15. PUBLIC INFORMATION

Any and all information submitted with or subsequent to the Bids will be considered public information and as such may be open to full review and scrutiny by the general public. Submission of a Bid will constitute a full waiver by Bidder of any right to confidentiality with regard to information that is submitted with the Bid or subsequently provided to the BOROUGH pursuant to the requirements of the Contract Documents.

16. BID EVALUATION

Bids will be evaluated in conformance with the New Jersey Local Lands and Buildings Law. The BOROUGH reserves the discretion to make an award, if any. All Bidders must demonstrate that they have the financial resources, experience, expertise, personnel, equipment, permits and physical capability to perform through the submission of information required with the Bid as described in the Contract Documents. In evaluating Bids, the BOROUGH will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such prices and other data, as may be requested in the Contract Documents. The BOROUGH reserves the right to reject any Bid if the evidence submitted by, or investigation of, a Bidder fails to satisfy the BOROUGH that such Bidder is properly qualified to carry out the obligations of the Contract Documents and to provide the services contemplated therein.

17. CONTRACT AWARD; WITHDRAWAL OF BIDS

In addition to the rights described elsewhere in this Section BI, the BOROUGH reserves the right to reject any or all Bids, to waive immaterial informalities, and/or to accept any Bid, which, in the opinion of the BOROUGH, will be in the best interest of the BOROUGH. The BOROUGH will evaluate all Bids.

No Bid shall be withdrawn for sixty (60) days following the opening of Bids except as provided herein. Award of bid shall occur no later than the second regular meeting of the Borough Council after bid due date.

## 18. CONTRACT EXECUTION

The terms and conditions of each section of this Request for Bids, including, without limitation, the Contract, the Specifications, and the Bidders Information, are expressly incorporated herein by reference and shall be deemed an integral part of the Contract Documents. Within forty-five (45) business days, or an extended period of time as may be permitted by the Borough, of award of the Bid, the Successful Bidder shall enter into a contract with the BOROUGH substantially in the form and content as the Contract included in this Request for Bids.

## 19. HEADINGS

The headings used throughout the Contract Documents are intended for convenience of reference only and shall not be considered as having any bearing on their interpretation.

## 20. BUSINESS REGISTRATION CERTIFICATE

Each Bid must include a copy of the “Business Registration Certificate” for the Bidder.

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY  
COMMUNICATIONS SITE LEASE AGREEMENT  
SECTION C  
COMMUNICATIONS  
SITE LEASE AGREEMENT**

## COMMUNICATIONS SITE LEASE AGREEMENT

THIS LEASE AGREEMENT made as of this day of \_\_\_\_\_, 2015, by and between THE BOROUGH OF MATAWAN, a municipal corporation, with principal offices located at the Municipal Building, 201 Broad Street, Matawan, New Jersey 07747 ("Lessor" or "Borough")

and

LESSEE

WITNESSETH

WHEREAS:

- A. Lessor is the owner in fee simple of the Municipally owned property at Block 71, Lot 16, in the Lessor of Matawan, County of Monmouth, State of New Jersey, as more particularly described on Exhibit A attached hereto and made a part hereof ("Premises"); and
- B. Lessee desires to lease a portion of the Premises from Lessor to install communications equipment, including antennas on the water tower ("Water Tower"), with the top of the highest bidders antenna to be located at approximately 94', and to install an equipment shelter or cabinets ("Shelter") on the ground, along with appurtenant improvements, the location of which shall be mutually agreed upon by both parties and made a part hereof; and
- C. In consideration thereof, Lessor is willing to lease to the Lessee that portion of the Premises described above for the management and construction of the Shelter or cabinets and for the installation of Lessee's communications equipment and to allow Lessee joint use of the Water Tower for the installation, at Lessee's sole cost and expense, of Lessee's antennas as described in more detail in this Lease. The Shelter or cabinets and that portion of the Water Tower on which Lessee shall install its antennas shall be for the use of Lessee. (Lessee's antennas and communications equipment are referred to collectively as "Lessee's Facilities"); and
- D. Lessee acknowledges that Lessor will enter into co-location agreements for ground space with additional co-locators, with each co-locator given priority on the Water Tower based upon their bid price.
- E. Lessor and Lessee desire to enter into this Lease upon the terms and conditions hereinafter set forth.
- F. Notice to Bidders, Bidders Information, Specifications and all Forms are made a part hereof and incorporated into this Lease Agreement for compliance by Lessee.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

### 1. DEMISE



- 1.1 Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that portion of the Premises more particularly described on Exhibit A (the "Rented Premises") attached hereto and made a part hereof, upon the terms and conditions herein contained.
- 1.2 Lessor hereby grants to Lessee a nonexclusive easement during the Term (hereinafter defined) for ingress and egress to the Rented Premises upon and across the Premises, including all roads and drives located or to be located thereon, for the movement of workers, machinery, vehicles and equipment for the purpose of constructing, operating, repairing and maintaining the Rented Premises and Lessee's Facilities. The access for operation, repair and maintenance shall be on a 24-hour, 365 days a year basis. Lessee shall also have the right in common with others to use any parking spaces, roads and driveways located on the Premises which are nearby the Rented Premises. Lessor shall have access to the Rented Premises as necessary for the construction inspections and construction and operation, repair and maintenance of Lessor's Facilities at any time during the Term or during an emergency. Lessor reserves the right, in case of an emergency to inspect any of Lessee's equipment. The Lessor retains the right to perform normal Lessor inspections of the Rented Premises.
- 1.3 During the Term, Lessee shall also have the right to use the Premises for providing electric and telephone to the Rented Premises all of which services are to be connected, installed and maintained at Lessee's sole cost and expense, subject to the provisions of Paragraph 10 below. Lessor hereby agrees to execute and deliver whatever reasonable documents may be necessary to the utility companies providing such service.
- 1.4 The Lessor grants to the Lessee the right to survey the Premises and the survey, after review and approval by the Borough Engineer, shall become a part of this Lease. The costs for the preparation of the survey and the review by the Borough Engineer shall be borne by the Lessee.

## 2. TERM

This Lease shall be effective as of the date of execution by both Parties, provided, however, the initial term shall commence on the Commencement Date (as hereinafter defined). The term of this Lease (the "Term") shall be for five (5) years, with four (4) five (5) year renewal options ("Renewal Terms"). The Option payments for each term shall be subject to the same terms and conditions as the original Lease Consideration as set forth in Paragraph 3 for the purpose of establishing that each year of any option period shall be subject to an additional three (3%) percent per annum rate increase. The Lease shall automatically renew for each Renewal Term unless, at least sixty (60) days prior to the termination of the then existing period, Lessee notifies Lessor of its intention not to renew the Lease. The sixty (60) day notification of an intention not to renew is for each five (5) year renewal term. The Term shall commence on the issuance of a building permit to the Lessee or upon three (3) months after execution of the within Lease Agreement, whichever occurs first, unless an extension is granted by Lessor.

## 3. LEASE CONSIDERATION

As consideration for Lessor's lease of the Rented Premises to Lessee, Lessee shall pay to Lessor annual rent of \$ \_\_\_\_\_ payable in twelve (12) equal monthly installments of \$ \_\_\_\_\_ each on the first day of each month, in advance, to the Lessor, beginning on the issuance of a building permit or three (3) months after the execution of the Lease Agreement, whichever is sooner. Should any delay in the issuance of the project building permit beyond 3 months from the execution date be due to factors outside the control of Lessee, then Lessor shall agree to extend the rent start date until permit is issued.

The Lease consideration shall be adjusted annually at the rate of three percent (3%) per annum.

In the event the rent commencement date, falls between the 1<sup>st</sup> and 15<sup>th</sup> of the month, the Agreement shall commence on the 1<sup>st</sup> of that month and if such date falls between the 16<sup>th</sup> and 31<sup>st</sup> of the month, then the Agreement shall commence on the 1<sup>st</sup> day of the following month (either the "Commencement Date"). Lessor and Lessee acknowledge and agree that initial rental payment(s) shall not actually be sent by Lessee until thirty (30) days after the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1, Lessee shall send to the Lessor the rental payments for January 1 and February 1 by February 1.

Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

Upon execution of this document, and prior to commencement of construction by Lessee under this Agreement, Lessee shall pay to Lessor the amount of three thousand dollars (\$3,000.00) ("Up-Front Payment") to cover Lessor's costs associated with the project.

Lessor hereby agrees to provide to Lessee certain documentation (the "Rental Documentation") evidencing Lessor's interest in, and right to receive payments under, this Agreement, including without limitation: (i) documentation, acceptable to Lessee in Lessee reasonable discretion, evidencing LESSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to Lessee, for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation requested by Lessee in Lessee's reasonable discretion. From time to time during the Term of this Agreement and within forty-five (45) days of a written request from Lessee, Lessor agrees to provide updated Rental Documentation in a form reasonably acceptable to Lessee. The Rental Documentation shall be provided to Lessee in accordance with the provisions of and at the address given in Paragraph 18.3. Delivery of Rental Documentation to Lessee shall be a prerequisite for the payment of any rent by Lessee and notwithstanding anything to the contrary herein, Lessee shall have no obligation to make any rental payments until Rental Documentation has been supplied to Lessee as provided herein.

#### 4. CO-LOCATION

It is agreed that the Water Tower may be used for other communication purposes and space on the Water Tower may be leased by Lessor to other parties.

#### 5. TERMINATION Except as otherwise provided herein, this Lease Agreement may be terminated, without any penalty or further liability as follows:

- a. upon thirty (30) days written notice by Lessor if Lessee fails to cure a default for payment of amounts due under such Lease Agreement within that 30-day period;

- b. upon thirty (30) days written notice by either party if the other party defaults under this Lease Agreement and fails to cure such default within that thirty (30) day period, or such longer period as may be required to diligently complete a cure commenced within that thirty (30) day period;
- c. upon thirty (30) days written notice by Lessee, if it is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit or governmental approval necessary to the construction and/or operation of the Lessee's Facilities covered by this Lease Agreement or Lessee's business (Lessee shall begin paying rent hereunder upon the issuance of a building permit or nine (9) months after the execution of this Lease Agreement, whichever is sooner, unless an extension is granted by Lessor);
- d. upon nine (9) months written notice by Lessee if the Premises are or become unacceptable in Lessee's sole discretion due to Lessee's design or engineering specifications for its wireless communications covered by this Lease Agreement;
- e. immediately upon written notice by Lessee if the Premises covered by this Lease Agreement are destroyed or damaged for a period in excess of 30 days which would adversely affect the effective use of the Lessee's Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Lessee shall be entitled to the reimbursement of any rent prepaid by Lessee. If Lessee elects to continue this Lease, then all rent shall abate until the Premises are restored by the Lessee to the condition existing immediately prior to such damage or destruction; or

## 6. USE OF THE RENTED PREMISES

A. Prior to the installation of communications equipment Lessee and Lessor will agree to a mutually acceptable location on the Premises.

B. The placement of the Lessor antennas is to be decided by both parties.

6.1 Lessee shall have the right to use the Rented Premises for the purpose of constructing, installing, and maintaining and operating a communications facility together with other uses involving the transmission and/or receiving of radio and microwave signals and uses incidental thereto together with antennas and all necessary connecting appurtenances, or, with the written consent of Lessor, for any other use as may be permitted by applicable law.

6.2 Lessee may place upon the Water Tower, at Lessee's sole cost and expense, its own wireless antenna system, all in accordance with applicable law. Lessee shall be solely responsible for obtaining all federal, state, county and municipal approvals, licenses, resolutions, variances, zoning permits, certificates, and such other permits (collectively the "Permits") as are necessary.

6.3 Prime Lessee shall, at its own expense, maintain the Rented Premises in a safe condition, in good order and repair. Any damage done to the Water Tower by any action of Lessee, or Lessee's contractors or any other of Lessee's employees or representatives shall be rectified by the Lessee at Lessee's sole cost.

6.4 Any modifications to Lessee's equipment installation, which deviate from what is depicted and described in Exhibit B and Exhibit C, must be approved by Lessor. Lessor's approval will not be unreasonably withheld.

6.5 Lessor acknowledges that Lessee, at its option, may perform engineering surveys, structural analysis reports or any other testing which may be required in order for Lessee to occupy the Premises as more fully described in Paragraphs 1.1, 1.2, 1.3 and 1.4 above. Any materially adverse test results obtained before Lessee has commenced construction shall entitle Lessee to terminate this Agreement on notice with immediate effect. If lessee has commenced construction then termination shall be as under Paragraph 5. It is understood that Lessee's ability to use the Rented Premises is contingent upon its obtaining all permits and approvals that may be required by any federal, state, county or municipal authorities which will permit the Lessee use of the Rented Premises as set forth in this Lease. The project shall be subject of a capital review and receive municipal approval. The capital review application shall be brought by the Lessor as applicant. All costs of the project including all municipal review costs, including legal fees and engineering fees, shall be borne by the Prime Lessee and co-locator(s). No formal zoning or planning application shall be required of Lessee. The Lessor will take no action which would adversely affect the status of the Premises with respect to the proposed use by the Lessee

6.6 In the event that the Lessee is unable to obtain the necessary approvals, permits or the soil boring tests are found to be unsatisfactory to the Lessee, the Lessee shall have the right to terminate this Lease. Notice of the Lessee's exercise of its right to terminate shall be given to the Lessor in writing, by certified mail, return receipt requested, and shall be effective sixty (60) days following receipt by the Lessor. All rent paid to the termination date shall be retained by the Lessor. Upon termination, this Lease Agreement shall become null and void and the parties shall have no further obligations including the payment of money to each other.

6.7 The payment of rent hereunder does not waive the Lessee's right to obtain all necessary approvals or permits as set forth above.

## 7. COOPERATION AND GOVERNMENTAL APPROVALS

The parties agree that the Lessee and the Lessor must come to an agreement as to the placement of the shelter and the location and installation details of the antennas, which is the subject matter of this Lease. . Initial Drawings and other materials necessary to determine the placement of the shelter and the location and installation details of the antennae shall be submitted to the Borough for Lessor approval. The Bidder shall secure any and all required governmental approvals. The project shall be subject of a capital review by the municipality. The capital review application shall be brought by the Borough as applicant. All required documentation pertaining to the approval process, including but not limited to, drawings, structural analysis and/or other engineering documentation shall be provided by the Lessee. All costs of the project including all municipal review costs, including legal fees and engineering fees shall be borne by the Bidder. No formal zoning or planning application shall be required of Bidder. The Borough will take no action which would adversely affect the status of the Premises with respect to the proposed use by the Lessee.

After said approval is provided, the Lessee shall be required to file for all appropriate building and electrical permits within twenty (20) days of said approval, unless an extension is granted by the Borough. It shall be the obligation of the Lessee to bear all costs related to the review and construction approval process. The Borough shall create invoices in the normal course of business to the Lessee and the Lessee shall be responsible to reimburse the Lessor for all costs of the review and approval process. The Lessee will also submit copies of its final construction drawings to the Borough Engineer to ensure compliance with the original approval of the initial drawings.

B. Lessee shall deposit a check in an amount of five thousand (\$5,000.00) dollars to be held in escrow by the Lessor to cover the costs of all initial approvals by the Borough Engineer, fees, inspections and any other costs incurred as a result of the Lessor's review and inspection. In the event that the initial escrow of five thousand (\$5,000) dollars is insufficient to cover the entire cost of the review, the Lessee agrees to pay the outstanding balance within thirty (30) days after being invoiced by the Lessor, not to exceed an additional two thousand (\$2,000.00) dollars. In the event that the initial deposit is more than sufficient to pay the costs of the work of the Borough Engineer, the Lessor shall refund the overage within thirty (30) days of final approval and construction of all work deemed necessary and appropriate. Escrow payment is in addition to the Up-Front Payment referred to in Section 3 of this Agreement

## 8. INSURANCE

8.1 Lessee shall obtain and keep in effect through the Term an insurance policy or policies or, at the discretion of the Lessor, an approved self-insurance program providing general public liability insurance against claims for personal injury (including death) and, at Lessor's option, property damage in a blanket amount of not less than \$3,000,000.00 per occurrence. Lessee may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Lessee may maintain. Such insurance requirements shall be satisfied by Lessee through a combination of primary and umbrella policies naming the Lessor as an additional insured.

8.2 The Lessee shall agree to indemnify and hold the Borough of Matawan and its officers and employees harmless from any liability, expense or costs of suit, including reasonable attorney's fees, arising out of or resulting from any action. If requested by the Lessor, but not more than annually. Lessee shall provide Lessor with evidence that the insurance required by Paragraph 8.1 is in effect.

## 9. TAXES

Lessor shall pay when due all real property taxes for the Property. In the event that Lessor fails to pay any such real property taxes, Lessee shall have the right, but not the obligation, to pay such owed amounts. Notwithstanding the foregoing, Lessee shall pay any personal property tax, real property tax or any other tax or fee which is directly attributable to the presence or installation of Lessee's Antenna Facilities and all installed improvements, as well as a pro-rata share of any personal property tax, real property tax or any other tax or fee which is directly attributable to the presence of any common improvements of the Water Tower facility, only for so long as this Lease remains in effect. If Lessor receives notice of any real property tax assessment against Lessor, which may affect Lessee and is directly attributable to Lessee's installation and/or the common improvements of the Water Tower facility, Lessor shall provide timely notices of the assessment to Lessee sufficient to allow Lessee to consent to or challenge such assessment, whether in a court, administrative proceeding, or other venue, on behalf of Lessor and/or Lessee. Further, Lessor shall provide to Lessee any and all documentation associated with the assessment and shall execute any and all documents reasonable necessary to effectuate the intent of this Section 9. In the event real property taxes are assessed against Lessor or Lessee for the Premises or the Property, Lessee shall have the right, but not the obligation, to terminate this Lease without further liability after thirty (30) days' written notice to Lessor, provided Lessee pays to Lessor a termination fee of six (6) months rent, and any real property taxes assessed as provided herein.

Notwithstanding the foregoing, Lessee shall not have the obligation to pay any tax assessment, or charge that Lessee is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making Lessee liable for any portion of Lessor's income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, Lessor shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

Lessee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Lessee is wholly or partly responsible for payment. Lessor shall reasonably cooperate with Lessee at Lessee's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by Lessee, there is a reduction, credit or repayment received by the Lessor for any taxes previously paid by Lessee, Lessor agrees to promptly reimburse to Lessee the amount of said reduction, credit or repayment. In the event that Lessee does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, Lessor will pursue such dispute at Lessee's sole cost and expense upon written request of Lessee.

#### 10. REPAIR AND MAINTENANCE

10.1 Lessor shall be responsible for snow and ice removal from the Premises so as to permit vehicular access to the Rented Premises.

10.2 Lessee shall keep and maintain the Rented Premises in a safe condition, in good order and repair.

10.3 In the event Lessor undertakes painting, construction or other alterations on the Water Tower, which in the opinion of Lessor requires removal of Lessee's antenna installation, Lessee shall, upon reasonable notification by Lessor, take reasonable measures at Lessee's cost to temporarily remove Lessee's equipment, personal property or Antennae Facilities attached to the Water Tower and protect such from paint and debris fallout which may occur during the painting, construction or alteration process. Lessor will permit a temporary Cellular On Wheels ("C.O.W.") site, or other mutually agreeable structure for the period during which Lessee's equipment needs to be relocated.

#### 11. UTILITIES.

11.1 Lessee shall be responsible as its sole cost and expense for bringing utilities to the Shelter and causing an electric meter to be installed. Lessor, at its sole cost and expense, shall have a meter installed to measure Lessor's use of electricity in connection with Lessor's Facilities. Each party shall be responsible for paying the electricity and other utilities used in connection with the operation of its respective equipment.

11.2 Lessee and each co-locator shall pay for utility services used at the Rented Premises.

#### 12. REMOVAL OF LESSEE'S EQUIPMENT

A. At the expiration or termination of the Term, Lessee shall, at Lessor's option, either (1) remove all Lessee's Facilities, including Shelter, from the Rented Premises; or (2) remove that portion of Lessee's Facilities determined by Lessor to be removed and to donate to Lessor that portion

of Lessee's Facilities which Lessor determines to be of use to Lessor and which Lessor agrees to accept. Any cost of removal shall be the exclusive obligation and responsibility of the Lessee. Lessee shall surrender the Rented Premises to Lessor in the condition in which it is upon commencement of the Lease, except for reasonable wear and tear and except for such portion of the Lessee's Facilities which are to be accepted by Lessor. Notwithstanding the above provisions, nothing herein shall prevent the Lessee from removing its antennas from the Water Tower or its equipment from the Shelter, or from removing the Shelter if the Shelter is a relocatable, reusable structure.

- B. After the installation of Lessee's equipment on the Water Tower, Lessee shall post a yearly Maintenance Bond in an amount sufficient to guaranty the repair, maintenance and removal of Lessee's equipment and Shelter. Said Maintenance Bond is to be in an amount approved by the Borough Engineer for the period during which the Lease Agreement is in full force and effect.

### 13. QUIET ENJOYMENT

- 13.1 Lessor covenants, represents and agrees that Lessor is the owner of the Premises free and clear of all liens and encumbrances, and has the full right, power and authority to enter into, execute and deliver this Lease.
- 13.2 Lessor covenants and agrees that Lessee, on paying the rent and performing the conditions and covenants herein, shall and may peaceably and quietly have, hold and enjoy the Rented Premises and the rights herein granted for the Term.

### 14. USE OF ANTENNA

- 14.1 Lessee shall install its antennas at approximately 94' (top of antennae) on the Water Tower. Lessor's review and approval shall be obtained prior to placement of antennas.
- 14.2 Lessee shall provide a site specific study that is certified to comply with all federal and state exposure limits before beginning operations. Further studies will be required should any federal or state regulations revise Radio Frequency ("RF") exposure limits. Lessee shall then meet the new standard within the time frame for compliance. A new site specific study will be completed and provided to the Lessor. At all times Lessee or its agents/representatives shall operate within the guidelines of all federal or state regulations. Lessee's Failure to adhere to all Federal Radio Frequency exposure limits shall give the Lessor the right to terminate this Lease Agreement, if Lessee does not cure same within ten (10) days of receipt of notice of non-compliance.
- 14.3 Lessee shall also provide a site specific intermodulation study depicting any interaction that may occur with the Lessor's and Lessee's frequencies. Lessee must demonstrate that the radio frequency power emitted by the antennas meets the requirements of the Federal Communications Commission and the New Jersey Administrative Code.

### 15. ASSIGNMENT

- 15.1 Lessor may assign this Lease Agreement upon written notice to Lessee and said assignee will be responsible to Lessee for the performance of all the terms and conditions of this Lease.
- 15.2 Lessor agrees that, after completion of construction, Lessee may not assign or sublet its rights, benefits, duties and obligations under this Lease Agreement without written consent of Lessor,

which consent shall not be unreasonably withheld. In addition, the Lessee, prior to any proposed assignment or sublet of the lease, shall pay the Lessor five thousand dollars and 00/100 (\$5,000.00) to cover the Lessor's costs with respect to review and also the approvals to be granted on the assignment. If such assignment is consented to and made, Lessee shall be relieved of all future liabilities hereunder and Lessor shall look solely to such assignee for the performance of this Lease Agreement after assignment. However, Lessee may assign all of its rights, benefits, duties and obligations under this Lease Agreement to any entity which acquires fifty (50%) percent or more of Lessee's assets, without Lessor approval. In that case, Lessee shall not be relieved for the performance of this Lease Agreement.

16. **MEMORANDUM OF LEASE** Upon request, the Lessor agrees to execute a Memorandum of Lease in recordable form which the Lessor or Lessee may record with the Clerk of Monmouth County.

17. **HOLD HARMLESS** Subject to Paragraph 8, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

#### 18. ENVIRONMENTAL LAWS

- A. Lessor represents and warrants that the Premises are free of hazardous substances as of the date of this Lease Agreement, and, to the best of Lessor's knowledge, the Premises have never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Lessor and Lessee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the Premises.
- B. Lessor and Lessee agree to hold harmless and indemnify the other, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.
- C. The indemnifications of this Paragraph 17 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Premises or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 18 will survive the expiration or termination of this Lease Agreement. Lessor shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable



environmental laws, all spills or other releases of any Hazardous Substance not caused solely by Lessee, that have occurred or which may occur on the Property.

- D. In the event Lessee becomes aware of any hazardous materials on the Premises, or any environmental or industrial hygiene condition or matter relating to the Premises that, in Lessee's sole determination, renders the condition of the Premises unsuitable for Lessee's use, or if Lessee believes that the leasing or continued leasing of the Premises would expose Lessee to undue risks of government action, intervention or third-party liability, Lessee will have the right, in addition to any other rights it may have at law or in equity, to terminate the Lease Agreement upon notice to Lessor.

## 19. MISCELLANEOUS

- 19.1 Entire Agreement. This Lease Agreement (including the specifications, form and documents attached thereto) contains all agreements, promises and understanding between the Lessor and Lessee. No verbal or oral agreements, promises or understandings shall be binding upon either Lessor or Lessee in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Lease Agreement shall be void and ineffective unless made in writing signed by the Lessor and Lessee. This Lease Agreement and any and all other documents, forms, exhibits, specifications, shall comprise the agreement, promises and understandings between the Lessor and Lessee.
- 18.2 Governing Law. This Lease Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of New Jersey.
- 18.3 Notices. All notices hereunder, in order to be effective, must be in writing (unless otherwise expressly provided for herein), and shall be given by either certified mail, return receipt requested, or by nationally recognized overnight courier service, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice).

To Lessor: Notice shall be given to each of the following:  
Borough Administrator  
Louis C. Ferrara  
Borough of Matawan  
201 Broad Street  
Matawan, New Jersey 07747

To Lessee:

- 19.4 Estoppel. Lessor agrees to provide Lessee within ten (10) days of request for same, an executed Landlord's estoppel agreement which, in customary form, includes but is not limited to verification that the lease Agreement between the parties is in full force and effect, that all obligations of the parties are current and that there are no known incidents of default or breach of the lease agreement, that the Lessor consents to the execution of financing by the Lessee which may encumber the Leasehold estate and said lease shall not be modified, amended or cancelled by the Lessee without prior written consent of the Lender, that the Landlord shall be served with notice of any default of the Lessee under said financing agreements, together with the opportunity to cure same by Lender for a period of ninety days following receipt of any such notice and that the Lessor will not undertake any action against the leasehold estate for a period of ninety days following said notice, giving Lender sufficient time to cure said claim. The parties further agree that the Lender shall be assigned all of rights to the Lease agreement

should the Lessee default on said finance but such default shall not constitute a default in the terms of the lease but shall be considered an assignment of any rights and obligations of the Lessee to the Lender.

19.5 Waiver. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty.

19.6 Heirs, Successors. This Lease Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors in interest, successors in title and assigns.

## 20. INTERFERENCE

A. Where there are existing radio frequency user(s) on the Premises, Lessor will provide Lessee with a list of all existing radio frequency user(s) on the Premises to allow Lessee to evaluate the potential for interference. Lessee warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Premises so disclosed by Lessor, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

B. Lessor will not grant, after the date of this Lease Agreement, a lease, license or any other right to any third party for the use of the Premises, if such use may in any way adversely affect or interfere with Lessee's Facilities. Lessor will notify Lessee in writing prior to granting any third party the right to install and operate communications equipment on the Premises. Nothing contained herein will restrict Lessee nor its successors and assigns from installing and modifying its communications equipment.

C. Lessor will not use, nor will Lessor permit its employees, Lessees, licensees, invitees or agents to use, any portion of the Premises in any way which interferes with the operations of Lessee or the rights of Lessee under this Lease Agreement. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

21. Lessee shall prepare and submit for Lessor review a wind load, engineering study and design criteria of the Water Tower as proposed and with the proposed antennas. This study shall be attached as Exhibit H.

22. Lessee shall submit a site plan for Lessor review which shall include full equipment disclosure; a. shelter, b. screening, c. antenna, number, size and color. Should site location be changed and equipment need to be moved, Lessee shall do so at their sole cost and expense.

23. The Lessee will, in good faith, work with the Lessor to supply, at its cost, an adequate emergency back up system (battery or generator) for the Lessor's emergency service use of the Lessor Facilities.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Lease to be duly executed as of the date first above written.

Attest:

BOROUGH OF MATAWAN, a  
municipal corporation of the State of  
New Jersey

\_\_\_\_\_  
Karen Wynn, RMC

By: \_\_\_\_\_  
Paul Bucellato, Mayor

Attest:

Lessee:

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

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

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

\_\_\_\_\_

### SCHEDULE OF EXHIBITS

Exhibit A – Property Description

Exhibit B – Site Drawings

Exhibit C – Equipment List

Exhibit D – Reserved

Exhibit E – Lessee's Certificate of Insurance

Exhibit F – Intermodulation Study

Exhibit G – Health Study

Exhibit H – Wind Load, Engineering Study and Design Criteria of Water Tower

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY  
COMMUNICATIONS SITE LEASE AGREEMENT  
SECTION D  
CHECKLIST**

## CHECKLIST

### Forms Provided:

Non-collusion Affidavit	_____
Affirmative Action Acknowledgment	_____
Ownership Disclosure Statement	_____
Mandatory Equal Employment Opportunity Language	_____
Prevailing Wage Statement	_____
Subcontractor Form	_____
Acknowledgment of Receipt of Addenda Form	_____
Proposal Form	_____

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY  
COMMUNICATIONS SITE LEASE AGREEMENT  
SECTION E  
SPECIFICATIONS**

## SPECIFICATIONS

1. The Water Tower is located on municipally owned property. Final approval of the site design is at the sole discretion of the Mayor and Council.
2. Successful Bidders will enter into a Lease with the Borough which shall permit them to co-locate on the Water Tower” and locate their associated equipment within a designated ground lease area, as space permits, with each bidder given choice of antenna and equipment location based upon their bid price. Maximum antenna height shall be ninety-four (94’) feet (top of antennas).
3. Maintenance by the Borough for the Borough Facilities only. Bidder responsible for maintenance and repair of its communications equipment, antennae and Rented Premises for Term of Lease.
4. The antenna installation shall be designed to withstand wind gusts of at least 100 miles per hour.
5. All plans and drawings for the antennas and equipment compound shall contain a signature and seal of a professional structural engineer licensed by the State of New Jersey.
6. The facility shall be fully automated and unattended on a daily basis and shall be visited only for periodic maintenance.
7. Vehicular access to the Shelter shall not interfere with Borough personnel, police, fire or rescue operations.
8. The Bidder shall secure any and all required governmental approvals. The project shall be subject of a capital review by the municipality. The capital review application shall be brought by the Borough as applicant. All costs of the project including all municipal review costs, including legal fees and engineering fees shall be borne by the Bidder. No formal zoning or planning application shall be required of Bidder. The Borough will take no action which would adversely affect the status of the Premises with respect to the proposed use by the Bidder.
9. The Bidder shall provide the Borough with an engineering report detailing antennae and support structure size, weight and load bearing capacity of the support structure (Water Tower) consistent with American National Standards Institute requirements.
10. The Bidder shall produce proof that Lessee’s installation complies with all state and federal laws and regulations concerning wireless communications systems and aviation safety.
11. The Bidder shall place its antennae on the Water Tower at their sole cost and expense at a height as set forth on Exhibit B attached to the Lease Agreement.
12. The Lessee shall install their antennas on the Water Tower, at the highest available elevation (approximately 94’), as the higher elevations were awarded under a previous bid. Final site design shall be agreed upon between Borough and Bidder.
13. These specifications together with the Lease and any and all other the documents, forms, exhibits, specifications, shall comprise the agreement, promises and understandings between the Borough and the Lessee.



14. A one-time, up-front payment of \$3,000 shall be made by each successful bidder to Borough upon execution of lease and prior to the start of construction. This one-time, up-front payment is in addition to the annual base rent amount and any escrow payments.
15. In connection with any and all applications, the Lessee must make to any local boards for approval, the Lessee shall deposit and submit at the time of the execution of the lease a check in the amount of not less than \$5,000.00 to be held in escrow by the Borough to cover the costs of fees, inspections and any and all costs incurred as the results of Borough's review. In the event the \$5,000.00 escrow is insufficient to cover the entire cost of review, the Lessee agrees to pay the outstanding balance within thirty (30) days after being invoiced by the Borough. Any failure to pay by the Lessee within the allotted period shall be deemed a default under the Lease Agreement. Aforementioned \$5,000.00 escrow payment is in addition to the \$3,000.00 up-front payment referred to in Section 19 of these specifications.
16. In the event of any interference, notwithstanding any engineering study conducted by Bidder to the contrary, Bidder shall, at its sole cost and expense, repair, replace, correct and/or otherwise be solely responsible to eliminate said interference immediately or as soon as possible and to repair and replace any damaged equipment.
17. Bidder shall prepare and submit for Borough review a wind load, engineering study and design criteria of the Water Tower as proposed and with the proposed antennas.
18. Bidder shall submit site plan for Borough review which shall include full equipment disclosure; a. shelter, b. screening, c. antenna, number, size and color. Should site location be changed and equipment need to be moved, Bidder shall do so at their sole cost and expense.
19. The Bidder is responsible to correct all interference with the Borough's Facilities.

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY  
COMMUNICATIONS SITE LEASE AGREEMENT  
SECTION F  
FORMS**

**NON-COLLUSION AFFIDAVIT**

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

STATE OF NEW JERSEY :

: ss

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

I, \_\_\_\_\_ of the City of \_\_\_\_\_ in the County of \_\_\_\_\_  
and the State of \_\_\_\_\_ of full age, being duly sworn according to law on my oath depose and  
say that:

I am \_\_\_\_\_ of the firm of \_\_\_\_\_  
the Bidder making the Proposal for a Contract with the Borough of Matawan ("Borough") to install  
communications equipment on the Water Tower described in the Contract Documents for the  
Communications Site Lease Agreement and that I executed the applicable Proposal with full authority to  
do so; that Bidder has not, directly or indirectly, entered into any agreement, participated in any collusion,  
or otherwise taken any action in restraint of free, competitive bidding in connection with the above-named  
Contract; and that all statements contained in the Proposal and in this Affidavit are true and correct, and  
made with full knowledge that the Borough relies upon the truth of the statements contained in the  
Proposal and in the statements contained in this Affidavit in awarding the Contract.

I further warrant that no person or selling agency has been employed or retained to solicit or  
secure such Contract upon an agreement or understanding for a commission, percentage, brokerage or  
contingent fee, except bona fide employees or bona fide established commercial or selling agencies  
maintained by the Contractor for the purpose of securing business.

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
(Signature of Duly Authorized Representative)

Subscribed and sworn to  
before me this \_\_ day  
of \_\_\_\_\_, 2015.

\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
Notary Public of  
My Commission Expires: \_\_\_\_\_, \_\_\_\_\_.

**AFFIRMATIVE ACTION ACKNOWLEDGMENT**

**BOROUGH OF MATAWAN  
MONMOUTH, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

Contractor acknowledges that his firm is an Affirmative Action Employer and certifies compliance with all requirements:

\_\_\_\_\_  
(Name of Firm)

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

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address of Firm)

\_\_\_\_\_

\_\_\_\_\_  
(Date)

**AFFIRMATIVE ACTION ACKNOWLEDGMENT**

**BOROUGH OF MATAWAN  
MONMOUTH, NEW JERSEY  
COMMUNICATIONS SITE LEASE AGREEMENT**

**REQUIRED EVIDENCE**

**AFFIRMATIVE ACTION REGULATIONS PL. 1975 CHAPTER 127 (N.J.A.C. 17:27)**

If awarded a contract, the Successful Bidder will be required to comply with the requirements of PL. 1975, Chapter 127, N.J.A.C. 17:27. Within three (3) days after receipt of the notification of intent to award the contract, the Successful Bidder shall present one of the following:

1. Appropriate evidence that the Contractor is operating under an existing federally approved or sanctioned affirmative action program; or

2. A Certificate of Employee Information Report Approval issued in accordance with N.J.A.C. 17:27-4; or

3. An initial Employee Information Report consisting of forms provided by the Affirmative Action Office and completed by Contractor in accordance with N.J.A.C. 17:27-4.

The Successful Bidder must submit no later than three (3) days after the signing of the Contract an Initial Project Manning Table consisting of forms provided by the Affirmative Action Office and completed by Contractor in accordance with N.J.A.C. 17:27-7.

Bidders are referred to Section BI, Bidder Information, for a further description of the above requirements.

**NO FIRM MAY BE ISSUED A CONTRACT UNLESS THEY COMPLY WITH THE  
AFFIRMATIVE ACTION REGULATIONS OF PL. 1975. CHAPTER 127.**

**AFFIRMATIVE ACTION ACKNOWLEDGMENT**

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

The following questions must be answered by all Bidders:

1. Do you have a federally-approved or sanctioned Affirmative Action Program?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please submit a photostatic copy of such approval.

2. Do you have a State Certificate of Employee Information Report approval?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please submit a photostatic copy of such certificate.

The undersigned contractor certifies that he/she is aware of the commitment to comply with the requirements of PL. 1975, Chapter 127 and agrees to furnish the required documentation pursuant to the law.

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

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

NOTE: A contractor’s Bid must be rejected as a non-responsive if a contractor fails to comply with requirements of PL. 1975, C. 127, within the time frame stipulated.

**OWNERSHIP DISCLOSURE STATEMENT**

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

Pursuant to N.J.S.A. 52:25-24.2, corporate, limited liability company and partnership Bidders must submit a statement setting forth the names and addresses of all stockholders in the corporation or partnerships who own ten percent (10%) or more of its stock of any class, or of all individual members or partners in the partnership or company who own a ten percent (10%) or greater interest therein, as the case may be.

If one or more such stockholder or partner is itself a corporation or partnership, the names and addresses of stockholders holding ten percent (10%) or more of that corporation’s stock, or the individual partners owning ten percent (10%) or greater interest in that partnership, as the case may be, shall also be listed.

The disclosure shall continue until the names and addresses of every non-corporate stockholder and individual partner exceeding the ten percent (10%) ownership criteria has been listed.

If the Bidder is neither a corporation nor a partnership, and/or if no stockholder or partnership falls within the criteria set forth above, Bidder shall so attest in the space provided below:

NAME:	ADDRESS:
_____	_____
_____	_____
_____	_____

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**  
**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)**  
**N.J.A.C. 17:27**

**GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report



Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

\_\_\_\_\_  
Signature

**PREVAILING WAGE STATEMENT**

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

If applicable, \_\_\_\_\_, as Successful Bidder and all subcontractors hired by \_\_\_\_\_ does hereby agree to pay and all workers employed no less than the prevailing wage rate as determined pursuant to N.J.S.A. 34:11-56.25 et seq, by the Commissioner of Labor and Industry or duly authorized deputy or representative.

Acknowledged For: \_\_\_\_\_  
(Name of Bidder)

By: \_\_\_\_\_  
(Signature of Authorized Representative)

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

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

**SUBCONTRACTOR FORM**

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

1. Subcontractors: Do you intend to sublet any portions of the Work? Yes \_\_\_\_\_ No \_\_\_\_\_  
If so, state the amount and the nature of the Work you intend to subcontract and the name and address of each subcontractor(s).

---

---

---

---

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

By:

\_\_\_\_\_  
(Signature of President if a Corporations or  
Other Duly Authorized Representative)

\_\_\_\_\_  
(Print Name and Title and affix Corporate Seal)

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM**

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Dated
_____	_____
_____	_____
_____	_____
_____	_____

Acknowledged For:\_\_\_\_\_

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

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

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

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY  
COMMUNICATIONS SITE LEASE AGREEMENT  
SECTION G  
PROPOSAL**

**BOROUGH OF MATAWAN  
MONMOUTH COUNTY, NEW JERSEY**

**COMMUNICATIONS SITE LEASE AGREEMENT**

**BID PROPOSAL FORM**

The undersigned, having carefully inspected the Borough, either personally or through its duly authorized representatives, and also having carefully read and examined the Notice to Bidders, Bidders Information, Communications Site Lease Agreement, Specifications and Bid Proposal, either personally or through a duly authorized representative which documents are understood and accepted as sufficient for the purpose herein expressed, hereby proposes to comply with the requirements and to furnish all labor, equipment, services and facilities in accordance with the Request for Proposals. The consideration which the undersigned required and proposed for performance is as follows:

**\*\*During the Initial 5 year tem of the Lease MINIMUM initial annual rental must be at least \$38,000.00 plus three (3%) percent annual increases (payable in monthly increments).\*\***

**Annual Rental to be paid to Matawan Borough during the initial 5 year term of the Lease:**

**Initial Year 1 Rental Amount    \$\_\_\_\_\_**

**(Spell Out in Words:\_\_\_\_\_Dollars)\*\***

**Date: \_\_\_\_\_**

**Bidder:\_\_\_\_\_**

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

**Print Name:\_\_\_\_\_**

**Title: \_\_\_\_\_**

**Address:\_\_\_\_\_**