

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 05/04/2023

Contract/Lease Control #: C23-3327-BCC

Procurement#: NA

Contract/Lease Type: AGREEMENT

Award To/Lessee: DESTIN WATER USERS, INC.

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 05/02/2023

Expiration Date: 05/01/2052 W/2 10 YR RENEWALS

Description of: TOWER SITE AGREEMENT

Department: BCC

Department Monitor: HOFSTAD

Monitor's Telephone #: 850-651-7150

Monitor's FAX # or E-mail: JHOFSTAD@MYOKALOOSA.COM

Closed:

Cc: BCC RECORDS

**TOWER SITE AGREEMENT
(November 2022)**

BCC Records
ML Carson

May, 2023

THIS AGREEMENT ("Agreement") is made this 2nd day of ~~November, 2022,~~ (the "Execution Date), by and between Okaloosa County, a political subdivision of the state of Florida, (the "County") and Destin Water Users, Inc., ("DWU") for use of a site to construct and maintain a radio tower to enhance Public Safety as part of a countywide Emergency Communications System for Okaloosa County. Collectively the County and the DWU shall be referred to as the "Parties."

WITNESSETH

WHEREAS, DWU owns the property located at 218 Main Street, Destin, FL (parcel number 00-2S-22-0000-0058-0110 (the "DWU Property"); and,

WHEREAS, the County has an existing lease agreement with DWU for a portion of the DWU Property (the "Leased Property"); and

WHEREAS, the County desires to use a portion of the Leased Property (the "Tower Site"), which is 80 ft by 80 ft, to construct and maintain an emergency communication radio tower and other related emergency radio communications equipment and devices to enhance county Public Safety emergency communications (the "Emergency Communication System" or "System"); and

WHEREAS, the System will operate as part of a comprehensive countywide network of twelve towers, 9-1-1 centers, and mobile and portable units for such emergency communications; and

WHEREAS, the System will serve over 30 different public safety entities to include all Emergency Medical Services, Fire/Rescue, Law Enforcement, and Okaloosa Emergency Management Agencies, as well as Transit, Utilities and similar countywide support agencies; and

WHEREAS, many of the agencies described above serve DWU and its members, as will the System, and;

WHEREAS, the County may permit additional tenants on the Tower Site, as provided herein, to defray the costs of maintaining the System, which may also provide additional benefits to DWU's Property for other types of non-emergency coverage.

WHEREAS, the Parties have agreed that their mutual best interests are served by allowing the Leased Property to be used, in part, as the Tower Site;

NOW, THEREFORE, in consideration of these premises and the mutual covenants of the parties it is agreed as follows:

1. **Tower Site.** The Tower Site shall be located where depicted on the detailed map attached hereto as Exhibit "A," attached hereto and incorporated herein. Upon approval of this Agreement, a survey with legal description shall be added to Exhibit "A" to definitively identify the Tower Site.
2. **Use.** The County shall be permitted to install a self-supporting, 200 ft Public Safety Grade Radio Tower on the Tower Site in accordance with the details set forth in Exhibit "B," attached hereto and incorporated herein, to include but not be limited to all cabling, emergency power generators, utilities.

fencing, site work, and related equipment on the Tower Site and to install or improve utilities and access to the Tower Site within related easements.

3. **Term.** The initial term of this Agreement shall be for a period of thirty (30) years commencing on the Execution Date, provided that the Tower Site is used as a material part of the System. Within 5 years of the end of the initial and 1st additional term, the County shall have the right to extend this Agreement with written notice to DWU for two additional ten (10) year periods, provided that the Tower Site is used as a material part of the System.

4. **Construction.** The County shall be solely responsible for all costs and obligations related to construction of the System on and off the Tower Site, to include but be not limited to: the tower installation, all tower mounted equipment, ground equipment, site development, stormwater drainage, utilities, fencing, access road and all related construction that may be necessary. Such work is to be performed by the County or its contractors in a safe manner consistent with current industry engineering and construction standards and practices.

5. **Construction Site Maintenance.** During construction on the Leased Property, all work shall be performed and the premises shall be maintained in a safe and workmanlike manner and the County shall o minimize any debris or unsightly areas. DWU reserves the right to require that the County take additional measures to protect the Leased Property and minimize unsightly areas should any construction stoppage exceed a period of thirty days. Additionally, during hurricane season, the County shall secure the site prior to any emergency event to avoid windblown hazards from the Tower Site.

6. **Egress/Ingress Access and Utility Easements.** The County, its agents, employees, contractors and its subleasees, shall be permitted, through the duration of this Agreement, to ingress and egress to the Tower Site and related easements for the purpose of design, construction/installation, upgrading repair, testing, refueling, and maintenance of the equipment on the Tower Site. The County's employees, sublessees and/or agents shall be granted ingress and egress to the Leased Property twenty-four hours a day, seven days a week. DWU may, in its sole discretion, provide equal, alternative ingress and egress access to the Leased Property during emergency situations where access is restricted, during the initial construction period for construction traffic, during special events, and/or if the other construction at DWU alters the traffic patterns of the DWU Property. In furtherance of providing the County with the access to the Leased Property described herein, there is hereby executed an easement, a copy of which is attached as Exhibit "C".

7. **Temporary Construction Area Easement(s).** The Parties acknowledge that the County will need an additional area outside the Leased Property for the staging of the initial construction and any major construction upgrades that may be necessary during the term of this Agreement. This may include the staging of vehicles, cranes, tower sections and other related equipment needed to perform work on the Leased Property. DWU hereby grants an initial temporary construction easement to the County for a duration of up to two (2) years, a copy of which is attached hereto as Exhibit "D." DWU agrees to utilize reasonable efforts to work with the County on any future construction area easements that may be necessary to support future construction on the Tower Site, to include but not be limited to:

adding/removing tower equipment including utilities thereto, major tower or utility maintenance, repair and/or replacement, and similar more significant construction on the Leased Property. Temporary future construction easements shall be for the minimum duration necessary, and the Parties agree to work together cooperatively to determine the locations that will be subject to such easements.

8. **Approvals/Permitting.** The County, with DWU's reasonable cooperation if needed, shall obtain all required governmental and quasi-governmental land use and operational permits, licenses, approvals, and authorizations including but not limited to the FAA (which includes military coordination) for height and airspace penetration issues.

9. **Consideration.** The Parties acknowledge that the System serves the public interest for the Parties, local residents, and first responders, and that such good will is the consideration for this Agreement. No other costs other than those specifically set forth herein shall be required.

10. **Utilities.** The County will construct at its expense all required electrical, fiber, or other utilities necessary to support equipment on the Leased Property. The County shall be fully responsible for all utility usage for or on the Leased Property. Beyond the initial construction, future utility construction may be necessary to serve the County or its sublessees.

11. **Subleasing.** The County recognizes that DWU leases certain space on its water towers to third party commercial users. While the County's tower space will differ in nature from the DWU water tower space and may cater to different users, the Parties desire to avoid competing directly for users, and the County wishes to avoid undercutting DWU tower leasing in any way. To that end, it is the intent of the Parties to work together cooperatively and for the County to apply the following protocols for commercial users specific to this tower and this Agreement:

1. For commercial sublessees/users who approach DWU with an interest in tower space and who DWU determines that it cannot reasonably accommodate, DWU may refer such users to the County in writing (email or other).

2. For commercial sublessees/users who approach the County with an interest in tower space, the County shall immediately refer them in writing (email or other) to DWU as a potential user. . DWU shall notify the County in writing of DWU's intent to sign a lease with the user within 60 days of the referral.

3. For any commercial sublessees/users on the Tower Site, the County agrees to charge the same rates as DWU charges on its towers for commercial customers plus ten percent (10%). If the commercial sublessee/user is proposing different equipment based on a tower versus water tank apparatus, the DWU General Manager may approve an alternate DWU rate for the County to use. The County shall remit the sum of the 10% above DWU rates to DWU upon receipt.

For purposes of this Agreement, the term "commercial sublessees" shall not include commercial entities that are working on behalf of not-for profit sublessees such as governmental entities as its agent/contractor for governmental purposes related to public health, welfare and/or safety. The County in its sole discretion has the right to sublease any portion of the Tower Site to another non-commercial, not-for-profit sublessee for purposes of use of the System, non-exclusively or exclusively. Such not-for-profit sublessees may include but shall not be limited to: Okaloosa County, Okaloosa County School District, City of Destin, the Military, State and Federal government agencies, which may or may not pay rent, at a rate determined by the County. All Sublessees shall have the easement rights granted to the County hereunder. At least thirty days in advance of any such

usage by a sublessee, the County shall provide written notice to DWU of the name and primary contact information for the sublessee, a copy of any usage agreement with the sublessee, and purposes for which the sublessee shall use the Tower Site.

12. **DWU Tower Usage.** DWU shall be entitled to install equipment on the Tower Site for DWU's use but not for other commercial purposes. The following shall be permitted on the Tower Site at no cost for DWU's use:

- a. Cameras overlooking the DWU Campus;
- b. WIFI Hot Spot for the DWU Campus;
- c. DWU radio repeater/receiver for any radio system the DWU utilizes for its employees;
- d. DWU Dish or other receiver for a utility SCADA system or automated read system.

For its usage as described in this section, DWU shall be responsible for its own installation, utilities, equipment shelter and maintenance to include equipment removal if no longer operable, unless otherwise agreed to by the County through written agreement. The County shall cooperate with DWU to provide secure access rights to the secure compound to install and thereafter maintain or remove its equipment. Such equipment shall be installed and maintained so as to not interfere or cause damage to any other Tower Site equipment.

13. **End of Easement Remediation** - Within 3 months of the end of the term, the County shall have the right to remove the tower and all vertical equipment and other physical improvements above the surface of the ground ("Improvements"). Should the County not desire to exercise its right for all or any portion of the Improvements, prior to the end of the term, it shall offer any of the remaining Improvements to DWU, in writing, as is, and at no cost. If DWU accepts some or all of the Improvements offered it shall do so in writing within thirty (30) days of the offer from the County. The County shall be fully responsible for removing any and all Improvements, not accepted by DWU, at its expense. The County shall not be responsible for removing any Improvements at or below surface of the ground.

General Provisions

14. **Governing Law & Venue.** This agreement shall be interpreted in accordance with the laws of the State of Florida without regard to its principles of conflicts of laws. Venue for any legal proceedings shall be in the state courts of Okaloosa County, Florida.

15. **Notices.** All notices shall be in writing. Such notices or demands shall be mailed or hand-delivered to the other party at the following address which may be changed in writing from time to time:

County:

Okaloosa County BCC
Attn: County Administrator
1250 N. Eglin Pkwy Suite 102
Shalimar, FL 32579

With Copies to:

Nabors, Giblin, & Nickerson, LLC
Attn: Okaloosa County Attorney
1250 N. Eglin Pkwy, Suite 102
Shalimar, FL 32579

Okaloosa County Sheriff's Office

Attn: Facilities Director
50 2nd Street
Shalimar, Florida, 32579

DWU:

Destin Water Users, Inc
Attn: General Manager
218 Main Street
Destin, FL 32541

With Copies to:

Anchors Gordon
Attn: Michelle Anchors, Esquire
2113 Lewis Turner Blvd, Suite 100
Ft. Walton Beach, FL 32547-6711

Either party may change the notice designation, at any time, by providing the other party with written notice five (5) days in advance of the change.

16. **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractor and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so.

17. **Insurance.** The County, its contractors/agents, or subleases it's contractors shall provide certificates of insurance to DWU, naming them as additionally insured, for coverage for the minimum insurance coverages required as follows:

- a. **Commercial General Liability Insurance:** Including Bodily Injury and Property Damage Liability, Independent Contractors Liability, Contractual Liability, Product Liability and Updated 9.2.2021 Completed Operations Liability in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.
- b. **Statutory Workers' Compensation and Employers Liability Coverage:** \$500,000 minimum.
- c. **Automobile Liability:** Automobile Liability in an amount not less than \$1,000,000 combined single limit, per occurrence for bodily injury and property damage, including owned, hired and non- owned vehicle coverage.

18. **Indemnification.** Unless otherwise stated herein, each party shall be solely responsible for the conduct of its employees and agents in connection with their performance or obligations under this Agreement, and hold the other harmless for any injuries or damages arising hereunder, and shall defend any claims for injuries or damages, even if such claims be groundless or fraudulent, except that liability in such cases shall not exceed the waiver limitations set forth in section 768.28, F.S., as it now exists or as it may be amended.

19. **Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by either party or of any rights or limits to liability existing under section 768.28, F.S. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

20. **Confidential and Exempt Security and Safety Plan Information.** The parties acknowledge that the plans and information related to the System to be installed are exempt from section 119.07(1), F.S, and section 24(a), Article I of the State Constitution, pursuant to section 119.071(3), F.S. In

addition, such System plans and specifications constitute information relating to the security systems for property owned or leased by a political subdivision of the State of Florida and, pursuant to section 281.301(1), F.S., are confidential and exempt from public disclosure.

21. **Third Party Beneficiaries.** It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions of any part of this AGREEMENT to create in the public or any member thereof, a third-party beneficiary under this agreement, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this AGREEMENT.

22. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written agreements. The parties acknowledge that they have not relied upon any statement, representation, prior or contemporaneous written or oral promises, agreements or warranties, except such as are expressed herein. The terms of this AGREEMENT can only be amended in writing upon mutual agreement of the parties and execution of the amendment by both parties.

23. **Conflicting Provisions.** The terms, statements, requirements, or provisions contained in this Amendment shall prevail and be given superior effect and priority over any conflicting or inconsistent terms, statements, requirements or provisions contained in any other document or attachment

24. **Severability.** If any term of this AGREEMENT is deemed, by the court having appropriate jurisdiction, invalid or unenforceable, the remainder of the terms of this AGREEMENT shall remain in full force and effect. This AGREEMENT shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions herein.

25. **Effective Date.** Once executed by both parties this Agreement shall become effective immediately.

26. **Attorney's Fees.** In the event of legal action or other proceeding arising under this Agreement, or a dispute regarding any alleged breach, default, claim, or misrepresentation arising out of this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred before suit, during suit, or at the appellate level. The prevailing party shall also be entitled to recover any attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of attorneys' fees and costs due to it.

(Intentionally Blank – Signatures on Next Page)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

DESTIN WATER USERS, INC.

Lockwood Wernet
Lockwood Wernet, General Manager

12/05, 2022
Date

ATTEST:

Rachel Green
Rachel Green
OKALOOSA COUNTY, FLORIDA:

Mel Ponder

Mel Ponder, Chairman
Robert A. "Trey" Goodwin III



May 2, 2023
Date

ATTEST:

J.D. Peacock, II
J.D. Peacock, II Clerk

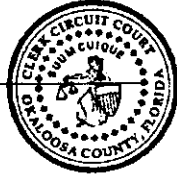
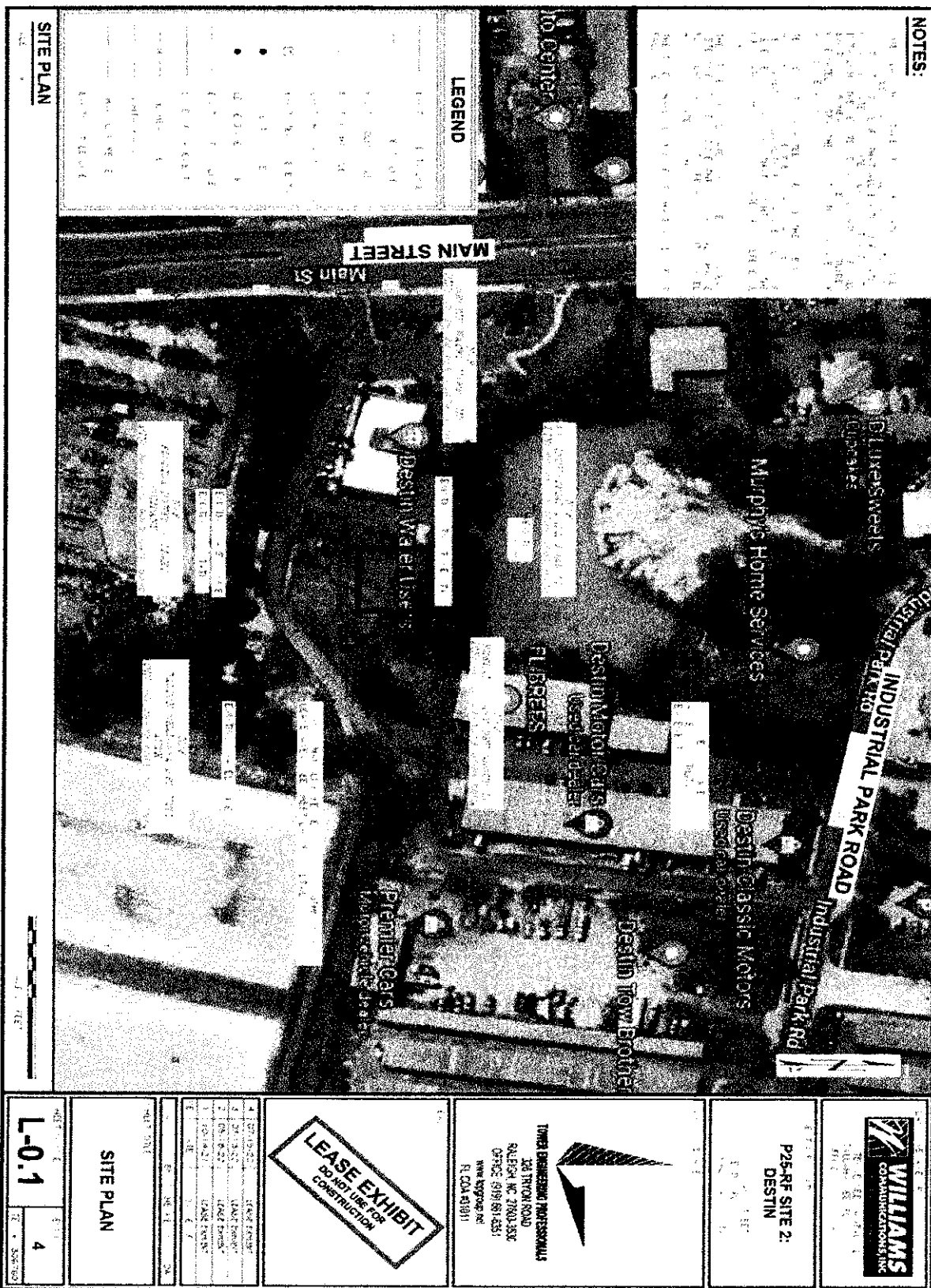


Exhibit "A" Tower Location/Site



WILLIAMS
COMMUNICATIONS INC.

P25-RF SITE 2:
DESTIN



TOWER ENGINEERING PROFESSIONALS
120 TRIVION ROAD
RALEIGH, NC 27603-1818
OFFICE: (919) 813-2551
WWW.ETP.COM
FL CDA #13911

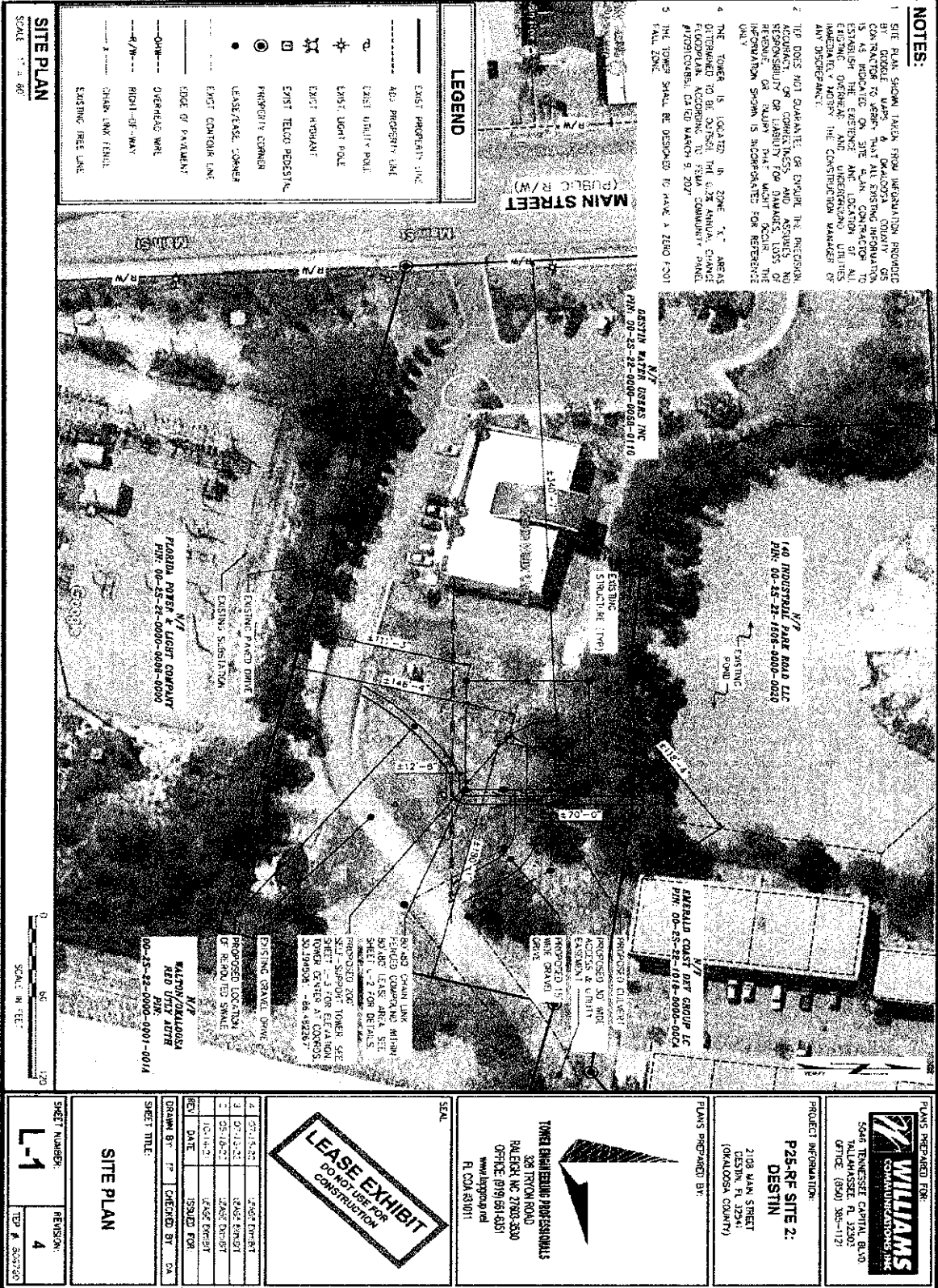
LEASE EXHIBIT
Do NOT use for construction

SITE PLAN

L-0.1

4

Exhibit "A" Tower Location/Site Continued



NOTES:

1. SITE PLAN SHOWN TAKEN FROM REGISTRATION RECORDS BY ORDER OF THE OKALOOSA COUNTY GIS CONTRACTOR TO VERIFY THAT ALL EXISTING INFORMATION IS INDICATED ON THE PLAN. CONTRACTOR TO ESTABLISH THE EXISTENCE AND LOCATION OF ALL EXISTING OVERHEAD AND UNDERGROUND UTILITIES. INFORMATION SHOWN IS NOT GUARANTEED FOR PRECISION OR ACCURACY.
2. TOP DOES NOT GUARANTEE OR ENDORSE THE PRECISION, ACCURACY, OR COMPLETENESS AND ASSUMES NO RESPONSIBILITY OR LIABILITY FOR DAMAGES, LOSS OF REVENUE OR ANY OTHER LOSS OR DAMAGE. THE INFORMATION SHOWN IS NOT GUARANTEED FOR PRECISION OR ACCURACY.
3. THE TOWER IS LOCATED IN ZONE "C" AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN ACCORDING TO FEMA COMMUNITY PANEL #20910008L DATED MARCH 9, 2017.
4. THE TOWER SHALL BE DESIGNED TO HAVE A 1500 FOOT FUL ZONE.

LEGEND

- EXIST. PROPERTY LINE
- ACQ. PROPERTY LINE
- EXIST. UTILITY POLE
- EXIST. LIGHT POLE
- EXIST. HYDRANT
- EXIST. TELCO PEDESTAL
- PRIORITY CORNER
- LEASE/ASEL CORNER
- EXIST. CONTOUR LINE
- EDGE OF PAVEMENT
- OVERHEAD WIRE
- RIGHT-OF-WAY
- CHAIN LINK FENCE
- EXISTING FUEL LINE

SITE PLAN
SCALE: 1" = 20'

0 50 100
SCALE: IN FEET

PLANS PREPARED FOR:
WILLIAMS COMMUNICATIONS, INC.
5646 TENNESSEE CAPITAL BLVD
TALLAHASSEE, FL 32303
OFFICE: (904) 385-1121

PROJECT INFORMATION:
P25-RF SITE 2:
DESTIN
2108 MAIN STREET
DESTIN, FL 32924
(OKALOOSA COUNTY)

PLANS PREPARED BY:
TOWER ENGINEERING PROFESSIONALS
308 TROYON ROAD
RALEIGH, NC 27603-3300
OFFICE: (919) 661-6351
www.towereng.com
FL COA #31011

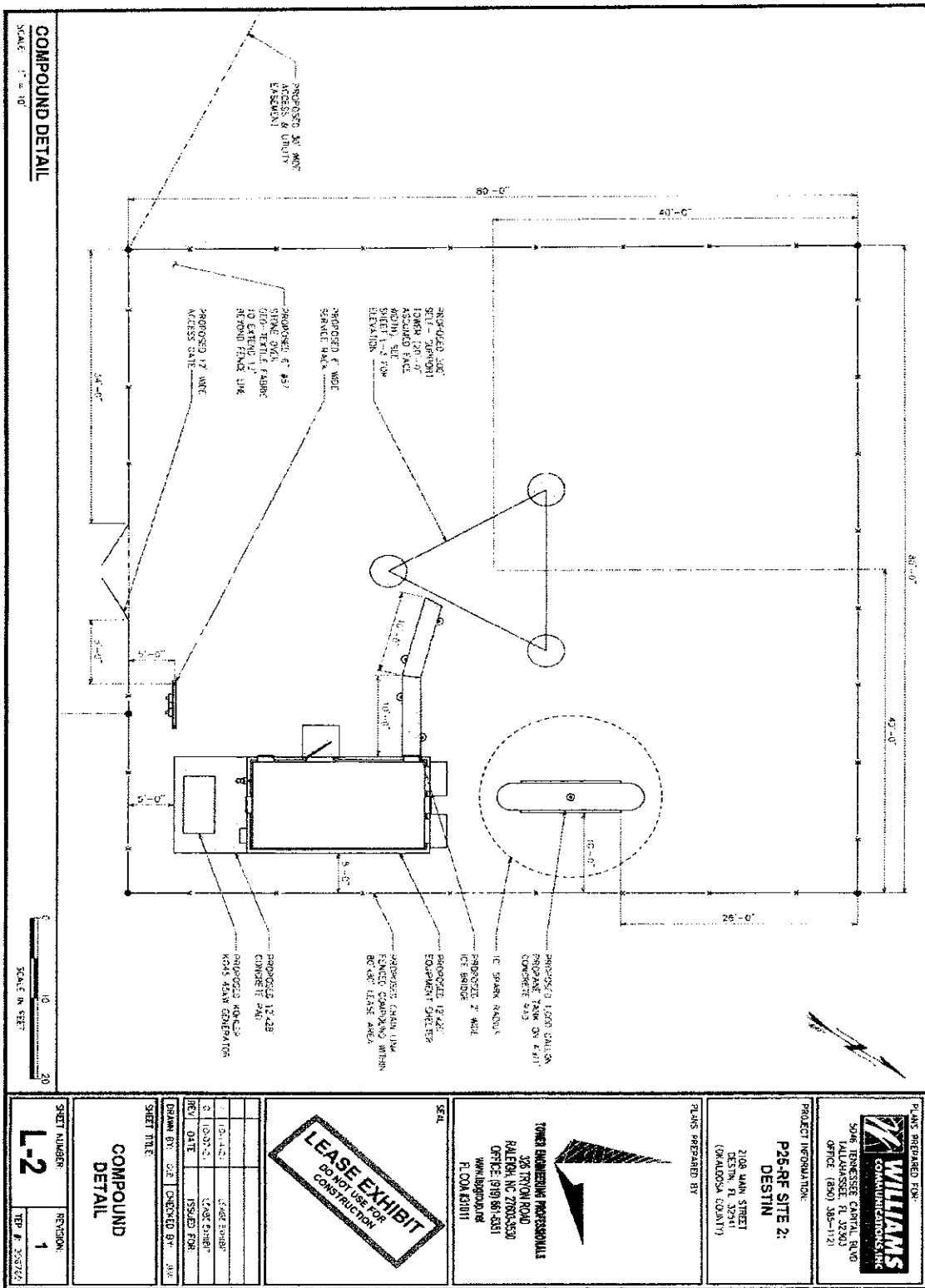
LEASE EXHIBIT
DON'T USE FOR CONSTRUCTION

REV	DATE	ISSUED FOR
1	07-15-20	2nd EXHIBIT
2	07-15-20	2nd EXHIBIT
3	07-15-20	2nd EXHIBIT
4	05-18-21	LEASE EXHIBIT

SHEET NUMBER: **L-1**
REVISION: **4**
DRAWN BY: **PT** CHECKED BY: **DA**
SHEET TITLE: **SITE PLAN**

Exhibit "A"

Tower Location/Site Continued



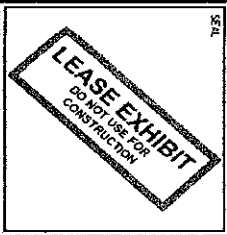
COMPOUND DETAIL
SCALE 1" = 10'

SCALE IN FEET
0 10 20

SHEET NUMBER	REVISION
L-2	1
TWP. # 23S72E	

COMPOUND DETAIL

SHEET TITLE	
NO.	DATE
1	ISSUED FOR
2	ISSUED FOR
3	ISSUED FOR
4	ISSUED FOR
5	ISSUED FOR
6	ISSUED FOR
7	ISSUED FOR
8	ISSUED FOR
9	ISSUED FOR
10	ISSUED FOR
11	ISSUED FOR
12	ISSUED FOR
13	ISSUED FOR
14	ISSUED FOR
15	ISSUED FOR
16	ISSUED FOR
17	ISSUED FOR
18	ISSUED FOR
19	ISSUED FOR
20	ISSUED FOR



SEAL

TOWER ENGINEERING PROFESSIONALS
508 TROY ROAD
RALEIGH, NC 27608
OFFICE: (919) 861-0351
WWW.TOWERENG.COM
P. COA #20111

PLANS PREPARED BY

**P25-RF SITE 2:
DESTIN**

2108 MAIN STREET
DESTIN, FL 32541
(OKALOOSA COUNTY)

PLANS PREPARED FOR

WILLIAMS
COMMERCIAL BANK

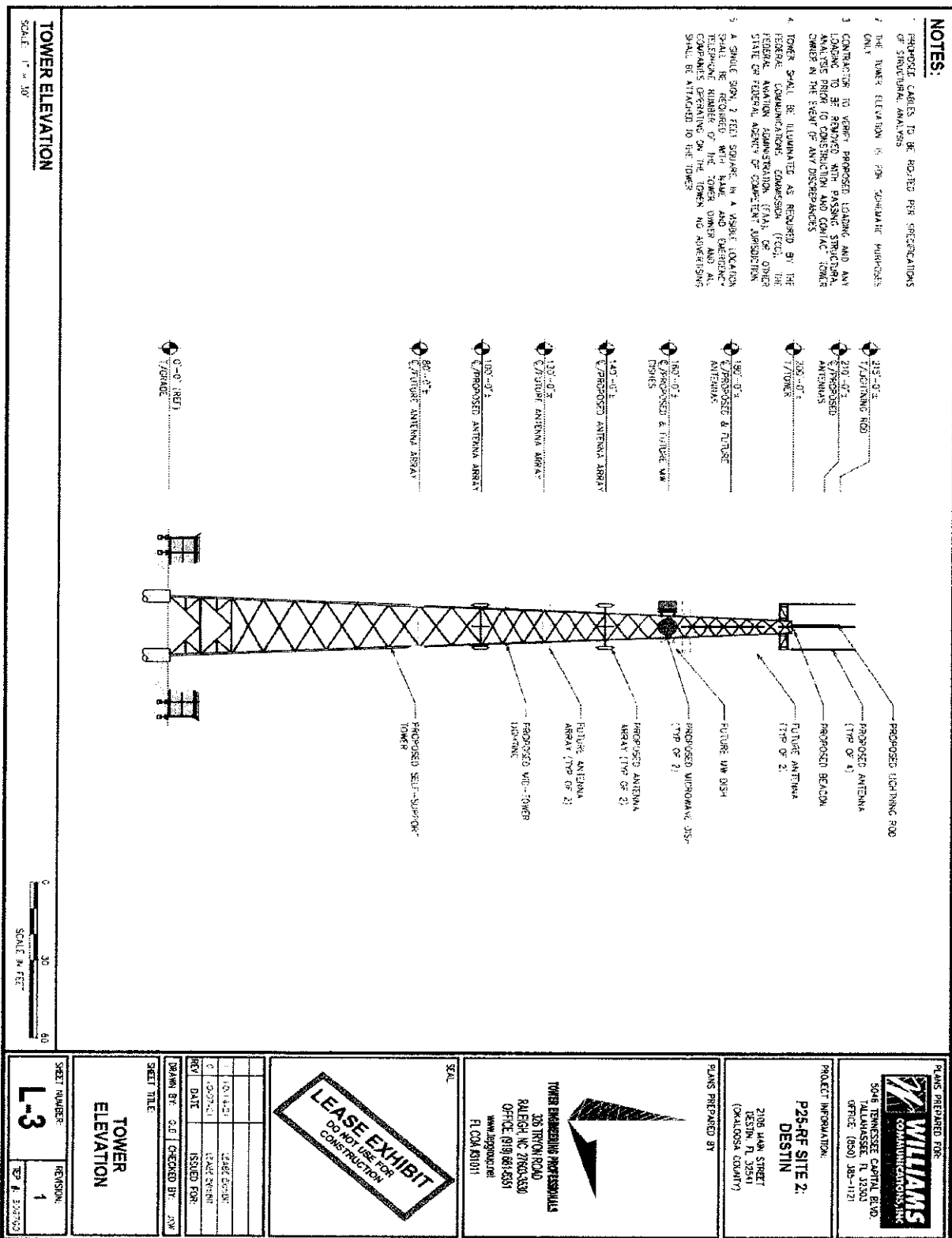
508 TENNESSEE CAPITAL BLVD
MILLSBORO, FL 32563
OFFICE: (850) 385-1121

PROJECT INFORMATION:

**P25-RF SITE 2:
DESTIN**

2108 MAIN STREET
DESTIN, FL 32541
(OKALOOSA COUNTY)

Exhibit "B" Radio Tower Plans

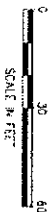


NOTES:

1. PERMITTED CABLES TO BE ROUTED PER SPECIFICATIONS OF STRUCTURAL ANALYSIS
2. THE TOWER ELEVATION IS PER SQUARE METERS ONLY
3. CONTRACTOR TO VERIFY PROPOSED LOADING AND ANY CHANGES TO BE PROVIDED WITH PASSING STRUCTURAL ANALYSIS PRIOR TO CONSTRUCTION AND CONTACT TOWER OWNER IN THE EVENT OF ANY DISCREPANCIES
4. TOWER SHALL BE ILLUMINATED AS REQUIRED BY THE FEDERAL COMMUNICATIONS COMMISSION (FCC), THE FEDERAL AVIATION ADMINISTRATION (FAA), OR OTHER STATE OR FEDERAL AGENCY OF COMPETENT JURISDICTION
5. A SINGLE 30" x 2 FEET SQUARE IN A VISIBLE LOCATION SHALL BE REQUIRED WITH NAME AND EMERGENCY TELEPHONE NUMBER OF THE TOWER OWNER AND ALL COMPANIES OPERATING ON THE TOWER. NO ADVERTISING SHALL BE ATTACHED TO THE TOWER

TOWER ELEVATION

SCALE: 1" = 10'



SHEET NUMBER:	REVISION:
L-3	1
	DATE: 11/20/2020

SHEET TITLE:	
TOWER ELEVATION	
DATE:	10/14/20
BY:	J. G. GIBSON
CHECKED BY:	J. G. GIBSON
ISSUED FOR:	12' X 12' SIGN
DESIGNED BY:	J. G. GIBSON

LEASE EXHIBIT
 DO NOT USE FOR CONSTRUCTION

TOWER ENGINEERING PROFESSIONALS
 305 TRION ROAD
 RALEIGH, NC 27603
 OFFICE: (919) 881-6551
 www.towereng.com
 FL COA #31011

PLANS PREPARED BY
P25-RF SITE 2, DESTIN
 2108 MAIN STREET
 DESTIN, FL 32541
 (OKALOOSA COUNTY)

PROJECT INFORMATION:
P25-RF SITE 2, DESTIN
 5046 TENNESSEE CAPITAL BLVD
 TALLAHASSEE, FL 32303
 OFFICE: (904) 388-1171



Exhibit "C"

NON-EXCLUSIVE INGRESS, EGRESS, ACCESS AND UTILITY EASEMENT AGREEMENT

2023 **THIS EASEMENT AGREEMENT** ("Agreement") is made this 2nd day of ~~November, 2022~~, ^{May,} (the "Execution Date), by and between Okaloosa County, a political subdivision of the state of Florida, (the "County") and Destin Water Users, Inc., ("DWU") for ingress, egress, access, and use of a site to construct and maintain a radio tower to enhance Public Safety as part of a countywide Emergency Communications System for Okaloosa County. Collectively the County and the DWU shall be referred to as the "Parties."

BCC Records
ML Carson

RECITALS

A. **WHEREAS**, the DWU is the fee simple owner of certain lands situated in Okaloosa County, Florida, and more specifically described in **Exhibit "A"** (Tower Location/Site) attached to the Parties' Tower Site Agreement and incorporated herein;

B. **WHEREAS**, the County desires to construct and use a radio tower on the lands described in Exhibit "A" to the Parties' Tower Site Agreement.

C. **WHEREAS**, DWU has agreed to grant to the County a non-exclusive ingress, egress, access and utility easement on, upon, over and across the lands described in **Exhibit "A"** of the Parties' Tower Site Agreement, and owned by DWU, for the benefit of DWU and the County, their successors and assigns, and subject to the terms, conditions and limitations contained in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants set forth below, as well as in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DWU and the County, intending to be legally bound, hereby covenant and agree as follows:

1. **Recitals.** The above recitals are true, correct and made part of this Agreement as if fully set forth herein.
2. **Grant of Easement.** DWU does hereby grant and convey to the County, its successors and assigns, a non-exclusive ingress, egress, access and use easement, which is the right to access and use the property in Exhibit "A" to the Parties' Tower Site Agreement for the purposes of designing, constructing, installing, upgrading, repairing, testing, operating and maintaining the radio tower, subject to the following terms, conditions and limitations:
 - a. The County, its agents, employees and/or sublessees shall be granted ingress and egress to the Leased Property twenty-four hours a day, seven days a week.
 - b. DWU may, in its sole discretion, provide equal, alternative ingress and egress access to the Leased Property during emergency situations where access is restricted, during the initial construction period for construction traffic, during special events, and/or if the other construction at DWU alters the traffic pattern of the DWU Property.

- c. This Agreement is binding upon DWU, the County, and the Parties' successors and assigns.

3. **Miscellaneous.**

a. **Right to Enforce.** Without limiting any remedy provided in this Agreement, DWU or the County, and their respective successors and assigns, shall have the right to enforce, by proceedings at law or equity, all easements, restrictions, and covenants imposed by the provisions of this Agreement, or any amendment hereto, including the right to prevent the violation of any such easements, restrictions or covenants and the right to recover damages for such violation.

b. **No Waiver.** Failure by DWU or the County to enforce or insist upon compliance with any easement, covenant or restriction herein contained in any certain instance or any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other easement, covenant or restriction.

c. **Cumulative Remedies.** All rights, options, and remedies of DWU or the County under this Agreement are cumulative, and no one of them shall be exclusive of any other, and DWU and the County shall have the right to pursue any one or all of such rights, options and remedies or any other relief which may be provided by law, whether or not stated in this Agreement.

d. **Severability.** Invalidation of any one or a portion of the easements, covenants or restrictions contained herein by judgment or court order shall in no way affect any other of the provisions of this Agreement, which shall remain in full force and effect.

e. **Covenants to Run with the Land.** The easements, covenants and restrictions of this Agreement shall run with and bind the land and ownership interests of DWU and the County as described herein, and shall inure to the benefit of and be enforceable by DWU and the County and their respective successors and assigns for the duration of the Parties' Tower Site Agreement.

f. **Duration.** This Agreement shall remain in full force and effect for the duration of the Parties' Tower Site Agreement, unless modified, extended or terminated in writing and signed by authorized representatives of both Parties. Lack of use of this easement or lack of exercise of rights under this Agreement for any duration of time will not be considered an expiration, abandonment, waiver or destruction of this easement or the rights under this Agreement.

g. **Amendment or Modification.** This Agreement may be amended or modified only by a writing that is signed and acknowledged by DWU (or its successors or assigns) and the County (or its successors or assigns), with formalities equal to this instrument and thereafter recorded in the Public Records of Okaloosa County, Florida.

h. **Paragraph Headings.** The paragraph headings in this Agreement have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

i. **Singular Includes Plural.** Whenever the context of this Agreement requires same, the singular shall include the plural.

j. **Attorney's Fees.** In the event that an action is instituted to construe, interpret or enforce any of the provisions of this Agreement or to declare the rights of a party hereunder or the successor or assignee of a party hereunder, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and paralegal assistants' fees and costs, whether incurred before, during or at trial, on appeal or in federal bankruptcy or reorganization proceedings.

k. **Constructive Notice and Acceptance.** Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of this Agreement is and shall be conclusively deemed to have consented and agreed to every covenant, restriction and easement contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in any such property.

l. **Governing Law.** This Agreement is made in the State of Florida and the validity, construction and enforceability of this Agreement and each of its provisions shall be governed by applicable laws of the State of Florida.

m. **No Public Dedication.** The easements created by this Agreement shall not constitute a dedication for public use.

n. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Any party hereto may execute this Agreement by any one counterpart.

o. **Power to Execute.** Each of the undersigned warrants that he or she has the full right, power and authority to execute this Agreement on behalf of the party indicated.

[SIGNATURE PAGES TO FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed effective as of the last date set forth below ("Effective Date").

Signed, sealed and delivered in the presence of:

Destin Water Users (Grantor)

Lockwood WERNER

Print

Lockwood Werner

Signature

General Manager

Title

12/05/2022

Date

Rachel Green

Print witness name

Rachel Green

Signature

Kim Wright

Print witness name

Kim Wright

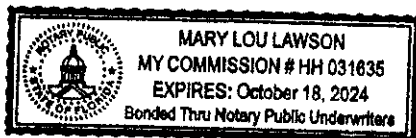
Signature

STATE OF Florida

COUNTY OF OKALOOSA

The foregoing instrument was acknowledged before me this 5th day of December, 2022, by Lockwood Werner, who is/are () personally known to me or who () produced _____ as identification, and having been first duly sworn, acknowledges the truth and accuracy of this document.

SEAL:



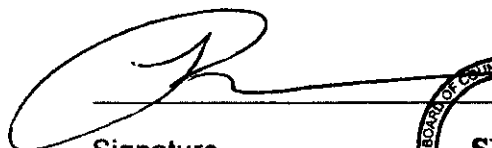

Mary Lou Lawson

Notary Public

Okaloosa County (Grantee)

Robert A. "Trey" Goodwin III

Print


Signature 

Chairman

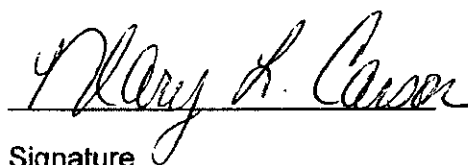
May 2, 2023

Title

Date


Mary L. Carson

Print witness name


Signature

Maria Everton

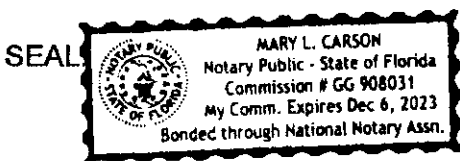
Print witness name


Signature

STATE OF FLORIDA

COUNTY OF OKALOOSA

The foregoing instrument was acknowledged before me this 2nd day of May, 2023, by Commissioner Robert A. "Trey" Goodwin III, who is/are (X) personally known to me or who () produced N/A as identification, and having been first duly sworn, acknowledges the truth and accuracy of this document.



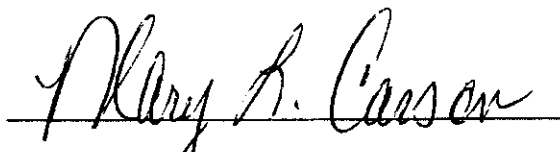

Notary Public

Exhibit "D"
Temporary Construction Easement
TEMPORARY CONSTRUCTION AREA EASEMENT AGREEMENT

BCCRecords
ML Carson

THIS EASEMENT AGREEMENT ("Agreement") is made this 2nd day of ^{May,} ~~November,~~ 2022, (the "Execution Date), by and between Okaloosa County, a political subdivision of the state of Florida, (the "County") and Destin Water Users, Inc., ("DWU") for construction of a radio tower to enhance Public Safety as part of a countywide Emergency Communications System for Okaloosa County. Collectively the County and the DWU shall be referred to as the "Parties."

RECITALS

D. WHEREAS, the DWU is the fee simple owner of certain lands situated in Okaloosa County, Florida, and more specifically described in **Exhibit "A"** (Tower Location/Site) attached to the Parties' Tower Site Agreement and incorporated herein;

E. WHEREAS, the County desires to construct a radio tower on the lands described in Exhibit "A" to the Parties' Tower Site Agreement.

F. WHEREAS, DWU has agreed to grant to the County a temporary construction area easement on, upon, over and across the lands described in **Exhibit "A"** to the Parties' Tower Site Agreement, and owned by DWU, for the benefit of DWU and the County, their successors and assigns, and subject to the terms, conditions and limitations contained in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants set forth below, as well as in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DWU and the County, intending to be legally bound, hereby covenant and agree as follows:

4. **Recitals.** The above recitals are true, correct and made part of this Agreement as if fully set forth herein.
5. **Grant of Easement.** DWU does hereby grant and convey to the County, its successors and assigns, a temporary construction area easement, which is the right to temporarily ingress, egress, access, use, and maintain an area as described below for the purposes of staging and constructing the initial construction and any major construction upgrades that may be necessary to construct a radio tower and improvements according to the construction plans for said improvements in, upon, over and through the property in Exhibit "A" to the Parties' Tower Site Agreement, subject to the following terms, conditions and limitations:
 - d. This Agreement includes, but is not limited to, the staging of vehicles, cranes, tower sections and other related equipment needed to perform work on the Leased Property, as well as the actual construction of the radio tower and any necessary improvements.
 - e. The area subject to this Agreement shall include the area between the DWU Customer Service Center Main Office Building and the northern property line, generally in proximity to the 80ft by 80ft site.

- f. Construction shall not impact access to DWU's infrastructure or the access road adjacent to the site (except for temporary exceptions specifically approved by DWU).
- g. This Agreement is binding upon DWU, the County, and the Parties' successors and assigns.

6. **Miscellaneous.**

p. **Right to Enforce.** Without limiting any remedy provided in this Agreement, DWU or the County, and their respective successors and assigns, shall have the right to enforce, by proceedings at law or equity, all easements, restrictions, and covenants imposed by the provisions of this Agreement, or any amendment hereto, including the right to prevent the violation of any such easements, restrictions or covenants and the right to recover damages for such violation.

q. **No Waiver.** Failure by DWU or the County to enforce or insist upon compliance with any easement, covenant or restriction herein contained in any certain instance or any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other easement, covenant or restriction.

r. **Cumulative Remedies.** All rights, options, and remedies of DWU or the County under this Agreement are cumulative, and no one of them shall be exclusive of any other, and DWU and the County shall have the right to pursue any one or all of such rights, options and remedies or any other relief which may be provided by law, whether or not stated in this Agreement.

s. **Severability.** Invalidation of any one or a portion of the easements, covenants or restrictions contained herein by judgment or court order shall in no way affect any other of the provisions of this Agreement, which shall remain in full force and effect.

t. **Covenants to Run with the Land.** The easements, covenants and restrictions of this Agreement shall run with and bind the land and ownership interests of DWU and the County as described herein, and shall inure to the benefit of and be enforceable by DWU and the County and their respective successors and assigns for the duration of the Parties' Tower Site Agreement.

u. **Duration.** This Agreement shall remain in full force and effect for up to two years, unless modified, extended or terminated in writing and signed by authorized representatives of both Parties. Lack of use of this easement or lack of exercise of rights under this Agreement for any duration of time will not be considered an expiration, abandonment, waiver or destruction of this easement or the rights under this Agreement.

v. **Amendment or Modification.** This Agreement may be amended or modified only by a writing that is signed and acknowledged by DWU (or its successors or assigns) and the County (or its successors or assigns), with formalities equal to this instrument and thereafter recorded in the Public Records of Okaloosa County, Florida.

w. **Paragraph Headings.** The paragraph headings in this Agreement have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

x. **Singular Includes Plural.** Whenever the context of this Agreement requires same, the singular shall include the plural.

y. **Attorney's Fees.** In the event that an action is instituted to construe, interpret or enforce any of the provisions of this Agreement or to declare the rights of a party hereunder or the successor or assignee of a party hereunder, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and paralegal assistants' fees and costs, whether incurred before, during or at trial, on appeal or in federal bankruptcy or reorganization proceedings.

z. **Constructive Notice and Acceptance.** Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of this Agreement is and shall be conclusively deemed to have consented and agreed to every covenant, restriction and easement contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in any such property.

aa. **Governing Law.** This Agreement is made in the State of Florida and the validity, construction and enforceability of this Agreement and each of its provisions shall be governed by applicable laws of the State of Florida.

bb. **No Public Dedication.** The easements created by this Agreement shall not constitute a dedication for public use.

cc. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Any party hereto may execute this Agreement by any one counterpart.

dd. **Power to Execute.** Each of the undersigned warrants that he or she has the full right, power and authority to execute this Agreement on behalf of the party indicated.

[SIGNATURE PAGES TO FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed effective as of the last date set forth below ("Effective Date").

Signed, sealed and delivered in the presence of:

Destin Water Users (Grantor)

Lockwood Werner
Print

Lockwood Werner
Signature

General Manager
Title

12/05/2022
Date

Rachel Green
Print witness name

Rachel Green
Signature

Kim Wright
Print witness name

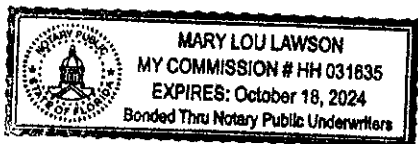
Kim Wright
Signature

STATE OF Florida

COUNTY OF Okaloosa

The foregoing instrument was acknowledged before me this 5th day of December, 2022, by Lockwood Werner, who is/are () personally known to me or who () produced _____ as identification, and having been first duly sworn, acknowledges the truth and accuracy of this document.

SEAL:



Mary Lou Lawson
Notary Public

Okaloosa County (Grantee)

Robert A. "Trey" Goodwin III

Print

Signature



Chairman

Title

May 2, 2023

Date

Mary L. Carson

Print witness name

Mary L. Carson

Signature

Maria Everton

Print witness name

Maria Everton

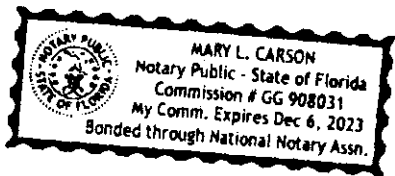
Signature

STATE OF FLORIDA

COUNTY OF OKALOOSA

The foregoing instrument was acknowledged before me this 2nd day of May, 2022, by Commissioner Robert A. "Trey" Goodwin III, who is/are (X) personally known to me or who () produced N/A as identification, and having been first duly sworn, acknowledges the truth and accuracy of this document.

SEAL:



Mary L. Carson
Notary Public

**TOWER SITE AGREEMENT
(July 2022)**

THIS AGREEMENT ("Agreement") is made this 19th Day of July, 2022, by and between the Okaloosa County, a political subdivision of the state of Florida, (the "County") Destin Water Users, Inc., ("DWU") for use of site to construct and maintain a radio tower to enhance Public Safety as part of a countywide Emergency Communications System for Okaloosa County. Collectively the County and the DWU shall be referred to as the "Parties"

WITNESSETH

WHEREAS, DWU owns Property located at 218 Main Street, Destin, FL (00-2S-22-0000-0058-0110 (site 2)); and,

WHEREAS, the County has a short-term agreement on larger site with the Property is located within; and

WHEREAS, the "Property" is approximately 80ft by 80ft is shown on Exhibit A inclusive of a route of ingress and egress from Industrial Park Road to the site and other utility easements; and

WHEREAS, the County desires to construct and maintain an Emergency Communication radio tower and other related emergency radio communications equipment and devices to enhance county Public Safety emergency communications; and

WHEREAS, the Emergency Communication System ("System") will operate as part of a comprehensive countywide network of 12 towers, 911 centers, and mobile and portable units for such emergency communications; and

WHEREAS, the System will serve over 30 different public safety entities to include all Emergency Medical Services, Fire/Rescue, Law Enforcement, and Okaloosa Emergency Management Agencies, as well as Transit, Utilities and similar countywide support agencies; and

WHEREAS, many of the agencies described above serve the DWU site and its users; and

WHEREAS, the County may permit additional tenants on the Property to defray the costs of maintaining the System, which may also provide additional benefits to DWU's Property for other types of non-emergency coverage.

NOW, THEREFORE, in consideration of these premises and the mutual covenants of the parties it is agreed as follows:

1. **Property.** DWU hereby grants the County an easement over the Property (80ft by 80ft) to install, maintain, operate and remove a radio tower, communication equipment and appurtenances the location of which is shown on the detailed map attached hereto as Exhibit A, which are further combined together with easements for access, utilities, and temporary construction easements. Upon approval of this agreement a survey with legal description shall be added to Exhibit A to definitively identify the Property.

2. **Use.** The County shall be permitted to install a self-supporting, 200ft Public Safety Grade Radio tower on the Property in accordance with the details set for in Exhibit B attached hereto and incorporated herein, to include but not limited to all cabling, emergency power generators, utilities, fencing, site work, and related equipment on the Property and to install or improve utilities and access to get to the Property and the granted Easements.

3. **Term.** The initial term of this Agreement shall be for a period of thirty (30) years commencing on the day of execution of this agreement. Within 5 years of the end of any term, the County shall have the right to extend this Agreement with written notice for two additional Ten (10) year periods conditioned upon it still being used as part of the emergency communication system.

4. **Construction.** County shall be solely responsible all cost and obligations related to construction on and off the Property to include but not limited to: the tower installation, all tower mounted equipment, ground equipment, site development, stormwater, utilities, fencing, access road and all related construction necessary is performed by County or its contractors in a safe manner consistent with current industry engineering and construction standards and practices.

5. **Construction Site Maintenance** - During construction the Property, any Construction Area Easement and any other work within any related easement shall be maintained in a safe and workmanlike manner and shall seek to minimize any aesthetic blight. Any prolonged construction stoppage over thirty days may require additional measures to address the aesthetics of the site until construction resumes. Additionally, during hurricane season the site shall be secured prior to any emergency event to help avoid creating windblown hazards.

6. **Property and Easement Egress/Ingress Access Easement.** The County shall be permitted, through the duration of this agreement and any future amendments, to ingress and egress and utilities on and to the Property and related easements for the purpose of design, construction/installation, upgrading repair, testing, refueling, and maintenance of the Property, Tower, Utilities, Communications equipment and all other related equipment. Access shall be to provide the County's employees and/or agents ingress and egress to the Property and related easements twenty-four hours a day, seven days a week. DWU may provide equal, alternative ingress and egress and utility access for the Property and related easements during emergency situations where access is restricted, during the initial construction period for construction traffic, during special events, and if the other construction at DWU alters the traffic patterns of the property. In furtherance of providing the County with access to the Property and related Easements, there is hereby executed an easement, a copy of which is attached as Exhibit "C" and attached hereto. It is hereby expressly agreed by the parties that the County, its agents, and any sublessees have the right to utilize the County's interest in the easement granted by the DWU.

7. **Temporary Construction Area Easement(s)**. An additional area outside the Property is necessary for the initial construction and any major construction upgrades that may be necessary during the term of this agreement. This may include the staging of vehicles, cranes, tower sections and other related equipment for the Property. DWU hereby grants an initial temporary construction easement to the County for a duration of up to two (2) years, a copy of which is attached hereto as Exhibit "D." DWU agrees to utilize best efforts to work with the County for any future construction area easements necessary to support future construction on the Property to include but not limited to: adding/removing tower equipment including utilities thereto, major tower or utility maintenance, repair and/or replacement, and similar more significant construction on the Property. Temporary future construction easements shall be for the minimum durations necessary and the Parties shall work cooperatively together on these locations.

8. **Approvals/Permitting**. The County with DWU's cooperation if needed, shall obtain all required governmental and quasi-governmental land use, permits, licenses, approvals and authorizations including but not limited to the FAA (which includes military coordination) for height and airspace penetration issues.

9. **Consideration**. The cost of allowing County to place equipment on the Property shall be at no cost. The Parties believe that it is in the public interest for the Parties, local residents, and first responders.

10. **Utilities**. The County will construct at its expense all required electrical, fiber, or other utilities necessary to support equipment on the property. The County shall be fully responsible for all utility usage for the Property. Beyond the initial construction, future utility construction may be necessary to serve the County or future site users.

11. **Subleasing**. The County recognizes that DWU has commercial space it leases on its water tower and that it utilizes a third-party to market such space. While the County tower space will be slightly different in nature than the DWU water tower space and may cater differently to users, the Parties desire to avoid competing directly, and the County wishes to avoid undercutting DWU tower leasing in any way. To that end it is the intent of the Parties to work together and for the County to apply the following protocols for commercial users specific to this tower and this lease:

a. For commercial subleasees/users that come to DWU and that they determine they cannot reasonably accommodate, DWU may refer those to the County in writing (email or other), which shall be deemed as foregoing a "Right of First Refusal"

b. For commercial subleases/users that come to the County, the County shall immediately refer them to DWU as a potential customer in writing (email or other). DWU shall essentially have a "Right of First Refusal" and shall notify the County of its intent with the commercial customer in writing (email or other) within 60 days.

c. For any commercial subleases/users, the County agrees to charge the same rates as DWU for commercial customers plus 10%, provided the DWU rates are provided to the County based on the formularies used by the DWU based on the specific request from the commercial subleases/user. If the commercial sublease/user is proposing different equipment based on a tower versus water tank apparatus the DWU General Manager may approve an alternate DWU rate for the County to use. The 10% above DWU rates shall go to DWU as a payment.

d. For non-commercial subleases/users, the County in its sole discretion has the right to sublease any portion of the tower site to another entity for purposes of use of the tower system, non-exclusively or exclusively. These non-commercial subleases/users may include but shall not be limited to the Okaloosa County, Okaloosa County School District, City of Destin, the Military, State and federal government

agencies, which may or may not pay some rent, at a rate determined by the County. All Sublessee's shall have the rights granted to the County hereunder to use of the Property, ingress, egress, construction and utilities.

12. **Consideration and DWU Tower Usage.** The cost of allowing County to place equipment on the Site and Property shall be at no cost. The Parties believe that the Public Safety Emergency Communication System and other Public Usage is in the public interest and consideration enough for the Parties, local residents, and first responders for use of the Site and Property. However, as additional consideration the County shall permit DWU to install equipment on the Site for DWU's use but not for other commercial purposes. The following shall be permitted on the Site at no cost for use and use for these purposes shall be considered in-kind and shall be considered a sub-leasee:

- a. Cameras overlooking the DWU Campus;
- b. WIFI Hot Spot for the DWU Campus;
- c. DWU radio repeater/receiver for any radio system the DWU utilizes for its employees;
- d. DWU Dish or other receiver for a utility SCADA system or automated read system.

For its usage, the DWU shall be responsible for its own installation, utilities, equipment shelter and maintenance to include equipment removal if no longer operable, unless otherwise agreed to by the County through written agreement. The County shall cooperate with DWU to provide secure access rights to the secure compound to install and thereafter maintain or remove its equipment. Such equipment shall be installed and maintained so as to not interfere or cause damage to any other Site equipment.

13. **End of Easement Remediation** - Within 3 months of the end of the lease period the County shall have the right to remove the tower and all vertical equipment and other physical improvements above the surface of the ground ("Improvements"). Should the County not desire to exercise its right for all or any portion of the Improvements, prior to the end of the Lease Term it shall offer any of the remaining Improvements to the DWU, in writing, as is, and at no cost. If the DWU accepts some or all of the Improvements offered it shall do so in writing within thirty (30) days of the offer from the County. The County shall be fully responsible for removing any and all Improvements, not accepted by the DWU, at its expense. The County shall not be responsible for removing any improvements at or below surface of the ground.

General Provisions

14. **Governing Law & Venue.** This agreement shall be interpreted in accordance with the laws of the State of Florida without regard to its principles of conflicts of laws. Venue for any legal proceedings shall be in the state courts of Okaloosa County, Florida.

15. **Notices**. All notices shall be in writing. Such notices or demands shall be mailed or hand-delivered to the other party at the following address which may be changed in writing from time to time:

County:

Okaloosa County BCC
Attn: County Administrator
1250 N. Eglin Pkwy Suite 102
Shalimar, FL 32579

With a Copies to:

Nabors, Giblin, & Nickerson, LLC
Attn: Okaloosa County Attorney
1250 N. Eglin Pkwy, Suite 102
Shalimar, FL 32579

Okaloosa County Sheriff's Office
Attn: Facilities Director
50 2nd Street
Shalimar, Florida, 32579

DWU:

Destin Water Users, Inc
Attn: General Manager
218 Main Street
Destin, FL 32541

With a Copies to:

Anchors Gordon
Attn: Michelle Anchors, Esquire
2113 Lewis Turner Blvd, Suite 100
Ft. Walton Beach, FL 32547-6711

Either party may change the notice designation, at any time, by providing the other party with written notice five (5) days in advance of the change.

16. **Independent Contractor**. The parties to this Agreement shall at all times be acting in the capacity of independent contractor and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so.

17. **Insurance**. The County, its contractors/agents, or subleases its contractors shall provide certificates of insurance to DWU, naming them as additionally insured, for coverage for the minimum insurance coverages required as follows:

- **Commercial General Liability Insurance**: Including Bodily Injury and Property Damage Liability, Independent Contractors Liability, Contractual Liability, Product Liability and Updated 9.2.2021 Completed Operations Liability in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.
- **Statutory Workers' Compensation and Employers Liability Coverage**: \$500,000 minimum.
- **Automobile Liability**: Automobile Liability in an amount not less than \$1,000,000 combined single limit, per occurrence for bodily injury and property damage, including owned, hired and non-owned vehicle coverage.

18. **Indemnification**. Unless otherwise stated herein, each party shall be solely responsible for the conduct of its employees and agents in connection with their performance or obligations under this Agreement, and hold the other harmless for any injuries or damages arising hereunder, and shall defend any claims for injuries or damages, even if such claims be groundless or fraudulent, except that liability in such cases shall not exceed the waiver limitations set forth in section 768.28, F.S., as it now exists or as it may be amended.

19. **Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by either party or of any rights or limits to liability existing under section 768.28, F.S. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

20. **Confidential and Exempt Security and Safety Plan Information.** The parties acknowledge that the plans and information related to the System to be installed are exempt from section 119.07(1), F.S, and section 24(a), Article I of the State Constitution, pursuant to section 119.071(3), F.S. In addition, such System plans and specifications constitute information relating to the security systems for property owned or leased by a political subdivision of the State of Florida and, pursuant to section 281.301(1), F.S., are confidential and exempt from public disclosure.

21. **Third Party Beneficiaries.** It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions of any part of this AGREEMENT to create in the public or any member thereof, a third-party beneficiary under this agreement, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this AGREEMENT.

22. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written agreements. The parties acknowledge that they have not relied upon any statement, representation, prior or contemporaneous written or oral promises, agreements or warranties, except such as are expressed herein. The terms of this AGREEMENT can only be amended in writing upon mutual agreement of the parties and execution of the amendment by both parties.

23. **Conflicting Provisions.** The terms, statements, requirements, or provisions contained in this Amendment shall prevail and be given superior effect and priority over any conflicting or inconsistent terms, statements, requirements or provisions contained in any other document or attachment

24. **Severability.** If any term of this AGREEMENT is deemed, by the court having appropriate jurisdiction, invalid or unenforceable, the remainder of the terms of this AGREEMENT shall remain in full force and effect. This AGREEMENT shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions herein.

25. **Effective Date.** Once executed by both parties this Agreement shall become effective immediately.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

//////////////////// **Signature Page to Follow** //////////////////////

DESTIN WATER USERS, INC.

Lockwood Wernet, General Manager

July 19, 2022

Date

ATTEST:

OKALOOSA COUNTY, FLORIDA:

Mel Ponder, Chairman

July 19, 2022

Date

ATTEST:

J.D. Peacock, II Clerk

Exhibit "B"

Radio Tower Design and Description

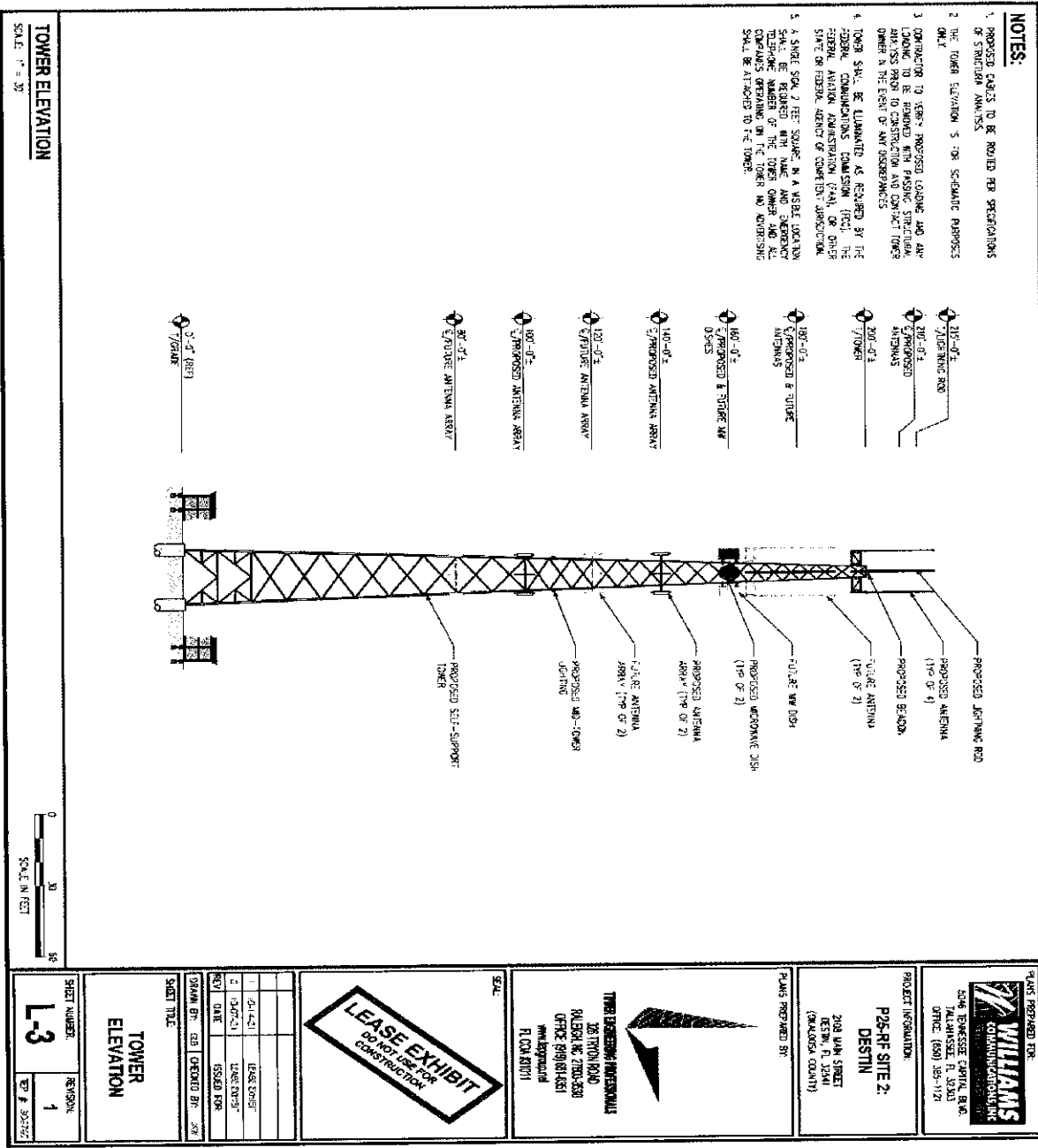


Exhibit "C"
Easement for Ingress and Egress and Utilities

Prepared by and return to:
Kerry Parsons, Deputy County Attorney
Nabors, Giblin & Nickerson
1500 Mahan Dr. Ste. 200
Tallahassee, FL 32308
T. (850) 224-4070
Kparsons@ngn-tally.com

EASEMENT

THIS EASEMENT made this 19th day of July, 2022, by and between Destin Water Users, Inc. with a mailing address of P.O. Box 308, Destin, FL 32579, its successors and assigns, hereinafter called "**Grantor**," and Okaloosa County, whose address is 1250 N. Eglin Parkway, Suite 102, Shalimar, Florida 32579, hereinafter called "**Grantee**";

WITNESSETH:

That Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, by these presents does hereby give, grant, bargain and release to the Grantee, a non-exclusive easement for the purpose of utilities, ingress, egress and maintenance of a radio tower and improvements upon, over and through the following described land in Okaloosa County, Florida, described as follows:

As shown on the drawings in Exhibit "A"

This easement shall run with term of this agreement unless mutually terminated in writing at an earlier date.

(Signatures on following page)

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name by its proper officers hereunto duly authorized, on the day, month and year first above written.

DESTIN WATER USERS, INC.

Lockwood Wernet, General Manager

STATE OF _____
COUNTY OF _____

SWORN TO and subscribed [] in person or [] online order, this _____ day of July , 2022, by Lockwood Wernet_, who is [] personally known to me, or who has [] produced _____ as identification.

Notary Public

[PLACE NOTARIAL SEAL]

Exhibit “D”
Temporary Construction Easement

Prepared by and return to:
Kerry Parsons, Deputy County Attorney
Nabors, Giblin & Nickerson
1500 Mahan Dr. Ste. 200
Tallahassee, FL 32308
T. (850) 224-4070
Kparsons@ngn-tally.com

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY EASEMENT made this ____ day of July, 2022, by and between Destin Water Users, Inc. with a mailing address of P.O. Box 308, Destin, FL 32579, its successors and assigns, hereinafter called “**Grantor**,” and Okaloosa County, whose address is 1250 N. Eglin Parkway, Suite 102, Shalimar, Florida 32579, hereinafter called “**Grantee**”;

W I T N E S S E T H:

That Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, by these presents does hereby give, grant, bargain and release to the Grantee, a temporary construction easement for the purpose of constructing a radio tower and improvements according to the construction plans for said improvements in, upon, over and through the following described land in Okaloosa County, Florida, described as follows:

Shall be the area between the DWU Customer Service Center and the northern Property Line, generally in proximity to the 80ft by 80ft site. However, such construction shall not impact access to onsite utility infrastructure or the access road going near the site (except for temporary durations specifically approval by DWU)

IT IS UNDERSTOOD and agreed by the parties hereto that the rights granted herein shall terminate upon completion of the project, but no later than the last day of June, 2024.

(Signatures on following page)

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name by its proper officers hereunto duly authorized, on the day, month and year first above written.

DESTIN WATER USERS, INC.

Lockwood Wernet, General Manager

STATE OF _____
COUNTY OF _____

SWORN TO and subscribed before me this ____ day of July, 2022, by Lockwood Wernet, who is [] personally known to me, or who has [] produced _____ as identification.

Notary Public

[PLACE NOTARIAL SEAL]