

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 07/20/2022

Contract/Lease Control #: C22-3208-BCC

Procurement#: NA

Contract/Lease Type: AGREEMENT

Award To/Lessee: OKALOOSA COUNTY SCHOOL BOARD

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 07/18/2022

Expiration Date: 07/17/2042 W/1 10 YEAR RENEWAL

Description of: TOWER SITE AGREEMENT

Department: BCC

Department Monitor: HOFSTAD

Monitor's Telephone #: 850-651-7515

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

Closed:

Cc: BCC RECORDS

TOWER SITE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ~~13th~~^{18th} day of ~~June~~^{July}, 2022, by and between the Okaloosa County, a political subdivision of the State of Florida, (the "County") and The School Board of Okaloosa County, Florida, a public body ("OCSB"), 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 OCSB shall be referred to as the "Parties."

Me
BCC Records

WITNESSETH

WHEREAS, the County and OCSB work collaboratively on many projects, to include most recently the interconnection of OCSB with fiber at County cost of approximately \$1.5 Million dollars, thereby providing dramatically improved service and saving OCSB tens of thousands of dollars per year; and

WHEREAS, OCSB owns property located in North Fort Walton Beach, located at 1976 Lewis Turner Blvd., Fort Walton Beach, FL 32547 ("Property"); and

WHEREAS, the "Site" on the Property is approximately 100 ft by 100 ft as shown on Exhibit A (approximately ¼ acre) and is considered inclusive of a route of ingress and egress from Lewis Turner Boulevard to the Site and other utility easements to serve the Site; and

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

WHEREAS, the Public Safety 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 OCSB, its employees and students on the Property and all other OCSB schools and properties; and

WHEREAS, the lack of interoperability between responding agencies has been a consistent comment in post tragedy reviews such as the Marjorie Stoneman Douglas school shooting in South Florida; and

WHEREAS, OSCB is willing to permit the County to construct, use, and maintain such tower in exchange for the consideration provided for in Sections 9 and 10, with such being deemed to compensate OCSB for the value of utilizing the Site on the Property, on which Public Safety Emergency Communication Tower/Equipment is placed; 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 OCSB's campus 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. **Site**. OCSB hereby grants the County an easement over the Property (100ft by 100ft Site) to install, maintain, operate and remove a radio tower, communication equipment and appurtenances the location of the Site, 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 Site and all easements on the Property.

2. **Use**. The County shall be permitted to install a self-supporting, 250ft Public Safety Grade Radio tower on the Property 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 Site and to install or improve utilities and access to get to the Site and the granted easements through the Property.

3. **Term**. The initial term of this Agreement shall be for a period of twenty (20) years commencing on the day of execution of this Agreement. Within 1 year of the end of any term, the County shall have the right to extend this Agreement with written notice for three additional Ten (10) year periods conditioned upon it still being used as part of the System.

4. **Construction**. County shall be solely responsible for all cost and obligations related to construction on and off the Site and the Property to include but not limited to: the tower installation, all tower mounted equipment, ground equipment, site development, stormwater, utilities, fencing access road from the parking lot and all related construction necessary shall be performed by County or its contractors in a safe manner consistent with current industry engineering and construction standards and practices. The County, its contractors/agents, or subleases, shall be responsible for the cost and expense of repairing any damage caused by their construction outside of the Site, during the term of this Agreement.

5. **Construction Site Maintenance**. During construction of 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 or impact on OCSB operations. Any prolonged construction stoppage over thirty (30) days may require additional measures to address the impacts of the easement areas until construction resumes. Additionally, during hurricane season the easement areas 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 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. OCSB 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 OCSB alters the traffic patterns of the campus. 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 OCSB.

7. **Temporary Construction Area Easement(s)**. An additional area outside the Site 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. OCSB hereby grants an initial temporary construction easement to the County for a duration of up to two(2) year, a copy of which is attached hereto as Exhibit "D."

The County agrees to obtain consent from OCSB on the area for the temporary construction easement and to utilize its best efforts to limit the impacts of construction on OCSB operations. OCSB agrees to utilize best efforts to work with the County for any future construction area easements necessary to support future construction on the Site and 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**. OCSB per Florida Statutes is empowered to oversee review, permit and otherwise inspect construction upon its OCSB campus property. OCSB has an agreement with the County Growth Management Department to perform building code plan review and permitting. The County's proposed tower location, height, and related uses are hereby considered approved for zoning and land use approval. The County shall still be required to receive approval from the County Growth Management Department for all construction activity per the Florida Building Code. The County with OCSB's cooperation if needed, shall obtain all required governmental and quasi-governmental permits, licenses, approvals and authorizations including but not limited to the FAA (which includes military coordination) for height and airspace penetration issues. It is understood and agreed that the County's ability to use the Property is contingent upon it obtaining all the certificates, permits and other approvals that may be required by any federal or state authorities. In the event any such applications shall be finally rejected or any certificate, permit, license or approval is denied, canceled or terminated by any state or federal government authority, such that the County will be unable to use the Property for its intended purposes, OCSB shall have the right to terminate this Agreement.

9. **Consideration**. OCSB will not require the County to make monetary rent payments. The Parties believe that the System is in the public interest and is consideration enough for the Parties, local residents, and first responders for use of the Site and Property. However, as additional consideration to OCSB for use of the Site and related easements, the County will provide the following:

- a. Through County's Fiber Network System, to include the current \$1.5 M in fiber extensions to the majority of school facilities, the County will provide future fiber at the County's expense, as the County's fiber system is extended into new areas, that are otherwise in close proximity to schools.

- b. School resource officer radios will now be interoperable with all first responders in the County to include the Sheriff's Department, the County EMS and the EOC, all local law enforcement and fire agencies and other responding agencies throughout the State.
- c. OCSB may experience better cell service coverage on the Property if the County is able to attract any cell phone providers to collocate on the towers.
- d. OCSB may be permitted to install bus radio repeaters on other County System towers, on a case-by-case basis when such uses can reasonably be accommodated based on engineered weight and wind load analysis of the Site and provided it does not take away from the capacity of the Site to accommodate other paying towers users that will offset System costs. Such a system shall not be a commercial system providing service to any other non-OCSB users and shall be exclusively for OCSB use.
- e. OCSB shall be permitted to use this Site, as provided for in Section 10 below.

10. **OCSB Tower Usage:** The County shall permit OCSB to install equipment on the Site for this Property for OCSB's specific use but not for other commercial purposes. The following shall be permitted on the Property at no cost for use and use for these purposes shall be considered in-kind and shall be considered a sublease:

- a. Cameras overlooking the Property;
 - b. Wireless internet for the Property, potentially for its students, staff, guests, and other OCSB use;
- and
- c. A Public Announcement System and/or Siren Alert System, and
 - d. A bus radio system repeater system.

For its usage, OCSB shall be responsible for its own installation, utilities, 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 OCSB 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 and shall be approved by the County.

In good faith, the County may permit other OCSB tower usage on a case-by-case basis when such uses can reasonably be accommodated based on engineered weight and wind load analysis of the Site and provided it does not take away from the capacity of the Site to accommodate other paying towers users that will offset System costs.

11. **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 that occurs on the Site and shall hold OCSB harmless. Beyond the initial construction, future utility construction may be necessary to serve the County or future site users to include OCSB.

12. **Subleasing.** The County may sublease any portion of the Site to another entity for purposes of use of the System, non-exclusively or exclusively, solely and exclusively for uses consistent with the permitted

uses articulated in this Agreement. Sublessee's shall have the rights granted to the County under this Agreement to use of the Property, ingress, egress, construction, and utilities. The County may choose not to sublease any portion of the Site in its discretion; however, if the County chooses to sublease any portion of the Site, examples of the subject of those subleases may include, without limitation, cell phone/data providers, State of Florida emergency communication system, Okaloosa School radio repeaters for its bus system, wireless internet providers and similar type wireless technology/communications providers. Revenues from these subleases shall be used to offset the initial cost and ongoing costs of maintaining the System including the tower, grounds, staffing, generators, shelters, emergency communications equipment, radio costs, construction costs, and land costs, to include all components and apparatus.

General Provisions

13. **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.

14. **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

OCSB:

The School Board of Okaloosa County, Florida
Attn: School Superintendent
120 Lowery Place SE
Fort Walton Beach, FL 32548

With a Copy to:

C. Jeffrey McInnis, Esq.
Anchors, Smith Grimsley, PLC
909 Mar Walt Drive, Suite 1014
Fort Walton Beach, Florida 32547

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.

15. **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.

16. **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.

17. **Insurance**. The County agrees to acquire and maintain during the term of this Agreement:

A. Commercial general liability insurance against claims for "personal injury" or property damage liability with a limit of not less than One Million and No/100 Dollars (\$1,000,000.00) in the event of "personal injury" to any number of persons or of damage to property arising out of any one occurrence.

B. Worker's Compensation coverage in compliance with Federal and/or State laws and Employer's Liability with a minimum limit of \$1,000,000 per occurrence.

C. Business Auto Liability covering autos of the County, including owned, hired and non-owned autos, for Bodily Injury and Property Damage with a combined single limit of \$1,000,000 each occurrence.

Such insurance may be furnished under a "primary" policy and an "umbrella" policy or policies. Such insurance may be carried in whole or in part under any blanket policies that include other properties and provide separate coverage for the Property provided that all of the foregoing requirements are satisfied. The County shall name OCSB as an additional insured as its interest may appear in regards to the aforementioned policies and shall furnish OCSB with a certificate of insurance upon request.

18. **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.

19. **Default and Right To Cure**. In the event either party fails to comply with the terms contained in this Agreement, the non-defaulting party shall give written notice to the other specifying in detail the nature of such default/breach. The defaulting party shall have sixty (60) days after written notice is received by the other party to either cure any default/breach or commence to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to an event of force majeure. If either party remains in default beyond any applicable cure period, the other will have the right to terminate this Agreement and exercise any and all rights and remedies available to it under law and equity.

20. **Termination for Convenience**. The County may terminate this Agreement, for any cause whatsoever, by giving ninety (90) days' advance, written notice. Upon such termination, this Agreement shall become null and void and all the parties shall have no further obligations to each other.

21. **End of Agreement Remediation of County's Improvements.** Within three (3) months after the end of the Agreement 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 Agreement Term it shall offer any of the remaining Improvements to OCSB, in writing, as is, and at no cost. If OCSB 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 OCSB, at its expense. The County shall not be responsible for removing any improvements at or below surface of the ground.

22. **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.

23. **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.

24. **Assignment.** This Agreement may not be assigned or transferred without the written consent of both parties.

25. **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.

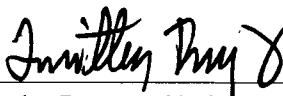
26. **Conflicting Provisions.** The terms, statements, requirements, or provisions contained in this Amendment shall prevail and be given superior effect and priority over any conflicting or inconsistent terms, statements, requirements or provisions contained in any other document or attachment

27. **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.

28. **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.

THE SCHOOL BOARD OF OKALOOSA COUNTY, FLORIDA



Timothy Bryant, Chairman

Date: June 13, 2022

ATTEST:



Marcus L. Chambers
Superintendent and Corporate Secretary

OKALOOSA COUNTY, FLORIDA:



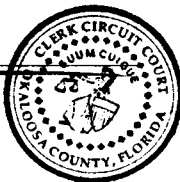
Mel Ponder, Chairman



Date: JUL 18 2022

ATTEST:







J.D. Peacock, II Clerk

Exhibit "A" Tower Location/Site

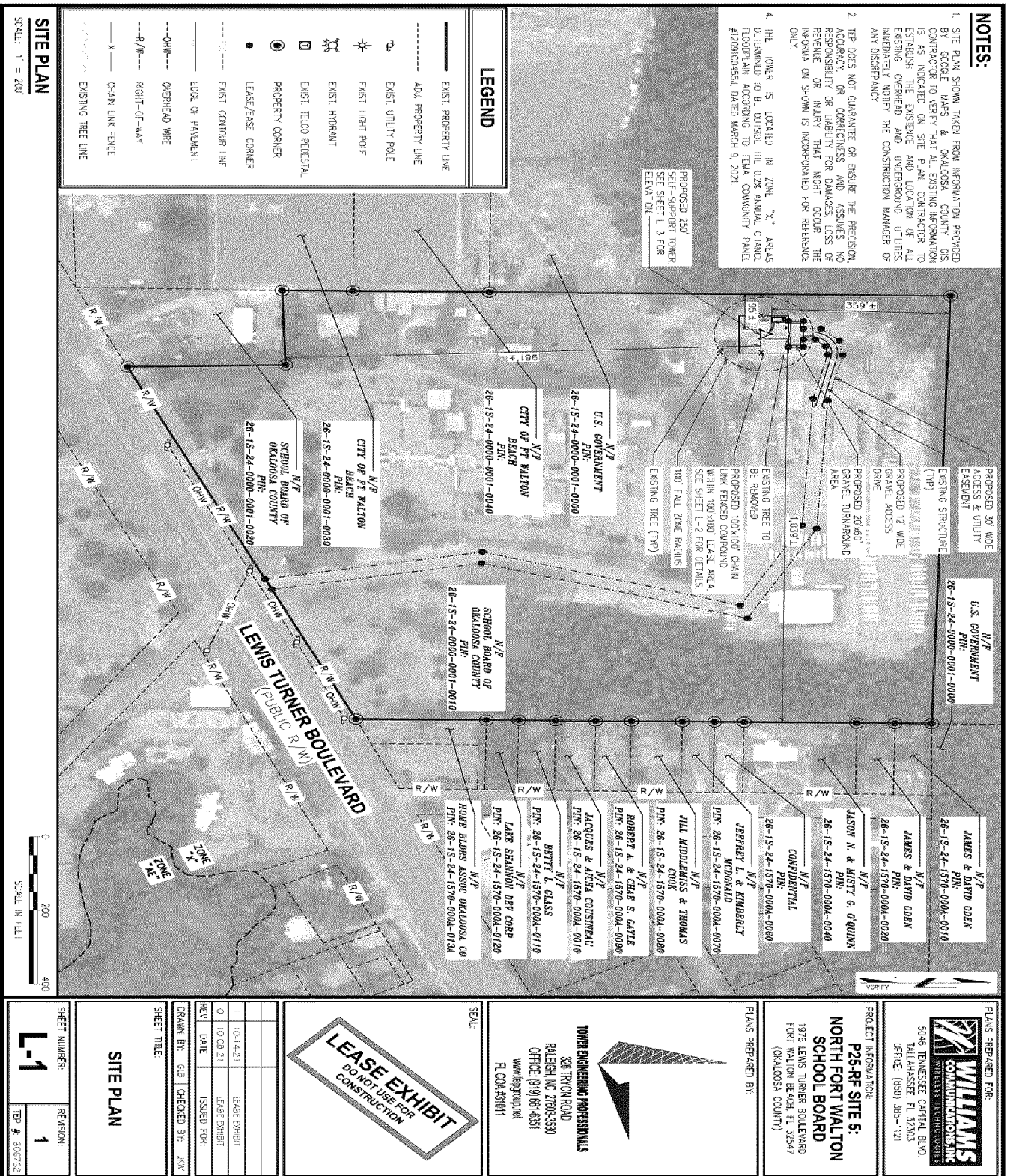


Exhibit "A" Tower Location/Site

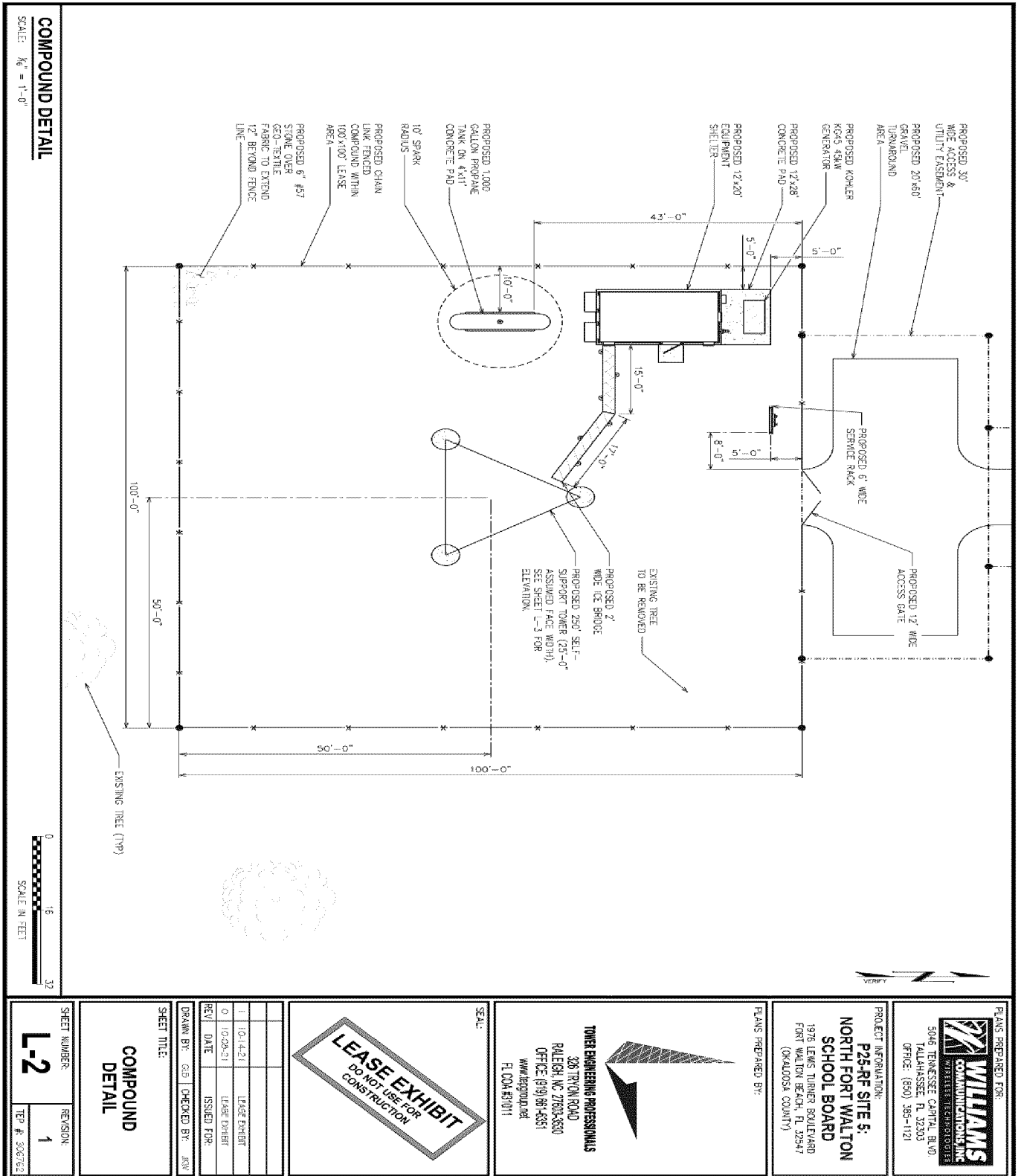
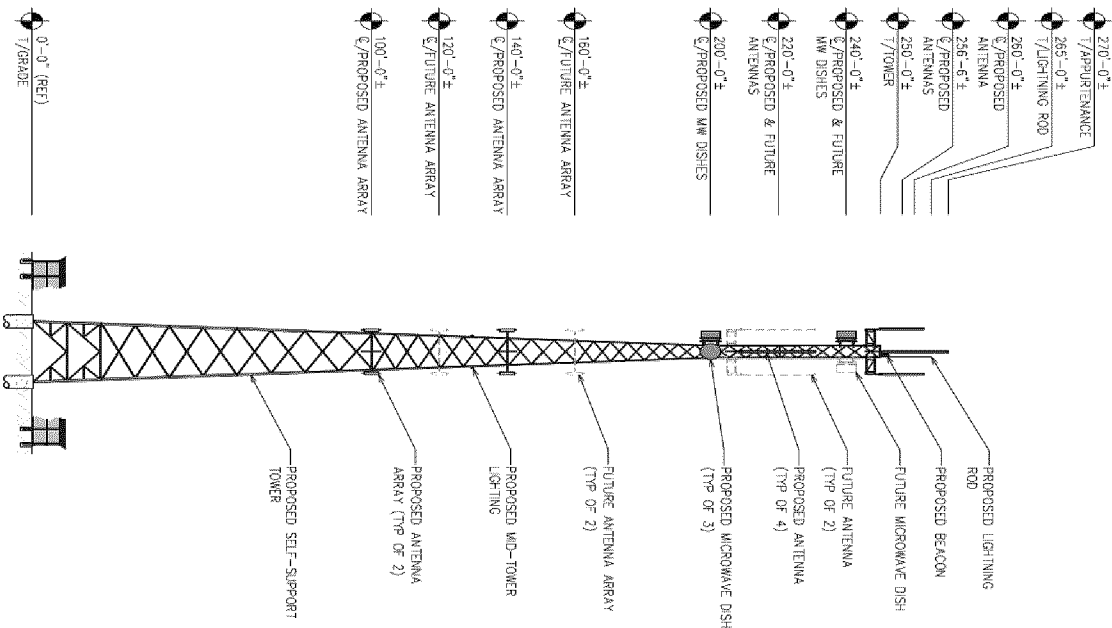


Exhibit "B"
Radio Tower Design and Description

NOTES:

1. PROPOSED CABLES TO BE ROUTED PER SPECIFICATIONS OF STRUCTURAL ANALYSIS.
2. THE TOWER ELEVATION IS FOR SCHEMATIC PURPOSES ONLY.
3. CONTRACTOR TO VERIFY PROPOSED LOADING AND ANY LOADING TO BE REMOVED 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 SIGNAL 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" = 40'



PLANS PREPARED FOR:

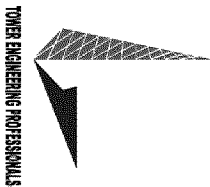


5046 TENNESSEE CANYON BLVD.
TALLAHASSEE, FL 32303
OFFICE: (850) 385-1121

PROJECT INFORMATION:

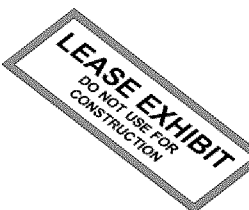
P25-RF SITE 5:
NORTH FORT WALTON
SCHOOL BOARD
1976 LEWIS TURNER BOULEVARD
FORT WALTON BEACH, FL 32547
(OKALOOSA COUNTY)

PLANS PREPARED BY:



326 TRYON ROAD
RALEIGH, NC 27603-4330
OFFICE: (919) 861-6361
www.teppro.com
FL COA #31011

SCALE:



REV	DATE	ISSUED FOR
1	10-14-21	LEASE EXHIBIT
0	10-09-21	LEASE EXHIBIT

DRAWN BY: GLE CHECKED BY: 3/22

SHEET TITLE:

**TOWER
ELEVATION**

SHEET NUMBER: 1

L-3

REV # 3/08/22

Exhibit “C”

Easement for Ingress and Egress and Utilities

Prepared by and return to:

Craig Coffey
1250 N. Eglin Parkway, Shalimar, FL 32579
850-609-6136

EASEMENT

THIS EASEMENT made this 13th day of June, 2022, by and between The School Board of Okaloosa County, Florida 120 Lowery Place SE, Fort Walton Beach, Florida 32548, hereinafter called “**Grantor**” and Okaloosa County, whose address is 1250 N. Eglin Parkway, Suite 102, Shalimar FL, 32579 its successors and assigns, 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:

INSERT LEGAL DESCRIPTION AND ATTACH DRAWING

This easement shall terminate in accordance with the Tower Site Agreement executed by Grantor and Grantee upon completion of the project, but no later than the last day of December, 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.

Signed, sealed and delivered
in the presence of:

THE SCHOOL BOARD OF
OKALOOSA COUNTY, FLORIDA

Sign: _____

Print: _____

Sign: _____


Print: _____



Timothy Bryant, Chairman

STATE OF Florida
COUNTY OF Okaloosa

SWORN TO and subscribed [☒] in person or [☐] online order, this 13th day of June, 2022, by Timothy Bryant, who is [☒] personally known to me, or who has [☐] produced _____ as identification.



Notary Public

[PLACE NOTARIAL SEAL]

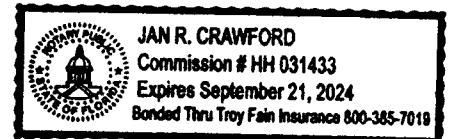


Exhibit “D”
Temporary Construction Easement

Prepared by and return to:

Craig Coffey
1250 N. Eglin Parkway, Shalimar, FL 32579
850-609-6136

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY EASEMENT made this 13th day of June, 2022, by and between The School Board of Okaloosa County, Florida 120 Lowery Place SE, Fort Walton Beach, Florida 32548, hereinafter called “**Grantor**” and Okaloosa County, whose address is 1250 N. Eglin Parkway, Suite 102, Shalimar FL, 32579 its successors and assigns, 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:

INSERT LEGAL DESCRIPTION AND ATTACH DRAWING

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 December, 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.

Signed, sealed and delivered
in the presence of:

**THE SCHOOL BOARD OF OKALOOSA
COUNTY, FLORIDA**

Sign: _____

Print: _____

Sign: _____

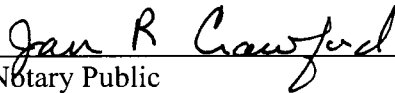
Print: _____



Timothy Bryant, Chairman

STATE OF Florida
COUNTY OF Okaloosa

SWORN TO and subscribed before me this 13th day of June, 2022, by
Timothy Bryant, who is [☒] personally known to me, or who has [☐] produced
_____ as identification.



Notary Public

[PLACE NOTARIAL SEAL]