

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF FORT LAUDERDALE
AND
FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**

This Memorandum of Understanding (Agreement) is made effective upon execution by both the City of Fort Lauderdale (CITY), a political subdivision created pursuant to Florida Statutes, located at 101 NE 3rd Avenue, Fort Lauderdale, Florida 33301, and the State of Florida, Department of Management Services (DMS), a state agency, located at 4030 Esplanade Avenue, Tallahassee, Florida 32399-7016. The CITY and DMS shall sometimes hereinafter be referred to in this Agreement individually as a "Party" or collectively as the "Parties." This Agreement between the CITY and DMS is a multiple-phase project: Phase One concerns the Future Tower Site, where DMS will construct and operate a tower, and Phase Two concerns the Current Tower.

WITNESSETH:

WHEREAS, the CITY owns real property located at 1300 West Broward Boulevard, Ft. Lauderdale, Broward County, known as the Ft. Lauderdale Police Department; and

WHEREAS, DMS and the CITY entered into an agreement on or about July 31, 1992, to lease property at the Ft. Lauderdale Police Department to DMS (known as and named Fort Lauderdale X213 for DMS purposes) to install a radio communications tower and related facilities, (the "Current Tower") and granting the CITY a license to use certain space on the Current Tower; and

WHEREAS, the CITY is relocating the Ft. Lauderdale Police Department and the Parties will subsequently discontinue use of the Current Tower; and

WHEREAS, the Parties desire to continue their relationship and share space at a new location; and

WHEREAS, the State of Florida owns real property located at NW 222 22nd Ave, Fort Lauderdale, Broward County, Florida 33311, known as the Broward Regional Juvenile Center and more particularly described in the legal description attached hereto (see Exhibit A, Legal Description) (hereinafter referred to as the "Future Tower Site"); and

WHEREAS, DMS has been directed by the Florida Legislature to continue the operation of the Statewide Law Enforcement Radio System (SLERS) to serve both law enforcement units of state agencies and local law enforcement agencies through mutual aid channels pursuant to section 282.709, Florida Statutes; and

WHEREAS, the Future Tower Site is geographically located in an area essential to maintaining necessary radio pattern coverage for SLERS; and

WHEREAS, DMS has entered into a lease agreement with the State of Florida for use of the Future Tower Site to build and operate radio facilities including, but not limited to, a new radio tower

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Exhibit 1

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and equipment shelter at the Future Tower Site (See Exhibit B, Amendment Number 6 to Lease Number 4307, attached for reference purposes only); and

WHEREAS, the Parties have represented that placement and operation of the individual Party's equipment at the Future Tower Site will not interfere with the other Party's communications equipment or operations, the structural integrity of the tower, or the future communications plans of either Party; and

WHEREAS, DMS may lease space located on the Future Tower Site to interested parties for use as public purpose; and

WHEREAS, utilization of the Future Tower Site by the CITY for law enforcement communications serves a public purpose; and

WHEREAS, the CITY will be granted a license by DMS to use certain space at the Future Tower Site (a more detailed description will be included as an amendment to this Agreement at a future date).

NOW THEREFORE, in consideration of the mutual benefits and the good and valuable consideration acknowledged hereto by the Parties, it is mutually agreed as follows:

I. Phase 1: Future Tower Site

1. **DESCRIPTION.** DMS will design, construct, and maintain a self-supporting tower for installation and operation of the radio equipment, antennas, and equipment shelter at the Future Tower Site. DMS hereby provides to the CITY access to and the right to use a portion of the Future Tower Site for the installation and operation of the CITY's equipment, antennas, equipment shelter and generator as described herein. The property description with details regarding City's access to the Future Tower Site will be added to this Agreement by amendment at a future date. DMS has the sole authority to determine the site design provided such site design is compliant with the site requirements set forth in this Agreement. The CITY shall have authority to comment on such design, and the Parties shall mutually agree upon the final site design prior to the start of construction.
2. **AUTHORIZED USERS.** Both Parties shall be authorized users of the Future Tower Site, so long as such use is consistent with the terms and conditions of this Agreement. A detailed description of the space on the tower on the Future Tower Site for the CITY's use will be included as an amendment to this Agreement at a future date. DMS has the exclusive right to extend the right to use the Tower to other governmental entities or expand its own use of the tower, so long as said use does not interfere with existing DMS's and CITY's communications systems. Approval of such authorized users is solely at the discretion of DMS. DMS will enter into a separate lease agreement with any approved authorized user of the Tower.
3. **CONSTRUCTION, MAINTENANCE, AND REPAIRS.** DMS will construct, maintain, and perform any necessary repairs to the Future Tower Site, including its equipment shelter and backup generator at its own cost and expense. The CITY agrees to install, maintain, and repair the City's equipment at the Future Tower Site, including but not limited to the CITY's separate equipment shelter and

generator, at its own cost and expense. The CITY shall provide any documentation or information required to obtain DMS approval prior to the CITY installing its equipment on the Future Tower Site. A more detailed description of the CITY's equipment on the tower, including but not limited to an equipment list will be added to this Agreement by amendment at a future date.

4. **MODIFICATIONS.** The CITY shall provide pre-notification and obtain DMS approval prior to performing any equipment replacement and repairs to its equipment on the Future Tower Site or in an equipment shelter. The CITY further agrees to facilitate and pay for, at the CITY's own cost, any required structural, engineering, or other required studies and any remediation work associated with the addition of any DMS-approved equipment at the Future Tower Site.
5. **PERMITS.** It will be the responsibility of the CITY to obtain any permits necessary for DMS's installation and operation of the Future Tower Site to include, but not be limited to, building permits, waiver of zoning requirements, zoning approvals, etc. DMS will obtain all Federal Aviation Administration (FAA) permits necessary for the operation of the Tower. Each Party will be individually responsible for obtaining its own Federal Communications Commission (FCC) frequency licensing as required for its own operations. DMS will provide site plans to assist the CITY in obtaining necessary approval for the erection of the Tower, and the DMS equipment shelter.
6. **EQUIPMENT.** Each Party will be responsible for providing its own radio equipment to be placed on the Future Tower Site including but not limited to, base stations, antennas, and cabling. Additionally, the CITY will provide its own equipment shelter, generator, generator fuel source, and air conditioning equipment. The CITY will also provide an emergency power generator for DMS's exclusive use. The CITY will have space reserved on the Tower and the Site. A detailed description of the CITY's equipment and space reserved on the Future Tower Site for its equipment shelter will be added to this Agreement by amendment at a future date.
7. **INTERFERENCE.** DMS and the CITY shall conduct their communications and on-site operations in such a manner as to create no interference with the other Party's current and future planned operations. In the event one Party's operations cause interference to the other Party's communications, the Party causing the interference shall undertake continuous effort to resolve the interference, within 24 hours of notice from the affected party. DMS shall coordinate the location of communications equipment at the Site and on the Tower amongst the Parties. DMS shall have the final authority and approval as to such arrangements.
8. **ACCESS.** At all times during the terms of this Agreement, the authorized employees and agents of the Parties shall have the right to enter upon the Future Tower Site where any of their equipment is located and enjoy full and complete access to the land on which the equipment is located, provided such access is made in such a manner as to create no interference with the other Party's operations. The DMS Network Operations Center (NOC), run by L3Harris Technologies, Inc., must be notified at (866) 537-7763 prior to any and all entry into the fenced area of the Site not limited to climbing of the tower. Any unauthorized access may result in law enforcement involvement.

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9. **UTILITIES.** Each Party shall be responsible for the acquisition of its own utilities at the Future Tower Site and for payment of monthly charges directly to the electrical utility company.
10. **COMPENSATION.** Due to the common interests and collaborative intentions of DMS and the CITY, neither Party shall be entitled to receive monetary compensation from the other under this Agreement.
11. **COOPERATION.** Each Party shall cooperate with the other to utilize the Future Tower Site for the purposes contemplated herein and to minimize interference to equipment and service.

II. Phase 2: Current Tower

12. **RELOCATION FROM AND DECOMMISSION OF CURRENT TOWER.** Once the tower is constructed on the Future Tower Site, the CITY will be responsible for removing its equipment from Current Tower and relocating it on the Future Tower Site. The CITY will also be responsible for coordinating and paying to remove or decommission the Current Tower and ancillary structures or equipment located at 1300 W. Broward Blvd, Fort Lauderdale, FL once the CITY has received notice from DMS that all DMS equipment has been removed from the Current Tower.

III. Terms and Conditions Applicable to Phase 1 and Phase 2

13. **TERM.** The term of this Agreement shall be for a period of twenty (20) years commencing on the date of execution of this Agreement by both Parties.
14. **RENEWAL.** This Agreement will be automatically renewed for two (2) additional ten (10) year periods with the same terms and conditions, unless either Party chooses not to renew, notice of which must be provided in writing sixty (60) days prior to the renewal date. In the event a Party provides such notice, they shall have three hundred and sixty-five (365) days at the expiration of the term for completion of the obligations under Section 18, Removal of Property. The Agreement terms and conditions may be modified if mutually agreed to in writing by the Parties.
15. **POINTS OF CONTACT AND NOTICES.** Primary Points of Contact for the Parties are set forth below. The Parties shall direct all matters, including notices, to the attention of the Points of Contact for attempted resolution or action. With the exception of emergency notices as addressed in section 33, Emergency Notices, all notices to DMS under this Agreement shall be in writing and shall be deemed received if received by email to the address listed below or deemed received on the delivery date when sent by nationally recognized overnight delivery service, receipt requested. The Points of Contact shall be responsible for overall coordination and oversight relating to the performance of this Agreement.

If to DMS:

Sunshine Donaldson, FCCM, Contract and Project Manager
Division of Telecommunications (DivTel)
Department of Management Services

Telephone: 850-329-9217 (office)
4030 Esplanade Way, Suite 180
Tallahassee, FL 32399
Email: sunshine.donaldson@dms.fl.gov

Teresa Nichols, Public Safety Leasing Manager
Division of Telecommunications
Department of Management Services
Telephone: 850-778-4422 (office)
4030 Esplanade Way, Suite 180
Tallahassee, FL 32399
Email: teresa.nichols@dms.fl.gov

With an email copy to:

Public Safety Leasing Manager
Email: SLERSleasing@dms.fl.gov

If to CITY:

City of Fort Lauderdale
Jason Swift
1301 SW 2nd Ct.
Fort Lauderdale, FL 33312
Telephone: (954) 828-5790
Email: jswift@fortlauderdale.gov

With a mailed copy to:

City Manager
401 SE 21 Street
Fort Lauderdale, FL 33316

City Attorney,
City of Fort Lauderdale
1 East Broward Boulevard
Fort Lauderdale, FL 33301

The Parties may from time to time designate any other Point of Contact or address for this purpose by written notice to the other Party.

16. ASSIGNMENT. This Agreement and the rights and premises hereunder may not be transferred, assigned, leased, subleased, licensed or sub-licensed in whole or in part without prior written consent of the Parties, which shall not be unreasonably withheld.

17. REMOVAL OF PROPERTY. Upon termination of this Agreement, whether at the expiration of any term or by earlier cancellation as herein provided, the CITY shall, within three hundred and sixty-

five (365) days after receipt of DMS' written request to do so, at its own cost and expense, remove or cause to be removed its equipment and other structures constructed on the Future Tower Site. Upon such removal, the CITY shall restore the premises to the same good order and condition as they were on the date this lease was executed, normal wear and tear excepted. Removal of the CITY's equipment shelter and generator will only be necessary if specifically requested by DMS. In the event the CITY abandons use of the tower for communications purposes for a period of at least one (1) year, DMS may either assume ownership of any and all equipment remaining on the Future Tower Site and/or tower or invoice the CITY for reimbursement of any costs paid by DMS for the removal of the CITY's abandoned equipment .

- 18. TERMINATION.** Both Parties shall have the right to terminate this Agreement for good cause shown upon giving sixty (60) days' advance written notice to the other party by nationally recognized overnight delivery service, receipt requested.
- 19. INDEMNIFICATION.** Each Party to this Agreement will be solely responsible for its own act(s) or omission(s) (or those of its employees, contractors, representatives, and agents) and for any and all claims, liabilities, injuries, suits, demands, and expenses of all kinds that may result or arise out of any alleged malfeasance or neglect act caused or alleged to have been caused by that Party (or its employees, contractors, representatives, and agents) in the performance or omission of any act or responsibility of that Party under this Agreement. Nothing contained herein shall be construed as a waiver, express or implied, by DMS or the CITY of their sovereign immunity or the provisions of Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability or otherwise. Nothing herein shall be construed as consent to be sued by third parties. All damage caused by acts, omissions to act or negligence shall be restored by the Party causing same.
- 20. WAIVER.** A Party's delay in exercising, or failure to exercise, any right, power, or privilege provided for in this Agreement will not be deemed a waiver thereof. In the event of an explicit waiver by either Party of a breach of any provision of this Agreement, such waiver shall not operate or be construed as a waiver of any subsequent breach by that same Party.
- 21. SEVERABILITY.** Any provisions of this Agreement in violation of the laws of the State of Florida shall be ineffective to the extent of such violation without invalidating the remaining provisions of this Agreement.
- 22. MISCELLANEOUS.** Nothing contained herein shall be construed as creating any principal-agent relationship between the Parties. The Parties shall have the right to incorporate into and make a part of this Agreement such conditions, changes, or modifications which are, or may hereafter become necessary to comply with any requirement or decision of the FCC so as not to prejudice or cause the termination of any party's FCC communications authorization.

- 23. ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof. Any changes to this Agreement, with the exception of updates to the Point of Contact, must be made in writing and signed by the Parties.
- 24. SUCCESSORS.** This Agreement shall bind the successors and assigns of the Parties.
- 25. EXHIBITS.** The Parties agree to amend this Agreement to incorporate all exhibits referenced herein as such documentation becomes available.
- 26. AVAILABILITY OF FUNDS.** Notwithstanding any provision herein to the contrary, this Agreement is subject to the availability of funds appropriated by the Legislature of the State of Florida.

Special Conditions for the State of Florida

- 27. APPROPRIATION.** Pursuant to section 255.2502, Florida Statutes, the State of Florida's performance and obligation to pay under the Agreement is contingent upon an annual appropriation by the Legislature.
- 28. PUBLIC RECORDS.** To the extent required by the Florida Public Records Act, Chapter 119, F.S., the CITY shall maintain and allow access to public records made or received in conjunction with the Agreement. A violation of Chapter 119 may constitute a material violation of this Agreement. The Agreement may be terminated for cause by DMS for the CITY's refusal to allow access to public records.

The Parties acknowledge that pursuant to section 119.071(3)(e), F.S., building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from section 119.07(1) and section 24(a), Art. I of the State Constitution.

- 29. GOVERNING LAW.** The Agreement will be governed by and construed in accordance with the laws of the State of Florida. Exclusive jurisdiction and venue for suit arising under the terms of the Agreement will be in the appropriate State court located in Leon County, Florida.
- 30. INSURANCE.** For purposes of any required insurance, DMS, as an agency of the State, may satisfy such obligations by self-insuring, pursuant to sections 440.38 and 768.28, F.S. Proof of self-insurance shall be made available upon request.

For purposes of any required insurance, the CITY, as a political subdivision of the State, may satisfy such obligations by self-insuring, pursuant to sections 440.38 and 768.28, F.S. Proof of self-insurance shall be made available upon request.

- 31. COOPERATION WITH THE INSPECTOR GENERAL.** The CITY understands its, and its subcontractors' (if any), duty, pursuant to section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.
- 32. CONTRACTORS AND SUBCONTRACTORS.** The Parties agree that DMS may meet its obligations under the Agreement through its contractors, including but not limited to utilities, construction, installation, and other work pursuant to Contract No. DMS-20/21-162.
- 33. EMERGENCY NOTICE.** In the event of an emergency regarding DMS's facilities and its operations, when providing notice under section 15, Points of Contact and Notices, would not elicit a fast enough response, the CITY shall call both of the following phone numbers and state that and how the sites needs assistance immediately:

24-7 Network Operations Center
Telephone: (866) 537-7763

Doug Whitfield, SLERS System Manager
Telephone: (850) 445-4830

In the event of an emergency regarding CITY facilities and operations, when providing notice under section 15, Points of Contact and Notices, would not elicit a fast enough response, the DMS shall call the following phone number(s) and state the immediate need for assistance:

(954) 828-5555 – Option 2
James Baker, Telecommunications Manager
(561) 892-4843

- 34. ATTORNEYS' FEES.** Except as otherwise provided by law, the Parties agree to be responsible for their own attorney's fees incurred in connection with disputes arising under the terms of the Agreement.
- 35. ENVIRONMENTAL.** DMS, as leaseholder of State-owned property (see Exhibit B), represents and warrants that to the best of the DMS's knowledge, the sites, as of the date of this Agreement, are free of hazardous substances, including asbestos-containing materials and lead paint. Each Party shall comply with paragraph 27 of Lease Number 4307 (Exhibit C), in addition to any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that Party's activity conducted in or on the sites. Each Party shall also comply with all federal, state and local laws in connection with any substances or materials brought onto sites by such Party, its employees, contractors or agents, that are identified by any law, ordinance or regulation as hazardous, toxic or dangerous.

Each Party shall also be responsible for its own claims, fines, judgments, penalties, actions, abatement, cleanup remediation, testing, losses, damages (including testing and investigations), expenses or liability directly or indirectly arising out of or attributable to its (or its employees,

agents, or contractors) own acts, resulting in the use, generation, manufacture, production, storage, release, discharge, disposal, or presence of a Hazardous Material on, under or about the sites.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

STATE OF FLORIDA

Department of Management Services

BY: _____

NAME: _____

TITLE: _____

DATE: _____

CITY OF FORT LAUDERDALE, a Florida
municipal corporation

By: _____

Susan Grant
Acting City Manager

Dated: _____

ATTEST:

By: _____

DAVID R. SOLOMAN
City Clerk

Approved as to Legal Form and Correctness:
Thomas J. Ansbro, City Attorney

By: _____

RHONDA MONTOYA HASAN
Senior Assistant City Attorney

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
AMENDMENT NUMBER 6 TO LEASE NUMBER 4307

ATTACHMENT C
LEASE NUMBER 4307