

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION  
**FROM:** CITY ATTORNEY'S OFFICE  
**DATE:** July 1, 2019  
**RE:** **Radio Tower Lease Agreement with Polk County**

Attached hereto for your consideration is a proposed Tower Lease Agreement with Polk County to lease space for its Public Safety Radio System equipment on the City's Primary Radio Tower (Radio Tower) and within the City's equipment building located at 1109 Parker Street. Pursuant to this Agreement, Polk County will be able to place transmitting and receiving antennae on the City's main Radio Tower as well as other necessary equipment within the enclosure at the base of the Radio Tower. This Agreement is essentially a modified version of a previous Tower Lease Agreement between the City and Polk County that has been in effect for the last twenty (20) years.

In consideration for the space being provided to Polk County on the Radio Tower, the City will be granted access to Polk County's radio system for the purpose of public safety interoperability and mutual aid communications countywide. In accordance with the Agreement, the County will pay 25% of all reasonable maintenance and repair costs for the Radio Tower on a per occurrence basis. The term of this Agreement, effective July 1, 2019, subject to approval of the City Commission, shall be for a period of twenty (20) years and contains four (4) additional five (5) year renewal options upon mutual written agreement of the parties. This Agreement is integral to the City's public safety operations and ensures that vital interoperability and communications with the County's radio system is available for the City's first responders.

It is recommended that the appropriate City officials be authorized to execute this Agreement with Polk County to lease space on the City's Primary Radio Tower.

attachment

## **Tower Lease Agreement**

THIS AGREEMENT is made and entered this 1st day of July 2019 between the CITY OF LAKELAND, a municipal corporation organized and existing in accordance with the laws of the State of Florida (hereinafter referred to as the "Lessor") and POLK COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "Lessee").

### WITNESSETH:

WHEREAS, Lessee desires to utilize space on Lessor's primary radio tower and within the equipment building located at 1109 Parker Street, Lakeland FL 33801; and

WHEREAS, Lessor desires to have access to Lessee's radio communications resources for the purpose of public safety interoperability and mutual aid communications county wide.

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

1. PREMISES. Lessor does hereby lease unto Lessee, its heirs, successors and assigns, certain tower space and existing equipment room space as follows:

(a) The location and description of the tower and Lessor's Tower Site ("leased premises") appears in Exhibit "A" attached hereto.

(b) The description and specifications of Lessee's equipment and space requirement appears in Exhibit "B" attached hereto.

(c) Rental space on the tower shall include those items marked Lessee ("County") on the tower loading as it appears in Exhibit "C" attached hereto.

2. USE. Lessee will use the leased premises for the purpose of a 2-way radio communication system. Lessee shall use the leased premises for no other purpose than that herein set forth without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

3. TERM. This Agreement shall be in effect for an initial period of twenty (20) years from July 1, 2019 (the "Effective Date") unless otherwise terminated as set forth in this Agreement. Thereafter, the Agreement may be renewed for up to four (4) additional five (5) year periods upon mutual written agreement of the parties.

4. RENTAL. Lessee shall, in lieu of rent, agree to the following:

(a) Provide the Lessor with reasonable access to the Lessee's radio communications resources for the purpose of public safety interoperability and mutual aid communications countywide.

(b) Pay twenty-five percent (25%) of all reasonable Maintenance and Repair costs on a per occurrence basis. For purposes of this Agreement, maintenance items are the tower system, equipment shelter and emergency backup generator. The Lessor will invoice Lessee for each occurrence to the address provided in the Notice section set forth below.

5. INVOICE AND PAYMENT. Invoices for any Maintenance and Repair work as set forth in Section 4. (b) shall be presented to Lessee within thirty (30) days after completion of such work. Lessee shall remit payment to Lessor for such work within thirty (30) days of receipt of such invoice.

6. PAYMENT DISPUTES. If a portion of any invoice is disputed, the undisputed amount shall be payable when due. In the event of a payment dispute, the disputing Party shall submit a written notice of said dispute within fifteen (15) days of receiving the invoice and provide a basis for the dispute. The Party receiving the written dispute shall issue a response to the disputing Party within fifteen (15) days of receipt of the written dispute. Upon determination of the correct amount, the remainder, if any, shall become due and payable. If within a reasonable period of time not to exceed sixty (60) days from the date of the disputed invoice, the Parties cannot determine or agree upon the correct amount of the disputed charge, either Party may exercise all remedies available at law or equity.

7. LICENSING AND PERMITS. Lessee shall be responsible for obtaining, at its own cost and expense, any permits, licenses, or authorizations necessary for the installation of any new equipment on the tower or in the equipment space. Lessee shall abide by all local, State, and Federal laws and regulations with respect to its obligations hereunder.

8. LESSEE'S OPERATIONAL COSTS. Lessee shall bear all costs associated with the installation, operation and maintenance of its equipment including the cost of all antenna assemblies and repeater-station cabinets contemplated by this Agreement. Lessor shall provide electrical power for the term of this Agreement. Lessee shall pay the full cost and expense of an intermodulation study and tower load study pertaining to the feasibility of locating any new equipment at Lessor's antenna site prior to installing the new facilities or equipment thereon. A copy of these studies and associated plans will be provided to and approved by the Lessor before any work will be permitted to commence. Lessee shall be responsible for providing property and liability insurance for its own equipment and for the installation of any security alarms.

9. ACCESS. It is mutually agreed that with prior notification, the Lessee shall have the right to enter the leased premises at the tower site at any reasonable hour or in time of emergency in order to service and maintain said equipment assemblies and cabinets.

10. LESSEE'S WARRANTIES. Lessee warrants that all installation and maintenance of Lessee's antennas and related equipment shall be performed in compliance with established industry standards and good engineering practices. Lessee

further warrants that operation of the equipment shall be in compliance with Federal, State and local laws and regulations.

11. LESSOR'S WARRANTIES. Lessor warrants that all installation and maintenance of antennas, related equipment, and the tower itself shall be performed in compliance with established industry standards and good engineering practices. Lessor further warrants that no antennas will be permitted on the tower without first obtaining a tower loading analysis by a professional tower engineer.

12. INSURANCE. Throughout the term of this Agreement, Lessee shall maintain insurance for the benefit of the Lessor against all claims of property damage and bodily injury caused by the acts of the Lessee, its agents, employees, licensees, independent contractors, invitee's or such other persons for whom the Lessee is responsible.

13. INDEMNITY. To the extent permitted by Florida Statute §768.28, Lessee shall indemnify and hold Lessor harmless against any claims, damages, costs, liability, and expenses arising out of this Agreement that are attributable to bodily injury, sickness, disease or death; injury to or destruction of tangible property, including the loss of use thereof; interference with the business or operations of any third party, or violation of any law or regulation, which are caused in whole or in part by any act or omission of Lessee or anyone for whose acts it may be liable. Nothing contained herein, however, shall be construed as a waiver of immunity or the limits on liability afforded by the law to the Lessee.

14. NO INTERFERENCE. The operation of Lessee will not in any way impair or interfere with the right of Lessor to maintain and operate its own radio or communications equipment at this location. Lessee will hold Lessor harmless from any energy radiating from any portion of the Lessee's installation. Should interference problems exist and be unresolvable, Lessee shall terminate its operation until any interference is eliminated. Unresolvable interference will be considered to exist when Lessor's operation will no longer meet the performance requirement specifications of the Federal Communications Commission or other government authority when Lessee's facilities are in operation, but continues to meet the requirements when Lessee's facilities are not in operation. Should interference problems be unresolvable, this Agreement will be deemed terminated. Lessor will not permit or suffer the installation of any future equipment which results in technical interference problems with Lessee's then existing equipment.

15. LESSOR'S RIGHTS. It is understood and agreed that the space, room, and rights acquired hereunder by Lessee shall not in any way impair or interfere with the right of the Lessor to maintain and operate its own existing radio or communications equipment.

16. REGULATIONS. It will be the responsibility of Lessee to comply with all laws, regulation, and ordinances, relating to the operations of its communications equipment.

17. NOTICES. All notices to the parties hereto shall be in writing and addressed as follows and sent by certified mail (postage prepaid) until written notice shall be given otherwise.

As to Lessor: Telecommunications Manager  
3610 Drane Field Road  
Lakeland, Florida 33811  
Phone: (863) 834-6894  
E-mail: Richard.Hesse@lakelandgov.net

As to Lessee: Radio System Manager  
1040 Alpha Ave.  
Municipal Airport  
Bartow, Florida 33830  
Phone: (863) 519-7390  
E-mail: KouroshBastani@Polk-County.net

18. ABANDONMENT. Should Lessee discontinue or otherwise abandon use of the leased premises for any single period of sixty (60) days, Lessor, at its option, may terminate this Agreement. If for any reason, Lessor abandons the premises, this Agreement shall be deemed void and all of Lessee's and Lessor's obligations hereunder shall cease to be effective from the date of said abandonment.

19. TERMINATION. This Agreement may be terminated by the Lessor, at Lessor's option; (a) on written notice in the event of a material breach of the Agreement which remains uncured thirty (30) days after notice of the breach and has been sent to the Lessee. Provided, however, tenancy shall not be deemed to be in default if Lessee diligently commences to cure such default within said thirty (30) day period; (b) on thirty (30) days written notice in the event any governmental body denies or revokes any permit or authorization necessary to maintain the tower and antenna operations at the site, unless notice of less time is required to comply with legal requirements; (c) on one hundred and eighty (180) days written notice in the event of condemnation or one hundred and eighty (180) days in event Lessor sells the premises to a third party; (d) on one hundred and eighty (180) days written notice in the event Lessor discontinues maintenance of the tower.

20. TERMINATION WITHOUT CAUSE. Either Party may terminate this Agreement without cause upon on hundred and eighty (180) days prior written notice or upon such shorter notice as may be mutually agreed upon in writing by both Parties.

21. REMOVAL OF EQUIPMENT. Upon termination whether pursuant to this Agreement or in the event that this Agreement is not renewed at the end of the term, Lessee shall remove all of its equipment from the Leased Premises within ninety (90)

days and shall return the tower to its original condition, ordinary wear and tear excepted. Property not removed within that time shall become the property of the Lessor.

22. ASSIGNMENT. Lessee may not assign or sublet its right or obligations under this Agreement without Lessor's prior written consent.

23. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to that State's choice of law or conflict of laws rules. Should suit be filed for any reason arising out of this Agreement, the Parties agree that venue for such action shall lie only in the State courts of competent jurisdiction sitting in Polk County, Florida, or in the United States District Court for the Middle District of Florida, Tampa Division, but, as to the federal court, only in the event of a claim involving a question of the interpretation or enforcement of rights or obligations, if any, arising under a federal statute or regulation. This subsection shall survive the termination of this Agreement for any reason.

24. ENTIRE AGREEMENT. This Agreement and the attached exhibits signed by the parties constitute the entire agreement between the Lessor and Lessee and no prior written or prior or contemporaneous oral promises or representations shall be binding. This Agreement shall not be amended or changed, except by written instrument signed by both parties hereto. Paragraph captions herein are for convenience only and neither limit or amplify the provisions of this Agreement.

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

**CITY OF LAKELAND, FLORIDA**

**POLK COUNTY, FLORIDA**

By: \_\_\_\_\_  
H. William Mutz, Mayor

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

\_\_\_\_\_  
(Printed Name/Title)

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Kelly S. Koos, City Clerk

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

\_\_\_\_\_  
(Printed Name)

APPROVED AS TO FORM AND  
CORRECTNESS:

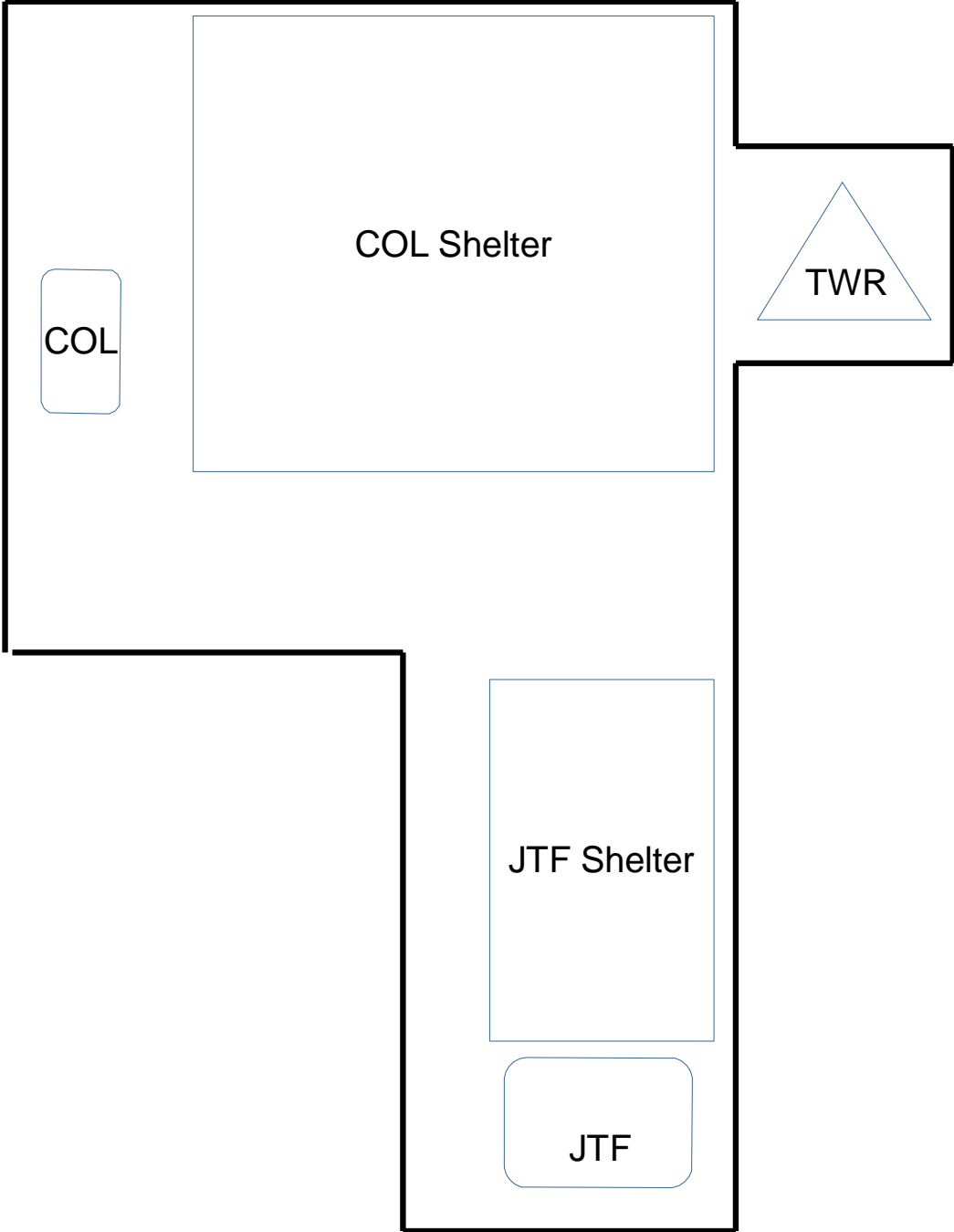
Reviewed as to form and legal sufficiency

\_\_\_\_\_  
Timothy J. McCausland, City Attorney

By: \_\_\_\_\_  
County Attorney's Office

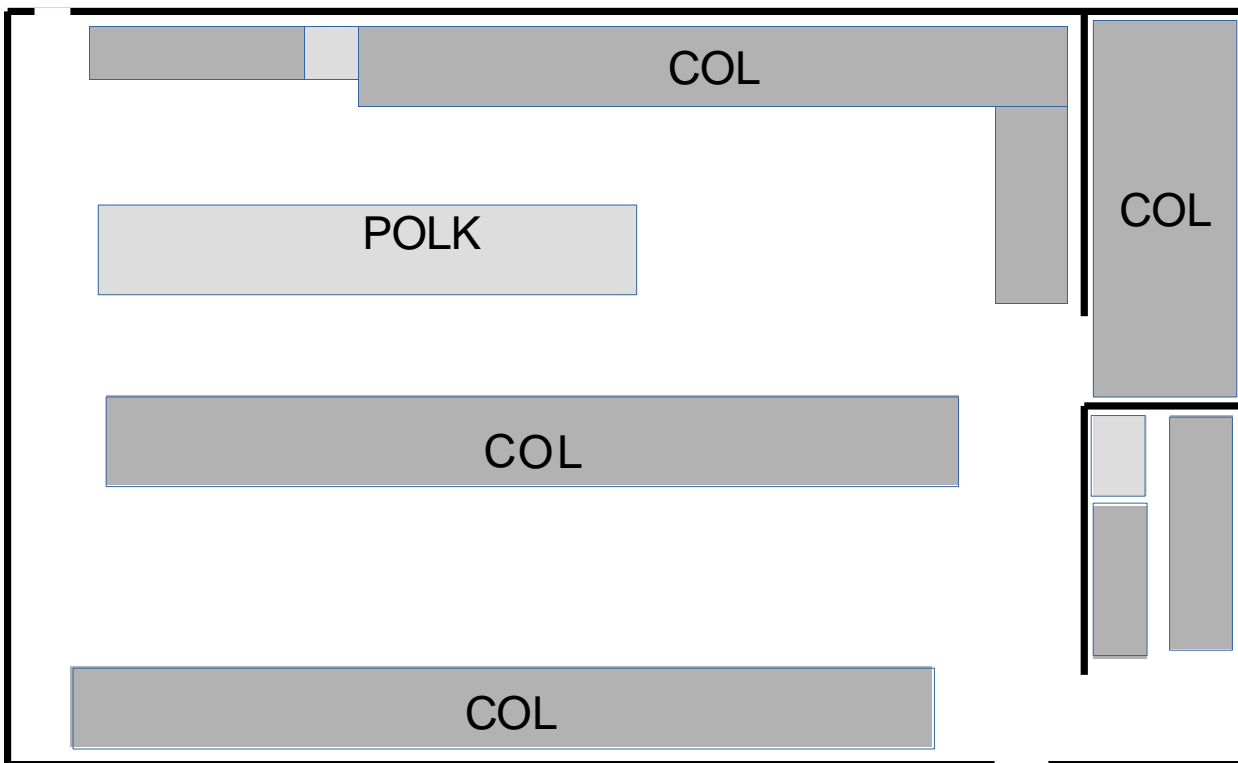
(Seal)

Exhibit A – Lakeland Prime Site





# Exhibit B – Prime Tower Shelter



# Exhibit C

## POLK and STATE Tower Loading

Elevation	Description (or Sim.)	Transmission Line	
	<b>Existing Antennas</b>		
400	RFS AO8410M-24TO	1-5/8"	STATE
400	Whip Ant.	7/8"	STATE
400	(2) BMR 12	(2) 1-5/8"	POLK
400	(4) Whip Ant.	(4) 1-5/8"	STATE
371	RFS 455-7	1-5/8"	STATE
368	BMR 12 on 8' SA	7/8"	POLK
357	Whip Ant. on 6' SA	7/8", 1/2"	STATE
351	Whip Ant. on 6' SA	7/8"	STATE
224	8-Ft. Dish with Rad	EW63	STATE
218	8-Ft. HP Dish	EW63	POLK
184	6-Ft. Dish with Rad	EW63	STATE
165	8-Ft. Dish with Rad	EW63	STATE
145	8-Ft. HP Ant	EW63	POLK
131	6-Ft. Dish with Rad	EW63	STATE
121	2-Ft. Dish with Rad	3/8"	POLK
114	Small Square Dish	1/4"	POLK
113	3-Ft. Panel Ant.	1/4"	POLK
109	2-Ft. Panel Ant.	1/4"	POLK
39	(2) Yagi on Mount	(2) 1/2"	POLK