

**DEVELOPMENT AND MANAGEMENT OF A
WIRELESS TELECOMMUNICATIONS FACILITY**

RFP NO. IT-2019-10

ISSUE DATE:	September 20, 2019
DUE DATE	November 12, 2019, 10:00 AM
ADDRESS	Town of Purcellville Attn: Procurement Specialist 221 S. Nursery Ave. Purcellville, VA 20132
CONTACT INFORMATION	Kathy Elgin, Procurement Officer kelgin@purcellvilleva.gov

ADDENDA DISCLAIMER: Please note that any addenda issued for this solicitation will be posted to the Town of Purcellville's Bid Board. To register for notice of solicitation's and addenda, go to <http://www.purcellvilleva.com/bids.aspx>.

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DEVELOPMENT AND MANAGEMENT OF A WIRELESS TELECOMMUNICATIONS FACILITY

- I. PURPOSE** - The objective of this Request for Proposal (RFP) is to obtain the services of a qualified licensed firm to provide Development and Management Services for a Wireless Telecommunications Facility in Purcellville, Virginia.

The Town requires the successful offeror (also referred to herein as “Contractor”) to enter into an agreement to develop, market, and manage a wireless telecommunications facility on a site owned by the Town. The Town seeks proposals from interested firms that can demonstrate capability to market, develop, sublicense, manage, and maintain a telecommunications facility. The successful offeror shall enter into a ten-year License Agreement with the Town, subject to possible renewals. The License Agreement is at Attachment 1.

The Town seeks a robust telecommunications facility that can accommodate the wireless needs of the Town into the future. The Town’s goals are to: (i) increase the bandwidth and capacity of wireless communications in the Town, particularly in the southwest portion of the Town, (ii) improve municipal communications, (iii) maximize municipal revenues, (iv) minimize aesthetic impact to the community, and (v) accomplish these goals in as little time as reasonably possible. The requirements as set forth in this RFP and License Agreement were prepared with the best information available to the Town. However, the Town is open to the ideas and advice from those expert in the telecommunications industry as to the best approach to accomplish these goals. The Town welcomes comments in response to this RFP about any terms or conditions included herein that are problematic, or terms and condition excluded from this RFP that are recommended to be included.

- II. BACKGROUND INFORMATION** - In order to increase cellular signal coverage and bandwidth, improve municipal communications, and maximize municipal revenues, the Town is seeking the services of a qualified firm to: install a telecommunications facility, manage the facility over at least 10 years, and negotiate and manage third-party licenses (sublicenses) for the use of this telecommunications facility.

The selected offeror must demonstrate real estate expertise, financial stability, site development and project management proficiency with managing a telecommunications facility on government owned property. The sole compensation to the successful offeror will be the payments it negotiates and receives from third parties for the use of the telecommunications facility it constructs on Town property.

III. SCOPE OF SERVICES

The Contractor shall provide all labor, materials and expenses to fully perform the following obligations, and shall perform all such obligations in compliance with all applicable regulations. The Contractor shall:

1. Perform soil study and site analysis of property located at 1001 S. 20th Street, Purcellville, Virginia (“Property”) in order to identify the recommended location for a telecommunications facility;

2. Analyze existing cell coverage throughout the Town and, in particular, the southwest quadrant of the Town;
3. Recommend a monopole cell tower height that will: (a) improve cell coverage and bandwidth in the Town and, in particular, the southwest quadrant of the Town, (b) accommodate municipal equipment to improve municipal communications; and (c) accommodate no fewer than eight telecommunications equipment arrays and associated equipment;
4. Recommend the preferred boundaries of the telecommunications facility site (“Site”) within the Property;
5. Market the Site to Approved Carriers. Provide a proposal to describe how the Town Site is to be marketed to Approved Carriers.
6. Design, engineer, and construct a new telecommunications facility, to include all associated expenses. This shall include a tower and foundation design for a telecommunications facility that can accommodate no fewer than eight equipment arrays. Prior to allowing any equipment on the tower, the Contractor shall require that plans depicting the equipment, certified by a licensed engineer, be submitted to the Contractor for review. The Contractor shall cause such plans to be reviewed by a licensed engineer who shall evaluate the submitted plans as well as the proposed cumulative load on the tower. The Contractor shall approve such equipment for location on the tower only if the Contractor’s licensed engineer first affirms in writing that the tower has adequate capacity to hold the proposed load, as well as the cumulative load of all the equipment proposed to be located on the tower. Prior to undertaking such an engineering review, the Contractor and his licensed engineer shall obtain from the Town agreement as to the appropriate engineering standards to be used.
7. Prepare site construction package, to include a license exhibit, zoning and permitting drawings.
8. Prepare architectural renderings and engineering design drawings, and provide as-builts in both hard copy as well as electronic format.
9. Take all steps necessary to secure all necessary governmental approvals, including Federal Aviation Administration, abatement quotes, environmental studies, storm water management studies, building permits, site plan approvals, easements, and any other governmental approval required for the construction of a new telecommunications facility, provided, however, that if the parties agree that the telecommunications tower should be built to height that is taller than the maximum height allowed under the Zoning Ordinance, then the Town shall be responsible for submitting an application to amend the Zoning Ordinance and shall conduct all required public hearings. Any such Zoning Ordinance modification is within the sole discretion of the Town Council; the Town does not guarantee that the maximum height allowed under the Zoning Ordinance will be increased.
10. Negotiate sub-license agreements for use of the telecommunications facility with third party Approved Carriers.
11. Provide Town with monthly rental and income reports for the Site managed by the Contractor; provide the Town with prompt updates for changes that occur at the telecommunications facility, including all new installations, upgrades, and equipment removals.
12. Establish formal evaluation and quality control procedures by which the Town can monitor each obligation of the Contractor under the License Agreement. The evaluation and quality control procedures must provide sufficient information to allow the Town to monitor the Contractor’s progress and effectiveness, and shall include a summary of the Contractor’s

licenses and marketing efforts so that the Town can evaluate the effectiveness of the services provided on an annual basis. The Contractor shall submit the quality control report to the Town not later than June 1 of each contract year.

13. Pay any taxes due as a result of the telecommunications facility.
14. Allow the Town to utilize space on the tower and Site for its municipal equipment.
15. Pay the Town an agreed percentage of gross revenues from the telecommunications facility, plus an annual license fee.

IV. CONTRACT TERMS AND CONDITIONS - The proposed License Agreement between the successful offeror and the Town is at Attachment 1 of this RFP.

V. EVALUATION OF PROPOSALS: SELECTION FACTORS - The criteria set forth below will be used to evaluate proposals and select the successful offeror. Each proposal shall include statements describing how the following objectives will be met:

Objectives / Selection Criteria	Weight
1. Increased bandwidth or capacity	1. 30
2. Increased coverage area	2. 30
3. Space allotted on tower for municipal equipment	3. 10
4. Revenue to the Town is maximized	4. 10
5. Speed at which project can be delivered to Town	5. 10
6. Tower design's visual impact on community	6. 10

The Town will develop a composite rating which indicates the collective ranking of the highest rated proposals in a descending order. The Town may then conduct interviews with only the top ranked offerors, usually the top two (2) or three (3) depending upon the number of proposals received. Negotiations shall be conducted with offerors so selected. The Town may request a Best and Final Offer, or make a recommendation for award/execution of the license.

VI. PROPOSAL SUBMISSION FORMAT – Each proposal shall describe the offeror's qualifications and understanding of the work to be performed. Offerors shall address the submission elements listed below, in the order presented below. Failure to include any of the requested information may be cause for the proposal to be considered nonresponsive and rejected.

1. **Offeror Organization:**

This section of the proposal shall contain the following minimum information:

- (a) General: Location of the Offeror's headquarters; nearest offices; applicable phone and facsimile numbers; and any other pertinent information relative to the size and organizational structure of the company.
- (b) Project Team: An organizational chart and written description of the proposed Project Team, with the names and titles of the key individuals shown. Include a supporting narrative to describe the qualifications, education and experience of personnel to be assigned.

- (c) **Financial Data:** Pertinent data which demonstrates the Offeror's corporate capability to successfully perform. Shall include information on the financial stability of the firm; e.g., annual financial reports and statements, Dun and Bradstreet and/or other credit bureau ratings.
- (d) **Subcontractor Data:** Identify all subcontractors (including consultants, advisors and suppliers) to be used and describe specific responsibilities, qualifications, and background experience of all key personnel. Include evidence of financial stability for each major subcontractor, consultant or advisor.

2. **Experience:**

- (a) Offeror: Describe the Offeror's prior related experience and expertise in providing equivalent management and development of wireless telecommunication base station facilities in similar size and scope to that specified. Responses must include the names, addresses, and phone numbers of contact persons; size and scope (magnitude and complexity) of that served; date of award and period of performance.
- (b) Offeror/Subcontractor Profiles: This section shall include recent data describing the current organization, date of incorporation, dollar volume, number of employees, home office location, and other company profile information. A profile must be completed for the primary vendor and any subcontractor that will be assigned to the project.
- (c) Offeror/Subcontractor References: A list of five (5) references for the Offeror and Subcontractor(s) for which each has provided Management of Wireless Telecommunication Base Station Facilities within the last three (3) years. References shall have been operating the systems for not less than three (3) months.

3. **Project Understanding:**

The Offeror shall provide a written narrative statement to demonstrate his or her understanding of developing, marketing, building, maintaining and managing a wireless telecommunications base station from a technical approach.

4. **Approach/Methodology:**

The Offeror shall provide a written narrative describing the approach/methodology to providing services. The Offeror shall present a description of the phases or segments, if any, into which the proposed program can logically be divided and performed, together with flow charts. The technical narrative should address separately each of the tasks described in the Scope of Work and responses should be keyed to appropriate paragraph numbers. This section should also contain a discussion of any changes proposed by the Offeror.

This section should include a description of: (i) the proposed approach and timing for identifying the Site on the Property, (ii) the proposed approach and timing for obtaining all governmental approvals and permits for construction, (iii) the cost to and ability to fund construction of the telecommunications facility, (iv) the proposed approach and timing to market the telecommunications facility, (v) the anticipated leasing/licensing procedure, (vi) the ability to comply with all terms of the proposed License Agreement, etc., and (vii) an anticipated project plan, listing all milestones and the approximate duration of each milestone. Anticipated significant difficulties and specific techniques to be used should be addressed.

5. **Project Fees:**

Each Offeror's proposal shall contain a complete, itemized breakdown of all fees proposed to be paid to the Town. Offerors must provide a projection of anticipated quantities and average annual gross revenues for Sub-Licenses or licenses to 3rd parties of space on the telecommunications facility. Such fees may include base rent, land lease, and a percentage of revenue from licenses issued by the Offeror to third-parties, or any combination thereof.

VII. INSTRUCTIONS FOR SUBMITTING PROPOSALS

1. Before submitting a proposal, read the ENTIRE solicitation including the License Agreement. Failure to read any part shall not relieve the Contractor of its contractual obligations. Technical and Price proposals must be submitted at the same time in separate sealed containers. Technical information provided shall not include price or cost data. The inclusion of price or cost data in the Technical proposal may be cause for the proposal being rejected. Include other information as requested or required. The proposal container must be completely and properly identified. The face of the container shall indicate the RFP number, time and date of acceptance, the title of the RFP, and whether it is the Technical or Price proposal. Proposals must be received by the Procurement Officer PRIOR to the hour specified as the due date. Proposals may either be mailed or hand delivered to Town of Purcellville, ATTN: Procurement Officer, 221 S. Nursery Ave., Purcellville, VA 20132. Faxed and e-mailed proposals will NOT be accepted.
2. **Questions and Inquiries** - Questions and inquiries, both verbal and written, will be accepted from any and all offerors. The Procurement Officer is the sole point of contact for this solicitation unless otherwise instructed herein. Unauthorized contact with other staff regarding the RFP may result in the disqualification of the offeror. Inquiries pertaining to the Request for Proposal must give the RFP number, title, and acceptance date. Material questions will be answered in writing with an Addendum provided however, that all questions are received at least ten (10) days in advance of the proposal due date. It is the responsibility of all offerors to ensure that they have received all addendums. Addendums can be downloaded from the Town's bid board found at www.purcellvilleva.gov. Addendums will be directly emailed to those Offerors that register on the Town's bid board.
3. **Proprietary Information** - Trade secrets or proprietary information submitted by an offeror in connection with this solicitation shall not be subject to disclosure under the Virginia Freedom of Information Act; however, **pursuant to Section 2.2-4342 of the Code of Virginia, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must clearly identify the data or other materials to be protected and state the reasons why protection is necessary. Failure to abide by this procedure may result in disclosure of the offeror's information.** Offerors shall not mark sections of their proposal as proprietary if they are to be part of the award of the contract and are of a "Material" nature.
4. **Authority to Bind Firm in Contract** - Proposals MUST give full firm name and address of offeror. Failure to manually sign proposal may disqualify it. Person signing proposal will show TITLE and AUTHORITY TO BIND THE FIRM IN A CONTRACT. Firm name

and authorized signature must appear on proposal in the space provided on the pricing page.

5. **Preparation and Submission of Proposals**

- A. All proposals shall be signed in ink by the individual or authorized principals of the firm.
- B. All attachments to the RFP requiring execution by the firm are to be returned with the proposals.
- C. Technical and price proposals are to be returned and submitted in separate sealed containers. The face of the container shall indicate the RFP number, time and due date, and the title of the proposal.
- D. Each firm shall submit one original and three copies of their proposal to the Town's Division of Procurement as indicated on the cover sheet of this Request for Proposal. The original proposal shall be clearly marked.

6. **Withdrawal of Proposals**

- A. All proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance.
- B. Proposals may be withdrawn on written request from the offeror at the address shown in the solicitation prior to the time of acceptance.
- C. Negligence on the part of the offeror in preparing the proposal confers no right of withdrawal after the time fixed for the acceptance of the proposals.

7. **Town Furnished Support/Items** - The estimated level of support required from Town personnel for the completion of each task shall be itemized by position and man hours or man days.

The offeror shall indicate the necessary telephones, office space and materials the offeror requires. The Town may furnish these facilities if the Town considers them reasonable, necessary, and available for the Contractor to complete his task.

8. **Subcontractors** - Offerors shall include a list of all subcontractors with their proposal. Proposals shall also include a statement of the subcontractors' qualifications. The Town reserves the right to reject the successful offeror's selection of subcontractors for good cause. If a subcontractor is rejected the offeror may replace that subcontractor with another subcontractor subject to the approval of the Town. Any such replacement shall be at no additional expense to the Town nor shall it result in an extension of time without the Town's approval.

9. **References** - All offerors shall include with their proposals, a list of at least three current references for whom comparable work has been performed. This list shall include company name, person to contact, address, telephone number, fax number, e-mail address, and the nature of the work performed. Failure to include references may be cause for rejection of proposal as non-responsive. Offeror hereby releases listed references from all claims and liability for damages that may result from the information provided by the reference.

10. **Late Proposals** - LATE proposals will be returned to offeror UNOPENED, if RFP number, acceptance date and offeror's return address is shown on the container.

11. **Rights of Town** - The Town reserves the right to accept or reject all or any part of any proposal, waive informalities, and award the contract to the offeror that will, in the judgment of the Town, best serves the interest of the Town. Informality shall mean a minor defect or variation of a proposal from the exact requirements of the Request for Proposal which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured.
12. **Prohibition as Subcontractors** - No offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.
13. **Proposed Changes to Scope of Services** - If there is any deviation from the Scope of Services, the appropriate line in the scope of services shall be lined-out or struck-through, and the substitution clearly indicated. The Town reserves the right to accept or reject any proposed change to the scope.
14. **Miscellaneous Requirements**
 - A. The Town will not be responsible for any expenses incurred by an offeror in preparing and submitting a proposal. All proposals shall provide a straight-forward, concise delineation of the offeror's capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.
 - B. Offerors who submit a proposal in response to this RFP may be required to make an oral presentation of their proposal. The Procurement Officer will schedule the time and location for this presentation.
 - C. Selected contents of the proposal submitted by the successful offeror and this RFP will become part of any contract awarded as a result of the Scope of Services contained herein. The successful offeror will be expected to sign a contract with the Town.
 - D. The Town reserves the right to reject any and all proposals received by reason of this request, or to negotiate separately in any manner necessary to serve the best interests of the Town. Offerors whose proposals are not accepted will be notified in writing.
15. **Notice of Award** - A Notice of Award will be posted on the Town's web site (www.purcellvilleva.gov).
16. **Protest** - Offerors may refer to Sections 2.2-4357 through 2.2-4364 of the Code of Virginia to determine their remedies concerning this competitive process. Protests shall be submitted to the Director, Management and Financial Services.
17. **Debarment** - By submitting a proposal, the offeror is certifying that offeror is not currently debarred by the Town, or in a procurement involving federal funds, by the Federal Government.
18. **Proof of Authority to Transact Business in Virginia** - An offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under

Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the offeror is not required to be so authorized. Any offeror described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Purchasing Agent or his designee. The SCC may be reached at (804) 371-9733 or at <http://www.scc.virginia.gov/default.aspx>.

19. **Cooperative Procurement** - As authorized in Section 2.2-4304 of the Code of Virginia, this procurement is being conducted on behalf of and may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the contractor.
20. **W-9 Form Required** - Each offeror shall submit a completed W-9 form with their proposal. In the event of contract award, this information is required in order to issue purchase orders and payments to your firm. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.
21. **Insurance Coverage** - Offerors must comply with the Insurance requirements specified in the License Agreement.

**Development and Management of a Wireless Telecommunications Facility
PROPOSAL SUBMISSION FORMS**

THE FIRM OF: _____

Address: _____

FEIN _____

Hereby agree to provide the requested services as defined in Request for Proposal No. IT-2019-10 for the price as stated in the price proposal.

Return the following with your proposal. If offeror fails to provide with their proposal, items should be provided within twenty-four (24) hours of proposal opening.

- 1. W-9 Form: _____
- 2. Certificate of Insurance: _____
- 3. References (on Town form): _____

Failure to provide the following items with your proposal shall be cause for rejection of proposal as non-responsive and/or non-responsible. It is the responsibility of the offeror to ensure that it has received all addenda.

- | ITEM: | INCLUDED: (X) |
|---|---------------|
| 4. Addenda, if any: | _____ |
| 5. Addenda, if any: | _____ |
| 6. Proof of Authority to Transact Business
in Virginia Form: | _____ |

Person to contact regarding this proposal: _____

Title: _____ Phone: _____ Fax: _____

E-mail: _____

Name of person authorized to bind the Firm (9.9): _____

Signature: _____ Date: _____

By signing and submitting a proposal, your firm acknowledges and agrees that it has read and understands the RFP documents and agrees to the Contract Terms and Conditions as contained herein.

REFERENCES

Reference for: _____.

OFFERORS shall provide references on this form. References should be for similar clients as the Town. The Town may contact the references provided, and information from the references will be used as a part of the management skills evaluation.

1. Firm Name _____

Contact _____ Title _____

Mailing Address _____

Phone _____ Email _____

2. Firm Name _____

Contact _____ Title _____

Mailing Address _____

Phone _____ Email _____

3. Firm Name _____

Contact _____ Title _____

Mailing Address _____

Phone _____ Email _____

4. Firm Name _____

Contact _____ Title _____

Mailing Address _____

Phone _____ Email _____

5. Firm Name _____

Contact _____ Title _____

Mailing Address _____

Phone _____ Email _____

RFP SUBMISSION FORM

SECTION I – COMPANY IDENTIFICATION AND OWNERSHIP DISCLOSURE

Company _____
Address _____
Contact Person _____ Title _____
Telephone No. _____ E-mail _____
Organized under the laws of State of _____
Principal place of business at _____

Listed below are the names and addresses of all persons having ownership of 3% or more in the company (attach more sheets if necessary):

Name _____ Address _____

SECTION II – EMPLOYEES NOT TO BENEFIT

I (we) hereby certify that if the contract is awarded to our company, partnership, or corporation, that no employee of the *Town of Purcellville*, or members of his/her immediate family, including spouse, parents or children has received or been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder’s fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this contract.

SECTION III – CONFLICTS OF INTEREST

This solicitation is subject to the provisions of Va. Code Ann. Section 2.1-639.2 et seq., the State and Local Government Conflict of Interests Act. The Offeror [] is [] is not aware of any information bearing on the existence of any potential organizational conflict of interest. If such a conflict exists, the offeror is prepared to sign a non-disclosure agreement.

SECTION IV - PROPOSAL SIGNATURE

My signature certifies that the proposal as submitted complies with all Terms and Conditions as set forth in RFP FN-2019-03. My signature also certifies that by submitting a proposal in response to this Request for Proposal, the Offeror represents that in the preparation and submission of this proposal, said Offeror did not, whether directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

I hereby certify that I am authorized to sign and bind the Offeror to the proposal submitted and any resulting agreement with the Town of Purcellville.

NAME OF OFFEROR: _____
ADDRESS: _____
NAME (print): _____ TITLE: _____
NAME (signature): _____
FED/TAX ID NO: _____ TELEPHONE: _____
E-MAIL: _____ DATE: _____

STATE CORPORATION COMMISSION IDENTIFICATION NUMBER

All Offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 shall include in the proposal the identification number issued to it by the State Corporation Commission. Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in the proposal a statement describing why the Offeror is not required to be so authorized. See Section 2.2-4311.2 of the Code of Virginia, as amended.

Any Offeror that fails to provide the information required by this Section shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the chief executive of the Town.

- 1. Enter State Corporation Identification Number: _____
- 2. Attach Statement, if required:

TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by an Offeror in connection with this procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act, provided, however, that the Offeror invokes the protection of Va. Code Section 2.2-4342 (F) prior to, or upon submission of the data or materials. Offeror must identify the data or materials to be protected and state the reasons why protection is necessary. Please mark one:

- No the proposal submitted does not contain any trade secrets and/or proprietary information.
- Yes, the proposal submitted does contain trade secrets and/or proprietary information.

If Yes is selected above, please clearly identify below the exact data and/or other materials to be protected and list all applicable pages of the proposal document containing such data and/or materials:

The proprietary or trade secret material submitted must be CLEARLY IDENTIFIED by some distinct method such as highlighting or underlining within the body of the proposal document and must indicate only the specific words, paragraphs, pictures or figures that constitute trade secrets or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

State the reason(s) why protection is necessary:

If the data and/or materials to be protected are not identified above and within the body of the proposal document and the reason(s) for protection are not provided, the Offeror will not have invoked the protection of Section 2.2-4342(F) of the Code of Virginia, as amended. Accordingly, effective upon award of the agreement, the proposal will be open and available for public inspection consistent with all applicable law.

TELECOMMUNICATIONS LICENSE AGREEMENT

This Telecommunications License Agreement (“Agreement”) is between the TOWN OF PURCELLVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia, (“**Town**”), and _____, a _____ [insert state in which organized] _____ [insert business entity] (“**Licensee**”) (collectively, the “parties”).

Recitals

A. In order to increase cellular signal coverage and bandwidth, improve municipal communications, and maximize revenues, the Town sought proposals from qualified firms to install a telecommunications facility and manage the facility for a period of 10 years, subject to possible renewals, with such management to include the solicitation, negotiation, and management of third-party licenses (sublicenses) for use of the telecommunications facility.

B. The Town’s request for proposals was issued on _____, 2019 and was identified as RFP Number _____ (“**RFP**”).

C. The RFP identified a Town-owned property as the site for the telecommunications facility, located at 1001 S. 20th Street, Purcellville, Virginia 20132 and consisting of approximately 41 acres (“**Property**”). The RFP requested proposals for a telecommunications facility designed to accommodate no fewer than 8 telecommunications equipment arrays, which facility would include, but not be limited to: a single telecommunications structure (also referred to herein as “**tower**”), one or more equipment cabinets, fencing, a locked gate, ingress and egress, and any other items necessary to establish a successful and secure site for a telecommunications facility (collectively, “**Telecommunications Facility**”).

D. The Licensee responded with a successful proposal dated _____, 2019 (“**Licensee’s Proposal**”).

Therefore, the parties agree as follows:

1. Contract documents. This Agreement incorporates by reference the RFP (Attachment 1) and Licensee’s Proposal (Attachment 2). If an irreconcilable conflict exists among the contract documents, the conflict will be resolved by giving precedence to the highest priority document. The order of the contract documents from highest priority to lowest priority is as follows:

- (a) Agreement amendments and addenda, including attachments and exhibits to such amendments and addenda
 - (b) Agreement, including attachments and exhibits to such Agreement
 - (c) RFP
 - (d) Proposal
2. Memorandum of License. At the request of Licensee and conditioned upon the placement of an executed and recordable *Termination of Telecommunications License Agreement* into escrow pursuant to a fully executed escrow agreement between the parties, the Town shall execute a Memorandum of the executed License Agreement, which the Licensee may cause to be recorded among the land records of Loudoun County, Virginia, at Licensee's sole cost and expense.
3. Site Study. No later than 14 days after the date of this Agreement, the Licensee and Town shall reach agreement, in the form of an addendum to this Agreement, identifying: (a) which areas of the Property shall be studied by the Licensee for suitability for a Telecommunications Facility, (b) setting forth a description of all on-site work or tests to be performed by Licensee in furtherance of such area-studies, and (c) setting forth a schedule for all such work. The Town may, in its sole discretion, send Town personnel to accompany the Licensee in the performance of any work on the Property. All work performed by Licensee on the Property shall be performed by qualified persons in a manner that minimizes disturbance to the Property. Upon conclusion of each area-study, the Licensee shall restore the area tested and studied to its previous condition. No later than 60 days after the date of this Agreement, the Licensee shall deliver to the Town a final written report that (i) includes the results of these area studies and (ii) defines all areas on the Property the Licensee deems suitable for a Telecommunications Facility.
4. Site Selection. No later than 15 days after receiving the Licensee's final written report, the Town shall, in its sole and reasonable discretion, select one of the areas on the Property deemed suitable for a Telecommunications Facility as the site for the Town's Telecommunications Facility ("**Site**"), or reject all of the areas deemed suitable for a Telecommunications Facility.

The Site selected by the Town, if any, shall be mapped and documented by the Town as an addendum to this Agreement ("**Site Addendum**"), allowing the Licensee exclusive use of the Site pursuant to the terms of this Agreement. The Licensee shall reserve space at the top-most portion of the telecommunications structure in order to accommodate at least 6 fully functioning whip antennae, and shall reserve corresponding space on the ground for any necessary ground-equipment, all for the Town's exclusive use and at no cost to the

Town (“**Reservation**”). The Reservation shall be described in the Site Addendum. The Town may reserve additional space on the telecommunications structure for Town use, in addition to the Reservation and as described in the Site Addendum, provided that all of the equipment mounted onto the telecommunications tower by the Town shall not exceed 20% of the tower’s structural load capacity. The Town shall deliver the Site Addendum to the Licensee for execution. The Licensee shall execute and deliver the Site Addendum to the Town no later than 7 days after the Town has delivered the Site Addendum to the Licensee. Failure of the Licensee to execute and deliver the Site Addendum in accordance with this paragraph shall constitute default by the Licensee under this Agreement.

5. Site Design and Governmental Approvals.

- (a) The Licensee shall deliver to the Town, no later than 30 days after the Town has delivered the Site Addendum to the Licensee, a conceptual design of the telecommunications structure to be constructed on the Site, designed to accommodate no fewer than 8 telecommunications providers.
- (b) The Licensee shall deliver to the Town, no later than 30 days after the Town has delivered the Site Addendum to the Licensee, a site plan showing in detail the location on the Site of: (i) the telecommunications structure, (ii) all equipment appurtenant to the telecommunications structure, (iii) ingress and egress to the Site, and (iv) all necessary easements.
- (c) The Licensee shall deliver to the Town no later than 45 days after the Town has delivered the Site Addendum to the Licensee, architectural renderings of the telecommunications structure, demonstrating what the tower will look like as viewed from at least 4 different vantage points in the Town of Purcellville, with such vantage points to be agreed upon in advance by the Town and the Licensee.
- (d) The Licensee shall deliver to the Town any additional information, drawings, or amendments concerning the site plan or telecommunications structure design, no later than 14 days after the Town’s request for the same.
- (e) The Licensee shall obtain any and all governmental approvals and permits necessary for the design and complete construction on the Site of a telecommunications structure that can accommodate no fewer than 8 telecommunications providers, including, but not limited to: zoning ordinance amendments, special use permits, approval of a final site plan, and approval of a telecommunications tower construction plan (“**Governmental Approvals**”). The Licensee shall obtain all Governmental Approvals no later than 8 months after the effective date of the Site Addendum. The Town, as owner of the Property and Site, shall execute when necessary any applications for Governmental Approvals.

6. Site Construction. No later than 15 days after securing all Governmental Approvals, the Licensee shall: (a) deliver to the Town a construction schedule setting forth all milestones in the construction of a fully-functioning Telecommunications Facility on the Site, and (b) commence the construction of such a Telecommunications Facility on the Site, which facility shall include, but not be limited to: a single telecommunications structure sufficient to accommodate no fewer than 8 telecommunication equipment arrays, one or more equipment cabinets, fencing, ingress and egress, and a secure gate. The Licensee shall complete construction of the Telecommunications Facility no later than 90 days after securing all Governmental Approvals, with time being of the essence. If the Licensee has obtained a single governmental approval that allows for some Site development, prior to obtaining all Governmental Approvals, the Licensee may, with the Town's prior written consent, exercise its development rights under that singular governmental approval but shall do so assuming all risk associated with commencing Site development without all of the governmental approvals that will ultimately be required in order to complete construction.

After commencing construction of the Telecommunications Facility, the Licensee shall diligently pursue and complete its full and complete construction on the Site. As part of such construction, the Licensee shall co-locate all ground-based equipment into as few equipment cabinets as reasonably possible.

No later than 30 days after construction of the Telecommunications Facility is completed, the Licensee shall deliver to the Town as-built drawings of the Site and the Telecommunications Facility.

7. Workmanship. The Licensee shall perform all work under this Agreement in a skillful and workmanlike manner, in compliance with all applicable laws and codes. The Licensee shall supervise and direct the full and complete construction of the Telecommunications Facility, using the Licensee's best skill and attention. The Licensee shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work under this Agreement. Unless otherwise specifically noted in this Agreement, the Licensee shall provide and pay for all labor, expertise, materials, freight/delivery equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work described in this Agreement. The Licensee shall at all times enforce strict discipline and good order among its agents and employees, and shall not contract or employ any unfit person or anyone not skilled in the task assigned to him. The Licensee shall comply with all OSHA and all applicable trade-related rules and regulations. The Licensee shall be responsible for the acts and omissions

of all of Licensee's employees, agents, and sub-contractors, and all other persons performing any of the work under this Agreement. The Licensee shall at all times keep the Site free from the accumulation of waste materials and debris caused by the Licensee's operations. The Licensee shall ensure that all persons working under this Agreement possess valid trade and professional licenses as needed to perform the work.

8. Town Use of Telecommunications Facility. The Town's equipment on the telecommunications structure shall not occupy more than 20% of the tower's structural load capacity. If at the time the Site Addendum is executed the Town has not claimed or reserved space on the telecommunications structure for Town use, the Town shall nevertheless have and retain the right to do so. At any time during the term of this Agreement, Licensee shall allow the Town to occupy the highest unlicensed radiation center (also known in the industry as "RAD center") on the telecommunications structure, and to place its ancillary ground-based equipment on the Site, all at no cost to the Town.
9. Marketing and Sub-licensing. The Licensee shall exercise commercially reasonable efforts to market the Site and enter into sub-license agreements in a manner that will maximize revenues from the telecommunications facility for both parties to this Agreement. The Licensee shall not execute any sub-license until it has first verified that the sub-licensee has obtained all permits and governmental approvals required to mount and operate the sub-licensee's equipment on the Site. The Licensee may sub-license space on the telecommunications structure and in the equipment cabinets without the Town's prior approval on condition that: (a) the sub-licensee is a telecommunications carrier possessing all necessary licenses and authorizations to operate the equipment that is the subject of the sub-license agreement, and (b) the sub-license agreement includes a rider in the form of Attachment 3 to this Agreement, which may not be amended or revised without the Town's prior written consent. If a sub-license is proposed that fails to meet one or both of these conditions, then the Licensee must obtain the Town's written consent prior to executing the sub-license. The Licensee shall not enter into a sub-license agreement with a term that extends past the then-remaining term of this Agreement. The Licensee shall deliver to the Town a copy of each sub-license within 15 days after its execution by both the Licensee and the sub-licensee.
10. Monthly Rent and Annual Site License Fee. The Licensee shall deliver to the Town a monthly payment equal to _____% of the aggregate gross revenues received by the Licensee in the immediately preceding month as a result of any use of the Site, whether such use is pursuant to a sub-license agreement or not ("**Monthly Rent**"). The Monthly Rent payment shall be delivered to the Town no later than the 10th day of each month. The Licensee shall include with each Monthly Rent payment to the Town a statement, signed

by an officer of the Licensee, setting forth and attesting to the amount of aggregate gross revenue received by the Licensee during the immediately preceding month from use of the Site.

In addition to the Monthly Rent, the Licensee shall pay the Town an annual license fee for use of the Site (“**Site License Fee**”). The Licensee shall deliver the to the Town, no later than 30 days after the Town has delivered the Site Addendum to the Licensee, the first annual Site License Fee in the amount of \$_____. The annual Site License Fee shall escalate by 5% each year for the duration of this Agreement, inclusive of all extensions.

The Licensee’s sole compensation for performing its duties under this Agreement shall be its right to retain ____% of the gross revenues derived from all sub-licenses of the Site pursuant to this Agreement.

11. Penalty for Late Payments. Any sum not paid by the Licensee when due under this Agreement shall be subject to a late payment charge of 5% of the amount due, and shall bear interest from the date due at a rate of 15% per annum, which interest shall accrue on a daily basis.

12. Ownership of Telecommunications Facility; Duties of Licensee Upon Expiration or Termination of Agreement. With the exception of Town property, the Licensee shall own and be responsible for all aspects of the telecommunications facility located on the Site, unless ownership is transferred to the Town in accordance with the procedures set forth in this section.

Within 60 days after the expiration or termination of this Agreement, the Town shall notify the Licensee of its election to (a) have Licensee remove any or all of the structures and equipment from the Site or (b) have the structures or equipment, or both, remain on the Site. If the Town elects option (b), then the Licensee shall, no later than 14 days after the Town election is made, provide the Town with a written affidavit, sworn to by an officer of the Licensee, setting forth all of the following relative to the Site: (i) all existing liabilities, (ii) all actual or threatened claims, and (iii) all observed issues on the Site in need of correction. The Town shall, within 10 days of receiving the affidavit, deliver to the Licensee a final written decision concerning its election of option (a) or (b).

If the Town fails to elect either option within the 60-day period, the Licensee shall inform the Town in writing, and Town shall have an additional 30 days to make the election. If the Town fails to make an election after the 30-day period, it shall be deemed to have elected option (a). If the Town elects or is deemed to have elected option (a), then the

Licensee shall promptly (and in any event within 120 days) remove all structures and equipment from the Site, with the exception of Town property, at the Licensee's sole cost and expense. If the Town elects option (b), then title to the Telecommunications Facility shall vest in the Town concurrent with the Town's final written election (made after its receipt of the affidavit) of Option (b), without the need for additional action by the Town or the Licensee, and the Town shall assume all responsibility and liability for the Telecommunications Facility and any damages or claims related thereto that arise on or after the date on which ownership transferred to the Town. The Licensee shall remain responsible for any and all liabilities, claims, and damages arising prior to that date.

The Licensee's removal of the structures and equipment, as provided in this section, will mean the removal of all equipment and improvements both above and below grade, including underground cables, unless otherwise agreed to in advance and in writing by the parties.

In addition to the aforementioned obligations under this section, upon the termination or expiration of this Agreement the Licensee shall, at its own cost and expense, deliver to the Town copies of all books and records regarding the Site and all funds in possession of the Licensee belonging to or owed to the Town.

13. Surety and Liens. The Licensee shall annually post a cash or corporate surety bond in the amount of \$_____ (or, at Licensee's option, a letter of credit) from a corporate surety company or bank reasonably acceptable to the Town, and in a form and amount reasonably deemed necessary by Town, to assure that the funds necessary to remove the Telecommunications Facility at the expiration or termination of this Agreement will be available.

The Licensee shall keep the Site and the Telecommunications Facility free from liens arising from any work performed, materials furnished, or obligations incurred by or at the request of the Licensee. If any lien is filed against the Site or all or part of the Telecommunications Facility as a result of acts or omission of the Licensee or the Licensee's employees, agents or contractors, then the Licensee shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Town no later than 90 days after the Licensee receives written notice that the lien has been filed. If the Licensee shall fail to discharge any such lien in accordance with this section, then the Town may, at its sole discretion, discharge such lien and treat the cost thereof (including legal costs, attorneys' fees, and administrative expenses) as an additional sum due to the Town under this Agreement.

14. Assignment. The Licensee shall have the right to assign its entire interest in this Agreement, on condition that it first receives the prior written consent of the Town, which consent shall not be unreasonably withheld. The Licensee may assign its interest in this License without the Town's prior written consent if the Licensee is assigning its entire interest in this Agreement to any affiliate, subsidiary or parent entity, or to any entity that merges with Licensee or purchases all or substantially all of the Licensee's assets. The Licensee shall provide the Town with written notice of any assignment for which consent is not required no later than 10 days after said assignment.
15. Condition of Site; Maintenance. Except as specifically provided in this Agreement, the Licensee acknowledges and agrees that the Site will be licensed to Licensee in an "AS IS, WHERE IS," CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUBJECT TO ALL DEFECTS, LATENT OR PATENT, KNOWN AND UNKNOWN, INCLUDING ENVIRONMENTAL CONDITIONS AND MATTERS THAT CURRENTLY EXIST OR MAY IN THE FUTURE ARISE. LICENSEE HEREBY WAIVES ALL RIGHTS, REMEDIES AND CAUSES OF ACTION AGAINST THE TOWN RESULTING FROM OR RELATING TO THE CONDITION OF THE SITE. By executing the Site Addendum, the Licensee acknowledges that it has had the opportunity to inspect the Site, and is relying solely on that inspection, and not on any representation or warranty of the Town in licensing the Site. Notwithstanding the foregoing, Town represents and warrants that to the best of its knowledge and belief there are no hazardous materials on, in, or under the Site, unless otherwise disclosed. The Town covenants not to bring onto the Site any hazardous materials.

The Licensee shall, at its own expense, maintain the Site and all improvements, equipment and other personal property on the Site in good working order, condition, and repair. If any part of the Telecommunications Facility, including the tower structure, is damaged beyond reasonable repair, then the Licensee shall replace all or such portions of the Telecommunications Facility as needed to restore them to their previous functional condition.

The Licensee shall keep the Site free of debris, free of anything dangerous or noxious, and free of anything that could create a hazard or source of undue vibration, heat, noise, or interference.

The Licensee shall not (either with or without negligence) cause or permit the use, storage, generation, escape, disposal, or release of any hazardous substances or hazardous wastes

in any manner not sanctioned by law. The Licensee shall indemnify and hold Town harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the presence or release of any hazardous substances or hazardous wastes on the Site, if caused by the Licensee or by persons acting under the Licensee. The Licensee shall execute such affidavits and representations from time to time as the Town may reasonably request concerning the Licensee's best knowledge and belief as to the presence of hazardous substances or hazardous wastes on the Site.

For purposes of this Agreement, the term "hazardous substances" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation, or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; the term shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease.

16. Use of the Property. The Licensee's rights under this Agreement extend only to the Site, and not to other portions of the Property. The Licensee's rights under this Agreement are subject and subordinate to the Town's use and operation of the Property. The Licensee shall use all commercially reasonable efforts to avoid any adverse impact to the Property from its use of the Site. The Town shall likewise use all commercially reasonable efforts to avoid any adverse impact to the Site from its use of the Property. The Town shall, prior to entering the Site, provide the Licensee with reasonable advance notice.
17. Insurance. The Licensee shall comply with all obligations of "Contractor" under the *Town of Purcellville Insurance Addendum Professional Service Contracts* set forth at Attachment 4 to this Agreement.
18. Indemnity; Waiver. The Licensee shall defend, with legal counsel acceptable to the Town, and indemnify and hold harmless the Town from all losses, costs, claims (including claims involving infringement of patent or copyright), causes of actions, demands, and liabilities arising from, due to, or as a result of: (a) any action by any carrier who has a sub-license agreement with the Licensee, or with whom Licensee has had negotiations concerning the Site, (b) Licensee's construction on or use of the Site, and (c) any issue otherwise arising from or related to Licensee's rights and obligations under this Agreement. The Licensee's indemnification of the Town shall be complete, and shall include, but not be limited to: the

cost of investigation, all expenses of litigation, the cost of all appeals, and all attorneys' fees and court costs. In addition to the Town, the Town's board members, staff, officers, agents, servants, employees, and volunteers shall be beneficiaries of Licensee's indemnification.

The Licensee hereby waives any right of recovery against the Town and its employees and officers for any claim, loss, liability, injury or damage that is covered by any policy of property insurance maintained by the Licensee (or would have been insured against if Licensee had complied with its obligations under this Agreement) with respect to this Agreement or the Site. The Licensee shall cause its insurers to issue appropriate *waiver of subrogation rights* endorsements to all policies of insurance carried in connection with the Site.

19. Town's right to other telecommunications facilities. The Licensee acknowledges that this Agreement provides the Licensee with exclusive use of the Site for a telecommunications facility, but does not prohibit the Town from contracting with telecommunications carriers or telecommunications service providers for telecommunications facilities located on property outside of the Site.
20. Reporting by Licensee; Access to Records. On or before the 10th day of each calendar month (or such other date as the Town may agree), the Licensee shall provide the Town with a written report setting forth in reasonable detail: (a) the gross revenue for the previous month derived from the Site, broken down into the gross revenues derived from each carrier sub-license, (b) any new carrier sub-license entered into by Licensee, (c) a list of all governmental approvals required to operate the Site as a Telecommunications Facility in the Town, the date of issuance of all such approvals, and the date of expiration, if any, of all such approvals, and (d) any issues that have arisen on the Site or which the Licensee anticipates may arise on the Site, which are reasonably anticipated to require action by the Licensee or the Town.

The Licensee shall keep full and correct records and books of account in accordance with generally accepted accounting principles, consistently applied, showing in detail all income and expenses relating to the Site and this Agreement, and shall permit the Town or its representatives to examine such books and records and makes copies or extracts thereof upon request.

If any audit of the Licensee's books and records reveals a discrepancy greater than 3% between any amount due to the Town under this Agreement and the actual amount paid by

the Licensee, then, in addition to the late charges and penalties due under this Agreement, the Licensee shall pay all costs of the Town's audit.

21. Term of License Agreement and Extensions. The term of this Agreement is 10 years. This Agreement may be extended by mutual agreement of the parties for up to 6 additional 5-year terms. Any extensions shall be documented, executed, and delivered by the parties as an addendum to this Agreement.
22. Termination of this Agreement by the Town. The Town, at its sole and absolute discretion, may terminate this Agreement if one or more of the conditions listed below exist. Unless otherwise stated in the condition below, such termination shall be automatic after 30 days' prior written notice to the Licensee of the existence of the condition. Upon termination of this Agreement by the Town, the Licensee shall perform all duties of the Licensee triggered by the termination or expiration of this Agreement, as set forth in section 12 of this Agreement. Exercise by the Town of its right to terminate this Agreement due to the existence of a condition set forth below, shall not limit the Town's right to pursue any other remedy that may be available to it under law. The conditions for termination are as follows:
- (a) the Licensee has not (i) received all necessary governmental approvals for a telecommunications facility on the Site and (ii) fully constructed a telecommunications structure on the Site within 18 months from the date of this Agreement; or
 - (b) the Licensee has not entered into at least one sub-license with a telecommunications provider from which the Licensee is receiving full rent; or
 - (c) after the initial construction of the telecommunications structure and the initial occupation by one or more rent-paying sub-licensees, the telecommunications structure loses all rent-paying sub-licensees and receives no rent from sub-licensees for a period in excess of 10 consecutive months; or
 - (d) the Licensee fails to cure any default in the payment of any amount due under this Agreement within 5 days after the Town sends written notice to the Licensee of such default; or
 - (e) the Licensee fails to cure any default in the performance or observance of, or compliance with, any covenant, agreement, term, or condition contained in this Agreement within 30 days after the Town sends written notice to the Licensee of such default; or
 - (f) the liquidation, termination, dissolution, or bankruptcy of the Licensee, upon which the Town may immediately terminate this Agreement; or
 - (g) any final judgment or judgments in an aggregate amount (including interest and costs) of more than \$500,000.00 is entered against the Licensee, and any such

judgment or judgments shall not have been paid or otherwise discharged within 60 days after all applicable appeal periods have terminated; or

- (h) the Town determines that the Site is needed for public purposes and no other public property will reasonably fulfill the public purpose for which the Site is needed. Under this condition, the Town shall provide the Licensee at least 180 days' prior written notice of termination; or
- (i) the Town reasonably determines that use of the Site for a Telecommunications Facility, or that conditions on the Site, are a threat to the public health, safety, or welfare, or violate applicable law; or
- (j) the Town's right to control the Site is terminated due to causes beyond its control; or
- (k) the Licensee breaches the confidentiality requirements set forth under section 25 of this Agreement, which may result in immediate termination of this Agreement.

23. Termination of this Agreement by the Licensee. The Licensee may terminate this Agreement by providing the Town with 180 days' prior written notice if one or more of the following conditions exist:

- (a) It is impossible for the Licensee to obtain all necessary Governmental Approvals to construct the telecommunications facility as it was designed, and the Town will not approve modifications to the design that would enable the Licensee to obtain all necessary Governmental Approvals; or
- (b) After the telecommunications facility is constructed, a material change in a government regulation makes it impossible for the Licensee to operate the telecommunications facility as it was constructed and the parties agree that it is impracticable for the Licensee to achieve compliance with the materially changed regulation; or
- (c) The parties agree that the Site was adequately marketed after complete construction of the telecommunications structure, and the Licensee has been unable to procure any sub-licenses for a period that exceeds the first 12 consecutive months after construction of the tower was completed.

24. Addenda. The failure of the parties to formally execute and deliver any addendum required under this Agreement shall not constitute grounds for either termination of this Agreement or a claim of breach or default hereunder, unless expressly stated in this Agreement.

25. Confidentiality. The Town and the Licensee acknowledge that through their performance of this Agreement they each may have access to the other's proprietary business information, or other confidential information. Therefore, the parties agree that they, and their officers and employees, shall not, except as required by law:

(a) Access, or attempt to access data or information that is unrelated to their job duties or authorizations under this Agreement, or that exceeds their authorizations under this Agreement; or

(b) Disclose to any other person, or allow any other person access to, any proprietary or confidential information. Disclosure of information includes, but is not limited to, oral communication, electronic mail and text messages, voice mail, written communication, and “loaning” computer access codes.

The Licensee shall mark as proprietary or confidential, as appropriate, all information that it seeks to make subject to this section of the Agreement and the Town will thereafter treat such marked information as proprietary or confidential, to the extent allowed under Virginia law. The Licensee shall consider all information and data obtained from the Town to be confidential, both during and after the term of this Agreement, unless the Town expressly indicates otherwise in writing.

26. Licensee’s Representations and Warranties; Survival. The Licensee represents and warrants to the Town the following, which representations and warranties shall survive for a period of 5 years after the termination or expiration of this Agreement:

- (a) Licensee is a corporation duly organized under the laws of the State of _____, is licensed to do business in the Commonwealth of Virginia, and has all corporate power and authority necessary to perform its obligations hereunder.
- (b) Licensee is in the business of and has substantial expertise in locating, permitting, licensing, and constructing a Telecommunications Facility.
- (c) Licensee shall exercise commercially reasonable efforts to obtain entitlements, approvals, permits, and as many carrier sub-licenses for the Site as is practicable, in an effort to maximize revenue and benefit to each party.
- (d) Licensee shall obtain, and at all times during the term of this Agreement maintain in good standing, any and all licenses, approvals, and other permits that are legally required of it, its principals, employees, and agents, in order for Licensee to lawfully perform the obligations under this Agreement and to maintain Licensee’s business in good standing.
- (e) Licensee shall upon request attend and participate in any meetings with the Town regarding this Agreement or the Site.
- (f) Licensee shall not knowingly violate any federal, state, municipal or other governmental law, ordinance, rule or regulation in performing its services under this Agreement and Licensee shall use reasonable diligence to comply with any and all such laws, ordinances, rules and regulations affecting the Site.
- (g) If Licensee shall be apprised of any claim, demand, suit or other legal proceeding made or instituted or threatened against the Town on account of any matter

connected with the Site, Licensee shall promptly give the Town all information in its possession in respect thereof, and shall timely assist and cooperate with the Town in all reasonable respects in the defense of any such suit or other legal proceedings.

- (h) Licensee shall at all times comply with the terms of this Agreement, and shall cause its carriers under carrier sub-licenses to comply with the terms of such sub-licenses.
- (i) The Licensee warrants to the Town that all materials and equipment incorporated into the Telecommunications Facility will be new unless otherwise specified, and that all work performed by or on behalf of the Licensee will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work performed by or on behalf of the Licensee that does not conform to these standards may be considered defective.

27. Notices. All notices, payments, demands and other communications and requests shall be in writing and shall be deemed to have been delivered by the sending party: (i) 3 days after the date when mailed by United States First Class, Registered or Certified Mail, postage prepaid, (ii) upon receipt when delivered by reliable overnight courier or hand delivery, or (iii) upon receipt when delivered by electronic mail. The physical mailing address of the parties is as follows:

TO LICENSEE:

TO TOWN:

Attn: _____

Attn: _____

or to such other addresses as either of the parties may designate from time to time by giving written notice as herein required.

28. Taxes. The Licensee shall be responsible for all tax obligations arising from its use of the Site, including real property and personal property taxes.

The Licensee acknowledges that the Town is exempt from Virginia State Sales or Use Taxes and Federal Excise Tax. The Licensee shall not charge the Town for Virginia State Sales or Use Taxes or Federal Excise Tax on the finished goods or products provided under this Agreement. However, the Town's tax-exempt status does not transfer or apply to the Licensee, and the Licensee shall be responsible for the payment of any sales, use, or excise tax that it, or any sub-licensee incurs in providing the Telecommunications Facility required by this Agreement, including, but not limited to, taxes on materials purchased by

or on behalf of the Licensee for incorporation in, or use on, the Telecommunications Facility.

29. Business, Professional, and Occupational License Requirement. The Licensee shall be licensed in accordance with the Town's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance during the entire duration of this Agreement, inclusive of all extensions. Questions concerning the Town's BPOL Tax should be directed to the Finance Department, telephone 540-338-7093.
30. Payments to Subcontractors, Agents and Sub-Licensees. Licensee shall make payments to its subcontractors, agents, and sub-licensees in accordance with the "Prompt Payments Requirements" set forth in the document set forth at Attachment 5, entitled *Rider for Agreements with Virginia Public Bodies Subject to the Virginia Public Procurement Act*.
31. Safety. The Licensee, its subcontractors and agents shall comply with all rules and regulations of the Occupational Safety and Health Administration (OSHA), the Virginia Occupational Safety and Health division, and all other applicable rules and regulations. The Licensee shall be held responsible for the safety of its employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this Agreement.
32. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of the provision or the remaining provisions of this Agreement.
33. Miscellaneous.
 - (a) Nothing in this Agreement shall confer upon the Licensee any property right in the Property or in the Site.
 - (b) In performing its duties under this Agreement, the Licensee shall at all times be an independent contractor. The Licensee shall have no authority, express or implied, to commit or otherwise obligate or bind the Town in any manner.
 - (c) The rights and remedies provided under this Agreement shall be cumulative and not exclusive of any rights or remedies provided by law.
 - (d) Waiver or amendment of any terms or provisions of this Agreement shall be in writing and agreed upon by both parties.
 - (e) Failure of either party to take action against a default or breach under this Agreement shall in no way constitute a waiver of rights to take such action.

- (f) This Agreement shall be binding on the parties, and their respective successors and assigns.
- (g) This Agreement and any addenda or amendments thereto may be executed in counterparts.
- (h) A signature by either party provided electronically shall be binding upon that party as though it were an original signature.
- (i) This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. Any legal actions brought with respect to this Agreement shall be filed in the Circuit Court of Loudoun County, Virginia, and in no other court.
- (j) This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof.
- (k) This Agreement shall be construed as if drafted by both parties.
- (l) Headings in this Agreement are for convenience of reference and shall not be construed to alter the intent of the parties as expressed in this Agreement.
- (m) Neither party intends this Agreement to confer any right, remedy, or benefit upon a third party.
- (n) Time is strictly of the essence in each provision of this Agreement.
- (o) Each party represents and warrants that the person signing this Agreement on their behalf is duly authorized to bind party for which they execute this Agreement.

34. Effectiveness; Date. This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it.

Signature Pages Follow

Each party is signing this Contract on the date stated opposite that party's signature. By signing below, the parties agree to be bound by the terms of this Contract, including all of its attachments.

TOWN OF PURCELLVILLE, VIRGINIA

DATE: _____

By: _____
Name: David A. Mekarski
Title: Town Manager

**COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to wit:**

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that David A. Mekarski, as Town Manager of the Town of Purcellville, Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 2019.

Notary Public

My Commission Expires:

My Notary Registration Number:

I, the undersigned, on behalf of the Town of Purcellville, hereby verify that the contents and form of the above Contract have been reviewed and approved.

Kathy Elgin, Procurement Officer

Sally G. Hankins, Town Attorney

LICENSEE

a _____ Corporation

DATE: _____

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, as _____ of _____, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this ____ day of _____, 2019.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

EXHIBIT A

SITE MAP

Proposed Site #1 is located at the Town of Purcellville Public Works Maintenance Facility that is approximately 1.5 miles from the current water tower and has a ground elevation of 584 feet above sea level. From initial review the facility has a large flat piece of land that could support either a 125 foot or 175 foot monopole. Further investigation will be required to determine if underground utilities are present or if the soil will be conducive for the tower foundation.







**DEVELOPMENT AND MANAGEMENT OF A
WIRELESS TELECOMMUNICATIONS FACILITY
RFP NO. IT-2019-10**

**ADDENDA NO 1
10/30/19**

- Add: **Non-Mandatory Pre-Proposal Meeting** - There will be a Non-Mandatory Pre-Proposal Meeting on November 5, 2019 at 1:00 PM. Meeting will begin at the Town of Purcellville, Maintenance Building, 1005 S. 20th St., Purcellville, VA 20132
- Add: **Insurance Requirements** - The Town's standard insurance requirements are provided as Attachment I. The successful firm will be required to comply with these requirements.
- Question 1 Is the zoning designation Industrial/Public?
Answer 1 Yes.
- Question 2 Does present zoning limit the height of communications towers to 60 feet?
Answer 2 Pursuant to Article 4 Section 1.2.36 of the Town of Purcellville Zoning Ordinance. The height of a communication tower is currently limited to 125 feet.
- Question 3 Since the height of the towers are limited to 125 feet how can he build a tower that is higher than 125 feet?
Answer 3 If an increased height is required, Town Staff will assist in requesting a change to the zoning ordinance.
- Question 4 Will the construction require a special use permit?
Pursuant to Article 4 Section 1.1 Use Table Communications Tower of the Town of Purcellville Zoning Ordinance. Yes
- Question 5 What are the fees for a Special Use Permit?
There is a fee schedule posted on the Town of Purcellville website. Click [here](#).

Kathy S. Elgin, CPPO, CPPB
kelgin@purcellvilleva.gov
Procurement Specialist
Issued 10/30/19

Attachment 4

Town of Purcellville Insurance Addendum for Professional Service Contracts

The Contractor shall, at all times during the Contract period and for any additional periods specified in this Addendum, comply with all aspects of and obligations under this Addendum. Neither the Contractor nor its sub-contractors shall commence work under the Contract until the Town has received all Certificates of Insurance and endorsements required under the terms of this Addendum.

1. General Liability and Excess Liability. The Contractor shall maintain at its cost general liability insurance and excess general liability insurance, in coverage amounts that meet or exceed the minimum limits that immediately follow this paragraph. The Contractor's general liability and excess liability policies shall be written and maintained on an occurrence basis, with an insurer licensed to conduct business in the Commonwealth of Virginia, and shall be maintained at all times during the Contract period. The Contractor shall maintain products-completed operations hazard coverage at all times during the Contract period, and for three years after the Contract has terminated or expired. The insurer must have an A. M. Best rating of A- or better. The Contractor's general liability and excess liability policies shall be endorsed to name the Town of Purcellville as an additional insured and shall be endorsed to provide that the Town of Purcellville, as an additional insured, is entitled to receive 100 percent of the benefits and coverages provided to the named insured under the policies for liabilities arising from the Contractor's work under the Contract. Any additional insured endorsement will be rejected if it includes an exclusion of completed operations coverage, unless a separate endorsement for that coverage is attached. The insurance provided under the general liability additional insured endorsement shall be primary and shall be fully exhausted without contribution from any other insurance provided by or available to the additional named insured. If the insurance provided under the general liability additional insured endorsement is exhausted, then the insurance provided under the excess liability additional insured endorsement shall cover the remainder of any liabilities without contribution from any other insurance provided by or available to the additional named insured, until it has been exhausted. Any additional insured endorsement must provide that the Town of Purcellville is entitled to separate defense counsel from the Contractor, and that the Town of Purcellville's defense costs will be calculated outside the relevant policy limits.

Minimum General Liability Insurance Coverage Limits:

- a. \$1,000,000 each occurrence under Coverage A (bodily injury and property damage)
- b. \$1,000,000 for each occurrence per person or organization under Coverage B (personal injury and advertising injury)
- c. \$2,000,000 aggregate limit per policy period for all but products-completed operations hazard coverage

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Town of Purcellville Insurance Addendum for Professional Service Contracts

- d. \$2,000,000 products-completed operations hazard coverage aggregate

Minimum Excess Liability Insurance Coverage Limits:

- a. \$3,000,000 each occurrence
- b. \$3,000,000 aggregate limit per policy period

- 2. Workers' Compensation. The Contractor shall maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage shall be provided by an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the Contractor to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. The Contractor shall also carry Employers' Liability Insurance in amounts that meet or exceed the minimum coverage limits that immediately follow this paragraph.

- a. \$1,000,000 bodily injury each accident
- b. \$1,000,000 bodily injury by disease each employee
- c. \$1,000,000 bodily injury by disease policy limit

- 3. Automobile. The Contractor shall maintain automobile liability insurance, in coverage amounts that meet or exceed the minimum limits that immediately follow this paragraph. The coverage is to be written only with a symbol "1" or "any auto." Coverage shall be provided by an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. Coverage shall be either on an occurrence-basis, or on a claims-made basis with an "extended reporting period" endorsement that extends the reporting period by a minimum of three years past the date on which insurance coverage expires or is terminated. The Town of Purcellville must be endorsed as an additional insured on the Contractor's automobile liability policy; a notation on the Certificate of Insurance is insufficient. The insurance provided under the additional insured endorsement shall be primary and without contribution from any other insurance provided by or available to the additional insured.

- a. \$1,000,000 bodily injury coverage for each accident
- b. \$1,000,000 property damage coverage for each accident

- 4. Professional Liability. The Contractor shall maintain professional liability insurance, in coverage amounts that meet or exceed the minimum coverage limits that immediately follow

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Town of Purcellville Insurance Addendum for Professional Service Contracts

this paragraph; such insurance shall cover claims of negligence, wrongful acts, misrepresentation, violation of good faith and fair dealing, inaccurate advice, errors, and omissions. Coverage shall be provided by an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. Coverage shall be either on an occurrence-basis, or on a claims-made basis with an “extended reporting period” endorsement that extends the reporting period by a minimum of three years past the date on which insurance coverage expires or is terminated.

- a. \$2,000,000 each occurrence or claim
 - b. \$3,000,000 aggregate limit per policy period
5. Certificate of Insurance; Endorsements. Prior to the commencement of work under the Contract, the Contractor shall provide the Town all Certificates of Insurance and endorsements necessary to demonstrate compliance with the terms of this Addendum. Certificates of Insurance and copies of endorsements must be issued by the Contractor’s insurer or insurance agent. The Contractor shall cause its insurer or insurance agent to furnish a new Certificate of Insurance and required endorsements prior to any change to or cancellation of an existing insurance policy; the failure of the Contractor to cause prompt delivery to the Town of a new and valid Certificate of Insurance and required endorsements upon any change to or cancellation of an insurance policy already approved by the Town shall result in, at the sole discretion of the Town, termination of the Contract or suspension of all payments due to the Contractor until a new Certificate of Insurance and required endorsements is furnished.
6. Waiver of subrogation required. All of Contractor’s insurance policies shall provide that the insurer waives all rights to assert a subrogation claim against the Town and its officers, officials, employees, agents, assigns and volunteers. The Contractor shall cause such waiver of subrogation to be specified and properly indicated on each Certificate of Insurance.
7. Deductibles and Self-Insured Retention. The Contractor shall disclose to the Town upon request the amount of all deductibles and self-insured retentions for its General Liability, Excess Liability, Automobile Liability, and Professional Liability policies. The Town reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its deductible and self-insured plan obligations. The Contractor will be permitted to provide evidence of its ability to fully fund the deductible or self-insured retention. The Contractor shall pay all deductibles and shall be liable for all amounts awarded or due that exceed the Contractor’s coverages.

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Town of Purcellville Insurance Addendum for Professional Service Contracts

8. Notice of Insurance Change or Cancellation. The Contractor's insurance policies shall be endorsed to require that the insurer provide to the Town of Purcellville all notices that the insurer provides to the first named insured, at the same time as such notices are provided to the first named insured. The Town's failure to timely receive such notices shall allow the Town to, in its sole discretion, terminate the Contract or suspend all payments due to the Contractor until a new Certificate of Insurance and required endorsements is furnished.
9. Contract Termination; Insolvency. Failure to maintain all required insurance, endorsements and Certificates of Insurance constitutes grounds for the Town to, at its sole discretion, immediately terminate the Contract, or order the Contractor to cease all activities under the Contract until all insurance requirements are met.
10. Insurance of Sub-Contractors. The Contractor shall require all of its sub-contractors to comply with all provisions of this Addendum, including maintenance of the same insurance coverages. Compliance by the Contractor and any of its sub-contractors with the insurance requirements under this Contract shall not relieve the Contractor or any of its sub-contractors of their liabilities and obligations under this Contract. Nothing contained in this Contract shall be construed to create a contractual relationship between the Town and any sub-contractor of the Contractor. The Contractor shall be fully responsible to the Town for the acts and omissions of the Contractor's employees, the Contractor's sub-contractors, and the employees of any sub-contractor.
11. Alternative Insurance Coverages. If the Contractor cannot meet the specifications required by these insurance requirements, alternative insurance coverages, satisfactory to the Town Manager, or his designee, may be considered and accepted by the Town in its sole discretion, if proposed by Contractor in its proposal of work to the Town.



November 13, 2019

The Town of Purcellville did not receive any proposals for the RFP for the Development and Management of a Wireless Telecommunications Facility. If your firm was interested and did not propose because of an impediment with our procurement process or the requirements in our documents, we would appreciate your feedback.

Please email me your comments.

Sincerely,

Kathy Elgin
kelgin@purcellvilleva.gov