

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND
CITY OF HOLLYWOOD REGARDING P25 SYSTEM ~~TOWER~~**

This Interlocal Agreement ("Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and the City of Hollywood, a Florida municipal corporation ("City") (collectively, County and City are referred to herein as the "Parties" and each individually as a "Party").

RECITALS

~~A. A comprehensive countywide emergency telecommunications system that provides residents and visitors with reliable, direct, and rapid access to public safety agencies is critical to the public health, safety, and welfare of residents of Broward County.~~

~~B. In 2015, County contracted with a technical consultant to conduct a comprehensive assessment of the existing public safety communications system, including surveying existing radio sites; inventorying equipment; performing radio system coverage studies; conducting user interviews with the Broward Sheriff's Office (including Broward Sheriff Fire Rescue and dispatch communications staff), municipal police and fire departments, and the Broward County School Board; and conducting focus group interviews with first responder agencies, interviews with representatives from neighboring systems, and online user surveys. At the conclusion of this work, the consultant provided County with a report assessing the needs of the public safety communications system and providing options for the upgrade or replacement of the existing public safety communications system ("Needs Assessment").~~

~~C. The Needs Assessment identified several issues with the existing public safety communications system, including coverage gaps in certain geographical areas of Broward County and in building coverage issues for dense structures.~~

~~D.A. In an effort to provide a reliable, direct and rapid access countywide emergency communications system~~Based on the results of the Needs Assessment serving the public health, safety and welfare, County initiated a competitive solicitation for a vendor to provide a state-of-the-art ~~public safety communications~~ system and, following the competitive procurement, entered into a contract with a value in excess of \$59 million for an upgraded countywide public safety radio communications system ("P25 System") with Motorola Solutions, Inc., to implement, support, and maintain the P25 System (the "P25 Agreement").

~~E. Upon completion, the P25 System will be a state of the art public safety communications system which that will provide for improved public safety communications within Broward County and will increase capabilities of emergency communications for public safety officials within Broward County and with federal, state, and neighboring agencies.~~

~~F. To provide countywide coverage, implementation of the P25 System requires modifications and improvements to several existing radio communication towers and the~~

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installation of seven new towers. The result of the P25 System will be a guaranteed ninety five percent (95%) portable coverage with ninety five percent (95%) reliability.

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G. County represents that its anticipated completion date for the tower site civil work required for the P25 System, including existing tower modifications and improvements, new tower construction, and installation of tower site equipment, is December 31, 2019.

H. County has worked to site the new towers in locations that would meet or exceed the coverage requirements of the P25 System. One of the sites initially selected by County for a new tower was the City's water treatment plant near West Lake Park in Hollywood, Florida. At City's request, the tower site was relocated from the City's water treatment plant to County-owned property within West Lake Park, 1200 Sheridan Street, Hollywood, Florida ("WLP SiteTower").

I.B. On August 21, 2018, County submitted an application to City for approval of a site plan for the WLP Tower ("Site Plan Application") for a tower ("WLP Tower") located at within West Lake Park, 1200 Sheridan Street, Hollywood, Florida (the "WLP Site"). On September 6, 2018, the City's Planning and Development Urban Design Division staff Board considered the application and recommended denial of the Site Plan Application. On October 17, 2018, the City's planning staff presented the Site Plan Application to the City Commission with a recommendation of approval. The City Commission deferred a decision on the Site Plan Application and requested that County consider relocating the antenna and related equipment WLP Tower to an alternate site, namely the roof of the newly-constructed Circ Residences building (the "Circ Site") in downtown Hollywood for which construction was newly completed.

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J.C. On January 8, 2019, as a result of City's deferral of its decision on the Site Plan Application, County adopted Resolution No. 2019-23, initiating the conflict resolution process pursuant to Chapter 164, Florida Statutes. The City has indicated on the record of each step of the conflict resolution process its belief that the County's commencement of such procedures was premature and inappropriate, and the Parties proceeded to comply with those procedures, in good faith, notwithstanding the City's announced position.

K.D. On January 29, 2019, pursuant to City's request that County relocate the proposed antenna and related equipment ("Circ System") tower to the Circ Site, County approved the commissioning of consultants for an expedited assessment of the viability of relocating the antenna and related equipment WLP Tower to the Circ Site while simultaneously negotiating potential lease terms with the owners of the Circ Site. In parallel with County's efforts, City also engaged a consultant to undertake a similar study and City staff coordinated with the owners of the Circ Site to expedite lease negotiations and share Circ Site information with the County.

L.E. By the end of March 2019, the County's studies were concluded and submitted for consideration by the Parties. By the County's consultant, Nick Falgiatore of Mission Critical Partners ("County Expert"), The City strongly disagreed with the County Expert's conclusions

and thereafter, in April, engaged its own and City's consultant, Alex Gil of consultant, G.M. Selby, Inc. ("City Expert"). The City Expert reached materially different conclusions regarding the viability of an antennae system tower at the Circ Site and the relative radio coverage afforded by the Circ Site as compared to the WLP Site West Lake Park. The City Expert concluded the Circ Site was far superior for when considering the health, welfare and safety of County residents.

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M.F. Notwithstanding, On April 16, 2019, the County Commission directed County staff to proceed with locating the tower at the WLP Site West Lake Park unless the site was not viable. On June 5, 2019, the City Commission denied County's Site Plan Application for to site the WLP Tower at West Lake Park.

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N.G. On June 6, 2019, pursuant to Section 164.1055, Florida Statutes, a joint public meeting between the governing bodies of County and City was held (at which the City's Attorney again announced the City's position that the meeting was premature under Section 164, Florida Statutes, but that the City's representatives were present and ready to reach a reasonable resolution, if possible).

O.H. In the spirit of cooperation, the Parties discussed agreed to certain terms to address the location of the proposed antennae system tower and resolution of the "conflict" pursuant to Section 164.1057, Florida Statutes.

Now, therefore, for good and valuable consideration, the receipt of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing Recitals are true and correct, incorporated herein, relied upon by the Parties, and form a material part of this Agreement.

2. Independent Expert Analysis.

2.1. Independent Expert Selection. The County Expert and the City Expert shall confer and, no later than ten (10) days after the Effective Date (as defined in Section 4), which time may be extended by mutual written agreement of the County Administrator and the City Manager, shall identify and recommend in writing to the Parties an independent expert mutually agreeable to them who is qualified to perform the services stated in Exhibit A and meets the other qualifications stated therein, including that he or she must have experience in performing public safety radio communications system work (or substantially similar work if agreed to in writing by the County Expert and the City Expert) ("Independent Expert"). If the Independent Expert is not selected within such ten (10) day period or such agreed-upon extended deadline, either Party may terminate this Agreement and neither Party shall have any further rights or obligations hereunder.

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2.2. Independent Expert Engagement. Within fifteen seven (157) business days after the identification of the Independent Expert per Section 2.1, or as soon thereafter as County and City may accomplish same through the exercise of reasonable diligence,

the Independent Expert shall be retained by both the County and the City ~~(provided City complies with the terms of this sSection 2.2)~~ to perform the services stated in Exhibit A and to submit a written report to the Parties in accordance with this Agreement and the attached Exhibit A. ~~County shall provide the proposed engagement agreement to City (by emailing a copy to the City Manager and the City Attorney), and City shall have the right to promptly review and approve the terms and conditions of the engagement in advance of such engagement but shall not unreasonably withhold or delay its approval of such terms and conditions. Any City objection to the terms and conditions of the engagement agreement must be emailed to the County Administrator and the County Attorney within five (5) calendar days after City receives the engagement agreement draft; if the County Administrator and the County Attorney do not timely receive any such objection, City shall be deemed to have agreed with the stated terms and conditions.~~ The Parties shall work expeditiously and in good faith to resolve any timely and proper City objections to the engagement of the Independent Expert. If the Parties are unable to fully resolve ~~these City any~~ objection(s) within seven (7) business days ~~after County's receipt of City's timely objection(s),~~ either Party may terminate this Agreement and neither Party shall have any further rights or obligations hereunder. ~~T, and the agreement between the Independent Expert and County shall identify City as an express third-party beneficiary with inspection and audit rights.~~ The Independent Expert shall retain any subconsultants the Independent Expert determines are necessary to perform the services stated in Exhibit A, and any such subconsultant services shall comply with the terms of this Agreement.

2.3. Independent Expert Report. No later than forty-five (45) days after the Independent Expert is retained, the Independent Expert shall issue and provide the Parties with a written report that complies with the scope stated in Exhibit A and includes the following:

- (a) The Independent Expert shall analyze County's estimates of the total cost of constructing and installing an operational WLP Tower (the "Original Tower Cost") and of the total annual cost of operating the WLP Tower, including support and maintenance, in accordance with the terms of the P25 Agreement (the "Original Maintenance Cost") ~~(collectively,~~ the Original Tower Cost and the Original Maintenance Cost as shown on Exhibit B attached hereto are collectively referred to as the "Total Original Cost"), ~~as shown on Exhibit "B" attached hereto,~~ together with any further information City or County promptly (as determined by the Independent Expert) provides to the Independent Expert regarding the Total Original Cost, and shall issue an opinion stating the Independent Expert's estimate of the total cost of constructing and installing an operational WLP Tower (the "Expert's Tower Cost Estimate"), and of the total annual cost of operating the WLP such-t Tower, including support and maintenance, and including an analysis of the possible impacts of a major wind and water event on the WLP, and Circ locations ~~(the "Expert's Operations Cost~~

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Estimate") Unless the context requires otherwise, whenever construction and/or installation of the WLP Tower or WLP Site is referenced, it includes all related services and materials (e.g., the generator) required for proper construction/installation and required for the WLP Tower to be fully operational and comply with the P25 Agreement; and

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(b) The Independent Expert shall provide an estimate of the total cost of constructing and installing the required antenna(s) and all associated equipment required to support the antenna(s) at the Circ Site, as well as the total anticipated annual operating the Circ antenna(s) and associated equipment, including support and maintenance, so as to satisfy the conditions of ~~P25 Agreement~~Exhibit C, and shall issue an opinion stating the Independent Expert's estimate of the total cost of constructing and installing an operational system on the Circ Site, along with the total annual anticipated cost of operating the system on the Circ Site, including support and maintenance (and reasonable annual lease cost associated with the lease of such system at the Circ Site). The report shall also include an analysis of the possible anticipated impacts of a major wind and water event at the Circ Site (the "Expert's Circ Estimate"); and

~~(b)~~(c) A comparison, based on the best available information (as determined by the Independent Expert) together with any further information City or County promptly provides to the Independent Expert between (i) the radio coverage and level of service that would reasonably be expected to be provided by antenna(s)-tower at the Circ Site ("Circ SystemTower"), in accordance with the requirements established by County for the P25 System in the P25 Agreement set forth in Exhibit C hereto along with other factors impacting the health welfare and safety of Broward County residents, and (ii) the radio coverage and level of service that would reasonably be expected to be provided by a tower at the WLP SiteWest Lake Park site, in accordance with the requirements established by County for the P25 System in the P25 AgreementExhibit C hereto along with other factors impacting the health welfare and safety of Broward County residents. In conducting this coverage-and-level-of-service-comparison, the Independent Expert shall consider the expected radio coverage to be the provided by the respective towers-sites (once the P25 System is operational) and any additional factors that could affect installation time to have the site ready for testing (including, but not limited to removing any restrictive covenants, required EPA, FAA, etc., or any required governmental approvals) and -factors that could affect the service provided by the towersat each site, including, but not limited to, building obstructions, shadowing, water level rise, storm surge, severe weather and flooding as well as the impact site location has on timely, safe and cost-

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efficient post-weather event repairs or restoration of service in the event of damage to the site and all other criteria described in Exhibit A. The Independent Expert will also include consideration of any service enhancement goods and services (such as, solely by way of example, signal repeaters) if and to the extent that both the Independent Expert determines such enhancements are reasonable and appropriate ~~and City has agreed, in writing, to fund such enhancements if the Circ Site Tower is selected at either site.~~

2.4. Independent Expert Costs. The Parties shall share equally in all costs and expenses of the Independent Expert (including of all subcontractors retained by the Independent Expert). County shall pay all such costs and expenses in accordance with the terms and conditions of the applicable agreement and shall invoice City for fifty percent (50%) of all such costs and expenses incurred by County. City shall pay the invoiced amounts within thirty (30) days after the date of each invoice.

~~2.5. Binding Report. The Parties stipulate and agree to be and that they are each bound by, and absent fraud or illegality on the part of the Independent Expert are estopped from challenging, the factual determinations, conclusions, and recommendations of the Independent Expert regarding the Circ Tower and the WLP Tower, including as set forth in the Independent Expert's written report. The Parties stipulate and agree that neither Party shall, absent fraud or illegality on the part of the Independent Expert, challenge the Independent Expert's written report including the stated factual findings, conclusions, or recommendations, or report through legal action or otherwise.~~

~~2.6-2.5. Conditions to Circ Tower Site. The written report of the Independent Expert shall determine and state in the written report whether the following two conditions ("Circ Conditions") are met:~~

- ~~(a) The Circ System Tower would meet the minimum P25 System requirements (including signal reliability) as set forth in the P25 Agreement, including the Specifications, Coverage Testing, and Final Acceptance testing (as those terms are defined in the P25 Agreement) Exhibit C hereto; and~~
- ~~(b) On balance, considering all of the relevant factors including those referenced above, installation of the Circ Site system Tower would be equal to or better than installation of the WLP Tower Site in terms of reliably protecting public health and safety for the useful life of the P25 System.~~

If the Independent Expert's report states that both of the Circ Conditions are met, then City shall have fifteen (15) days after the issuance of such written report to notify County in writing (by sending email notice to the County Administrator with a simultaneous copy to the County Attorney) that City is electing that the Circ Tower System be installed ("City

Election Notice”). If either or both of the Circ Conditions are not met (as determined by the Independent Expert), or City fails to timely provide the City Election Notice, ~~and/or the Lease Condition (as defined in the immediate below paragraph) is not timely met,~~ then County shall proceed with the WLP Tower and, to the full extent permissible under applicable law, City agrees to expedite all required approvals, permitting, and inspections in connection therewith, and City stipulates and agrees that it shall take all required measures, including the scheduling of a special meeting to reconsider its denial of the Site Plan Application at the WLP Site or rescind such denial, be estopped from asserting and waives all objections to the WLP Tower, and covenants not to litigate or contribute any resources to any private litigation associated with the installation or operation of the WLP Tower except as required by law.

The Parties acknowledge that installation at the Circ Site requires negotiation of a lease between County and the entity that owns the Circ Site. ~~As all additional operating costs (as specified below) for the Circ Site will be borne by City, County and City shall work collaboratively to develop, as expeditiously as is possible, a lease acceptable to both Parties and to the Circ Site ownership. County and City agree to not unreasonably object to any lease terms, and agree to make their respective administrative and legal staffs available at all reasonable times on and after the Effective Date to negotiate and document the required leasing arrangement. The Parties agree that, even if the other conditions of this Agreement are met, the Circ Tower installation is not feasible unless County and the Circ Site’s ownership entity enter into the required lease agreement within fifteen (15) days after City sends the City Election Notice (the “Lease Condition”). The County Administrator and the City Manager may extend this time by mutual written agreement.~~

~~Within ten (10) business days after sending the City Election Notice, City shall provide to County a reasonable payment bond (or such other form of security approved in writing by the County Administrator) guaranteeing payment of all of City’s financial obligations under this Agreement. If City fails to timely provide such bond, the City Election Notice shall be deemed to have not been timely provided by City to County.~~

3. **Circ SystemTower.** If, and only if, the Circ Conditions ~~and the Lease Condition are~~ are met and City timely provides the City Election Notice, then the following provisions of this Section 3 shall apply (unless the context requires otherwise, whenever construction and/or installation of the Circ SystemTower is referenced, it includes all related services and materials (e.g., the generator) required for proper construction/installation and required for the Circ SystemTower to be fully operational and comply with the P25 AgreementExhibit C):

3.1. **Siting Tower at West Lake Park; Circ Tower-System Installation.** County shall cease any and all efforts to construct the WLP Tower ~~at the West Lake Park site,~~ and County shall contract for the construction and installation of the Circ SystemTower in accordance with the terms of the P25 Agreement (as same may be reasonably amended to address the Circ SystemTower construction and installation). The contract or

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amendment shall provide for construction and installation to be completed within ~~ninety~~ one hundred twenty (9120) days after execution of the contract or amendment, except that County may reasonably extend such deadline upon a good faith showing by the retained contractor that additional time is required. City agrees, to the full extent permissible under applicable law and to the greatest extent practicable, to expedite all required permits, other approvals, and inspections within its control.

3.2 Funding.

I. A. Should the costs for the Circ System exceed the Expert's Tower Cost Estimate, City shall pay County the difference between (i) the ~~actual-reasonable~~ total cost of constructing and installing the Circ ~~System Tower~~ as agreed to by County and City and in accordance with the terms of the P25 Agreement (as same may be amended as referenced above), and (ii) the Expert's Tower Cost Estimate. City shall make such payment(s) after such costs are incurred by the County and within thirty (30) days after each County written demand therefor. The County shall be responsible for any such cost above that reasonably charged in the industry.

~~3.2. B.~~ In addition, each year for the duration of the P25 Agreement or the useful life of the Circ ~~System Tower~~, whichever is longer, and within thirty (30) days after demand therefor, City shall pay County 50% of the difference between (i) the actual cost for support and maintenance on an annual basis for the Circ ~~Tower, as determined~~ System by the Independent Expert including but not limited to all lease payments and repair costs (including repairs to the roof or any component of the Circ Residences that the Circ ownership or representative demonstrate must be made by County as a result of the Circ Tower construction or installation), and (ii) the Expert's Operations Cost Estimate. ~~For purposes of interpretation (including any required judicial construction of this Agreement) and to add further clarity, if City so opts (based on the conditions precedent being met), County will install or cause the Circ Tower to be installed, with City being fully responsible for all capital and ongoing operational and support and maintenance costs of the Circ Tower in excess of what the Independent Expert opines in the written report it would have cost County to construct, install, and operate, and maintain the WLP Tower over the full useful life of the P25 System; for all such costs and expenses, City shall reimburse County within thirty (30) days after demand. City's reimbursement obligation shall include the cost of replacing the Circ Tower (or any required component(s) thereof) if required due to windstorm damage or other natural cause, and the cost of any repair work on any part of the P25 System that any County provider validly determines is not covered by any applicable warranty but that would have been covered by such warranty had the WLP Tower (and not the Circ Tower) been included within the P25 such system. Except as set forth in 3.4 below, the City's funding obligations are limited to the amounts in 3.2 I. A and B above. All repair and replacement costs during the duration of the P25 Agreement or the useful life of the Circ System, whichever is longer, are the County's responsibility.~~

responsibility.

II. A. Should the Expert's Tower Cost Estimate exceed the costs for the Circ System, County shall pay City the difference between (i) the Expert's Tower Cost Estimate and (ii) the reasonable total cost of constructing and installing the Circ System as agreed to by County and City in accordance with the terms

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of the P25 Agreement (as same may be amended as referenced above). County shall make such payment(s) within thirty (30) days after the City's written demand therefor.

B. In addition, each year for the duration of the P25 Agreement or the useful life of the Circ System, whichever is longer, and within thirty (30) days after demand therefor, County shall pay City 50% of the difference between (i) the Expert's Operations Cost Estimate, and (ii) the actual cost for support and maintenance on an annual basis for the Circ System, as determined by the Independent Expert.

~~3.3. — Enhancements. If, upon completion of installation of the Circ Tower, Motorola Solutions, Inc. reasonably determines that service enhancement goods and services are required for the Circ Tower to meet County's minimum requirements for the P25 System, City shall be fully responsible for all costs and expenses for such enhancements. County shall contract for such enhancements, and City shall reimburse the full amounts paid by County no later than thirty (30) days after demand by County (and each subsequent determination and demand, as applicable). If to the extent access to any private property is required to ensure adequate service, City shall take all required steps to promptly obtain and secure such access on County's behalf.~~

~~3.4. 3.3 Maintenance Repairs. If at any time during the duration of the P25 Agreement County reasonably determines that the Circ System Tower is in need of repairs or enhancements (in addition to the support and maintenance otherwise provided under the P25 Agreement) for any reason including so that the Circ System Tower will reliably operate consistent with the minimum requirements established for the P25 System, County shall provide notice to City in accordance with Section 11 herein. City shall, within thirty (3) days of receipt of such notice, review and determine whether such measures are needed, and City agrees that such approval shall not be unreasonably withheld. County shall perform the required repairs at the County's expense, or enhancements and City shall reimburse County for the reasonable costs of same within thirty (30) days after County's invoice for reimbursement.~~

4. **Effective Date.** This Agreement shall be effective on the date this Agreement is fully executed by the Parties ("Effective Date"), provided that this Agreement shall be null and void and of no force or effect unless: (i) at City's special meeting on June 12, 2019, City rescinds its vote of June 5, 2019, denying the Site Plan Application, and instead votes to unconditionally, and to the full extent permissible under applicable law irrevocably, approve the Site Plan Application (which approval may contain the condition outlined in Section 5 below); and (ii) this Agreement is fully executed by the Parties (with executed copies emailed to the County Administrator and the County Attorney, or the City Manager and the City Attorney, as applicable) no later than June 14, 2019. If the City Attorney notifies the County Attorney by email on or before June 12, 2019, that the condition established in (i) above, under City's code provisions, cannot be accomplished until a later date in June 2019, which date shall be specified in such email, the condition established in (i) above shall be deemed modified to require its satisfaction by such later date in June 2019.

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Commented [MA3]: You will notice that we added "reasonably" in a number of places to give the City comfort that the County and its folks cannot act arbitrarily at City expense.

Commented [MA4]: Doug, we need this, and it doesn't hurt the City because of paragraph 5. If you can think of some other way of accomplishing the same thing, we are open to discussing it. We just need to make sure that if Circ doesn't work we can move forward with WLP (which is the aspect that is binding on the City), and our concern is over contract zoning.

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5. Site Plan Application. Notwithstanding approval of the Site Plan Application as set forth in Section 4, County agrees not to seek any permits or commence any construction for the WLP Tower if the Circ Conditions are met and City timely provides the City Election Notice ~~and fulfills its obligations related to the Circ System Tower as set forth in Section 3. The Parties acknowledge that County has asserted that the Site Plan Application is already deemed approved pursuant to Section 365.1762(13)(d), Florida Statutes, and nothing herein shall prejudice or preclude County's right to judicially assert that at any time if it is required.~~

6. Default; Interpretation. If either Party defaults in the performance of a material provision of this Agreement and fails to cure such default within fifteen (15) days after receipt of written notice by the nondefaulting Party specifying the nature of such default, or if such default cannot be cured within fifteen (15) days and the defaulting Party fails to commence such cure within such time and diligently pursue such cure to completion, the nondefaulting Party shall be entitled to pursue all remedies available to it at law or in equity. ~~In any litigation regarding this Agreement, the Parties stipulate that this Agreement should be interpreted in accordance with the principle set out in Section 3.2.~~ The Parties further agree that their respective obligations under this Agreement include the taking of all actions that a reasonable and prudent governmental entity, acting in good faith, would reasonably be expected to take in furtherance of the purpose of this Agreement and to meet their respective express obligations under this Agreement.

7. Venue; Choice of Law; Availability of Specific Performance Remedy; Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties acknowledge and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, will be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement will be exclusively in such state courts, forsaking any other jurisdiction that either Party may claim by virtue of its residency or other jurisdictional device. The Parties agree, to the full extent permissible under applicable law, that the elements required for a court to require specific performance of their respective material obligations under this Agreement are present and that the critical public safety concerns underlying this Agreement justify the granting of such judicial remedy. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES EXPRESSLY WAIVE ANY RIGHTS EACH PARTY MAY HAVE TO A JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.**

8. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by either of the Parties nor shall anything included herein be construed as consent by a Party to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision and City is a municipal corporation as defined in Section 768.28, Florida Statutes, and each Party shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes. ~~However, to the full extent permissible under applicable law, if the Circ Tower is installed and operated at the election of~~

~~City pursuant to the terms of this Agreement, City agrees to indemnify County in full, including for all attorneys' fees and litigation costs incurred, in connection with any action(s) for damages (whether for personal injury, wrongful death, or otherwise) resulting from claims of inadequate P25 system performance in connection with the decision to install and operate the Circ Tower.~~

9. **No Third-Party Beneficiaries.** Except as otherwise expressly stated herein, neither Party intends to directly or substantially benefit a third party by this Agreement; therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either or both of them based upon this Agreement.

10. **Modification; Termination; Waiver.** It is further agreed that no modification, amendment, alteration, or termination of this Agreement will be effective unless contained in a written document executed with the same formality and of equal dignity herewith. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party against whom it is asserted, and any such written waiver will only be applicable to the specific instance to which it relates and will not be deemed to be a continuing or future waiver. County hereby authorizes the County Administrator to enter into amendments to this Agreement that she deems prudent, provided any such amendments are approved as to legal sufficiency by the Office of the County Attorney.

11. **Notice.** Except as provided in Section 2.6, in order for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first class mail, with a contemporaneous copy via e-mail to the addresses listed below, and will be effective upon mailing (provided such contemporaneous e-mails are sent). The addresses for notice will remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

For County:

Broward County Administrator
115 South Andrews Avenue, Room 409
Fort Lauderdale, Florida 33301
Email address: BHenry@broward.org

With a copy to:

Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Email address: AMeyers@broward.org

For City:

Dr. Wazir Ishmael
2600 Hollywood Boulevard, St. 419

Hollywood, Florida 33020_____
Email address: wishmael@hollywoodfl.org_____

With a copy to:

[Douglas R. Gonzales, City Attorney](#)_____
[2600 Hollywood Boulevard, St. 407](#)_____
[Hollywood, Florida 33020](#)_____
Email address: dgonzales@hollywoodfl.org_____

12. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

13. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. Subject to any subsequent agreement by the Parties (or any unilateral action where expressly permitted in this Agreement) to extend any deadlines, the times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement.

14. Exhibits; Priority of Provisions. The attached Exhibits A and B are incorporated into and made a part of this Agreement. If there is a conflict or inconsistency between any term, statement, requirement, or provision of Exhibit A or B and any provision of Sections 1 through 197, the provisions contained in Sections 1 through 197 will prevail and be given effect.

15. Representation of Authority; Further Assurances. Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full and legal authority. The Parties hereby agree to execute, acknowledge, deliver, and cause to be done, executed, acknowledged, and delivered all further assurances and to perform such acts as reasonably requested of them in order to carry out this Agreement.

16. Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part will be deemed severed from this Agreement and the balance of this Agreement will remain in full force and effect.

17. Joint Preparation. This Agreement has been jointly prepared by the Parties hereto and will not be construed more strictly against either Party.

18. Financial obligations of either Party under this Agreement that continue beyond the end of their respective fiscal years are subject to both the appropriation and the availability of funds in accordance with Chapters 129 and 166, Florida Statutes, as applicable.

19. If the condition stated in Section 4(i) cannot be met by June 12, 2019, and County determines it is prudent to file a court action to challenge the Site Plan Application denial, the Parties agree that (i) County may file a simplified action merely to ensure that judicial jurisdiction is maintained, and (ii) if such condition is not met by the end of June 2019, the Parties will file a joint motion to allow County to supplement its filing, which motion shall explain to the court that the simplified action was filed pursuant to mutual agreement to preserve public resources in light of the anticipated resolution of the dispute.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Interlocal Agreement Between Broward County and City of Hollywood Regarding P25 System ~~Tower~~ on the respective dates under each signature: Broward County through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 11th day of June, 2019, and City, signing by and through its Mayor or Vice-Mayor, authorized to execute same by City Commission action on the 12th day of June, 2019.

County

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 2019

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Maite Azcoitia (Date)
Deputy County Attorney

By _____
René D. Harrod (Date)
Deputy County Attorney

INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND
CITY OF HOLLYWOOD REGARDING P25 SYSTEM ~~TOWER~~

City

Attest:

City of Hollywood

City Clerk

By _____
Josh Levy, Mayor

Approved as to form
and legal sufficiency for the use of and
reliance by the City of Hollywood, Florida
only:

Douglas R. Gonzales,
City Attorney

____ day of _____, 20____

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Exhibit A
INDEPENDENT EXPERT CRITERIA AND SERVICES

Criteria

The Independent Expert must have no financial interest, ~~pending~~ or prior contractual relationship within the past ten (10) years with either Party or with either Party's expert. The Independent Expert must not be a direct competitor of either Party's expert or of any of the subcontractors of either Party's expert ~~(as determined by agreement of the Parties' experts)~~ that submitted a report or analysis regarding the WLP ~~Tower-Site~~ or the Circ Site. The Independent Expert may not have any current contractual relationship(s) with Motorola, or any of its subdivisions, or have had any such contractual relationship(s) within the past five years.

Scope of Services

The Independent Expert shall prepare ~~thea~~ written report set forth in Section 2.3 of the Agreement comparing the WLP ~~Tower-Site~~ to the Circ ~~SystemSite~~, which shall include comparisons based upon the following criteria:

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1. Coverage evaluation with consideration of shadowing from ~~nearby~~ obstructions and the building rooftop
2. Construction ~~complexity and associated~~ costs
3. Serviceability after installation is complete
4. Survivability during a ~~major weather event or~~ hurricane as well and access and restoration considerations in the event of flooding or storm surge
5. Safety to the surrounding communities or nearby critical infrastructure, including risks of tower collapse and falling equipment
6. Any other factors that may affect use of a location for the life of the P25 System

Specific tasks the Independent Expert shall complete include:

- Interviews with County, City, and Motorola Solutions, Inc. staff, County ~~E~~expert, and City ~~E~~expert regarding their analysis of the locations for the Circ ~~Tower-Site~~ and the WLP ~~TowerSite~~
- Site visits of the Circ ~~Residences~~-Site and ~~West Lake Park-WLP s~~Site, both independently and with County and City staff
- Independent coverage modeling of the Circ ~~Tower-System~~ and the WLP Tower
- Development and provision of a written report that evaluates the strengths and weaknesses of each location with regard to the criteria defined
- Written conclusions as expressly required under ~~thi~~se Agreement

Exhibit B

County Estimate of Installation and Operational Costs of WLP ~~Tower~~Site

Commented [RDH5]: Exhibits replaced with WLP costs (rather than Circ costs)

[Figure 3 to be added re: operational costs]

Exhibit C

the radio coverage and level of service that would reasonably be expected to be provided by an antennae system at the Circ Site required by the P25 Agreement