



## County Commission

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AI- 29388

98.

## Broward County Commission Regular Meeting

Meeting Date: 06/11/2019  
Director's Name: Andrew J. Meyers  
Department: County Attorney

## Information

## Requested Action

A. MOTION TO APPROVE Interlocal Agreement ("ILA") between Broward County and the City of Hollywood (the "City") seeking to resolve a Chapter 164 intergovernmental conflict relating to the construction and operation of a radio communication tower in West Lake Park or, as desired by the City, at the Circ Residences building ("Circ"), which approval is subject to approval of same by the Hollywood City Commission at its meeting on June 12, 2019; and authorize the Mayor and Clerk to execute same.

B. MOTION TO AUTHORIZE County Administrator to negotiate and execute any necessary contracts and amendments, subject to approval as to legal sufficiency by the Office of the County Attorney, and to take any necessary administrative and budgetary actions, to perform and effectuate the County's obligations under the ILA.

C. MOTION TO AUTHORIZE Office of the County Attorney to initiate and take any legal actions as may be necessary against the City if the ILA is not approved by the Board of County Commissioners or the City Commission on or before June 12, 2019, and notwithstanding any such approval further authorizing the filing of any required court action to timely challenge the City's June 5, 2019, site plan denial.

## Why Action is Necessary

Board approval and the referenced delegations of authority are required to achieve the actions outlined above.

## What Action Accomplishes

Allows the Board to consider a proposal that could potentially resolve this intergovernmental dispute, and authorizes additional actions related to such dispute and this potential resolution.

## Is this Action Goal Related

## Previous Action Taken

## Summary Explanation/Background

On January 8, 2019, the County commenced Chapter 164 dispute resolution proceedings against the City of Hollywood (the "City") regarding the County's siting and construction of a radio communication tower in West Lake Park. The County is in the midst of an ongoing upgrade, costing in excess of \$50 million, to the public safety regional communications system (the "P25 System"). The P25 System relies upon a network of communication towers that facilitate the critical radio communications for first responders and other public safety officials, and is currently being implemented by County vendor Motorola Solutions, Inc. Based upon extensive coverage analyses and in coordination with vendors, consultants, and other industry professionals, the County identified the locations for additional communication towers that must be sited and built to support the upgrade to the regional communications system. The communication tower proposed to be constructed at West Lake Park is critical infrastructure and necessary for the implementation of the countywide public safety



emergency radio communication system.

On June 5, 2019, the City of Hollywood denied the application submitted by the County on August 21, 2018, for site plan approval ("Site Plan Application") of the tower at West Lake Park. The Site Plan Application had been continued on multiple occasions before finally being denied on June 5, 2019. The County contends that the Site Plan Application was improperly denied and that, pursuant to Florida Statutes Section 365.172(13)(d), the Site Plan Application is deemed "automatically approved" and the County "may proceed with the placement of the facilities without interference or penalty." § 365.172(13)(d), Fla. Stat.

On June 6, 2019, the Board and the City Commission met in a joint public meeting pursuant to Section 164.1055, Florida Statutes, and discussed the terms of a potential resolution of the dispute.

The proposed ILA, which is being developed in coordination with the Hollywood City Attorney and will be distributed before the June 11, 2019, Board meeting, provides for retention of an independent expert (including any necessary subcontractor(s)) to provide an opinion ("Expert Report") that would be binding on both the County and the City and would determine cost, feasibility, and performance issues relating to the proposed construction and operation at West Lake Park and the City's alternative proposal for proposed construction and operation at the Circ. The ILA will also address the parties' mutual acknowledgment that, to be feasible, the proposed construction and operation must be in compliance with the technical specifications and coverage requirements stated in the County's P25 System agreement with Motorola Solutions. If the Expert Report determines that a tower at the Circ would comply with the minimum system requirements (including signal reliability) established for the P25 System and that, on balance, the Circ location is equal to or better than the West Lake Park location in terms of reliably protecting public health and safety, then, provided applicable deadlines are met, the City may elect for the tower to be installed at the Circ. If the City so opts, the City will be responsible for funding the full incremental cost of installation, construction, operation, and support and maintenance of the tower at the Circ that exceeds the anticipated costs of same for a tower at West Lake Park.

This item would approve the proposed ILA, subject to the City Commission approving same at its emergency meeting on June 12, 2019, and would provide further required authorizations for the County Administrator and County Attorney.

#### Source of Additional Information

Maite Azcoitia and Rene D. Harrod, Deputy County Attorneys, (954) 357-7600

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#### Fiscal Impact

##### Fiscal Impact/Cost Summary:

Not determined at this time.

#### Attachments

[Additional Material - Information](#)

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**ITEM #98**

**ADDITIONAL MATERIAL**

**Regular Meeting**

**JUNE 11, 2019**

**SUBMITTED AT THE REQUEST OF**

**OFFICE OF THE COUNTY ATTORNEY**

**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Andrew J. Meyers, County Attorney *ajm*

**DATE:** June 10, 2019

**RE:** **Item 98, June 11, 2019, Commission Meeting (Interlocal Agreement with City of Hollywood Regarding Chapter 164 Dispute)**

Attached to this memorandum is the current draft (as of Monday morning) of the proposed Interlocal Agreement between Broward County and the City of Hollywood ("ILA") regarding the potential resolution of the Chapter 164 dispute discussed at the joint public meeting on June 6, 2019. On Saturday afternoon, we had sent an initial draft of the attached to the Hollywood City Attorney (Mr. Doug Gonzalez), and we sent him a subsequent draft late Sunday afternoon. Mr. Gonzalez let me know that he needed to delay sending back formal comments until he had the opportunity to vet the draft with various of his client representatives.

The most material terms of the draft ILA are:

1. An independent expert would be retained to opine on several matters including whether installing the tower on the Circ property would meet the minimum P25 system standards, and to determine the County's cost of installing and operating the tower at West Lake Park. These opinions and determinations would be binding on the parties;
2. If the independent expert determines that the Circ installation would meet the required minimum P25 system standards, the City could opt for the tower to be installed on the Circ property provided the City paid for the additional construction and operating costs vis-à-vis the costs of siting the tower at West Lake Park; and



3. If the independent expert determines the Circ tower would not meet the minimum system standards, or the City chose not to pay for the additional costs, the City would have approved (rescinding its prior denial) the West Lake Park site plan application, which would permit the County to proceed with the West Lake Park installation once certain conditions unrelated to the City were met.

This morning, Mr. Gonzalez mentioned that at least some of his client representatives do not agree that the conceptual agreement reached on June 6, 2019, included an obligation for the City to pay the increased operating costs (he acknowledged that the City would be obligated to pay the increased construction/installation costs).

I told Mr. Gonzalez that we were adding a few additional provisions and would send him a revised draft for his comment. Those revisions are included in the draft ILA attached hereto, which draft has been sent to Mr. Gonzalez (the draft sent to Mr. Gonzalez was redlined).

As the Board will be considering this item on June 11, 2019 (Item 98), and the City Commission is expected to consider this item at an emergency meeting on June 12, 2019, we wanted to circulate this draft now. Between now and the Commission meeting tomorrow, we will continue working with County staff and the City in the hope we can finalize the ILA for consideration by the respective boards. We will notify you of any material changes to the document before the Board's consideration of the ILA.

Please contact Deputy County Attorneys Maite Azcoitia (ext. 7605) or Rene Harrod (ext. 7618) or me with any questions or concerns.

AJM/RDH/gf  
Attachment

c: Bertha Henry, County Administrator  
Bob Melton, County Auditor



## **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 communications 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. Based on the results of the Needs Assessment, 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 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 installation of seven new towers. The result of the P25 System will be a guaranteed ninety-five



percent (95%) portable roundtrip coverage for a hip-mounted portable radio inside a building with 25 dB of attenuation, with ninety-five percent (95%) reliability.

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 Site").

I. On August 21, 2018, County submitted an application to City for approval of a site plan ("Site Plan Application") for a tower located at the WLP Site ("WLP Tower"). On September 6, 2018, City's Planning and Urban Design Division staff issued its report recommending that the City Commission approve the Site Plan Application. On October 17, 2018, the City Commission deferred a decision on the Site Plan Application and requested that County consider relocating the WLP Tower to an alternate site, namely the roof of the newly-constructed Circ Residences building (the "Circ Site") in downtown Hollywood.

J. 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.

K. On January 29, 2019, pursuant to City's request that County relocate the proposed tower to the Circ Site, County approved the commissioning of consultants for an expedited assessment of the viability of relocating the 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.

L. By the end of March 2019, the studies were concluded and submitted for consideration by the Parties. County's consultant, Nick Falgiatore of Mission Critical Partners ("County Expert"), and City's consultant, Alex Gil of G.M. Selby, Inc. ("City Expert"), reached different conclusions regarding the viability of a tower at the Circ Site and the relative radio coverage afforded by the Circ Site as compared to the WLP Site.

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

N. 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.



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

Now, therefore, for good and valuable consideration, the receipt and sufficiency 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 in writing 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.

2.2. Independent Expert Engagement. Within fifteen (15) business days after the identification of the Independent Expert per Section 2.1, or as soon thereafter as County may accomplish same through the exercise of reasonable diligence, the Independent Expert shall be retained by County (provided City complies with the terms of this Section 2.2) to perform the services stated in Exhibit A and to submit a written report to the Parties in accordance with 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 objection. If the Parties are unable to fully resolve all timely City 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. 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") (the Original Tower Cost and the Original Maintenance Cost are collectively referred to as the "Total Original Cost"), 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 Tower, including support and maintenance (the "Expert's Operations Cost Estimate"); and
- (b) A comparison, based on the best available information (as determined by the Independent Expert), between (i) the radio coverage and level of service that would reasonably be expected to be provided by a tower at the Circ Site ("Circ Tower"), in accordance with the requirements established by County for the P25 System in the P25 Agreement, and (ii) the radio coverage and level of service that would reasonably be expected to be provided by the WLP Tower, in accordance with the requirements established by County for the P25 System in the P25 Agreement. In conducting this coverage and level of service comparison, the Independent Expert shall consider the expected radio coverage to be provided by the respective towers (once the P25 System is operational) and any additional factors that could affect the service provided by the towers, including, but not limited to, building obstructions, shadowing, water level rise, storm surge, and flooding. 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 is selected.

2.4. Independent Expert Costs. The Parties shall share equally in all costs and expenses of the Independent Expert (inclusive 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. City shall pay the invoiced amount 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, opinions, and conclusions 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 determinations, opinions, or conclusions, through legal action or otherwise.

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

- (a) The Circ 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); and
- (b) On balance, considering all of the relevant factors including those referenced above, the Circ Tower would be equal to or better than the WLP Tower 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 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, 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 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.

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 Tower. If, and only if, the Circ Conditions and the Lease Condition 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 Tower is referenced, it includes all related services and materials (e.g., the generator) required for proper construction/installation and/or required for the Circ Tower to be fully operational and comply with the P25 Agreement):

3.1. Siting Tower at West Lake Park; Circ Tower Installation. County shall cease any and all efforts to construct the WLP Tower, and County shall contract for the construction and installation of the Circ Tower in accordance with the terms of the P25 Agreement (as same may be reasonably amended to address the Circ Tower construction and installation). The contract or amendment shall provide for construction and installation to be completed within one hundred twenty (120) 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. City shall pay County the difference between (i) the actual total cost of constructing and installing the Circ Tower 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) within thirty (30) days after each County applicable written demand therefor. In addition, each year for the duration of the P25 Agreement or the useful life of the Circ Tower, whichever is longer, and within thirty (30) days after demand therefor, City shall pay County the difference between (i) the actual cost for support and maintenance on an annual basis for the Circ Tower, 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, 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 system.

3.3. Enhancements. If, upon completion of installation of the Circ Tower, Motorola Solutions, Inc. reasonably determines that service enhancement goods and/or 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 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 and pay any costs reasonably associated therewith.

3.4. Maintenance. If at any time during the duration of the P25 Agreement County reasonably determines that the Circ Tower is in need of repairs or enhancements (in addition to the support and maintenance otherwise provided under the P25 Agreement) so that the Circ 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. County shall perform the required repairs 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.

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 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 365.172(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 interpretation 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

*With a copy to:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

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 19, the provisions contained in Sections 1 through 19 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:

\_\_\_\_\_  
Doug Gonzales, City Attorney

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_



Exhibit A  
Independent Expert Criteria and Services

**Criteria**

The Independent Expert must have no financial interest 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 Site or the Circ Site.

**Scope of Services**

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

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 hurricane as well as 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 Expert, and City Expert regarding their analysis of the locations for the Circ Tower and the WLP Tower
- Site visits of the Circ Site and WLP Site, both independently and with County and City staff
- Independent coverage modeling of the Circ Tower 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 the Agreement