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Lease Bid, 500 Mill Rd, Absecon NJ

CHECK LIST

Your bid will not be considered complete unless all items listed below are included with your package.

Bid Form 2.00(signed & attached) _____ **(MANDATORY)**

State of New Jersey Business
Registration Certificate 3.14 & 3.15 (attached) _____ **(MANDATORY)**

Sets of Bids submitted (2 original complete sets are required) _____

Lease Bid, 500 Mill Rd, Absecon NJ

CITY OF ABSECON, NEW JERSEY

1.00 TECHNICAL SPECIFICATIONS

1.01 INTENT

The City of Absecon, New Jersey intends to award a contract for the LEASE OF REAL PROPERTY (GROUND SPACE) LOCATED IN ABSECON, NEW JERSEY.

Sealed bids will be received by the City Clerk for the City of Absecon by 12:00 PM, on December 19th, 2023, at the address indicated below.

**City of Absecon
ATTN: Jessica Thompson
500 Mill Road
Absecon, New Jersey 08201**

at which time said bids will be publicly opened and read aloud as required.

The conditions and requirements of these specifications are intended to be open and non-restrictive for the purpose of obtaining adequate participation of interested tenants, uniformity in the submission of bids and selection of the highest responsible bidder.

The City shall be the sole judge concerning the merits of all bids.

The checklist herein states the specifications that the Borough will accept.

1.02 PRE-BID/SITE VISIT CONFERENCE

A pre-bid conference is not applicable for this solicitation.

Site Visits are by appointment only. Please Jenn Harvey at jharvey@abseconpd.org to schedule an appointment.

All questions to be submitted in writing to Jessica Thompson, 500 Mill Road, Absecon New Jersey or email at jthompson@abseconnj.org by 12:00PM on December 8th 2023.

Lease Bid, 500 Mill Rd, Absecon NJ

1.03 DESCRIPTION

This facility is a 1,640 square ft of land located at 501 Mill Rd, Absecon NJ. LOT 1 BLOCK 200. Latitude 39-25-57.2N, Longitude 74-30-28.4W

The City of Absecon desires to enter into a long-term lease with a company interested in leasing the site and managing tenants on the tower.

The minimum acceptable bid is \$3,200 monthly base rent plus 75% of each gross revenue payment of all tenants on the tower.

The successful bidders shall be required to enter into a lease contract for said property from the City.

The lease agreement will begin January 11th, 2024, and consist of an initial 5-year term, with the option to renew for 4 additional 5-year terms, for a total of up to 25 years. On the renewal of each 5 year term, the successful bidder shall pay the then current rental, increased by fifteen (15%) percent.

The successful bidder shall have the exclusive right to enter into sublease or license agreement on terms which are reasonably acceptable to both the bidder and the City which permit other parties to use space on the tower. Any such sublease will be subject to the same limitations applicable to the successful bidder.

The City will have the right, free of charge, to use space on the tower for the City's telecommunications equipment and the City's equipment shelter will be located on the City's property adjacent to the site.

The successful bidder and tenants on the tower shall not create any hazard with the reasonable and proper use of the property or with any other public communication systems located on the premises. The bidder and tenants further, shall provide no interference with the County's public safety radio communications network.

Prior to installation of any new equipment, the successful bidder must submit to the Borough for its review and approval, plans and specifications for the designated areas to be leased including satisfactory structural analysis certified by a licensed civil engineer. The structural analysis shall conform to TIA/EIA-222-H- Structural Antenna Towers and Antenna Supporting Structures, or the most recent version applicable.

The successful bidder will be responsible for securing all required approvals/permits, and for all costs associated with the maintenance and operations of the facility.

All work involved with the installation of future equipment at this site must be coordinated with Jenn Harvey, Dir of Info Technology.

The successful bidder shall be required to enter into a written lease which shall be in the form and substance satisfactory to the City of Absecon Mayor and City Council of Absecon, New Jersey

Lease Bid, 500 Mill Rd, Absecon NJ

The lessee shall be responsible for installation of the antennae and related equipment and for maintenance thereof. During installation clutter and debris shall at all times be kept to a minimum and the site shall be cleaned up daily.

The lessee shall not assign this agreement without the express written consent by the City of Absecon.

It shall be a default if the successful bidder defaults in the payment or provision of rent or any other sums to the City of Absecon when due, and does not cure such default within ten (10) days; or if the successful bidder defaults in the performance of any other covenant or condition and does not cure such other default within thirty (30) days after written notice from the City of Absecon specifically the default complained of, or if the successful bidder abandons or vacates the premises; or if the successful bidder is adjudicated as bankrupt or makes any assignment for the benefits of creditors; or if the successful bidder becomes insolvent.

In the event of a default, the City of Absecon shall have the right, at its option, in addition to and not exclusive of any other remedy the City of Absecon may have by operation of law, without any further demand or notice, declare the lease at the end.

The City of Absecon shall award a bid in such a manner as to maximize the annual revenue from the Communications Facility.

1.04 INSURANCE REQUIREMENTS

The Bidder/Contractor must secure and maintain the following insurance coverage during the term of this contract (unless an exception is provided herein):

Comprehensive general liability coverage for personal injury and property damage liability of not less than one million dollars (\$1,000,000) combined single limit for each occurrence/ two million dollars (\$2,000,000) aggregate; and

2. All statutory workers compensation and employer liability coverage required to be held by law.

Within ten days of the Notice of Intent to Award Contract, the Bidder shall provide the Borough with a Certificate of Insurance evidencing that said insurance is and will be in effect during the term of the contract.

Each Certificate of Insurance shall contain the following information or statements:

1. Name and address of insured.
2. A statement that the City of Absecon, New Jersey is an Additional Insured under Comprehensive General Liability.
3. The number and description of each policy in force on the date of the Certificate.
4. The expiration date of each policy shown as well as the amount of coverage for each policy.

Lease Bid, 500 Mill Rd, Absecon NJ

5. A statement showing the method of cancellation. If cancellation may be effected by the giving of notice to the insured and the City of Absecon by the insurer, the policy and Certificate must provide that cancellation shall not be effective until ten (10) days after receipt of such notice by the said City of Absecon.

During the term of the contract, it shall be the responsibility of the Bidder to provide the Borough with additional Certificates of Insurance in compliance with the above showing current coverage when any insurance policy for the above-listed coverage expires.

Submission of proof of the required insurance coverage in the form of a Certificate or Certificates of Insurance is a condition precedent to contract award.

STATEMENT FROM INSURANCE BROKER: Each bidder must include with his bid a statement from the bidder's insurance broker stating that the broker will, upon successful award of this contract to their client, supply the bidder with insurance in the types and amounts required by these specifications. (Section 4.12)

1.05 CITY REPRESENTATIVE

The CITY Representative is

Jessica Thompson
City Administrator
500 Mill Rd
Absecon NJ 08201
(609) 641-0663 x103
E-mail Address: jthompson@abseconnj.org

This person is designated as the City Representative for this solicitation and will be the point of contact for performance and payment after execution of the contract.

The City Administrator is responsible for all contract administration matters.

1.06 LEASE PERIOD

Lease Period will begin January 11th, 2024 and consist of FIVE (5) YEARS beginning at the time of receipt of a dual signed lease agreement, with four (4) five (5) year options.

Lease Bid, 500 Mill Rd, Absecon NJ

2.00 BID FORM

CITY OF ABSECON, NEW JERSEY
FOR
LEASE OF REAL PROPERTY (TOWER & GROUND SPACE)
LOCATED IN ABSECON, NEW JERSEY

_____, 20____
Date

CITY OF ABSSECON MUNICIPAL BUILDING
ATTENTION: Jessica Thompson
500 Mill Rd
Absecon NJ 08201

BID: The minimum acceptable bid is \$3,200 per month plus 75% of each gross revenue payment of all tenants on the tower.

<u>Initial Monthly Rent</u>	<u>% Gross revenue Share</u>

Please take notice that only those bids submitted on this BID FORM will be considered in determining the highest bid.

Signature (Business Name)

_____, 20____
(Type or print full name) (Title) (Date)

(Telephone Number) (Fax Number)

This bid document is not to be altered in any way. Any exceptions by the Company to the terms or specifications in this document should be documented on a separate sheet labeled "*Company Name* Exceptions to Bid Specifications" and submitted with the bid.

3.00 TERMS

3.01 DEFINITIONS

Bidder: The word bidder as cited in this solicitation is defined as any responsible vendor who provides services or products as required and who meets all the requirements stipulated in the solicitation.

City: The word City as cited in this solicitation is defined as the City of Absecon.

City Office Building: The administrative offices are located at and legal notices are to be served at

**Absecon MUNICIPAL COMPLEX
ATTENTION: Jessica Thompson
500 Mill Rd
Absecon NJ 08201**

Contractor(s): The word Contractor(s) as used in this solicitation means the lowest responsible Bidder(s) who is awarded a contract.

Owner: The word Owner as cited in this solicitation is defined as the City of Absecon.

Vendor: see 'Bidder' above.

Contract: A dual signed copy of this bid package.

3.02 BID SECURITY

Each bid proposal shall be accompanied by a Bid Bond, Certified Check, Treasurer's Check or Cashier's Check in the amount of ten (10%) percent of the ANNUAL BASE amount of the bid proposal (but not in excess of \$20,000.00), pursuant to N.J.S.A. 40A:11-21.

The bid security of all bidders except the apparent highest responsible bidder, will be returned within ten (10) days after the opening of bid proposals, Sundays and holidays exempted.

Non-performance by a successful bidder or their failure to execute the contract or meet bond requirements within ten (10) days after notice of award shall result in their bid security being forfeited to the Borough as liquidated damages.

3.03 BIDDING INSTRUCTION

Two (2) ORIGINAL sets of the bid shall be enclosed in a sealed envelope addressed to the

**Absecon MUNICIPAL COMPLEX
ATTENTION: Jessica Thompson
500 Mill Rd
Absecon NJ 08201**

Lease Bid, 500 Mill Rd, Absecon NJ

With FRONT of envelope plainly marked with name and address of bidder and complete solicitation title and solicitation number as shown on the cover of this package. Two (2) complete original sets of bid forms properly signed are required. One original bid guarantee document (bid bond, certified check or cashier check) is required.

Official bid forms (section 2.00) are enclosed and **MUST BE USED** when submitting bid.

3.04 LATE BIDS

NO LATE BID WILL BE ACCEPTED OR CONSIDERED. The city will not be responsible for late postal delivery service nor will postmark dates be considered in honoring bids. The Borough will not be responsible for any bid misdirected in delivery by person or delivery service.

3.05 BID WITHDRAWAL

A written request for the withdrawal of a bid, or any part thereof, may be granted if the request is received by the City prior to the specified time of bid opening.

3.06 ORAL INSTRUCTIONS

No interpretation of the meaning of the Specifications or other Contract Documents will be made to any bidder orally. Every request for such interpretation shall be in writing addressed to the City Administrator. Such requests to be given consideration must be received at least ten (10) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda, which will be mailed by Certified Mail to all prospective bidders currently on record, not later than five (5) working days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve any bidder from any obligation under its bid as submitted.

No other means of communications, whether oral or written, shall be construed as a formal or official response or statement.

All Addenda so issued shall become part of the Contract Documents.

3.07 ASSIGNMENTS

The bidder shall not assign, transfer, convey, sublet or otherwise dispose of the contract, or its rights, title or interest therein or any part thereof.

If the bidder assigns, transfers, conveys, sublets, or otherwise disposes of the contract in whole or in part, or of its right, title or interest therein, or any of the monies to become due under the contract to any person, firm, or corporation, the contract may, at the option of the City, be canceled and/or annulled and the Borough thereupon relieved and discharged from any and all liability and obligations growing out of the same to the bidder and to its assignee or transferee; provided that nothing herein contained shall be construed to hinder, prevent or affect an assignment by the bidder for the benefit of creditors made pursuant to the statutes of the State of New Jersey; and no right under this contract or to any monies to become due hereunder shall be asserted against the City in law or in equity by reason of any so-called

assignment of this contract, or any part thereof, or any monies to grow due hereunder.

3.08 CONTRACT INTERPRETATION

The City's interpretation of the meaning and intent of these bid documents and the contract shall be final and conclusive.

In case of any discrepancy between any of these items, the one with more specific language takes precedence over any with general language, and the one that is more stringent takes precedence over the one that is less stringent.

3.09 CONTRACT AWARD

The City reserves the right to award the contract to bidder submitting the most favorable aggregate bid (i.e., lump sum).

The award of the contract or the rejection of bids shall be made within sixty (60) days of the date of opening bids. All bid guarantees will be returned immediately if all bids are rejected.

The City reserves the right to deviate from the details of these specifications if the evaluated bid of any bidder indicates the best interest of the City will be served by such action. The successful bidder to whom the award is to be made will be notified at the earliest possible date.

On the occasion when more than one responsible bidder has submitted an identical total bid offers a coin toss ceremony shall be conducted. Representative(s) from each bidder shall be in attendance. Two (2) coin tosses shall determine the award of the bid as follows:

Toss #1 shall determine who has choice of heads or tails.

Tosses #2 shall determine the overall winner of the contract.

A contract will be executed upon satisfaction of all requirements of these bid documents by the successful bidder.

NOTE: THE CITY OF ABSECON SHALL NOT BE RESPONSIBLE FOR ANY EXPENDITURE OF MONIES OR OTHER EXPENSES INCURRED BY THE BIDDER UNLESS THE BIDDER HAS RECEIVED A SIGNED CONTRACT AND A PURCHASE ORDER.

3.10 GOVERNING LAW, STATE AND FUNDING

This contract shall be governed by and construed in accordance with the laws of the State of New Jersey, including the Local Public Contracts Law of the State of New Jersey (N.J.S.A. 40A:11-et seq and New Jersey Local Public Contracts Law Rules N.J.A.C. 5:34-1 et seq.) and the Uniform Commercial Code (UCC). All contracts are subject to the availability and appropriation of funds annually .

Whereas there exists in some industries such conditions as paying of poverty wages, violating workplace regulations and suppressing worker rights; the City of Absecon shall not purchase, lease, rent or take consignment goods and/or services produced under the above conditions.

Lease Bid, 500 Mill Rd, Absecon NJ

Each bidder, by submitting a bid, certifies they will comply with all Federal, State and County laws concerning the above.

3.11 REJECTION OF BID

The City reserves the right to accept or reject any and all bids and to waive any immaterial defects or informality in any bid or in the bidding should it be in the best interest of the Borough to do so. The determination of a material defect shall be a matter of sole discretion of the City.

3.12 BID OPENING ATTENDANCE

At the time fixed for the opening of bids, their contents will be read and made public for the information of bidders and other interested persons, who may be present either in person or by a representative.

3.13 COMMUNICATIONS AFTER THE BID OPENING

It is highly improper for a bidder, after bid opening, to contact any representative of the City of Absecon to discuss the bids. The solicitation package contains all documents and instructions. These may be supplemented by any comments you wish to make. Such additional material and comments must be submitted with the bid. Should there be any questions concerning the bid submitted, you will be contacted by a representative of the City of Absecon and any discussion or contact will be limited to the questions of the representative.

3.14 RESPONSES

Unnecessarily elaborate responses beyond that sufficient to present a complete and effective response to the solicitation of bids is not desired. Unless specifically requested in the solicitation, elaborate artwork, corporate brochures, lengthy narratives, expensive paper, specialized binding, and other extraneous presentation materials are neither necessary nor desired.

3.15 NEW JERSEY BUSINESS REGISTRATION CERTIFICATE

P.L.2004, c.57 (Chapter 57) amends and supplements the business registration provisions of N.J.S.A. 52:32-44 which impose certain requirements upon a business competing for or entering into a contract with a public contracting agency.

All bidders must submit a copy of their State of New Jersey Business Registration Certificate with each bid submission.

The bidder must include the proofs of all named or listed subcontractors in a construction bid as part of the bid submission.

Submittal of the required Business Registration Certificate is mandatory. Failure to submit the required Business Registration Certificate is a fatal defect rendering the bid proposal unresponsive. This fatal defect cannot be waived or cured.

See N.J.S.A 40A:11-23.2(f).

Lease Bid, 500 Mill Rd, Absecon NJ

The State Division of Revenue issues Business Registration Certificates. There is no cost to file, and renewal is unnecessary, though changes to information must be submitted.

Information on how a business can obtain a certificate on the Internet at www.nj.gov/njbgs.

“NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS”

The contractor shall provide written notice to its subcontractors of the responsibility to submit proof of business registration to the contractor.

Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of the contract or shall attest that no subcontractors were used.

For the term of the contract, the contractor and each of its affiliates and a subcontractor and each of its affiliates [N.J.S.A. 52:32-44(g) (3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor must submit a copy of the business registration certificate with the submission of each bid.

3.16 BUSINESS REGISTRATION CERTIFICATE ATTACHMENT

=====
ATTACH CERTIFICATE HERE
=====

Lease Bid, 500 Mill Rd, Absecon NJ

4.00 SAMPLE LEASE AGREEMENT

Lease Bid, 500 Mill Rd, Absecon NJ

COMMUNICATONS ANTENNA SITE

LEASE AGREEMENT

CITY OF ABSECON

AND

LEASE AGREEMENT BETWEEN THE CITY OF ABSECON

THIS AGREEMENT is made this _____ day of _____, 2023, by and between the City of Absecon, of the State of New Jersey, with address of 500 Mill Rd, Absecon New Jersey 08201 (hereinafter referred to as the "City"), and _____, corporation doing business in the State of New Jersey, with address _____ (hereinafter referred to as the "Company").

WHEREAS, the City of Absecon, solicited bids for a nonexclusive lease for the communications site located at 501 Mill Rd, Absecon New; and

WHEREAS, the Company is a successful bidder pursuant to said bid and is further a communications tower owner and wireless network asset manager and conducts business in the State of New Jersey; and

WHEREAS, the Company desires to manage the wireless assets on the City's communications site in Absecon, New Jersey.

WHEREAS, the Company agrees that it will abide by all of the bid specifications, technical and other requirements; and

WHEREAS, after having awarded this bid to the Company as the high bidder, the City and Company are desirous of entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions stated herein, and in further consideration of the obligations, terms and agreements hereinafter set forth and recited, the City and Company do hereby agree as follows:

Lease Bid, 500 Mill Rd, Absecon NJ

1. Premises: The City is the owner of a certain plot, parcel or tract of land identified as Lot 1, Block 200, in the City of Absecon, New Jersey. There is a communications tower located at said property. Company desires to place certain antennae on and equipment in said facility to use in connection with its federally licensed wireless communications business.

2. Lease of Premises: The City leases to Company, the use of a portion of said facility for the placement of antennae or other equipment as set forth in this Agreement and the Bid Specifications.

3. Sub-Lease: The Company shall have the exclusive right, with the City's reasonable consent and approval to enter into sublease or license agreement on terms which are reasonably acceptable to both the company and the City which permit other parties to use space on the tower and to gain access to the site through the City's property in the same manner permitted to the Company. Any such sublease will be subject to the same limitations applicable to the Company hereunder, except that no sublease will permit any party thereunder to further sublease its rights. The minimum sublease rent shall be _____. The Company shall pay the City seventy-five percent (75%) of the Gross revenue Payment actually received from any non-affiliate that subleases space on the tower. The Company shall deliver such payment to the City on an annual basis within 30 days of the anniversary of the commencement date of any sublease.

4. Construction and Installation: The Company agrees to construct, install, operate, maintain, replace and upgrade any antennae and equipment as set forth in this Agreement. The Company shall strictly comply with said bid-specifications which are incorporated into this section of this Agreement and specifically made a part hereof by this reference. Further, the Company shall abide by any directives of the City and shall submit

any plans for the installation of an antenna pursuant to this Agreement to the City or its designee for approval prior to the commencement of any construction or installation of an antenna or other equipment as set forth in this Agreement.

All construction, installation, operation and maintenance of any antenna or other equipment used, placed or installed by the Company, shall be at the sole cost and expense of said Company. Subject to prior written approval by the City and additional reoccurring charges, Company further has the right to add, modify and replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services. The City shall review plans and offer any comments to the Company within fifteen (30) business days of receipt of same. The City's approval shall not be unreasonably withheld or delayed. Detailed As-Built plans showing the location of all equipment and utilities, both above and below ground, must be submitted within thirty (30) days of installation. The As-Built information shall be in the form of an AutoCAD file, and it shall include a complete and detailed inventory of all antennas and related equipment.

5. Permits: The Company will be solely responsible, at the Company's own cost, to obtain any and all certificates, permits or other approvals that may be required by any Federal, State or Local Authority, in order to install, maintain or operate the antenna and equipment used in conjunction with this Agreement. City agrees that Company's ability to use the Premises is contingent upon the suitability of the premises for Company's use and Company's ability to obtain all governmental licenses, permits, approvals or other relief required or deemed necessary or appropriate by Company for its construction and installation of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits. The City authorizes

Company to prepare, execute and file all required applications to obtain governmental approvals for Company's use of the Premises under this Lease and agrees to reasonably assist the Company with such applications. The company agrees to pursue all necessary approvals expeditiously.

6. City's Equipment on the Tower:

- a. The City shall have the right, free of charge, to use space on the tower for the City's Telecommunications Equipment and the City's equipment shelter will be located on the City's property adjacent to the site.
- b. The City shall have the right to add additional telecommunications equipment to the tower as changing technology and/or City's needs dictate; provided however, that (i) the additional equipment to be added does not interfere with existing equipment, (ii) The City's additional equipment shall be mounted on the tower at a level mutually agreed upon by the Company and the City.
- c. The City's existing antenna at the 75ft, 80ft, 100ft and 120ft level and associated cabling will remain.

7. Electricity: The Company will be responsible for the cost of any electricity or other utility necessary, if approved by the city, for the operation of the antennae and equipment contemplated by this Agreement. The company will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by the Company on the Premises. The City will fully cooperate with any reasonable utility company requesting an easement over, under and across the Premises in order for the utility company to provide service to the Company.

8. Compliance: The Company agrees to comply with all applicable governmental laws, rules, statutes and regulations relevant to the use of the antenna and associated

equipment. The Company cannot modify, supplement or replace said equipment without the prior written approval of the City.

9. Term: The initial term of this lease will be for five (5) years at a minimum annual rental per year as established in this Agreement. Said rental shall be payable in equal monthly installments. The initial terms shall commence on the commencement date, January 11th, 2024.

This Agreement shall automatically renew for four (4) additional five (5) year terms upon the same terms and conditions as set forth herein unless the Company or the City supplies written notice of its intention to terminate or modify this lease at least sixty (60) days prior to the termination of any renewal period. Within sixty (60) days after termination, all antennae and equipment of the Company shall be removed from the facility of the City, and further removed from the rental premises without any damage to said premises.

10. Rent: Beginning on the commencement date, the Company will pay to the City a monthly rental payment of _____ \$_____; plus ____% gross revenue from tenants and applicable taxes as required by law which may be due with said payment to the City of Absecon, 500 Mill Road, Absecon New jersey 08201. Rent shall be due in advance on the first day of each month. On the renewal of each 5 year term, the Company shall pay the then current rental, increased by fifteen (15%) percent.

11. Termination: This Agreement may be terminated without penalty or further liability, except where indicated, as follows:

a. By either party upon thirty (30) days prior written notice if the other party is in default pursuant to this Agreement and all applicable cure periods have expired.

b. By the City if involuntary bankruptcy proceedings are commenced against

the Company and such proceedings remain unstayed for 60 days, by appeal or otherwise.

c. By the City if the Company's use of the Premises in any way interferes with the radio transmission or operation of Burlington County's Public Safety Radio Network and said interference cannot be resolved.

d. By Company, in Company's sole discretion, if Company determines that its use of the property (as same may be modified from time) is no longer consistent with the optimal operation of Company's communication network based upon either technical or economic considerations. The company will be required to pay monthly lease payment through the end of the current term.

e. By Company, if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation for the Company Facilities.

f. By Company if Company is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies.

g. By Company if any environmental report for the Property reveals the presence of any Hazardous Material after the Term Commencement Date.

12. No Interference: The Company shall not interfere with the City's use of the facility and the City shall have the absolute right to occupy the communications tower for its own purposes as long as the same can be done without damaging or otherwise interfering with the equipment of the Company. The Company's equipment must be installed, maintained and removed at the end of the term or any renewal terms set forth in this Agreement by the Company without any damage to the property of the City including all mechanical devices or equipment attached to said facility. The antenna and equipment of

the Company shall not interfere with any transmissions or operations of the City or the Company shall be considered in breach of this Agreement. The Company shall not be permitted at any time to place any sign or advertisement identifying the company at, on or near the rental premises and the facility situated thereon.

13. No Grant of Property Interest: This Agreement shall not be construed to be a grant or conveyance by the City to the Company of any right, title, or interest in the land rental premises or any right, title or interest in other property owned by the City.

14. Right of Inspection and Access: The Company shall have the right to inspect and maintain its equipment during normal business hours. However, if an emergency occurs, the Company shall have access seven (7) days a week twenty-four hours per day. The Company shall give the City one (1) hour notice if access is needed for emergencies outside of normal business hours. Notice shall be provided to the City Administrator or his designee.

15. Insurance: The Company will carry during the term and any renewal term, at its own cost and expense, the following insurance:

a. All hazard insurance for the replacement cost of the antennae and equipment to be installed by the Company.

b. General liability insurance in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate as the combined single limit for bodily injury or death and property damage. The Company will name the City of Absecon as an additional insured under the general liability policy.

c. Workers' compensation insurance as required by law

d. The Company will require its insurance provider to give at least thirty (30) days written notice of any termination or cancellation of said policy to the City.

16. No Interference with Other Frequencies: To the extent, that any equipment of

another wireless provider is located on or will be located on the facility and rental premises, the antenna and equipment of the Company shall not interfere with any existing radio frequency users currently existing on the property including but not limited to any transmissions of the City of any nature

17. Indemnification: The Company agrees to indemnify, defend and hold the City, its agents, officers and employees, harmless from and against any direct or indirect injury, loss, damage or liability (or any claims in respect to the foregoing), costs or expenses (including reasonable attorney's fees and court costs) resulting from the installation, use, maintenance, repair, or removal of the antennae or other equipment to be placed pursuant to this Agreement or, for any breach of any of the provisions of this Agreement, unless any such injury, loss, damage or liability was direct result of the negligence of the City, its officers or employees.

18. Warranties: The City and the Company each acknowledge and represent that it is duly organized, validly existing and in good standing and has all the rights, power and authority to enter into this Agreement and bind itself hereby.

19. Environmental/Hazardous Substances: The Company represents, warrants and agrees that it will take no action of any nature, which will cause any environmental contamination at the property or will result in the discharge, location or existence of hazardous substances at said property. The Company will comply with all local, state or federal statutes or regulations pertaining to the environment and natural resources and its operation of the antennae and equipment as set forth in this Agreement will comply with the same. Further, the Company will not locate, or store any such hazardous substance at the property of any nature whatsoever.

Further, the Company will not emit through the ground, water or air, refine, manufacture,

generate, produce, store, contain, handle, transfer, process, treat or transport hazardous substances or hazardous waste or materials, products or pollutants, including without limitation, asbestos, oil, petroleum products and their byproducts, or any other hazardous substance as defined and regulated under any environmental laws in existence in the State of New Jersey or the United States of America. The Company agrees to defend, indemnify, and hold harmless the City from and against any and all direct liabilities, damages, losses, costs, assessments, penalties, fines, expenses and fees, including reasonable legal fees, that the City may suffer due to the existence of discovery of any hazardous substance on the property, or released into the environment that are directly or indirectly caused or attributed to the Company's use of the premises or use and location of the antenna and equipment as set forth in this Agreement. Indemnification set forth in this paragraph specifically includes reasonable costs, expenses and fees incurred in the connection with any investigation of the rental premises or any clean-up activities or remedial actions which are required by any governmental authority at the premises which have been caused directly or indirectly by the Company or the use of the antennae and equipment by the Company. The City represents and warrant that (i) it has not knowledge of the presence of any Hazardous Material located in, on, under upon or affecting Property in violation of any Environmental Law (ii) no notice has been received by or on behalf of the City from any governmental entity or any person or entity claiming any violation of or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Property and (iii) that it will not permit the City or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any Environmental Law. The City agrees to defend, indemnify and hold harmless the Company from and against any and all direct liabilities, damages, losses, costs,

assessments, penalties, fines, expenses and fees, including reasonable legal fees, that the Company may suffer due to the existence or discovery of any hazardous substance on the Property, or released into the environment that are directly caused or attributed to the City or the City's use of the Property. The provisions of this section will survive the termination or expiration of this lease agreement or any renewal term, set forth herein.

20. Maintenance: The Company will keep and maintain, at the Company's sole expense, during the duration of this lease term or any renewal term, the antennae and equipment to be installed pursuant to this Agreement. The Company will keep the rental premises in good condition, reasonable wear and tear excepted, and the Company will further be solely responsible for complying with all applicable FCC and Federal Aviation Administration rules and regulations regarding maintenance and structural integrity of the antenna and any equipment therewith.

21. Removal of Equipment/Restoration: The City waives any and all lien rights it may have, statutory or otherwise, concerning the Company's antennae or equipment, the Company's Facilities or any portion thereof. The antennae or equipment shall be deemed personal property for the purposes of this lease, regardless of whether any portion is deemed real or personal property under applicable law. Any antennae or equipment, brought onto the rental premises or installed by the Company will remain the Company's personal property, and the Company shall have the right to remove its Facilities at any time without the City's consent. At the expiration of this lease term or any renewal period, the Company shall remove its Facilities from the rental premises.

The Company covenants and agrees that the antennae and all equipment shall be removed from the rental premises within forty-five (45) days after the expiration of the lease term or any renewal thereof without any damage to the rental premises, of the City and the Company

will be responsible for any and all costs, of any and all nature, associated with any repair which is necessary in the sole discretion of the City after removal of such antenna and equipment. If the antennae and equipment is not removed within the time frame as set forth in this section, the City may remove and store the same and any and all costs and expenses of any nature associated therewith will be chargeable to the Company.

22. Default and Right to Cure: The following will be deemed a default by the Company and a breach of this Agreement:

a. The Company shall be in default if it does not cure a monetary default within fifteen (15) business days after written notice.

b. The Company's failure to perform any other term or condition of this Agreement within thirty (30) days after receipt of written notice from the City, sent to the address of the Company as set forth in this Agreement by certified mail/return receipt requested. No such default will be deemed to exist if the Company has commenced work to cure the default within such 30 day time period, has diligently and forth rightly proceeded with said cure, and is incapable of performing such cure within said 30 day period and if, after the expiration of said 30 day period the Company continues to diligently and forthrightly work until said cure has occurred.

c. The City will be deemed to be in default of this Agreement, if it has breached any term or condition of this Agreement and has not cured the same within thirty (30) days after receipt of written notice sent by certified mail/return receipt requested by the Company. However, no such failure to cure, will exist, if the City has commenced the cure of any default within such 30 day period but has been unable after diligent efforts, to cure said default if after the expiration of the 30 day period the City continues to diligently and forth rightly work until such cure has occurred. No default by the City will enable the Company

to withhold rental payments or abate the amount of rental paid for any reason.

23. Assignment and Sub Lease: Company shall have the right to assign, sell or transfer its interest in this Agreement with the approval or consent of City, not to be unreasonable withheld, to Company's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or at least 51% of Company's assets in the market defined by the Federal Communications Commission in which the property is located by reason of merger, acquisition or other business reorganization. Upon notification to City of such assignment, transfer or sale, and upon submission of appropriate information, proofs of assignment or other guarantees as requested by the City, Company will be relieved of all future performance, liabilities and obligations under this Agreement. Company may not otherwise assign the Agreement without City's consent, City's consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary contained in this Agreement, Company may assign, pledge or otherwise transfer without notice or consent its interest in this Agreement to any financing entity or agent on behalf of any financing entity to whom Company (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments or in respect of guarantees thereof. No encumbrances of the property shall be permitted.

24. Notices: Any notice or demand required to be given shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

If to Company: _____

Attn: _____

The company or City may from time to time designate any other address for this purpose by written notice to the other party. All notices shall be deemed received upon actual receipt.

If to City: ABSECON MUNICIPAL COMPLEX
ATTENTION: Jessica Thompson
500 Mill Rd
Absecon NJ 08201

25. Severability: If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain in full force and effect and be binding upon the parties as though the unenforceable provision had been severed and was not contained in this Agreement.

26. Taxes: The Company will pay any property taxes assessed on the rental premises or any portion of the same which is directly attributable to the installation of the antenna and equipment at, on or in the rental premises. Company shall have the right to protest any tax assessment and City agrees to cooperate with Company in filing the protest of such assessment. Nothing in this paragraph shall be construed as limiting either party's right to contest, appeal or challenge any tax assessment. The company shall pay any tax assessment directly to the municipality and shall provide the City with proof of payment.

27. Condemnation: In the event the City receives notification of any condemnation proceedings affecting the Property, the City will provide notice of the proceedings to the Company within ten (10) business days. If a condemning authority takes all of the Property or a portion sufficient, in Company's reasonable determination, to render the Premises unsuitable for Company, this Agreement will terminate as of the date the title vests in the condemning authority. All parties will have rights granted to them pursuant to the laws of the

State of New Jersey and the United States of America in the event of any condemnation of the rental premises. The Company specifically relieves the City from any liability in the event that the antennae and equipment placed at the rental premises cannot operate for any reason, as the result of condemnation by a governmental authority.

28. Casualty: The City will provide notice to the Company of any material casualty affecting the property within forty-eight (48) hours of the casualty. If any part of Company's equipment or antennas Premises is damaged by fire or other casualty so as to render the Premises unsuitable, in Company's sole determination, then Company may terminate this lease by providing written notice to the City, which termination will be effective as of the date of such damage or destruction. Upon such termination, the Company will be entitled to collect all insurance proceeds payable to the Company on the account thereof and to be reimbursed for any prepaid Rent on a pro-rata basis.

To the extent that any casualty is caused solely by the negligence or intentional misconduct of Company, Company will be responsible for any loss incurred by the City to any of the property of the City including the communications tower located at the rental premises or for any loss of life or personal injury resulting therefrom.

29. No Brokerage: Both parties acknowledge that no broker has been used for this transaction and no broker fee is due and owing to any party.

30. Cooperation: The Company agrees that it will take any and all steps necessary and cooperate with any employees or officials of the City or any outside contractors hired on behalf of the City who may be performing any work at the communications tower.

31. No Oral Amendment: This Agreement cannot be amended, modified or revised unless done in writing and signed by each of the parties hereto.

32. Waiver: To the extent that the City or the Company does not enforce any of their rights pursuant to this Agreement, the non-enforcement of said rights shall not be considered a waiver of the right of the City or the Company to enforce any provision or clause of this Agreement at any future time.

33. Benefit: The terms and conditions contained in this Agreement will be binding on the parties and their respective heirs, executors and administrators.

34. Entire Agreement: This Agreement and the exhibits which may be attached hereto, and the bid specifications referenced herein, are the entire Agreement between the parties and will supersede any and all other oral negotiations or agreements.

35. Governing Law: This Agreement shall be governed and construed according to the laws of the State of New Jersey.

36. Structural Integrity: The City makes no representation regarding the structural integrity of the site and the burden of investigating the same to determine that the structural integrity is sufficient to hold the antenna and other equipment as proposed by the Company shall rest solely on the Company. The Company indemnifies and holds harmless the City in this respect.

37. Additional Facility Maintenance: To the extent that the location of the antenna or equipment by the Company disturbs any painted surfaces, or causes any rust or blistering, on the exterior of the facility the Company will be responsible for taking any and all steps to correct said deficiency and paint said area in a color which matches exactly the color of the facility at the time of such repair.

38. Temporary Removal: If the City determines, in its sole discretion, that it is necessary to temporarily remove the antennae or equipment, necessary for the purpose of maintenance of the communications tower, then the Company shall cooperate with the City

and shall be solely responsible for the removal and replacement of said antenna and/or equipment at no cost to the City. Such removal shall be done in conjunction with the work to be performed on behalf of the City and in no event shall occur less than sixty (60) days after written notification that removal is necessary is forwarded to the Company by the City. The City acknowledges the expense that will be undertaken by the Company in the temporary removal of its antenna and equipment. Therefore, both parties shall work together, in good faith, to allow the Company to keep its antennas and equipment on the structure while the maintenance is proceeding. This will require the Company to move its antennas and equipment to other locations on the structure. If both parties determine that keeping Company's equipment and antennas on the structure, during maintenance is not feasible, Company shall be allowed to bring a temporary cell site on wheels ("COW") on the Premises. The Cow shall remain until the Company can place its antennas back onto the structure.

39. Proper Grounding: All antennae installed by the Company shall be properly grounded to protect from lighting strikes and further shall be certified by an engineer to be capable of withstanding wind velocity which may occur due to storms or hurricanes.

40. Qualified Personnel: The Company shall use only qualified workers for installation, maintenance and operation of the antenna and equipment, and all such work shall be performed in a diligent and workmanlike fashion and at a minimum shall comply with any and all regulations, statute, codes, standards or other laws governing the same.

41. Non-Discrimination: During the performance of this Agreement the Company agrees as follows:

a. The Company, where applicable, will not discriminate against any employee or applicant for employment because of age, race, color, national origin, ancestry,

marital status, sex, affectional or sexual orientation. The Company will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other form of compensation, and selection for training, including apprenticeship. The Company agrees to post in conspicuous places, available employees and applicants for employment, notices to be provided by the Public Agency Contracting Officer setting forth provisions of this nondiscrimination clause.

b. The Company, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

c. The Company, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contracting or understanding, a notice, to be provided by the Public Agency Contracting officer, advising the labor union or workers' representative of the Company commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Company, where applicable, agrees to comply with any Regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

e. The Company agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by

Section N.J.A.C. 17:27-5.2 of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action office pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

f. The Company agrees to inform in writing all recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

g. The Company agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal Law and applicable Federal court decisions.

h. The Company agrees to review all procedures relating to transfer, upgrading, downgrading, and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation and to conform with the applicable employment goals consistent with the statutes and court decisions of the State of New Jersey and as established by applicable Federal Law and all applicable Federal court decisions.

i. Company shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as

Lease Bid, 500 Mill Rd, Absecon NJ

may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

42. Controlling Document: In the event any discrepancies occur between the Lease and the Bid Documents, the language in the Lease shall be the controlling document.

(SEAL)

BOUGH COUNCIL OF
THE CITY OF ABSECON

Attest: _____ By: _____

Date _____ Date: _____

(SEAL)

Attest: _____ By _____

Title:

Date _____ Date: _____