

AGENDA NOTE (Revised)

Agenda Item: Request for Public Hearing- Tower Lease Agreement

Attached is a draft Tower Lease Agreement for Federal Bureau of Investigation (FBI) equipment to be located on the County owned Communications Tower for Board consideration.

Recommended Action:

Authorize the scheduling and advertisement of a public hearing for the purpose of receiving public comments relative to the draft Tower Lease Agreement with the FBI.

**BASIC ORDERING AGREEMENT
BETWEEN**

AND THE

FEDERAL BUREAU OF INVESTIGATION

This Basic Ordering Agreement (BOA) effective _____, is between _____, hereinafter referred to as "Licensor" and the Federal Bureau of Investigation (FBI), hereinafter referred to as "Licensee."

This BOA is entered into to provide services in accordance with the following:

- Terms and Conditions described in Attachment 1;
- The fees as described in Attachment 2;
- The itemized pricing as described in the Antenna Site Equipment Itemization (ASEI).

All attachments are made a part herein.

Article I – Scope of Work

The maximum term of this BOA is ten years from effective date _____ through September 30, _____.

The Licensor agrees to furnish services described herein as Licensee may order during the effective dates of the Agreement. The Licensor's obligation to the Licensee shall become effective upon the issuance date of the order.

Article II – Delivery of Services

The services specified in Attachment 1 shall be completed at _____ (site name), located at _____ (Premises).

Article III – Payment/Fixed Prices

The Licensee shall be entitled to purchase services listed in Attachment 1, at the fees described in Attachment 2.

Article IV – Administrative Matters

Licensor POC

Name: _____
Address: _____
Phone: () _____
Fax: () _____
Email: _____

Licensee Contract Administration POC

Name: _____
Address: _____
Phone: () _____
Fax: () _____
Email: _____

Licensee Local Point of Contact

Telecommunications Manager: _____
Address: _____
Phone: () _____
Fax: () _____
Email: _____

FBI Division: _____
Site Name: _____
Licensor Site No.: _____
Licensee Site No.: _____
Agreement Exp. Date: _____

Each of the parties executing this Agreement on behalf of the Licensor and Licensee represents and warrants that such party (i) is a duly authorized representative, (ii) has full right and authority to enter into this Agreement, and (iii) that any person signing on behalf of such party is authorized to do so. Upon either party's request, the other party shall provide evidence reasonably satisfactory to the requesting party confirming the foregoing warranties. This BOA and attachments contain the entire agreement between the parties regarding the tower and the property for the Licensee's operations. This Agreement shall extend to and bind the heirs, executors, administrators, successors, and assignees of the parties hereto.

LICENSOR:

LICENSEE:

U.S.DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

BY: _____

BY: _____

DATE: _____

DATE: _____

ATTACHMENT 1 TERMS AND CONDITIONS

1. AGREEMENT

Licensor hereby gives permission, revocable and terminable as hereinafter provided, to Licensee to enter the Premises for the purpose of using it for the improvements to its communications system equipment and operations (hereinafter referred to as the "Improvements"). Said Improvements shall be located so as to not interfere with any of the Licensee's operations.

2. USE OF PREMISES

Licensee shall be permitted to use the Premises for the operation of communications equipment and related purposes. Licensee shall not be permitted to use the Premises for any other purpose except by prior written permission of Licensor.

For rooftop installations, Licensee acknowledges that Licensor may decide, in its sole discretion, from time to time, to make repairs to the roof of the building on the Property or to replace all or part of the roof of the building on the Property. If Licensor elects to make roof repairs, Licensee will, upon Licensor's request, and at Licensor's cost, temporarily remove or relocate Licensee's rooftop Improvements so that the roof repairs may be completed.

Licensor shall have the right to change the location of the Improvements (including relocation of Improvements on the tower to an elevation used by other site users) upon sixty (60) days written notice to Licensee, provided that said change does not, when complete, materially alter the signal pattern of the Improvements existing prior to the change. Any such relocation shall be performed in a manner approved by Licensee at Licensor's expense and with reasonably minimal disruption to Licensee's operations and shall be evidenced by an amendment to this agreement.

3. TERM

The initial term of this Agreement shall run from _____ to _____ (base year). Licensee may extend the term of this Agreement for up to nine (9) additional one-year option periods. Each option period shall run from October 1 until September 30 so as to conform to the Government's fiscal year. Extension of this agreement beyond September 30 is contingent upon Congressional approval of the funding needed to cover this agreement.

Licensor or Licensee may terminate this Agreement, without cause or penalty, at any time by providing three (3) months' written notice to the other party of its termination.

- Licensee **is** required to remove all antennas and feed line upon termination of this agreement.
 Licensee **is not** required to remove all antennas and feed line upon termination of this agreement.

4. ACCESS

Licensor shall provide Licensee access to the Premises at all times for the uses authorized herein.

5. MAINTENANCE

Licensor, at Licensor's sole cost and expense, shall maintain the Premises (excluding Licensee's Improvements) and the access to the Premises in good order and repair. Licensor, will, at Licensor's sole expense, provide for interior maintenance and repairs, as applicable, of the Property in accordance with generally accepted good practices. Damage resulting from the acts or omissions of Licensee shall be repaired by Licensee at the Licensee's sole cost and expense. The costs of any maintenance and operations of the Licensee's Improvements, unless otherwise provided herein, shall be at the sole expense of Licensee.

6. LIABILITY FOR INJURIES

Pursuant to the terms and conditions of the Federal Tort Claims Act (Title 28 U.S.C., Sections 1346(b), 2671-2680), Licensee has financial responsibility for claims for personal or property damage, including death, arising out of the acts, omissions, or negligence of the Licensee, or its employees acting within the scope of their employment in relation to this Agreement. Claims for tort damages shall be submitted and adjudicated in accordance with the procedures of the Federal Tort Claims Act and applicable law. Additionally, in the event an FBI employee conducting official business related to its activities under this Agreement is injured, the

FBI agrees to process and forward claims for employee workers compensation to the United States Department of Labor (USDOL) pursuant to the Federal Employees Compensation Act (Title 5, U.S.C., Section 8108, et. Seq.) and pertinent regulations promulgated by the USDOL. The parties will cooperate to ensure that all claims subject to these authorities are promptly addressed and resolved. Except as otherwise provided in this BOA, neither party shall be liable to the other for any claim that either may have against the other with respect to the recovery of any incidental, consequential, indirect, special, punitive or exemplary damages.

7.INSURANCE

Licensee, as an agency of the United States Government, is self-insured and shall not be required to obtain insurance under this agreement

8.INTERFERENCE

In the event the Licensor determines that the operation of the Improvements by Licensee is the cause of interference to transmission and/or reception of any other communications systems in use in the vicinity of the Premises, Licensee shall take all appropriate steps necessary to mitigate said interference within forty-eight (48) hours of receiving written notice.

9.PERMIT

Licensee is responsible for obtaining and paying the costs of all permits, licenses or other approvals by any regulatory body having jurisdiction over the uses authorized herein.

10. COMPLIANCE

Should Licensee fail or neglect to comply with any terms or conditions of this BOA or to comply with any reasonable requirement of Licensor after thirty (30) days' written notice and demand from Licensor, this BOA shall be subject to termination by Licensor. In the event of such termination, Licensee shall immediately remove any and all of its Improvements from the Premises and surrender all rights and privileges under this Agreement.

11.POSTING OF FREQUENCIES

All Federal Government frequencies are authorized by the Department of Commerce (DOC) and are exempt from disclosure under the Freedom of Information Act, Title 5, USC, Section 552 (b) (2), (b) (4), and (b) (7). Frequencies cannot be posted at communications sites. Copies of DOC frequency authorizations can be provided to communications Licensor upon request.

12. ASSIGNMENT

Licensor shall not assign this Agreement, or sublease all or any part of its rights and obligations hereunder, without the prior written notice to Licensee. The written notice shall include documents describing the proposed transaction, e.g. purchase/sale agreement or memorandum of understanding. The new Licensor shall assume all of Licensor's obligations under this Agreement and must fully perform all obligations that may exist under this Agreement following the date of such assignment and assumption. The transferring Licensor shall waive all rights under this BOA arising against the Licensee subsequent to the date of such assignment. Nothing in this Agreement shall relieve the parties from compliance with any federal law.

13. DISPUTES

Disputes under this Basic Ordering Agreement shall be resolved in accordance with the FAR 52.233-1, 41 USC 601-613 Disputes and Appeals.

14. PAYMENTS

In compliance with the Debt Collection Improvement Act of 1996, all federal payments will be made by electronic funds transfer (EFT).

ATTACHMENT 2

Licensee shall pay rental fees as defined in the itemization schedule included in this agreement. Rent shall be owed per antenna and per floor space as specified therein. Each antenna and floor space will escalate annually by the escalation factor indicated below. Licensee may remove, without penalty, one or more itemized antennas or floor spaces during the term of this agreement. Licensee shall provide Licensor (3) months' notice prior to removal of these items. The monthly recurring rent will be reduced accordingly. Licensee may request additional antenna space. Licensor may accommodate such requests with an itemization for each new antenna. Requests for additional floor spaces, if accommodated, will increase the total floor space monthly recurring rent based on the initial and escalated floor space itemization.

The rental fees shall include the cost of electricity for the Licensee's Improvements. Payments shall be made payable monthly in arrears and shall commence on the date of installation of equipment or upon another agreed to date. Licensee shall be liable for late payments in accordance with the terms and provisions of the FAR 52.232-25 Prompt Payment, (late payment interest penalties are computed in accordance with the Office of Management and Budget prompt payment regulations at Title 5 CFR 1315). Payment will be made by Electronic Funds Transfer Other Than Central Contractor Registration in accordance with FAR Clause 52.232-34.

Renewal of this Agreement for each successive year shall be on the same terms and conditions as set forth herein except that fee shall be increased by _____ over the rent paid during the preceding term for each renewal period. For convenience, the total of all itemized antennas and floor spaces on the Antenna Site Itemization Rental Quote (ASIRQ) are identified cumulatively below. This monthly recurring cost is contingent upon the number of antennas and floor spaces remaining in use during any option period.

Rental begins on _____ (month/year).

- FY _____ Base Year _____/month
- FY _____ Option Year 1 _____/month
- FY _____ Option Year 2 _____/month
- FY _____ Option Year 3 _____/month
- FY _____ Option Year 4 _____/month
- FY _____ Option Year 5 _____/month
- FY _____ Option Year 6 _____/month
- FY _____ Option Year 7 _____/month
- FY _____ Option Year 8 _____/month
- FY _____ Option Year 9 _____/month

The Federal Government has created the System for Award Management (SAM.gov) <https://www.sam.gov/portal/public/SAM/>. This system increases visibility of vendor sources for specific supplies and services as well as establishes a common source of vendor data for the Federal Government. Every vendor registered in SAM.gov has a unique Dun and Bradstreet (DUNS) number. Payments to vendors are sent to the banking information that is tied to the DUNS number in SAM.gov. The banking information that the vendor enters into SAM.gov is not accessible to anyone other than the vendor. It is necessary for the Site Owner/Manager to ensure that the FBI has the DUNS number which has the current banking account information which the Site Owner/Manager desires the FBI to direct payments to. The Site Owner/Manager is required to keep the SAM.gov registration up-to-date and to ensure the banking information is accurate.

Tax Identification Number: _____

Licensor DUNS Number (mandatory): _____