

**BOROUGH OF CARLSTADT
BERGEN COUNTY, NEW JERSEY
NOTICE TO BIDDERS**

PLEASE TAKE NOTICE that sealed bids will be received by Borough of Carlstadt, Bergen County, New Jersey on August 18, 2022 at 11:00 a.m., prevailing time, at the Clerk's Office, 500 Madison Street, Carlstadt, New Jersey 07072 for:

**LEASE OF REAL PROPERTY OWNED BY THE BOROUGH OF
CARLSTADT (LOT 14.01, BLOCK 120), FOR THE CONSTRUCTION AND
MAINTENANCE OF A WIRELESS TELECOMMUNICATIONS MONOPOLE
AND RELATED SUPPORT FACILITIES**

A bid package consisting of this Notice to Bidders, Instructions to Bidders, Specifications, Proposed Lease Agreement, Proposal Sheet and required Affidavits may be obtained at the office of the Borough of Carlstadt between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding holidays. The bid package, as aforesaid, will also be available on the municipal website of the Borough of Carlstadt at www.carlstadtnj.us.

Bidders should examine the Property prior to bidding. The Property is offered for Lease in its present condition, "As-Is" with no representation or guaranty of suitability for a particular use. Bidder assumes all risk relating to the condition of the Property, including, but not limited to compliance with laws relating to the environment. Bidders assume all patent and latent risks in connection therewith.

Proposals must be submitted on forms provided by the Borough of Carlstadt and placed in a sealed envelope bearing the name of the bidder, and clearly marked, "Bid for Lease for Wireless Telecommunications Monopole ENCLOSED – DO NOT OPEN" in the lower left corner. A certified check or cashier's check made payable to the order of the Borough of Carlstadt, or a duly executed Bid Bond, in the amount of two months' rent, but in no case in excess of \$20,000 must be deposited by the Bidder.

Proposals shall be delivered or mailed to: Claire Foy, Borough Clerk
Borough of Carlstadt
500 Madison Street
Carlstadt, New Jersey 07072

No bid will be accepted after the date and time set forth above. The Borough of Carlstadt assumes no responsibility for bids submitted other than by hand delivery.

The Borough of Carlstadt reserves the right to reject any and all Proposals or to waive any minor informalities or irregularities in the Proposal received and to accept the Proposal(s) which is in the best interest of the Borough of Carlstadt.

By Order of the Mayor and Council.

INSTRUCTIONS TO BIDDERS

1. SUBMISSION OF BIDS.

The Borough of Carlstadt, Bergen County, New Jersey invites sealed bids pursuant to the Notice to Bidders for the lease of real property owned by the Borough of Carlstadt (lot 14.01, block 120), for the construction and maintenance of a wireless telecommunications monopole and related support facilities in accordance with the terms set forth in the lease proposed and included in these specifications.

A. Sealed bids will be received by the Borough Clerk at the time and place stated in the Notice to Bidders, and at such time and place will be publicly opened and read aloud.

B. The bid proposal form shall be submitted: (1) in a sealed envelope; (2) addressed to the Borough of Carlstadt; (3) bearing the name and address of the bidder written on the face of the envelope; and (4) clearly marked as provided in the Notice to Bidder.

C. It is the bidder's responsibility to see that bids are presented to the Borough of Carlstadt on or before the hour and at the place designated. Bids may be hand delivered or mailed; however, the Borough of Carlstadt disclaims any responsibility for bids forwarded by regular or overnight mail. Bids received after the designated time and date will be returned unopened.

D. Sealed bids forwarded to the Borough of Carlstadt before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid.

E. All prices and amounts must be written in ink or preferably typewritten. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be rejected by the Borough of Carlstadt. Any changes, white-outs, strikeouts, etc. on the proposal page must be initialed in ink by the person responsible for signing the bid.

F. Each bid proposal form must give the full business address of the bidder and be signed by an authorized representative. Bids by partnerships must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations or other limited liability entities must be signed in the legal name of the corporation or other entity and must contain the signature and designation of the person authorized to bind the corporation or other entity in the matter. When requested, satisfactory evidence of the authority of the officer signing shall be furnished.

2. BID SECURITY.

Accompanying each bid shall be a certified check, cashier's check or a bid bond in an amount equal to two months' proposed rent. The Bid Bond shall not exceed \$20,000.00

When submitting Bid Bond, it shall contain a Power of Attorney for the full amount of Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable

to the Borough of Carlstadt. The check or bond of the unsuccessful bidder(s) shall be returned as prescribed law. The check or bond of the bidder to whom the contract is awarded shall be retained until a Lease is executed. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a Lease.

3. BID DOCUMENTS.

The bid must be returned in its entirety in order to be considered for an award. Each bid must be accompanied by the items requested below in the form attached. Failure to provide these items and the entire bid package may cause for rejecting this proposal.

- Proposal sheet (**Appendix A**)
- Bid security
- Non-collusion Affidavit (**Appendix B**)
- List of names and addresses of all stockholders, partners or members in the corporation or partnership who owns 10% or more of its stock or other ownership interests – “Ownership Disclosure” (**Appendix C**)
- Business registration certificate issued by the State of New Jersey Dept. of the Treasury
- Copy of bidder’s FCC license or a Letter of Intent signed by FCC carrier representing that the carrier intends to install an FCC licensed telecommunication antenna facility at the site if the bidder is successful.

4. FAILURE TO ENTER INTO A LEASE.

Should the successful bidder fail to execute and deliver the lease within ten (10) days after receipt of written notification by the Borough of Carlstadt that the lease is ready for execution the bidder forfeits to the Borough of Carlstadt as liquidated damages the bid security deposited with its bid.

5. RIGHT TO REJECT BIDS.

The Borough of Carlstadt reserves the right to reject any and all bids or parts thereof and to waive any informality if deemed in the best interests of the Borough of Carlstadt.

6. AWARD OF LEASE.

Award of the lease, if made, will be made within sixty (60) days of the bid opening date by the Mayor and Council. The highest responsible bidder, as determined by the Borough of Carlstadt, will be awarded a lease of real property for the construction and maintenance of a new wireless telecommunications monopole and related support facilities. The proposed form of lease is attached as **Appendix D**.

7. ZONING AND OTHER GOVERNMENT APPROVAL REQUIREMENTS.

The successful bidder is required to undergo a Capital Projects Review before the Planning Board pursuant to N.J.S.A. 40:55D-31 and to obtain any and all governmental licenses, permits, approvals, or other relief required of or deemed necessary or appropriate by bidder for its use of the property for a wireless telecommunication facility.

8. QUALIFICATIONS TO BID.

In order to qualify as an eligible bidder, a bidder must:

- maintain a FCC license OR must submit with the bid a Letter of Intent signed by FCC carrier representing that the carrier intends to install an FCC licensed telecommunication antenna facility at the site if the bidder is successful;
- furnish proof that he/she or it, or any parent, subsidiary or affiliated corporation of bidder has had at least five (5) years previous experience in the construction and operation of cell tower monopoles; and
- maintain an effective charter and authorization to do business in New Jersey. All bidders are advised that the Borough of Carlstadt will verify corporate status with the New Jersey State Treasurer and that no contract will be awarded to any Corporation whose charter or authorization to do business in the State of New Jersey has been suspended or revoked.

Bidders who do not conform to this paragraph shall not be considered.

9. CERTAIN CONDITIONS.

Insofar as possible, the successful bidder in the performance of the lease, including the construction of the cell tower and related improvements and the relocation of the Borough facilities, shall employ methods or means as will avoid interruption or interference with the operation of the affairs of the Borough of Carlstadt and shall likewise take the necessary steps to insure that during the course of performance there will be no unreasonable infringement on the rights of the public.

In addition, the successful bidder shall employ methods which will not violate any applicable statutes, regulations or ordinances of the United States of America, the State of New Jersey, any subdivision thereof, or the Borough of Carlstadt.

10. INTERPRETATIONS.

No interpretation of the meaning of the Notice to Bidders, Instruction to Bidders, Specifications, Lease or other contract documents will be made to any bidder. Supplemental instructions, if any, will be made in the form of a written addendum to this Invitation to Bid, which, if issued, will be mailed to all parties of record having received specifications. Failure of any bidder to receive any addendum shall not relieve the bidder of any obligation under his/her or its bid as submitted nor from any obligation to confirm to the requirements herein or in any addendum set forth. Any and all addenda shall be signed by a bidder and returned as a part of the bid.

11. LAW AGAINST DISCRIMINATION:

All Borough of Carlstadt contracts prohibit the successful bidder from discrimination in the hiring of persons who are qualified and available to perform work to which the contract relates by reason of race, creed, color, national origin, ancestry, or sex, in accordance with N.J.S.A. 10:2-

1 through 10:2-4, including all amendments thereto. All bidders shall comply with the New Jersey Law Against Discrimination and all applicable regulations relative to affirmative action requirements.

12. AFFIRMATIVE ACTION:

All bidders shall comply with the Affirmative Action Regulations adopted by the Treasurer of the State of New Jersey and applicable to all contracts with public agencies in the State of New Jersey. All bidders are notified that there is mandatory Affirmative Action language that must be included in all contracts. A copy of that language is attached as **Appendix E**.

SPECIFICATIONS

1. The successful bidder will procure and maintain commercial general liability insurance, with limits of not less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be furnished to Borough of Carlstadt with the signed lease and keep current thereafter and in accordance with the lease.
2. The Borough of Carlstadt makes no representations regarding the status or condition of the Property, including but limited to no representations or warranties concerning the compliance of the Property with any laws protecting the environment. The bidder assumes all risk related to the condition of the Property. Bidders may contact the Borough of Carlstadt to arrange for inspection of the site and to satisfy themselves of its suitability for its proposed use.
3. The term of the lease shall be for a period five (5) years with four (4) renewable five (5) year extension options.
4. In order to qualify as an eligible bidder, Bidders must maintain a FCC license OR must submit with the bid a Letter of Intent signed by FCC carrier representing that the carrier intends to install and FCC licensed telecommunication antenna facility at the site if the bidder is successful. Bidders who do not conform to this paragraph shall not be considered.
5. The successful bidder will be responsible for all costs related to the clearing of the land of any improvements on the Property and construction of the monopole and the removal and relocation of certain Borough police communication antennas/equipment from its current location to the new monopole. The police communication antennas/equipment to be relocated to the tower shall be supplied to the successful bidder for installation prior to monopole construction completion. The successful bidder shall also be responsible for ongoing maintenance and cleanliness of the Property.
6. The minimum bid is \$24,000 a year, payable in equal monthly installments. Rent for each year after the first year will be increased by the greater of five (5%) percent annually.
7. The Borough shall receive fifty percent (50%) of all revenue paid by other carriers or other users who co-locate on the subject monopole, payable to the Borough on a monthly basis, along with the monthly rent. This shall be deemed additional rent.
8. Prior to commencement of construction on the subject property, the successful bidder shall provide the Borough of Carlstadt with the name of the contractor and all subcontractors that will be constructing the improvements. Each is subject to the prior written approval of the Borough of Carlstadt, such approval not to be unreasonably withheld.
9. The successful bidder will provide the Borough of Carlstadt with photo simulations as to the proposed telecommunications monopole.

10. The successful bidder shall, at its sole cost and expense, be responsible for all costs related to the cell tower including but not limited to the cell tower's foundation and structural components shall be designed in accordance with Telecommunications Industry Association ("TIA") standard TIA-222-G-05 Structural Standards for Antenna Supporting Structures and Antennas. Due to the proposed cell tower carrying emergency communication systems, the structure shall be classified as Class III in accordance with TIA-222-G-05. The Bidder shall submit structural calculations signed by a professional engineer licensed in the State of New Jersey certifying that the proposed structure meets the foregoing standard. The Borough Engineer shall review and approve such calculations.
11. The successful bidder shall supply plans for the conduit and cell tower location, including a site map and detail signed and sealed by a professional engineer licensed in the State of New Jersey, which shall be subject to review and approval by the Borough Engineer prior to commencement of construction.
12. The successful bidder shall secure all necessary permits from all governmental agencies with jurisdiction including the New Jersey Sports and Exposition Authority and the applicable Borough of Carlstadt's Construction Department and/or Land Use Board.
13. Upon completion of the improvements, the successful bidder shall provide an as-built survey to the Borough of Carlstadt, which shall be reviewed and approved by the Borough Engineer.
14. All construction shall be coordinated with the Carlstadt Police Department and any other municipal department or government agency that the Borough of Carlstadt may designate, in its reasonable discretion.

**APPENDIX A
BID PROPOSAL FORM FOR THE BOROUGH OF CARLSTADT**

**LEASE OF REAL PROPERTY OWNED BY THE BOROUGH OF
CARLSTADT (LOT 14.01, BLOCK 120), FOR THE CONSTRUCTION AND
MAINTENANCE OF A WIRELESS TELECOMMUNICATIONS MONOPOLE
AND RELATED SUPPORT FACILITIES (“BIDDER”)**

_____ submits a binding bid for the above referenced lease for an annual rent during initial term at \$ _____/yr.

Each Bidder shall provide the following information as an integral part of his, her or its bid; and failure to answer all questions will render the bid as irregular and non-responsive.

Is the Bidder associated with, affiliated with, or substantially controlled by any other entity directly and/or indirectly (Yes No) if the answer is yes, provide details [attach additional pages as needed to provide a full and complete response].

Provide the Borough with financial information sufficient to demonstrate the financial capacity of the bidder to meet the obligations undertaken by the lease agreement.

Has the Bidder or any members, partners or officers thereof, failed to complete a municipal contract or defaulted under any contract? If so, where?

Has the Bidder or any members, partners of officers thereof, when the lowest bidder on a municipal contract withdrawn any bid? If so, for what reason?

Provide as references municipalities in which the Bidder has a communications tower and the names of the responsible municipal official in each. The Bidder must list all New Jersey municipalities in which a communications tower has been installed during the past five [5] years. The Bidder may provide other municipal references at the option of the bidder. At least three [3] references must be provided.

Has the Bidder or any partners or officers thereof been a party to any lawsuits or legal actions, whether of a civil or criminal nature, arising out of or involving bid contracts or the performance thereof? If so, give details and disposition of the matter.

Are there any unsatisfied judgments recorded against the Bidder or any partners or officers thereof? If so, give details, including the name and address of each judgment creditor; and the amount of each judgment.

Signed by Authorizing Person for Bidder

Print Name:
Title:

Witnessed by:

Print Name:
Title:

APPENDIX C

OWNERSHIP DISCLOSURE

I hereby certify that the list below contains the names and home addresses of all stockholders. Partners or members holding 10% or more of the issued and outstanding stock or equity interests of the undersigned.

_____ Partnership _____ Corporation
_____ Limited Liability Company _____ Sole Proprietorship

PLEASE CHECK APPROPRIATE BOX ABOVE AND SIGN BELOW.

Where a corporation, partnership or limited liability company (LLC) owns 10% or more of the bidder, this disclosure requirement shall be followed until the names and addresses of the individuals owning 10% or more of the stock, partnership interest or LLC interests owning 10% or greater interest shall be disclosed.

Name _____ Name _____

Address: _____ Address: _____

Percentage: _____ Percentage: _____

Name _____ Name _____

Address: _____ Address: _____

Percentage: _____ Percentage: _____

Add additional pages if necessary.

Subscribed and sworn before me
this ___ day of _____, 2022

(Print name and title of Affiant)

(Notary Public)

APPENDIX D

COMMUNICATIONS SITE LEASE AGREEMENT

THIS LEASE AGREEMENT made as of this ____ day of _____, 2022 by and between **THE BOROUGH OF CARLSTADT**, a municipal corporation, with principal offices located at 500 Madison Street, Carlstadt, New Jersey 07072 (“BOROUGH”) or (“OWNER”), and _____ with offices at _____ (“TENANT”).

W·I·T·N·E·S·S·E·T·H

WHEREAS, Borough is the owner in fee simple of the property known and designated as Block 120 Lot 14.01 in the Borough of Carlstadt, County of Bergen, State of New Jersey as more particularly described on Exhibit A attached hereto (“the Premises”); and

WHEREAS, Tenant desires to lease the Premises from the Borough and to construct thereon a Cellular Communications Tower (the “Tower”) and ancillary facilities on which will be installed certain antenna, and appurtenant improvements; and

WHEREAS, in consideration thereof, the Borough is willing to lease to the Tenant that portion of the Premises for that construction and installation and to allow Tenant joint use of the Tower for the installation, at Tenant’s sole cost and expense, of Tenant’s antennas as described in more detail in paragraphs 5.2 and 12 below. That portion of the Tower on which Tenant shall install its antennas shall be for the use of Tenant. (Tenant’s antennas and communications equipment are sometimes hereinafter referred to collectively as “Tenant’s Facilities”); and

WHEREAS, the Borough shall have the right to require Tenant to relocate and install, at Tenant’s cost and expense, upon the Tower communications antenna or antennas for use by the Borough of Carlstadt or any of its departments or agencies (“Borough Facilities”); and

WHEREAS, the Borough and Tenant desire to enter into this lease upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. DEMISE

1.1. Borough hereby leases to Tenant and Tenant hereby leases from Borough that portion of the Premises more particularly described on Exhibit A hereto (the “Premises”) upon the terms and conditions herein contained.

1.2. The Borough retains a nonexclusive right during the Term (hereinafter defined) for ingress and egress to the Premises upon and across the Premises, including all roads and drives located or to be located thereon, for the movement of men, machinery, vehicles and equipment for the purpose of constructing, operating, repairing and maintaining the Borough Facilities. That access for operation, repair and maintenance shall be on a 24-hour a day, 365 days a year basis.

1.3 The Borough retains the right to enter to Premises at reasonable times and upon reasonable notice to perform Borough inspections of the Premises.

1.4 During the Term, Tenant shall also have the right to use locations within the Premises approved by the Borough for providing electric, telephone, water, sewer and other utility services to the Premises, all of which services are to be connected, installed and maintained at Tenant's sole cost and expense, subject to the provisions of paragraph 9 below.

2. TERM

2.1 The term of this Lease (the "Term") shall be for five (5) years, The Term shall commence on the first day of the calendar month following delivery of possession of the Premises to the Tenant by the Borough.

2.2 In the event that neither the Borough nor the Tenant shall have given notice to the other at least six (6) months prior to the expiration of the Term, then the Lease shall continue in force for a further term of one (1) year and for annual terms thereafter until terminated by either party by giving of written notice to the other of its intention to terminate the Lease at least six (6) months prior to the end of the term. The monthly rental for each annual extension shall be equal to the monthly rental for the last month of the preceding term, plus five (5%) percent.

2.3 Tenant shall have the option to extend the term on all provisions contained in this Lease for four (4) additional five (5) year terms following expiration of the effective term by giving notice of exercise of the option ("Option Notice") to the Borough at least six (6) months but not more than nine (9) months prior to the expiration of that term. **TIME IS OF THE ESSENCE OF THE TIME REQUIREMENTS OF THE OPTION NOTICE.** If Tenant is in default on the date of giving the Option Notice, the Option Notice shall be totally ineffective. If Tenant is in default on the date the extended term is to commence, the extended term shall not commence and this Lease shall expire at the end of the then current term. Tenant shall have no other right to extend the term beyond the extended terms described in this Section.

3. CONSIDERATION

3.1 As consideration for Borough's lease of the Rented Premises to Tenant, Tenant pay to the Borough an annual rental of \$_____ payable in twelve (12) equal monthly installments of \$_____ each on the first day of each month, in advance, to the Borough beginning with the first day of the calendar month following issuance of a building permit to the Tenant by the Borough of Carlstadt.

3.2 After the first year of the Term, the rent shall be increased every year as provided in Section 2 at the rate of five (5%) per cent per annum. For example, if the initial rental is \$1,200.00 per month, the rental for the second year would be \$1,531.54 per month; the rental for the third year would be \$1,954.68 per month and continuing in that manner for the remainder of the Term.

3.3 Tenant shall be responsible for reasonable review and processing fees related to the installation, maintenance, modification, upgrade and replacement of tenant facilities and the premises. These fees shall be in addition to the rent and in addition to any other fees

required by statute or regulation to process land-use and construction applications, permits and other local, state and federal approvals.

3.4 Tenant shall pay any property or other taxes assessed on or any portion of the Premises of Tenant's Facilities where such taxes are directly attributable to Tenant's Facilities. Tenant shall reimburse

3.5 All amounts payable by Tenant to or on behalf of the Borough shall be deemed additional rent.

4. ADDITIONAL REVENUES. It is agreed that the Tower may be used for other communications purposes and space on the Tower may be Subleased to other parties by the Tenant, or that Tenant may consent to co-locate communication facilities of another FCC licensed party, but only with consent of the Borough, which consent shall not be unreasonably withheld. All administrative work required by such Sublease or consent to co-locate shall be the responsibility of the Tenant. The gross revenues generated by any sublease or consent for other use of the Premises shall be equally divided between the Borough and the Tenant and shall constitute additional rent due to the Borough payable monthly with the rent payment provided in Section 3.

5. USE OF THE PREMISES

5.1. Tenant shall have the right to use the Premises for the purpose of constructing, installing, maintaining and operating a communications facility together with other uses involving the transmission and/or receiving of radio and microwave signals and uses incidental thereto together with antenna structures and all necessary connecting appurtenances.

5.2. Tenant shall construct the Tower at Tenant's sole cost and expense in accordance with Plans and specifications approved by the Borough and may place upon the Tower, at Tenant's sole cost and expense, its own cellular antenna and microwave dish and appurtenances and shall install a perimeter chain link or similar security fence around the Premises and the Tower, all in accordance with applicable laws.

5.3 Tenant shall be solely responsible for obtaining all Federal, State, County and municipal approvals, licenses, resolutions, variances, zoning permits, certificates, and such other permits (collectively the "Permits") as are necessary to construct the Tower, to install all of Tenant's Facilities and the Borough Facilities and to operate and maintain the Tenant's Facilities.

5.4. Tenant shall, at its own expense, maintain the Premises in a safe condition, in good order and repair.

5.5. Tenant shall use the best and most reliable industry standards and practices while performing any and all construction and maintenance in regard to the premises, the tenant facilities and this lease. Tenant shall adhere to safety protocols established or recommended by the Telecommunications Industry Association, American National Standards Institute, Occupational Safety and Health Administration, and any other applicable body with jurisdiction or expertise over the construction of cell site facilities. Tenant will use the most proven and reliable tower climbing gear and equipment when performing any and all construction and maintenance. Tenant will demonstrate that all contractors, employees and other agents involved in the construction and maintenance of the tower and tenant facilities have all required certifications and licenses,

including, but not limited to applicable tower climbing certifications as well as electrical, plumbing and other state licenses, as applicable, and as required by the uniform construction code.

5.6 Tenant's ability to use the property is contingent upon its obtaining after the execution date of this Lease all of the certificates, permits and other approvals that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit the Tenant use of the property as set forth in this Agreement. If Tenant is unable to obtain the necessary approvals within 120 days of the date of this Lease, either party shall have the right to terminate this Lease. Notice of the exercise of a right to terminate under this section shall be given to the other party in writing, by certified mail, return receipt requested, or by a recognized overnight delivery service (such as Federal Express), and shall be effective upon receipt by the other party. All rentals paid or owed prior to the termination date shall be retained by the Borough. Upon termination this Agreement shall become null and void and all of the parties shall have no further obligations including the payment of money to each other.

6. COOPERATION AND GOVERNMENTAL APPROVALS. The Borough shall cooperate with Tenant in its effort to obtain the Permits, including but not limited to joining in the execution of any applications or documents as may be necessary in such regard. The costs shall be borne by Tenant. It shall be the obligation of the Tenant to make application to the Carlstadt Planning Board and the New Jersey Sports and Exposition Authority for site plan review and approval or its equivalent and to bear all costs related to that application, including all filing fees and costs of review of the plans by the Borough Engineer or other Borough Consultants. It is further the obligation of the Tenant to apply for and receive all other governmental approvals which may be required and to bear the cost of all such applications.

7. INSURANCE

7.1. Tenant shall obtain and keep in effect through the Term an insurance policy or policies, or, at the discretion of the Borough, an approved self-insurance program, providing general public liability insurance against claims for personal injury (including death) and, at Borough's option, property damage in a blanket amount of not less than \$3,000,000 per occurrence. Tenant shall also provide Worker's Compensation insurance for all who are working on the premises in the amounts required by law.

7.2 The amount of said insurance coverage shall be as follows:

Public liability insurance in an amount of not less than \$2 million for personal injuries, including wrongful death, to any one person and not less than \$5 million on account of any one occurrence and the policy shall contain property damage insurance coverage and amount of not less than \$1 million for each occurrence.

All automobile insurance will provide the coverage for each automobile, truck, vehicle or other equipment used in the performance of this lease shall be in an amount of not less than \$1 million for personal injuries, including wrongful death, to anyone person and subject to the same limit for each person, in an amount of not less than \$2 million on account of any one occurrence.

Property damage insurance with respect to each motor vehicle, or other equipment used in the performance of this lease shall provide for coverage and amount of not less than \$1 million on account of any one occurrence.

7.3. Borough shall be named as an additional insured on Tenant's liability policy. Prior to taking possession of the Premises, Tenant shall provide Borough with evidence that the insurance required by this paragraph 7 is in effect. If requested by Borough, but not more than annually.

8. REPAIR AND MAINTENANCE

The Borough shall have no responsibility for to keep and maintain the Premises (except for Borough Facilities) in good order and repair.

9. UTILITIES

9.1. Tenant shall be responsible at its sole cost and expense for bringing all utilities to the Premises and use of such utilities to be metered, including installation of a separate meter measuring the use of utilities serving the Borough Facilities. Each party shall be responsible for paying for the electricity and other utilities used in connection with the operation of its respective equipment.

9.2. Tenant shall pay for all utility services used at the Premises, excluding Borough's Facilities, as well as for the power needed to operate Tenant's Facilities.

10. REMOVAL OF TENANT'S EQUIPMENT

10.1 At the expiration or termination of the Term, Tenant shall, at the option of the Borough, either [1] remove all its Tenant's Facilities, including the Tower, from the Rented Premises or [2] remove that portion of its Tenant's Facilities determined by the Borough to be removed and to donate to the Borough that portion of the Tenant's Facilities which the Borough determines to be of use to the Borough and which the Borough is agreeable to accepting. Any cost of removal shall be the exclusive obligation and responsibility of the Tenant.

10.2 Tenant shall surrender the Premises to Borough in the condition in which it is upon commencement of occupancy by Tenant, except for reasonable wear and tear and except for such portion of the facilities which are to be accepted by the Borough. Notwithstanding the above provisions, nothing herein shall prevent the Tenant from removing its antennas from the Tower or its equipment from the building, or from removing the building if the building is a relocatable, reusable structure.

11. QUIET ENJOYMENT

11.1. Borough covenants, represents and agrees that Borough is the owner of the Premises free and clear of all liens and encumbrances, and has the full right, power and authority to enter into, execute and deliver this Lease.

11.2. Borough covenants and agrees that Tenant, on paying the rent and performing the conditions and covenants herein, shall and may peaceably and quietly have, hold and enjoy the and the rights herein granted for the Term.

12. USE OF ANTENNA

12.1. Borough and Tenant recognize that both Borough and Tenant shall be using the Tower for transmission purposes and agree to cooperate with each other so that neither party interferes with the use of the antenna(s) or communications equipment of the other and further agree to confer in good faith with the other in an attempt to find resolutions to any use of the one which interferes with the transmission or use by the other party or to any changed circumstances which would impair one party's use of its antenna(s) or transmission equipment.

12.2 Tenant recognizes that Borough will be using the Tower and its antennas for public purposes which are essential to the public welfare of the citizens of Carlstadt and would be irreparably harmed by any interference with this use. Tenant represents as a fundamental inducement for the execution of this Lease that it will not impair such usage through its action or inaction.

12.3. Borough and Tenant agree that the Tower may be used for other purposes and that space on the Tower may be leased out to other entities. Any such arrangement shall require the consent of the Borough and the Tenant which shall not be unreasonably withheld.

13. ASSIGNMENT

13.1. Borough may assign this Lease upon written notice to Tenant and said assignee will be responsible to Tenant for the performance of all the terms and conditions of this Lease.

13.2. Borough agrees that, after completion of the Tower and installation of the Borough Facilities, Tenant may assign all rights, benefits, duties and obligations under this Lease by giving Borough written notice, subject to the consent of Borough, which consent shall not be unreasonably withheld provided that the proposed assignee meets the qualifications established in the Notice to Bidders, Specifications and other requirements of the bid which resulted in this Lease. If such assignment is consented to and made, Tenant shall be relieved of all future liabilities hereunder and Borough shall look solely to such assignee for the performance of this Lease after assignment.

13.3. Subject to Section 4 above, Tenant shall have the right to allow others to use the Premises and to use and enjoy the rights herein granted to Tenant, with the consent of Borough, which consent shall not be unreasonably withheld, and provided that such license does not interfere with Borough's use of the Borough Facilities. If the Tenant shall grant licenses as provided in this Section, 50% of the gross amount as and when received by Tenant shall be paid to the Borough.

14. MEMORANDUM OF LEASE. Upon request, Borough agrees to execute a memorandum of this Lease in recordable form which Borough or Tenant may record in the recording office of the County in which the Premises is located.

15. WAIVER OF CLAIMS.

TENANT WAIVES ANY AND ALL CLAIMS AGAINST THE BOROUGH FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS A NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES AND WHICH IS SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS OF A PARTY UNDER THIS LEASE.

16. WAIVER OF JURY TRIAL.

BOTH TENANT AND THE BOROUGH WAIVE A TRIAL BY JURY OF ANY OR ALL ISSUES ARISING OUT OF OR RELATED TO THIS LEASE OR ANY OF ITS PROVISIONS.

17. INDEMNIFICATION.

Tenant shall indemnify, defend and hold harmless the Borough, its officials, officers, agents and employees (each an "Indemnified Person") from an against all claims and liabilities, including reasonable attorney's fees and costs) asserted by a third-party against an Indemnified Party caused by or a rising out of Tenant's breach of any of its obligations, covenant or warranties contained in this Lease, or Tenant's negligent or willful acts or omissions arising of or related to the Lease. In In the event of an Indemnified Person's contributory negligence or other fault, the Indemnified Person shall be limited but only to the extent that the Indemnified Person's negligence or other fault caused such claim.

18. DEFAULT.

If Tenant fails to perform any of its obligations under this Lease, then the Borough shall give tenant written notice of such breach at which time Tenant shall be in default; provided, however, that if such default is not a default in the payment of money and is capable of being cured or remedied, Tenant shall have the right to remedy such breach prior to it being in default under this lease. The term "cure period" is a period of 30 days, measured from the date of Tenant's receipt of the notice of breach. Notwithstanding that, however, if such breach cannot reasonably be cured within that 30 day period, and Tenant proceeds promptly after receipt of such notice to commence to remedy same and pursues such cure with due diligence, the cure period is extended for such period of time as may be necessary to complete the cure, not to exceed 60 days from Tenant's receipt of written notice of the breach.

Upon a default by tenant that is not susceptible of being cured, or is not cured within the cure period, the Borough may exercise any remedies available at law or an equity, including the right to terminate this Lease for tenant's breach and recover possession of the Premises and damages.

If the Borough should suffer immediate and irreparable harm as a result of Tenant's default, then the Borough may pursue injunctive relief immediately without the passage of the cure period.

The cure period shall not be applicable to default in the payment of rent.

In the event of default by Tenant, Tenant shall pay the Borough all reasonable attorney's fees and costs incurred in enforcing its rights under this Lease.

19. MISCELLANEOUS

19.1. Entire Agreement. The terms conditions and representations set forth in the Notice to Bidders, Instructions to Bidders and Specifications are incorporated into this Lease and made a part hereof. This Lease (including the specifications, forms and documents attached thereto) contain all agreements, promises and understandings between Borough and Tenant. No verbal or oral agreements, promises or understandings shall be binding upon either Borough or Tenant in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Lease shall be void and ineffective unless made in writing signed by the parties.

19.2. Governing Law. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of New Jersey.

19.3. Notices. All notices hereunder, in order to be effective, must be in writing (unless otherwise expressly provided for herein), and shall be given by either certified mail, return receipt requested, or by nationally recognized overnight courier service, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To Borough: Notice shall be given to each of the following:

Director of Operations	Borough Clerk	Borough Attorney
Borough of Carlstadt 500 Madison St Carlstadt, NJ 07072	Borough of Carlstadt 500 Madison St. Carlstadt, NJ 07072	Borough of Carlstadt 500 Madison St. Carlstadt, NJ 07072

To Tenant: [TO BE INSERTED}

19.4. Estoppel. Either party shall, from time to time, in the case of a request by the Borough on not less than ten (10) days' prior written request by the Borough and, in the case of a request by Tenant on not less than thirty (30) days prior written request by Tenant, execute, acknowledge and deliver a written statement certifying that this Lease is unmodified and in full force and effect, or that the Lease is in full force and effect as modified and listing the instruments of modification; and whether or not to the best knowledge of the party delivering the estoppel the other party is in default hereunder, and if so, specifying the nature of the default. It is intended that any such statement may be relied upon by the requesting party's prospective purchaser, mortgagee, subtenant or assignee.

19.5. Waiver. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty.

19.6. Heirs, Successors. This Lease shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors in interest, successors in title and assigns.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Lease Agreement to be duly executed as of the date first above written.

Signature blocks to be inserted

APPENDIX E

MANDATORY AFFIRMATIVE ACTION LANGUAGE

Mandatory Affirmative Action Language Required in all Contracts with a Public Agency in the State of New Jersey. In accordance with the requirements of P.L.1975, c. 127, and of *N.J.A.C. 17:27*, during the performance of this contract the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex. The contractor 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 or sex. 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 forms of compensation; and agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

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

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

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer of the State of New Jersey pursuant to P.L.1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by *N.J.A.C. 17:27-5.2* promulgated by the Treasurer of the State of New Jersey 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 *N.J.A.C. 17:27-5.2* promulgated by the Treasurer of the State of New Jersey pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

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

The contractor or subcontractor 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.

The contractor or subcontractor 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 or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office [in the New Jersey Department of the Treasury] as may be requested by the office from time to time in order to carry out the purpose of these regulations and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting compliance investigation pursuant to Subchapter 10 of the *New Jersey Administrative Code* (N.J.A.C. 17:27).