

RESOLUTION NO. 2014- 96

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF A PERMISSIVE USE AGREEMENT FOR THE TEMPORARY USE OF SPACE ON A COUNTY OWNED TOWER WITH PHILLIPS BROADCASTING LLC, AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE PERMISSIVE USE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, Phillips Broadcasting LLC (“WAOC”) is moving their broadcasting equipment from Middleburg and has contacted St. Johns County (“County”) seeking to use the 400’ County owned tower (“Tower”) located at 3055 Agricultural Center Drive on a temporary basis for signal testing to provide enhanced signal coverage in St. Johns County; and,

WHEREAS, the County has declared the aforementioned Tower as surplus and now uses an adjacent tower at 3057 Agricultural Center Drive; and,

WHEREAS, the Tower has available space and will be scheduled to be disassembled in fiscal year 2015; and,

WHEREAS, subject to the material terms and conditions of the proposed Permissive Use Agreement (“Agreement”), attached hereto as Exhibit “A”, and incorporated herein, the County desires to grant WAOC temporary use of the tower.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the material terms and conditions of the Agreement and authorizes the County Administrator, or designee, to execute the Agreement in substantially the same form and format as attached hereto.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor or concept of this Resolution then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk is instructed to file the original Permissive Use Agreement in the Clerk’s Office.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 15th day of April, 2014.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: 

John H. Morris, Chair

ATTEST: Cheryl Strickland, Clerk

By: 

Deputy Clerk

RENDITION DATE 4/17/2014



PERMISSIVE USE AGREEMENT

THIS PERMISSIVE USE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2014, by and between St. Johns County, a political subdivision of the State of Florida, whose mailing address is 500 San Sebastian View, St. Augustine, Florida 32084, hereinafter referred to as "COUNTY", and Phillips Broadcasting, LLC, 567 Lewis Point Rd Extension, St. Augustine, FL 32086.

For and in consideration of the mutual promises contained herein, and the sum of Five Hundred Dollars (\$500.00) per month on the first day of each month the agreement is in effect paid by Phillips Broadcasting, LLC to the COUNTY, and further consideration as herein provided, the COUNTY and Phillips Broadcasting, LLC agree as follows:

Article 1. Permitted Use.

The COUNTY, subject to the conditions herein expressed, does hereby grant to Phillips Broadcasting, LLC the non-exclusive privilege and license to enter upon the tower and equipment shelter located at 3055 Agricultural Center Drive ("Premises") for the purpose of transmission and reception of communication signals and the installation, maintenance, operation, repair, replacement and upgrade of communication equipment. Electricity will be provided to the tower and equipment shelter by the COUNTY.

Article 2. Duration.

This Agreement shall be effective upon the date of full execution by the parties hereto ("Effective Date"). This Agreement may be terminated upon either the COUNTY or Phillips Broadcasting, LLC providing at least thirty (30) days advance notice to the other party of such intent to terminate. Such notification shall indicate that either COUNTY or Phillips Broadcasting, LLC intends to terminate this Agreement thirty (30) days from the date of notification, unless a date greater than thirty (30) days is specified.

Article 3. Restriction.

A. The non-exclusive privilege and license granted in this Agreement shall be exercised solely by Phillips Broadcasting, LLC (inclusive of his officers, agents, invitees, guests, servants and/or employees) at the subject Property described herein and upon no other property unless prior written consent is provided by the COUNTY.

B. No rights or property interests are granted to or created in Phillips Broadcasting, LLC by this Agreement except as otherwise provided herein. The non-exclusive privilege and license granted by the COUNTY under the terms, conditions and provision of this Agreement is granted only as an accommodation to Phillips Broadcasting, LLC.

C. Phillip Broadcasting, LLC shall install, operate and maintain its equipment in a manner that will not cause interference to any of the COUNTY's operations at the Property, including, but not limited to, the COUNTY's operation of its communications equipment, lighting systems and/or or related repair and maintenance activities. For purposes of this Agreement, the term "interference" shall mean any use on the Property that causes electronic or physical obstruction with or degradation of the communication signals from the COUNTY's communication tower. Failure to comply with this provision related to interference may result in the automatic termination of this Agreement by the COUNTY without further notice or action required on the part of the COUNTY.

D. Within thirty (30) days of the notice of termination described in Section 2, Phillip Broadcasting, LLC shall remove its equipment and restore the property to the prior condition.

Article 4. Assignment.

Phillips Broadcasting, LLC shall not assign, transfer, sell or otherwise convey any right, license or privilege noted in this Agreement, or associated with this Agreement, without prior written approval by the COUNTY. Should Phillips Broadcasting, LLC assign, transfer, sell, and/or otherwise convey any of the rights, licenses or privileges of this Agreement, without such prior written approval by the COUNTY, then such action on the part of Phillips Broadcasting, LLC shall result in the automatic termination of this Agreement and revocation of all privileges and licenses contained herein without further notice or action required on the part of the COUNTY.

Article 5. Indemnification.

A. Phillips Broadcasting, LLC shall indemnify, defend, and hold COUNTY harmless from all claims (including tort-based, contractual, injunctive, and/or equitable), losses (including property (personal and/or real), and bodily injury), costs (including attorneys' fees), suits, administrative actions, arbitration, or mediation originating from, connected with, or associated with, or growing out of (directly and/or indirectly), the installation, use, maintenance repair, operation or removal of Phillips Broadcasting, LLC's equipment and activities on the Premises. Moreover, the Phillips Broadcasting, LLC shall indemnify, defend, and hold COUNTY harmless from all claims, losses, costs, suits, and administrative actions, arbitration, or mediation, from, or incident to, connected with, associated with, or growing out of Phillips Broadcasting, LLC's direct and/or indirect negligent or intentional acts or omissions associated with the above-noted actions or activities.

B. This provision relating to Indemnification, is separate and apart from, and is in no

way limited by, any insurance provided by Phillips Broadcasting, LLC, pursuant to this Agreement, or otherwise.

C. Nothing in this Lease Agreement shall be interpreted or construed to mean COUNTY waives its common law sovereign immunity as provided under Section 768.28, Florida Statutes, or consents to being sued hereunder.

D. These provisions relating to indemnification shall survive the termination/expiration of this Agreement.

Article 6. Insurance

A. Phillips Broadcasting, LLC, at Phillips Broadcasting, LLC's sole cost and expense, shall secure and maintain for the Term of this Lease Agreement, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate to protect the Phillips Broadcasting, LLC from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any activity under this Agreement, whether such operations be by Phillips Broadcasting, LLC or by anyone directly employed by or contracting with Phillips Broadcasting, LLC.

B. Phillips Broadcasting, LLC, at Phillips Broadcasting, LLC's sole cost and expense, shall secure and maintain for the Term of this Lease Agreement, Comprehensive Automobile Liability Insurance with minimum limits of \$2,000,000 combined single-limit for bodily injury and property damage liability to protect the Phillips Broadcasting, LLC from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned automobiles, including rented/hired automobiles whether such operations be by Phillips Broadcasting, LLC or by anyone directly or indirectly employed by Phillips Broadcasting, LLC.

C. Phillips Broadcasting, LLC, at Phillips Broadcasting, LLC's sole cost and expense, shall secure and maintain for the Term of this Agreement, Umbrella or Excess Liability Insurance covering workers compensation, commercial general liability and business auto liability with minimum limits of liability of \$1,000,000.

D. Phillips Broadcasting, LLC, at Phillips Broadcasting, LLC's sole cost and expense, shall secure and maintain for the Term of this Lease Agreement, adequate Workers' Compensation Insurance in at least such amounts as are required by State law.

E. In the event of unusual circumstances, COUNTY, upon reasonable notice to Phillips Broadcasting, LLC, may adjust the insurance requirements provided herein.

Article 7. Environmental.

Phillips Broadcasting, LLC shall not install, use, generate, store, locate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit, or dispose of Hazardous Substances in, upon, under, over or from the subject property in violation of any federal, state, or local law, statute, regulation, ordinance, rule, code, or order relating to human health or the environment ("Environmental Regulation"). Hazardous Substance means (i) any substance defined as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or under Florida law including, but not limited to, regulations promulgated by the Florida Department of Environmental Protection; (ii) petroleum, petroleum products and by products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas; and (iii) any other substance or material now or in the future deemed to be hazardous, dangerous, toxic, or a pollutant or contaminant under any Environmental Regulation. Phillips Broadcasting, LLC shall indemnify, defend and hold harmless the COUNTY, its officers, agents and employees from and against any claim, damage or expense arising out of Phillips Broadcasting, LLC's breach of this obligation.

Article 8. Permits and Licenses.

To the extent that Phillips Broadcasting, LLC is required by local, state and/or federal authority to secure and maintain any permits, certifications, licenses or approvals associated with the privilege and license granted in this Agreement, then Phillips Broadcasting, LLC shall be responsible for securing and maintaining such permit, certification, license or approval at his sole expense.

Article 9. Entire Agreement and Amendment.

It is expressly understood and agreed that this Agreement sets forth all the covenants, agreements, terms and conditions between the parties and that there are no other oral or written agreements between them. It is further understood that no subsequent amendments, alterations or additions to this Agreement shall be binding upon the parties hereto unless reduced to writing and executed by duly authorized representatives of each party.

Article 10. Governing Law and Venue.

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns COUNTY, Florida.

Article 11. Severability.

If any word, phrase, sentence, part, subsection, section or other portion of this Agreement is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, subsection or other portion shall be severable and the remaining portions of this Agreement not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

IN WITNESS WHEREOF, authorized representatives of the COUNTY, and CONTRACTOR have executed this Contract on the day and year below noted.

ST. JOHNS COUNTY

Phillips Broadcasting, LLC

Signature

Michael Wanchick
County Administrator

Date of Execution

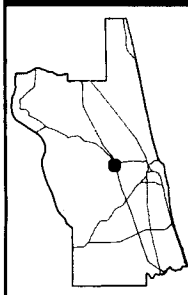
Legal Review by:

Assistant COUNTY Attorney

Signature

Printed Name & Title

Date of Execution



2013 Aerial Imagery

0 100 200

Feet

March 24, 2014

Permissive Use Agreement

Phillips Broadcasting, LLC

Land Management
Systems
Real Estate
Division
(904) 209-0762

Disclaimer:
This map is for reference use only.
Data provided are derived from multiple
sources with varying levels of accuracy.
The St. Johns County Real Estate
Division disclaims all responsibility
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of the data shown hereon.

