

Item # 5


**ADDITIONAL MATERIAL
Regular Meeting
JUNE 18, 2019**

SUBMITTED AT THE REQUEST OF

**OFFICE OF THE COUNTY
ATTORNEY**

MEMORANDUM

TO: Board of County Commissioners

FROM: Andrew J. Meyers, County Attorney 

DATE: June 14, 2019

RE: **Interlocal Agreement with the City of Hollywood; Item 5 on the June 18, 2019, County Commission Agenda**

Item 5 on the June 18 Board meeting agenda is a motion to approve the interlocal agreement ("ILA") between the County and City of Hollywood intended to resolve the dispute regarding the location of the final required emergency communications tower. The attached draft is being distributed today as additional material. This draft was sent to the City for review this morning, and updated in minor respects an earlier draft sent to the City very late yesterday afternoon. We hope to receive the City's comments today, but might not receive them until over the weekend. The County's technical experts might also propose some further changes to the proposed agreement, and our legal team will continue to review and refine the draft. When the ILA is finalized, we will provide a version showing all substantive changes from the draft attached hereto.

The proposed deal is based on the following material points:

1. There are two significant preconditions to the ILA being effective: (a) the Agreement must be approved by both parties by June 19; and (b) the City must take required action to approve the County's West Lake Park site plan application by July 3. Otherwise, the ILA will be null and void. The provision regarding site plan approval was inserted to put the County into the best possible position regarding the potential construction of a tower at West Lake Park, but potential challenges by third parties and other requirements would still need to be resolved.
2. At the core of the ILA is the parties' mutual commitment to be bound by the conclusions of the mutually retained independent expert. Being able to agree on an independent expert is the first significant challenge under the

agreement. Failure to timely do so would permit either party to terminate the agreement.

3. Essentially, if (a) the independent expert concludes that the proposed Circ site would meet all applicable system standards and would, on balance, after consideration of a long list of inclusive factors, protect public health and safety at least as well as would the proposed West Lake Park site, (b) the City commits to paying certain capital and operating costs, and (c) a lease on the Circ building can be finalized, then the City can opt for the applicable tower to be installed on the Circ rooftop. If any of those conditions is not met despite the parties' best efforts, the City is required to work collaboratively with the County to expedite development of the West Lake Park site.
4. The parties have agreed to evenly split the costs of the independent expert, and to evenly split any sums required by Circ to renew discussions or enter into a lease (Circ has been seeking to be made whole for its expert and legal fees).
5. The City has insisted on two additional provisions which have been inserted, the latter of which was previously discussed by the County Commission. First, the City wants the County to commit not to permit any commercial utilization of the Circ tower equipment (if installed). Second, if the Circ site is to be utilized, the City wants the County to reinstate the restrictive covenant affecting West Lake Park.

Because there are several ways the proposed deal could not go into effect or could terminate, we have sent the City notice that we would like to complete Chapter 164 mediation in parallel with the steps required under the ILA. Chapter 164 requirements are also addressed in the resolution the Board will consider as Motion B of Item 5.

Please feel free to call Deputy County Attorneys Rene Harrod (ext. 7618) or Maite Azcoitia (ext. 7605) or me with any questions or concerns regarding this matter. We will continue to alert you to all material developments.

AJM/gf
Attachment

c: Bertha Henry, County Administrator
Robert Melton, County Auditor
Rene Harrod, Deputy County Attorney
Maite Azcoitia, Deputy County Attorney

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND
CITY OF HOLLYWOOD REGARDING P25 SYSTEM**

This Interlocal Agreement (“Agreement”) is made and entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and the City of Hollywood, a Florida municipal corporation (“City”) (collectively, County and City are referred to herein as the “Parties” and each individually as a “Party”).

RECITALS

A. County asserts that a comprehensive countywide emergency communications system that provides residents and visitors with reliable, direct, and rapid access to public safety agencies is critical to the public health, safety, and welfare of residents of and visitors to Broward County.

B. County represents that in 2015, County contracted with a technical consultant to conduct a comprehensive assessment of the existing public safety communications system, including surveying existing radio sites; inventorying equipment; performing radio system coverage studies; conducting user interviews with the Broward Sheriff’s Office (including Broward Sheriff Fire Rescue and dispatch communications staff), municipal police and fire departments, and the Broward County School Board; and conducting focus group interviews with first responder agencies, interviews with representatives from neighboring systems, and online user surveys. At the conclusion of this work, the consultant provided County with a report assessing the needs of the public safety communications system and providing options for the upgrade or replacement of the existing public safety communications system (“Needs Assessment”).

C. County contends that the Needs Assessment identified several issues with the existing public safety communications system, including coverage gaps in certain geographical areas of Broward County and in-building coverage issues for dense structures.

D. In an effort to provide a reliable, direct, and rapid access countywide emergency communications system protecting the public health, safety and welfare, County initiated a competitive solicitation for a vendor to provide a state-of-the-art public safety communications system and, following a competitive procurement, entered into a contract with an initial value in excess of \$59 million for an upgraded countywide public safety radio communications system (“P25 System”) with Motorola Solutions, Inc., to implement, support, and maintain the P25 System (the “P25 Agreement”).

E. County asserts that upon completion, the P25 System will be a state-of-the-art public safety communications system which will provide for improved public safety

communications within Broward County and will increase capabilities of emergency communications for public safety officials within Broward County and with federal, state, and neighboring agencies.

F. County contends that to provide countywide coverage, implementation of the P25 System requires modifications and improvements to several existing radio communication towers and the installation of seven new towers. The result of the P25 System will be a guaranteed ninety-five percent (95%) portable roundtrip coverage for a hip-mounted portable radio inside a building with 25 dB of attenuation, with ninety-five percent (95%) reliability.

G. County represents that its anticipated completion date for the tower site civil work required for the P25 System, including existing tower modifications and improvements, new tower construction, and installation of tower site equipment, is December 31, 2019.

H. County asserts that County has worked to site the new towers in locations that would meet or exceed the coverage requirements of the P25 System. One of the sites selected by County for a new tower is County-owned property within West Lake Park, 1200 Sheridan Street, Hollywood, Florida (“WLP Site”).

I. On August 21, 2018, County submitted an application to City for approval of a site plan (“Site Plan Application”) for a tower located at the WLP Site (“WLP Tower”). City represents that on September 6, 2018, City’s Planning and Urban Design Division staff issued its report recommending that the City Commission approve the Site Plan Application. City further asserts that on September 6, 2018, its Planning and Urban Development Board considered the Site Plan Application and recommended denial of the Site Plan Application. On October 17, 2018, the City’s planning staff presented the Site Plan Application to the City Commission with a recommendation of approval. The City Commission deferred a decision on the Site Plan Application and requested that County consider relocating the planned P25 site to an alternate site, namely the roof of the newly-constructed Circ Residences building (the “Circ Site”) in downtown Hollywood.

J. On January 8, 2019, County adopted Resolution No. 2019-23, initiating the conflict resolution process pursuant to Chapter 164, Florida Statutes. City has indicated on the record during the conflict resolution process its belief that County’s commencement of such process was premature and inappropriate, and the Parties proceeded to comply with those procedures, in good faith, notwithstanding City’s announced position/

K. On January 29, 2019, pursuant to City’s request that County relocate the applicable proposed P25 site to the Circ Site, County approved the commissioning of consultants for an expedited assessment of the viability thereof, while simultaneously negotiating potential lease terms with the owners of the Circ Site. In parallel with County’s efforts, City staff

coordinated with the owners of the Circ Site to expedite lease negotiations and share Circ Site information with County.

L. By the end of March 2019, County's studies were concluded and submitted for consideration by the Parties by County's consultant, Nick Falgiatore of Mission Critical Partners ("County Expert"). County disagreed with County Expert's conclusions, and thereafter, in April 2019, engaged its own consultant, G.M. Selby, Inc. ("City Expert"). The City Expert reached materially different conclusions regarding the viability of a P25 site at the Circ Site and the relative radio coverage afforded by the Circ Site as compared to the WLP Site. The City represents that the City Expert concluded the Circ Site was far superior as a P25 Site when considering the health, welfare, and safety of County residents.

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

N. On June 6, 2019, pursuant to Section 164.1055, Florida Statutes, a joint public meeting between the governing bodies of County and City was held (at which the City Attorney again announced its position that the meeting was premature under Section 164, Florida Statutes, but that its representatives were present and ready to reach a reasonable resolution, if possible).

O. In the spirit of cooperation, and to protect the health, safety, and welfare of the residents of Hollywood and countywide, the Parties discussed certain terms to address the location of the proposed tower and resolution of the conflict pursuant to Section 164.1057, Florida Statutes.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Effective Date; Required Conditions. This Agreement shall be effective on the date it is fully executed by the Parties ("Effective Date"), provided that this Agreement shall be null and void and of no force or effect unless: (i) at its meeting on June 19, 2019, City approves reconsideration of its vote of June 5, 2019, denying the Site Plan Application, said June 19 vote having the effect of rescinding its denial of the Site Plan Application; (ii) it votes to unconditionally, and to the full extent permissible under applicable law irrevocably, approve the Site Plan Application (which approval may contain the condition outlined in Section 4 below) on or before July 3, 2019; and (iii) this Agreement is fully executed by the Parties (with executed copies emailed to the County Administrator

and the County Attorney, or the City Manager and the City Attorney, as applicable) no later than June 20, 2019.

2. Independent Expert Analysis.

2.1. Independent Expert Identification. The County Expert and the City Expert shall confer and, no later than ten (10) days after the Effective Date, which time may be extended by mutual written agreement of the County Administrator and the City Manager, shall identify in writing an independent expert mutually agreeable to the County Expert and the City Expert who is qualified to perform the services required under this Agreement including as stated in Exhibit A, and meets the other qualifications stated therein, including that he or she must have experience in designing or implementing

public safety radio communications systems (or experience performing substantially similar work if agreed to in writing by the County Expert and the City Expert) (“Independent Expert”). If the Independent Expert is not identified in writing within such ten (10) day period or such agreed-upon extended deadline, either Party may terminate this Agreement (but only prior to such identification) (the County Administrator and City Manager are authorized to terminate on behalf of their respective Parties), in which event neither Party shall have any further rights or obligations hereunder.

2.2. Independent Expert Engagement. Within fifteen (15) business days after the identification of the Independent Expert per Section 2.1, or as soon thereafter as County and City may accomplish same through the exercise of reasonable diligence, the Independent Expert shall be retained by County and City to perform the services stated in the Agreement including Exhibit A and to submit a written report to the Parties in accordance with Exhibit A (and as further detailed in this Agreement). The Parties shall work expeditiously and in good faith to contract with the Independent Expert, including by promptly make necessary staff available for negotiations and drafting. If the Parties are unable to enter into the retainer agreement within twenty (20) business days after such identification, either Party may declare in writing (acting through the County Administrator or the City Manager, as applicable) that they will terminate this Agreement (the County Administrator and City Manager are authorized to terminate on behalf of their respective Parties) if the retainer agreement is not executed within ten (10) days after such writing is provided. If such termination occurs, neither Party shall have any further rights or obligations hereunder. The Independent Expert shall retain any subconsultants the Independent Expert determines are necessary to perform the services stated in Exhibit A or otherwise stated in this Agreement, provided that each subconsultant meet the qualification criteria for the Independent Expert.

2.3. Independent Expert Report. No later than forty-five (45) days after the Independent Expert is retained (unless an extension is agreed to in writing by the Parties through the County Administrator and City Manager upon request for additional time by the Independent Expert, which agreement shall not be unreasonably withheld or delayed), the Independent Expert shall consider the P25 Agreement standards, specifications, and requirements (as stated in the P25 Agreement, incorporated as Exhibit B) (the “P25 Agreement standards”) together with any further information City or County promptly (as determined by the Independent Expert) provides to the Independent Expert and provide the Parties with a written report that complies with the scope stated in Exhibit A and includes the following:

Capital Cost Estimates:

- (a) The Independent Expert's estimate of the total reasonable cost of constructing and installing an operational WLP Tower (including all hard and soft costs and all associated equipment; e.g., shelter/environmentally controlled room, 100 kw generator, etc.) after consideration of the county's estimates, and in accordance with the P25 Agreement standards (the "**Expert's WLP Capital Cost Estimate**") (the Parties stipulate that such reasonable costs shall include but not be limited to expenditures required to maintain Motorola's applicable system performance guarantee(s)); and
- (b) The Independent Expert's estimate of the total reasonable cost of constructing and installing an operational Circ System (including all hard and soft costs and all associated equipment including all associated equipment; e.g., shelter/environmentally controlled room, 100 kw generator, etc.) in accordance with the P25 Agreement standards ("**Expert's Circ Capital Cost Estimate**") (the Parties stipulate that such reasonable costs shall include but not be limited to expenditures required to maintain Motorola's applicable system performance guarantee(s)).

Operating/Support and Maintenance Cost Estimates:

- (c) The Independent Expert's estimate of the average annual cost per site to County of operating (including site-specific support and maintenance, but excluding any rent payment) the free standing towers in the P25 System (the "**Expert's Average Annual Nonrent Operations Cost Estimate**")- and
- (d) The Independent Expert's estimate of the total anticipated annual operating costs (including site-specific support and maintenance, but excluding rent) of the Circ System ("**Expert's Annual Circ Nonrent Operations Cost Estimate**")/

Comparison/Feasibility:

- (e) A comparison, based on the best available information (as determined by the Independent Expert), between (i) the radio coverage and level of service that would reasonably be expected to be provided by collocation on the Circ Site, in accordance with the P25 Agreement standards ("Circ System"), and (ii) the radio coverage and level of service that would

reasonably be expected to be provided by the WLP Tower, in accordance the P25 Agreement standards; and

- (f) The Independent Expert's conclusion as to whether (i) the Circ System would meet the minimum P25 Agreement standards (including for signal reliability); and (ii) on balance, considering all of the relevant factors including those referenced in this Agreement, whether the Circ System would be equal to or better than the WLP Tower in terms of reliably protecting public health and safety for the useful life of the P25 System (items (f)(i) and (f)(ii) are the "**Circ Conditions**")/

In considering items (a) through (f), the Independent Expert shall consider any and all factors he or she determines to be material including, as applicable, any or all of the following:

- Installation strategies;
- Whether projected capital expenditures were prudently increased to reduce subsequent operating costs or to reduce the risk of potential damage to the installed equipment;
- Any unique features or physical limitations of the respective sites;
- The public safety (noncommercial) nature of the system;
- Availability of goods and services and any applicable contractual limitations on the source or specifications of goods and services, including any requirements to maintain performance guarantees or warranties;
- Recommended or (where applicable) contractually-required resiliency;
- Recommended or (where applicable) contractually-required redundancy;
- Engineering (per the EIA/TIA 222 Rev. G and/or H standard, as applicable) including applicable type, exposure, and topographical categories based on the latitude and longitude;
- Costs associated with the applicable equipment's routine and/or preventive maintenance;
- Expected and reasonably foreseeable repairs based on the nature of the respective sites;
- Any required (contractually or otherwise) maintenance of the equipment and infrastructure installed on-site (including both grey and blue skies), but excluding software maintenance or any systemwide maintenance equally required for all sites;
- The expected radio coverage to be provided by the respective sites (once the P25 System is installed, integrated, optimized, operationally tested, and cutover);

- Any additional factors that could affect the service provided by the respective sites, including but not limited to building obstructions; shadowing;
- Water level rise, storm surge, or flooding;
- Limits to or lack of access affecting or delaying maintenance, repairs, or recovery;
- Severe weather;
- The costs associated with restoration or repair during blue skies and grey skies including in connection with a major wind event;
- The impact site location has on timely, safe, and cost-efficient postweather event repairs or restoration of service in the event of damage to the site;
- Resiliency;
- Installation time (including but not limited to removing any applicable restrictive covenants or obtaining any required governmental approvals other than those of County or City); and/or
- Any service enhancement goods and services (such as, solely by way of example, signal repeaters) if and to the extent the Independent Expert determines such enhancements are material, reasonable, and appropriate at either site.

2.4. Independent Expert Costs. The Parties shall share equally in all costs and expenses of the Independent Expert (inclusive of all subconsultants retained by the Independent Expert). County shall pay all such costs and expenses in accordance with the terms and conditions of the applicable agreement and shall invoice City for fifty percent (50%) of all such costs and expenses incurred by County. City shall pay the invoiced amount within thirty (30) days after the date of each invoice.

2.5. Binding Report. The Parties stipulate and agree to be and that they are each bound by, and absent fraud or illegality on the part of the Independent Expert are estopped from challenging, the factual determinations, opinions, and conclusions of the Independent Expert regarding the Circ System and the WLP Tower, as set forth in the Independent Expert's written report. The Parties stipulate and agree that neither Party shall, absent fraud or illegality on the part of the Independent Expert, challenge the Independent Expert's written report, including the stated factual determinations, opinions, or conclusions, through legal action or otherwise.

2.6. Conditions to Circ System. The Independent Expert shall determine and specifically state in the written report whether the Circ Conditions are met. If the Independent Expert's report states that both of the Circ Conditions are met,

then City shall have fifteen (15) days after the issuance of such written report to notify County in writing (by sending email notice to the County Administrator and the County Attorney) that City is electing that the Circ System be installed (“City Election Notice”). If either or both of the Circ Conditions are not met (as determined by the Independent Expert), or City fails to timely provide the City Election Notice, or the Lease Condition (as defined in the Section 2.7) is not timely met, then County shall proceed with the WLP Tower and, to the full extent permissible under applicable law, City agrees to expedite all required approvals, permitting, and inspections in connection therewith, and City stipulates and agrees that it shall be estopped from asserting and waives all objections to the WLP Tower, and City covenants not to litigate or contribute any resources to any private litigation associated with the installation or operation of the WLP Tower.

2.7. Lease Condition. The Parties acknowledge that installation at the Circ Site requires negotiation of a lease between County and the entity that owns the Circ Site. County and City shall work collaboratively to develop, as expeditiously as is possible, a lease acceptable to both Parties and to the Circ Site ownership. County and City agree to not unreasonably object to any lease terms, and agree to make their respective

administrative and legal staffs available at all reasonable times on and after the Effective Date to negotiate and document the required leasing arrangement. The Parties agree that, even if the other conditions of this Agreement are met, the Circ System installation is not feasible unless county and the Circ Site's ownership entity enter into the required lease agreement within fifteen (15) days after County provides the Circ Site owner written notification that the required design has been completed (thereby enabling the proposed leased premises to be identified in the lease) (timely entering into the binding lease is hereby defined as the "Lease Condition")/ The County Administrator and the City Manager may extend this time by mutual written agreement, and shall reasonably extend this time provided both Parties have acted in good faith and taken all reasonable and prudent actions in seeking to finalize the required leasing arrangement. If the Circ Site ownership requires that its going forward expenses (e.g., legal and engineering) must be paid as a condition to its further consideration of a leasing arrangement, the Parties agree to equally split such cost. Additionally, as part of any leasing arrangement, any prior expenses (e.g., legal and engineering) incurred by the Circ Site ownership that the Circ Site ownership requires be reimbursed shall be equally split by the Parties.

3. Circ System. If, and only if, the Circ Conditions and the Lease Condition are met and City timely provides the City Election Notice, then the following provisions of this Section 3 shall apply (unless the context requires otherwise, whenever construction and/or installation of the Circ Tower is referenced, it includes all related services and materials (e.g., environmentally controlled room, generator) required for proper construction/installation and/or required for the Circ System to be fully operational and comply with the P25 Agreement standards):

3.1. Siting Tower at West Lake Park; Circ System Installation. County shall cease any and all efforts to construct the WLP Tower, and County shall contract for the construction and installation of the Circ System in accordance with the terms of the P25 Agreement (as same may be reasonably amended to address the Circ System construction and installation). The contract or amendment shall provide for construction and installation to be completed within one hundred twenty (120) days after approval of all required permit(s), except that County may reasonably extend such deadline upon a good faith showing by the retained contractor that additional time is required. City agrees, to the full extent permissible under applicable law and to the greatest extent practicable, to expedite all required permits, other approvals, and inspections within its control.

3.2. Funding. City shall pay County:

(a) The amount by which the Expert's Circ Capital Cost Estimate exceeds the Expert's WLP Capital Cost Estimate (provided that if the actual cost to

County of the Circ System installation through Final Acceptance is less than the Expert's WLP Capital Cost Estimate, the difference shall be credited against any other amount owed by City under this Agreement). For clarity, County shall be responsible for any amount by which the actual Circ System installation exceeds the Expert's Capital Cost Estimate;

(b) On an annual basis for the duration of the useful life of the Circ System or the P25 System, whichever is longer, the amount by which the actual operating costs of the Circ System, including site-specific support and maintenance for the Circ System (which may exceed the Expert's Annual Circ Nonrent Operations Cost Estimate) exceeds the Expert's Annual Nonrent Operations Cost Estimate; and

(c) On an annual basis, the amount by which the actual rent for the Circ Site exceeds \$_____, which the Parties stipulate is the current average rental cost to County of the other three rooftop tower sites that are part of the P25 System (with such obligation subject to indexing as provided in the applicable leases).

City shall make all of such above-referenced payment(s) within thirty (30) days after each County applicable written demand therefor.

3.3. Enhancements. If, upon completion of installation of the Circ System but before Final Acceptance of the P25 System, Motorola Solutions, Inc. reasonably determines that service enhancement goods and/or services are required for the Circ System to meet the P25 Agreement standards, or should prudently be installed/completed to protect the safety of first responders and residents or as a result of any shading or other signalization issues, and, to the extent the Independent Expert concurs, City shall be fully responsible for all costs and expenses of such enhancements. Such service enhancements shall include any determined to be required due to currently planned development for which a permit has been submitted to the City in the vicinity of the Circ Site as of the Effective Date, and from any other likely development known to the City (which City shall disclose with the City Election Notice). County shall contract for such enhancements, and City shall reimburse the full amounts paid by County (for all enhancements as to which the Independent Expert concurs) no later than thirty (30) days after demand by County (and each subsequent determination and demand, as applicable). If access to any private property is required to ensure adequate service, City shall take all required steps to promptly obtain and secure such access on County's behalf and pay any costs reasonably associated therewith.

3.4. No Commercial Use. County covenants not to permit any commercial utilization of the Circ System (e.g., telecommunications dishes unrelated to the P25 public safety system).

3.5. Restrictive Covenant. Upon Final Acceptance of the P25 System, County shall reinstate the restrictive covenant on the WLP Site that was modified by Broward County Resolution No. 2019-264 on May 7, 2019, to the same state and scope as was in effect prior to the adoption of that Resolution.

4. Site Plan Application. Notwithstanding approval of the Site Plan Application as set forth in Section 1, County agrees not to seek any permits or commence any construction for the WLP Tower if the Circ Conditions and the Lease Condition are met and City timely provides the City Election Notice and fulfills its obligations related to the Circ System as set forth in Section 3. City acknowledges that County has asserted that the Site Plan Application is already deemed approved pursuant to Section 365.172(13)(d), Florida Statutes, and nothing herein shall prejudice or preclude County's right to judicially assert that at any time if it is required. Additionally, if City approves the Site Plan Application (as stated in Section 1(ii) above), and any person or entity challenges such Site Plan Approval, and provided County is not then in breach of its obligations under this Agreement, for purposes of defending against such challenge City stipulates that the Site Plan Application is also deemed approved pursuant to Section 365.172(13)(d), Florida Statutes, and County may proceed with placement of the WLP Tower at the WLP Site without interference or penalty by City (subject to County's agreement not to proceed as set forth in this paragraph's first sentence). The Parties shall jointly and severally use best efforts to cooperatively defend against any legal action(s) related to City's approval of the Site Plan Application, whether filed against County and/or City, and shall provide counsel and other professionals as reasonably necessary to vigorously defend any such action(s). City acknowledges that County is relying on the described reconsideration and approval of the Site Plan Application as a primary benefit to County of this Agreement, and City will, accordingly, to the full extent permissible under applicable law, refrain from taking any action that would undermine such approval. Additionally, if any court invalidates the approval (or any City act in connection therewith), in whole or in part, County shall have the option within thirty (30) days after such ruling (or after any affirming appellate ruling, if County chooses to appeal) to terminate this Agreement, in which event neither Party shall have any further rights or obligations hereunder.

5. Good Faith; Assurances. The Parties shall in good faith undertake to perform their obligations in this Agreement, to satisfy all conditions, and to cause the transactions contemplated by this Agreement to be carried out promptly in accordance with its terms. The Parties shall cooperate fully with each other and their respective representatives in connection with any actions required to be taken as part of their respective obligations under this Agreement, including any and all preliminary

or subsidiary actions that are necessary, implied, or reasonably required to effectuate the express obligations stated in this Agreement.

6. Default. If either Party defaults in the performance of a material provision of this Agreement and fails to cure such default within fifteen (15) days after receipt of written notice by the nondefaulting Party specifying the nature of such default, or if such default cannot be cured within fifteen (15) days and the defaulting Party fails to commence such cure within such time and diligently pursue such cure to completion, the nondefaulting Party shall be entitled to pursue all remedies available to it at law or in equity.

7. Venue; Choice of Law; Availability of Specific Performance Remedy; Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties acknowledge and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, will be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out

of this Agreement will be exclusively in such state courts, forsaking any other jurisdiction that either Party may claim by virtue of its residency or other jurisdictional device. The Parties agree, to the full extent permissible under applicable law, that the elements required for a court to require specific performance of their respective material obligations under this Agreement are present and that the critical public safety concerns underlying this Agreement justify the granting of such judicial remedy. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES EACH EXPRESSLY WAIVE ANY RIGHTS SUCH PARTY MAY HAVE TO A JURY OF ANY CIVIL LITIGATION RELATED TO OR ARISING OUT OF THIS AGREEMENT.**

8. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by either of the Parties nor shall anything included herein be construed as consent by a Party to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision and City is a municipal corporation as defined in Section 768.28, Florida Statutes, and each Party shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

9. No Third-Party Beneficiaries. Except as otherwise expressly stated herein, neither Party intends to directly or substantially benefit a third party by this Agreement; therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either or both of them based upon this Agreement.

10. Modification; Termination; Waiver. It is further agreed that no modification, amendment, alteration, or termination of this Agreement (except as expressly otherwise provided) will be effective unless contained in a written document executed with the same formality and of equal dignity herewith. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party against whom it is asserted, and any such written waiver will only be applicable to the specific instance to which it relates and will not be deemed to be a continuing or future waiver. County hereby authorizes the County Administrator to enter into amendments to this Agreement that she deems prudent, provided any such amendments are approved as to legal sufficiency by the Office of the County Attorney.

11. Notice. Except as is expressly otherwise provided in this Agreement, in order for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first class mail, with a contemporaneous copy via e-mail to the addresses listed below, and will be effective upon mailing (provided such contemporaneous e-mails are sent). The addresses for notice will remain as set forth herein unless and until

changed by providing notice of such change in accordance with the provisions of this section.

For County:

Broward County Administrator
115 South Andrews Avenue, Room 409
Fort Lauderdale, Florida 33301
Email address: BHenry@broward.org

With a copy to:

Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Email address: AMeyers@broward.org

For City:

Dr. Wazir Ishmael
2600 Hollywood Boulevard, St. 419
Hollywood, Florida 33020
Email address: wishmael@hollywoodfl.org

With a copy to:

Douglas R. Gonzales, City Attorney
2600 Hollywood Boulevard, St. 407
Hollywood, Florida 33020
Email address: dgonzales@hollywoodfl.org

12. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

13. Interpretation. The Parties further agree that their respective obligations under this Agreement include the taking of all actions that a reasonable and prudent governmental entity, acting in good faith, would reasonably be expected to take in furtherance of the purpose of this Agreement and to meet their respective express obligations under this Agreement. The titles and headings contained in this

Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Subject to any subsequent agreement by the Parties (or any unilateral action where expressly permitted in this Agreement) to extend any deadlines, the times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement.

14. Exhibits; Priority of Provisions. The attached Exhibits A and B are incorporated into and made a part of this Agreement. If there is a conflict or inconsistency between any term, statement, requirement, or provision of Exhibit A or B and any provision of Sections 1 through 19, the provisions contained in Sections 1 through 19 will prevail and be given effect.

15. Representation of Authority; Further Assurances. Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full and legal authority. The Parties hereby agree to execute, acknowledge, deliver, and cause to be done, executed, acknowledged, and delivered all further assurances and to perform such acts as reasonably requested of them in order to carry out this Agreement.

16. Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, through any applicable appeal, that part will be deemed severed from this Agreement and the balance of this Agreement will remain in full force and effect.

17. Joint Preparation. This Agreement has been jointly prepared by the Parties hereto and will not be construed more strictly against either Party.

18. Financial obligations of either Party under this Agreement that continue beyond the end of their respective fiscal years are subject to both the appropriation

and the availability of funds in accordance with Chapters 129 and 166, Florida Statutes, as applicable.

19. If County determines it is prudent to file a court action to challenge the Site Plan Application denial, the Parties agree that (i) County may file a simplified action merely to ensure that judicial jurisdiction is maintained, and (ii) if requested by County, the Parties will file a joint motion to allow County to supplement its filing, which motion shall explain to the court that the simplified action was filed pursuant to mutual agreement to preserve public resources in light of the anticipated resolution of the dispute.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Interlocal Agreement Between Broward County and City of Hollywood Regarding P25 System on the respective dates under each signature: Broward County through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 18th day of June, 2019, and City, signing by and through its Mayor or ViceMayor, authorized to execute same by City Commission action on the 19th day of June, 2019.

ATTEST:

County

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward
County
Board of County Commissioners

By _____
Mayor

____ day of _____, 2019

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357 -7600
Telecopier: (954) 357 -7641

By _____
Maite Azcoitia (Date)
Deputy County Attorney

By _____ (Date)
René D. Harrod
Deputy County Attorney

Regarding P25 System

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND
CITY OF HOLLYWOOD REGARDING P25 SYSTEM**

City

Attest:

City of Hollywood

City Clerk

By _____
Josh Levy, Mayor

Approved as to form and legal sufficiency for
the use of and reliance by the City of
Hollywood, Florida only:

Douglas R. Gonzales
City Attorney

____ day of _____, 2019

Exhibit A
INDEPENDENT EXPERT CRITERIA AND SERVICES

Criteria

The Independent Expert must have no financial interest or pending or prior contractual relationship within the past ten (10) years with the County Expert or City Expert. The Independent Expert must not be a direct competitor in the State of Florida market with either County Expert or City Expert (as determined by agreement of the Parties' experts) or with any entity that has previously submitted a report or analysis regarding the WLP Site or the Circ Site. The Independent Expert may not have any formal vendor affiliation with Motorola Solutions, Inc. or Harris Corporation, and may not have any direct, current contractual relationship(s) with Motorola Solutions, Inc., or any of its subdivisions, or have had any such direct, contractual relationship(s) within the past five years; the foregoing limitation shall not include consulting work done for a customer of Motorola Solutions, Inc. Additionally, the Independent Expert must be vendor neutral and must not have any actual or perceived business dealings that would be strengthened or weakened based upon either agreeing or disagreeing with the findings of either of the Parties' experts or consultants involved in this matter, including county, city, Motorola Solutions, KCI, Mission Critical Partners, or G.M. Selby. Notwithstanding any of the foregoing, any individual or entity agreed upon in writing by the County Expert, the City Expert, the County Administrator, and the City Manager shall be deemed qualified to serve as the Independent Expert.

Scope of Services

The Independent Expert shall prepare the written report set forth in Section 2 of the Agreement comparing the WLP Site to the Circ Site, which shall include comparisons based upon the following criteria (in addition to the criteria specified elsewhere in the Agreement):

1. Coverage evaluation with consideration of shadowing from obstructions and the building rooftop
2. Construction (including strategy, complexity, and costs)
3. Serviceability for both routine and non-routine maintenance after installation is complete
4. Survivability of all components during a major weather event or hurricane
5. Access and restoration considerations during both blue sky and grey sky events, including in the event of flooding or storm surge
6. Safety to the surrounding communities or nearby critical infrastructure, including risks of tower collapse and falling equipment
7. Any other factors that may affect use of a location for the life of the P25 System

Specific tasks the Independent Expert shall complete include:

- Interviews with County, City, Motorola Solutions, Inc. staff, County Expert, and City Expert regarding their analysis of the Circ Site and the WLP Site

- Site visits of the Circ Site and WLP Site, both independently and with County and City staff

Regarding P25 System

- Independent coverage modeling of the Circ System and the WLP Tower to validate whether coverage complies with the P25 Agreement standards
- Development and provision of a written report that evaluates the strengths and weaknesses of each location with regard to the criteria defined
- Written conclusions as expressly required under this Agreement

Regarding P25 System

Exhibit B
P25 Agreement

See P25 Agreement as set forth at the following link:

[http://www.broward.org/CommunicationsTechnology/911Projects/Documents/Agreement\(fullyexecuteandbookmarked\).pdf](http://www.broward.org/CommunicationsTechnology/911Projects/Documents/Agreement(fullyexecuteandbookmarked).pdf)

Regarding P25 System