



## **Project Manual**

*For:*

### **Highway Department Storage Building**

**8500 Boston State Road, Town of Boston, NY**

*Prepared For:*

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Town of Boston  
8500 Boston State Road  
Boston, NY 14025

*Town Board:*

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Salamanca, NY 14779  
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*Date of Preparation:*

September 2017

*For Bids:*

October 27, 2017

**PROJECT MANUAL – Town Hall Parking Lot Improvements - Town of Boston, NY**

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**LEGAL NOTICE  
TOWN OF BOSTON  
NOTICE TO BIDDERS**

**NOTICE IS HEREBY GIVEN** that the Boston Town Board invites sealed bids for a **Highway Department Storage Building** to be constructed near the Highway Garage located behind Town Hall at 6401 Town Park Lane. The work will include forming and pouring a cast-in-place foundation, furnishing and erecting a 40'x 80' metal building with a 20' eave height, provision of windows and doors as indicated on the plans and the installation of electrical power and lighting within the building. The Town of Boston will perform all required excavation and backfilling and will install the electrical feed to the building.

The Bidding Requirements, Contract Forms, General Conditions, Plans and Specifications, may be examined and obtained at the Town Clerk's Office, 8500 Boston State Road, Boston, New York, 14025. Bids will be opened in the lower level conference room on October 27, 2017 at 10 a.m. local time. The bids shall be in accordance with Drawings, Specifications and any Addenda prepared by Hannon Engineering, P.C., 20 Wildwood Avenue, Salamanca, NY 14779.

Each bid must be accompanied by a Non-Collusive Bidding Certification. Each bid must be accompanied by a bid bond, made payable to the Owner in an amount not less than 5% of the amount of the Bid. Bid bonds shall be executed by a surety company licensed to do business in New York State. The bid security of all but the three lowest formal Bidders will be returned within five days after the day the Bids are opened. Performance and Payment bonds are required in the full amount of the contract sum. NYS Prevailing Wage Rates apply for all work performed on the project.

Bidders are instructed to quote the Work using the bid form provided in the Project Manual and submit in a sealed opaque envelope marked "**Bid for: Highway Department Storage Building**".

**Dated:**            **October 04, 2017 By Order of the Town Board**

**Published:**    **October 05, 2017 Dawn Boncal, Town Clerk**

## INSTRUCTIONS TO BIDDERS

### 1. RECEIPT AND OPENING OF PROPOSALS

Proposals will be received by the Town of Boston on October 27, 2017 at 10:00 a.m. in accordance with Drawings, Specifications, Addenda, and any other Contract Documents as prepared by *Hannon Engineering, P.C.* Direct all questions regarding the intent or meaning of drawings and specifications in writing to *Hannon Engineering, P.C.* Responses to such inquiries, when considered necessary by the Engineer, will be issued in Addendum form to all bidders. Prebid inquiries answered by other means will not be binding. The Project consists of the provision of labor, supervision and materials for all items normally associated with the construction of a 40'x80'x20' eave height metal building, including foundation (walls and piers only), windows, doors, building wiring, electrical lighting in accordance with the plans.

### 2. BIDS

All bids must be submitted on forms supplied in the Project Manual and shall be subject to all requirements of the Contract Documents including the Drawings and Specifications, and these Instructions to Bidders. All bids must be regular in every respect and no interpretations, excisions and special conditions shall be made or included in the Bid Form by the Bidder. If the Contract is awarded, it will be awarded by the Town of Boston, to a responsible bidder on the basis of the lowest bid, contractor's history and the selected alternative bid items, if any.

Persons desiring to make a proposal will find herein proposal blanks. The specifications and plans referred to are considered as, and shall form a part of, the contract.

Proposals must be made upon the blank form provided. The blank spaces in the proposal, except as otherwise noted, must be filled in by the Bidder and no change shall be made by the Bidder in the phraseology of the proposal or in the items mentioned herein.

The Prices in the proposal must be plainly stated in figures and words. In case of conflict, words take precedence over figures. Proposals that contain any omission, erasure, alterations or additions, or that contain irregularities of any kind, may be rejected as informal.

Bidders shall also complete on the bid form - unit prices as required by the Contract Documents.

If the proposal is made by a firm, the name and place of residence of each member of the firm must be given. If made by a corporation, the name of the president, secretary and treasurer shall be given, with the address of the office of the Corporation.

### 3. EXAMINATION OF SITE AND PREBID WALK THROUGH

Each bidder shall visit the site of the proposed work and fully acquaint him or herself with the existing conditions therein relating to construction and labor, and should fully inform him or herself as to the facilities involved, the difficulties and restrictions accompanying the performance of the contract. The Bidders should thoroughly examine and familiarize him or herself with the Drawings, Specifications and other Contract Documents. The Contractor by execution of the contract should in no way be relieved of any obligation under it, due to his or her failure to receive or examine any form or legal instrument or to visit the site and acquaint him/herself with the conditions there. There will be no formal Pre-Bid meeting conducted.

### 4. NON-COLLUSIVE BIDDING CERTIFICATION

The Bidder is required to submit a non-collusion affidavit with the proposal form. The certification represents that the Bidder accepts the premise that their bid has been tendered independently of collusion, or restricting competition, prior disclosure of the Bidder's prices before the gaining of bids or induced others to submit or not submit a bid for the purpose of restricting competition. A holder of executive responsibility of the Bidder's company must sign this form.

### 5. SUBSTITUTIONS

The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Engineer at least *five (5)* days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the work including changes in the work of other contracts that incorporation of the proposed substitution would require shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Engineer's decision of approval or disapproval of a proposed substitution shall be final.

If the Engineer approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

All possible substitution items shall be submitted to the Engineer for review within twenty (20) days after the commencement of work. No substitutions of specified items will be reviewed after this period. The Engineer will expect the usage for the specified items or approved substitutions as defined herein.

## 6. EXEMPTION FROM SALES AND COMPENSATING USE TAXES

The Town of Boston is exempt from payment of Sales and Compensating Use Taxes of the State of New York and municipalities and counties on all materials and/or tangible personal property purchased from a supplier which will be incorporated into the exempt project, pursuant to the provisions of this proposal and these taxes are not to be included in bids.

This exemption does not, however, apply to tools, machinery, equipment or other property leased by or to the Contractor or a subcontractor and the Contractor and his subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property.

The signed Contract between the Contractor and the Town of Boston and/or between the Contractor and the Subcontractor which identifies the project, location and exempt owner, will be sufficient proof and shall form the basis for exemption of materials and/or tangible personal property purchased for incorporation into the exempt project.

When purchasing the qualifying, tangible personal property from a supplier, the Contractor or Subcontractor shall continue to use a "Contractor Exempt Purchase Certificate, ST-120 (8/69)" until a revised form is available, subject to the addition of the "Date of the Contract" in the space where the project is described and checking box "a".

Contractor's purchases of tangible personal property which do not become an integral part of the exempt organization's real property, and are consumed by the Contractor as well as purchases of taxable services continue to be subject to tax. However, those purchases of tangible personal property by the Contractor which are not incorporated into the realty but are later sold and transferred to the exempt organization as tangible personal property continue to be exempt.

The following types of property and services are representative, but not intended to be inclusive, of purchases which are taxable to all Contractors:

1. Construction machinery and equipment, including rentals or repair parts.
2. Contractor's office supplies.
3. Contractor's supplies, tools and miscellaneous equipment, including forms, materials and scaffolding (whether purchased or rented).
4. Temporary heat.
5. Telephone and electric services.

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6. All other items purchased or rented by a contractor for his use in performing the Contract and not incorporated into the realty.

### 7. WITHDRAWAL OF BIDS

Bids may be withdrawn on written or telegraphic request dispatched by the bidder in time for delivery in the normal course of business prior to the time fixed for opening; providing that written confirmation of any telegraphic withdrawal over the signature of the bidder is placed in the mail and postmarked prior to the time set for bid opening.

### 8. QUALIFICATIONS OF BIDDERS

In determining the qualifications of a Bidder, the Town of Boston will consider his record in the performance of any contract for work into which he may have entered with the Town of Boston or with other private or public bodies, and the Town of Boston expressly reserves the right to reject the Bid of such Bidder if such record discloses that such Bidder in the opinion of the Town of Boston has not properly performed such contracts or has habitually and without just cause neglected the payment of bills or has otherwise disregarded his obligations to Subcontractors or Material Suppliers or employees.

The Town of Boston may require the selected Contractor to complete the Contractor's Qualification Statement, AIA Document A305, prior to award of Contract.

The Town of Boston may make such investigation as he deems necessary to determine the ability of the Bidder to perform the work, and Bidder shall furnish to the Town of Boston all such information and data for this purpose as the Town of Boston may request. The Town of Boston reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Town of Boston that such Bidder is properly qualified to carry out the work contemplated therein. Conditional Bids will not be accepted.

### 9. COMPLIANCE OF ALL LAWS

The Contractor shall keep himself informed and shall comply with all Federal, State, County and Local laws, ordinances and regulations, and all amendments and additions thereto as such may apply.

### 10. ADDENDA AND INTERPRETATIONS

Neither the Town of Boston nor the Engineer will make any oral interpretation of the meaning of the plans, specifications or other contract documents or any bidders nor will any proof or approval be executed in any way for any material or equipment prior to the awarding of any contract. If any person who contemplates the submission of a proposal is in doubt as to the

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true meaning of any part of plans or specifications or other proposed contract documents, he/she may submit a request for interpretation, in writing, to *Hannon Engineering, P.C., 20 Wildwood Avenue, Salamanca, New York 14779-1545*, and to be given consideration, it must be submitted at least Five (5) days prior to bid opening date. The person submitting the request will be responsible for its prompt delivery. In the event of any error, omission or discrepancy in the contract drawings or between the drawings and specifications, the bidder shall request an interpretation in advance of the taking of bids. Failing to do so, the Contractor must accept the ruling of the Engineer as the correct intent. Any and all interpretations will be in the form of written addenda, which will be mailed to all bidders who have taken out a full set of plans and specifications. It shall be the bidder's responsibility to inquire as to addenda issued. All such addenda shall become a part of the contract. Failure of any bidder to receive any addenda or interpretation shall not relieve the bidders from obligation under his bid as submitted.

Bidders discovering any errors, inconsistencies or ambiguities in the Bidding or Contract Documents, or of the site of project conditions shall promptly notify the Engineer. Claims for misunderstanding or misinterpretation on the part of the Bidder will not be entertained.

### 11. SUBMIT FOR COMPLETE PROJECT

Bidders are required to form their judgement of the quantities and character of the work by personal examination of the ground where it is to be done, and of the specifications and drawings relating to it, or by such other means as they may prefer. Bidders must not assert any misunderstanding in regard to anything to the work, or the locations and ground where it is to be executed.

It is the intention of the plans and specifications to provide finished work, and any items omitted therefrom which are clearly necessary for the completion of the work, shall be considered a portion of the work, although not directly specified.

Anything shown on the plan but not mentioned in the specification or vice versa shall be done and furnished as though specifically set forth in both.

### 12. CONTRACTS

One General Construction Contract will be agreed upon and entered into by the Town of Boston and the lowest responsible bidder. The contractor shall be responsible for communicating and coordinating the work so that scheduling and performing the work occurs in a reasonable sequence and a timely manner. Sub-contractors shall not cover up sections of work or unnecessarily complete items which will preclude another trade or a Town agency from installing or completing their work.



### 13. REJECTION OR ACCEPTANCE OF BIDS

Proposals for the work covered by this Contract may be held by the Town of Boston for the balance of forty-five (45) days from receipt of proposals and shall continue in full effect and not be withdrawn during that period until a contract has been executed with another bidder. If no contract has been executed within the forty-five (45) day period, any proposal may be withdrawn or nullified by the party or parties submitting the same, but in absence of such action, shall be deemed to be confirmed and extended in time for as long as permitted by the proposals. The Town of Boston reserves the right to consider all elements entering into the question of determining the responsibility of the bidder. Any bid, which is incomplete, conditional, obscure, or which contains conditions not called for, errors or irregularities of any kind will be considered irregular and may cause for rejection of bid. If there are irregularities between the price given in writing and the numerical amount, the price in writing shall be considered the bid. The Town of Boston expressly reserves the right to change the plans or specifications during the progress of the work, which may result in an increase or decrease of quantities, in which case such additions or deductions will be paid for at item prices to be agreed upon.

The Contract Awards will be made to the responsible bidders submitting the lowest acceptable bids for each portion of the work.

The lowest acceptable bids for the Work will be determined by combining the Base Bid with those Alternate prices selected by the Town of Boston to be included in the Contract Amount, if any.

### 14. AWARD OF CONTRACT

Notice of the awarding of a Contract to the successful bidder will be made in writing by mail by the Owner. Such notice will be forwarded to the Contractor at the address furnished by him or her in his or her proposal, as being proper legal address to which all formal notices shall be sent and to which his bid deposit should be returned.

### 15. EXECUTION OF CONTRACT

A bidder to whom a Contract award is made will be required to execute a written contract with approved sureties, within ten (10) days from the date of service of notice to that effect. If a bidder to whom a contract award is made is unable to meet this requirement, he shall forfeit his bid guaranty. A written contract executed by the successful bidder may be held by the Owner for a period of thirty (30) days following the date of the award of Contract, and if not then executed by the Owner as required by law, shall be null and void unless the Contractor shall agree to an extension of the thirty (30) day period. A bidder to whom a contract is awarded, and who is a corporate body, shall furnish at the time of the execution of the Contract, a

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resolution of the directors of the Corporation, sealed with the Corporate Seal authorizing the officer signing to execute the contract on behalf of the corporation.

### 16. THE AGREEMENT

The *Suggested Form of Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) EJCDC C-520* and *Standard General Conditions of the Construction Contract EJCDC C-700* will be used; and are available through the Engineers Joint Contract Documents Committee (EJCDC). Payment of account of the contract will be made on or about the 15th day of each month. Said payment will be ninety percent (90%) of the value based on Contract prices, of labor and materials suitable incorporated into the work up to the first day of that month, as estimated by the Engineer. At the point of Substantial Completion, as certified by the Engineer, a sum sufficient to increase the total payments to ninety-five percent (95%) of the Contract Amount will be paid provided the Contractor shall have delivered to the Town of Boston or Engineer if so requested, satisfactory releases or waivers of all claims, liens, and claims of liens of subcontractors, laborers, and material men, and all other persons, firms and associations or corporations who may have performed any labor or furnished any material under or in connection with the performance of this agreement. Final payment shall be due thirty (30) days after substantial completion of the work, provided the work be then fully completed and the contract fully performed and releases and waivers have been delivered.

Before starting operations, the Contractor will be required to furnish Certificates of Insurance called for in the General Conditions and Supplementary General Conditions and a cost breakdown in accordance with a form designated by the Engineer. Each periodic request for payment by the contractor shall be made in the form and manner determined by the Engineer and shall be accompanied by a statement in affidavit form, properly acknowledged before a Notary Public or Commissioner of Deeds, certifying to the fact that the statements in the periodic request are correct and further, that all the subcontractors, laborers and material men have been paid in full up to the extent that may have an interest in the amounts previously certified by the Engineer, and to deliver satisfactory releases or waivers from said persons, if required.

The Contractor's periodic request for payment shall be consistent with the original schedule of values for each subitem; the authorized additions or deductions to the same as a result of change orders, the total contract value; the percentage of the work completed up to date of the request, and the value thereof.

### 17. CONTRACT BONDS

The successful bidder will be required to furnish separate Performance and Labor and Material Payment Bonds, each in a sum not less than 100% of the Contract Amount for the completed work. Each bond shall be an obligation of an approved surety company, authorized to do business in the State of New York and having local agents to execute said bond. Agents of

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bonding companies that write bonds for this Contract shall furnish power of attorney, bring the seal of the company, evidencing such agent's authority to execute the particular types of bonds to be furnished. A copy of this proof shall be attached to the signed copy of the Contract. The Contractor will pay for premiums for such bonds.

### 18. INJURY TO WORK

The Contractor shall so conduct his or her operations so as not to damage existing structures or work installed either by him/her or by other contractors. In case of such damage resulting from his or her own operation, he or she shall repair and make good as new the damaged portion at his or her own expense.

### 19. RIGHTS OF THE OWNER

In the event of default by the Contractor to meet scheduled completion dates, the Town of Boston may enter and take possession of said work or any part thereof provided the work has reached, or thereafter reaches, such a degree of completion as will, in the Town of Boston's opinion, make the work reasonably safe, fit and convenient for the use for which it was intended. Such possession of use shall not be considered a final acceptance of the work so taken or used.

### 20. TIME FOR COMPLETION/LIQUIDATED DAMAGES

Procurement and preparatory work called for shall proceed immediately upon receipt of signed contracts or letter of intent by the Owner. Times of Substantial Completion and Final Completion shall be no later than **January 31, 2017 and February 28, 2018 respectively**. ***Liquidated damages of \$200 per day will be assessed the contractor for each day the project is not finished after either the substantial or final agreed upon completion dates are not complied with.***

### 21. EXTENSION OF TIME: NO WAIVER

If the Contractor shall be delayed in the completion of his work by reason of unforeseeable causes beyond his control and without fault or negligence, including, but not restricted to, Acts of God, or of the public quarantine restrictions, strikes, riots, civic commotions, or freight embargoes, the period hereinabove specified for completion of his work shall be extended by such time as shall be fixed by Town of Boston.

### 22. GUARANTIES

The Contractor shall in all respects guaranty the Work to the Town of Boston on the form bound herewith, and responsible for all material, equipment, and workmanship of the Work. The Contractor shall forthwith repair, replace or remedy in a manner approved by the Town of

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Boston any such material, equipment workmanship, or other part of the Work found by the Town of Boston to be defective or otherwise faulty and not acceptable to the Town of Boston, which defect or fault appears during the period of one (1) year, or such longer period as may be prescribed by the Contract, from the date of Physical Completion or any part thereof, by the Town of Boston. The Contractor shall also pay for any damage to the Work resulting from such defect or fault. The date of this guaranty commences on the date of the Substantial Completion and will expire one year later.

### 23. EQUIVALENTS

Where, in these specifications, certain kinds, types, brands or manufacturers of material are named, they shall be regarded as the required standard of quality. Where two or more are named these are presumed to be equal, and the contractor may select one of those items. If the contractor desires to use any kind, type, brand, or manufacture of material other than those named in the specification, he shall indicate in writing, when requested and prior to award of contract, what kind, type, brand, or manufacture is included in the base bid for the specified detail, wherein it differs from the quality and performance required by the base specifications, and such other information as may be required by the Town of Boston.

The Contractor is directed to review item 5 SUBSTITUTIONS.

### 24. CHANGES AND ALTERATIONS

The Town of Boston may at any time, by a written order, and without notice to the sureties, require the performance of such changes and alterations in the work as it may find necessary or desirable. The amount of compensation to be paid the Contractor for any changes and alterations as so ordered, shall be determined as follows: (A) By such applicable unit prices, if any as set forth in the contract; or (B) If no such unit prices are set forth, then by a lump sum mutually agreed upon by the Town of Boston and the Contractor; or (C) If no such unit prices are set forth, and the parties cannot agree upon a lump sum, then by the actual net cost in money to the Contractor of the materials and of the wages of applied labor (including premiums for workmen's compensation insurance) required for such changes and alteration, plus 15% on the Contractor's work and 10% on the Subcontractor's work as compensation for all other items of profit, and costs or expenses including administration, overhead, superintendence, insurance (other than workman's compensation insurance), allowances made by the Contractor, additional premiums upon the performance *guaranty* of the Contractor and the use of small tools.

### 25. NAMES OF SUBCONTRACTORS

In the event that the Contractor desires to subcontract any part of the Work, it shall first submit to the Engineer a statement showing the character and amount of the Work to be subcontracted and the party to whom it is proposed to subcontract the same. Submission of said statement shall be

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30 days prior to the time the Contractor plans to actually employ the proposed subcontractor. The Contractor shall also furnish a statement as to the proposed subcontractor's experience, financial ability, or other qualifications for properly performing the Work proposed to be subcontracted. In the event that the Owner or the Engineer objects for any reason to the Contractor contracting with a particular Subcontractor, the Owner or the Engineer shall provide the Contractor with notice of the same within ten (10) business days after submission by the Contractor to the Owner and the Engineer of the name and qualifications of such Subcontractor. The Contractor shall not contract with any such Subcontractor and shall promptly provide the Engineer with the name, experience, financial ability and other qualifications of a substitute Subcontractor.

The Contractor warrants that all subcontractors selected by it are financially able, sufficiently experienced, and otherwise qualified to perform the work of their subcontracts.

The Contractor shall be solely responsible for the acts or defaults of subcontractors and of such subcontractors' officers, agents and employees each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.

The Contractor shall be fully responsible for the administration, integration, coordination, direction, safety practices and supervision of all of its subcontractors.

No subcontractor shall be permitted to work at the Site unless it furnishes and maintains the Insurance required by this Contract. Certificates of Insurance shall be provided to the Owner, prior to admission of each subcontractor to the site.

The Contractor shall execute with each of its subcontractors and all subcontractors shall execute with their sub-subcontractors a written agreement which shall bind the latter to the terms and provisions of this Contract insofar as such terms and provisions are applicable. The Contractor and all subcontractors and sub-subcontractors shall promptly, upon request, file with the Owner a conformed copy of such agreements, from which the price and terms of payment may be deleted.

If, at any time during the progress of the Work to be performed, the Owner decides that any subcontractor of any tier is incompetent, careless or uncooperative, the Engineer as directed by the Owner will notify the Contractor accordingly and immediate steps will be taken by the Contractor for cancellation of such subcontract. Such termination, however, shall not give rise to any claim by the Contractor or by such subcontractor for loss of prospective profits on work unperformed or work unfinished, and a provision to that effect shall be contained in all subcontracts.

No provisions of this Contract shall create or be construed as creating any contractual

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relation between the Owner and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

The divisions or sections of the Contract Documents are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

The Owner reserves the right to limit the total amount of subcontracts to sixty percent of the total contract price.

### 26. PERMITS AND LICENSES

All permits and licenses required for and during construction of this project will be secured and paid for by the Contractor. All costs incurred shall be included in the Bid Price.

### 27. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

The Contractor at its expense shall procure and shall maintain the insurance required in this section and elsewhere in this Contract to be provided by the Contractor. The Contractor shall require each subcontractor to procure and maintain the insurance required by this Contract to be provided by subcontractors.

The contractor shall procure (in addition to the coverage required in other sections of this Contract):

- (a) Workers' Compensation and Disability Benefits with coverage to the statutory limits as required by the laws of the state in which the project is located in sufficient limits to discharge obligations under all applicable state Workers' Compensation laws, and, where applicable, the United States Longshoremen and Harbor Workers Act, the Jones Act and Admiralty or Maritime Law.
- (b) Employers Liability Insurance, including occupational disease coverage, in the amount of at least \$1,000,000.
- (c) Commercial General Liability Insurance providing coverage for the Contractor for legal liability and customarily covered expenses for bodily injury and property damage with respect to the Work under this Contract, including but not limited to liability for bodily injury and property damage: 1) arising out of operations performed for the Contractor by independent contractors or arising out of acts or omissions of the Contractor in connection with its general supervision of such operations (Contractors' Protective Liability Insurance), 2) occurring after operations have been completed or abandoned (Completed Operations Insurance), 3) arising, after physical

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possession of the products has been relinquished, 4) out of the Contractor's products or reliance upon a representation or warranty with respect thereto (Products Liability Insurance), and 5) assumed under this Contract (Contractual Liability Insurance). This policy shall include coverage for explosion, collapse and underground operations (XCU hazards) and shall provide coverage in the amount of at least \$1,000,000 per Occurrence, \$3,000,000 in the General Aggregate, and \$3,000,000 in the Products Completed Aggregate. This policy shall contain a per Project Aggregate Endorsement.

- (d) Comprehensive Automobile Liability insurance providing coverage for the Owner and the Contractor for legal liability (and customarily covered expenses) for bodily injury and property damage arising out of the ownership, maintenance, operation, use, loading, or unloading owned, non-owned and hired automobiles. The policy shall provide coverage in the amount of at least \$1,000,000 Combined Single Limit, and shall include the MCS-90 Sudden and Accidental Pollution endorsement.
- (e) Owners protective liability insurance providing coverage for the Owner as the named insured for legal liability (and customarily covered expenses) for bodily injury and property damage arising out of the operations under this Contract performed for the Owner by the Contractor or any of its subcontractors or out of acts or omissions of the Owner in connection with the Owner's general supervision of such operations. The policy shall provide coverage in the amount of at least \$2,000,000 Per Occurrence and \$2,000,000 in the Aggregate.
- (f) The Contractor shall obtain and maintain Builders Risk/Installation Floater insurance in a form acceptable to the Owner upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include as named insured the Owner, Contractor, Engineer, and Subcontractor of any tier. This insurance shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" insurance for physical loss or damage including without duplication of coverage at least: theft, vandalism, malicious mischief, transit, collapse, false work, temporary buildings, debris removal, flood, earthquake, testing and damage resulting from defective design, workmanship or material. This insurance shall not be restricted, canceled or lapsed for reasons of occupancy. The limits of the coverage shall be at least equal to the full contract amount for the project.
- (g) Umbrella Coverage/Excess Liability Insurance providing coverage for the Owner and the Contractor for costs in excess of the limits set forth in paragraphs (b), (c) and (d) above. This policy shall provide coverage in the amount of at least \$5,000,000 Per Occurrence and \$5,000,000 in the Aggregate. Owner reserves the right to increase or decrease the minimum limits depending on the project value and complexity.

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The Town of Boston and Engineer shall be named as additional insured on policies (c), (d), (f) and (g). Each subcontractor shall provide (in addition to the coverage required in other sections of this Contract):

- (a) Comprehensive General Liability Insurance providing coverage for the subcontractor in the form as hereinabove required of the Contractor including Contractors Protective Liability Insurance, Completed Operations Insurance, Products Liability Insurance, and Contractual Liability Insurance.
- (b) Comprehensive automobile liability insurance providing coverage for the subcontractor as hereinabove required of the Contractor.

Each policy of insurance required under the Contract whether for Contractor or Subcontractor shall be issued by an insurance company approved by the Owner, authorized to issue such policy in the State in which the Project is located, shall be in form and content satisfactory to the Owner and its attorney, with a minimum of A-Best Insurance rating and shall provide: 1) that the policy shall not be changed or canceled until the expiration of thirty days after written notice to the Owner and Contractor, and 2) that it shall be automatically renewed upon expiration and continued in force unless the Owner and Contractor are given thirty days written notice to the contrary, 3) that Contractors insurance shall be primary to any other coverage of Owner or engineer and, 4) that the insurer has agreed to waive rights of subrogation as the Owner and Engineer.

No Work shall be commenced under the Contract until the Contractor has delivered to the Owner proof of issuance of all policies of insurance required by the Contract to be procured by the Contractor. Before commencing any Work under the Contract, each subcontractor shall deliver to the Owner proof of the issuance of all policies of insurance required to be provided by the subcontractor. Nothing herein shall limit or substitute for the liability of Contractor for the liabilities of its subcontractors in connection herewith. The Contractor and subcontractors shall deliver to the Owner duplicate originals of each policy in which the Owner is named insured, certificates of all other insurance in such number as the Owner may require, and such alternate or additional proof of coverage as the Owner demands. The Contractor and each subcontractor shall from time to time upon the demand of the Owner promptly deliver to the Owner such proof of insurance as the Owner may require.

In the event of the failure of the Contractor to furnish and maintain such Insurance, the Owner shall have the right to take out and maintain such insurance for and in the name of the Contractor, and the Contractor agrees to pay the cost thereof and to furnish all necessary information to permit Owner to take out and maintain such insurance for the account of the Contractor. Compliance by the Contractor with the foregoing requirements to carry insurance and furnish certificates shall not relieve the



## Highway Department Storage Building – Town of Boston, NY

Contractor from liability under any provision of this Contract.

All liability insurance required by this Contract shall be maintained in force during the term of this Contract and until the later of one year after the date of final acceptance or one year after the Contractor or any subcontractor performs any Work under the Contract.

### ALTERNATIVE OR ADDITIONAL INSURANCE

If required by the Owner, the Contractor and any subcontractor shall provide any other alternative or additional insurance coverage, with appropriate additions or deductions from the Contract price to be made pursuant to the provisions applicable to change orders.

### 28. AVAILABILITY OF PLANS AND SPECIFICATIONS

Copies of the Drawings, Specifications and Bidding Documents may be examined and obtained at the following offices:

*Town Clerk's Office  
Town of Boston  
8500 Boston State Road  
Boston, NY 14025  
(716) 941-6113 EXT - 0*

### 29. WAGES

The successful bidder shall be responsible for paying the higher of the Federal or NYS prevailing wage to all workers. The successful bidder shall be required to submit Certified Payroll reports with every Application for Payment.

### 30. MBE and WBE PARTICIPATION

This contract will be funded wholly or partially with tax revenue, and as such, is subject to all state and federal rules and regulations pertinent thereto, including, but not limited to, federal policy of encouraging the participation of minority and women business enterprises as sources of suppliers, equipment, construction and services.

### 32. TOWN OF BOSTON PARTICIPATION

The Town of Boston Highway Department will perform all site preparation, site electrical and earthwork required for the project. This work shall include clearing & grubbing, rough and final grading of the site, extension of underground electrical power to the building, foundation excavation, and backfilling (including materials within and outside building limits). The

Highway Department Storage Building – Town of Boston, NY

Contractor shall coordinate and cooperate with the Town Highway Superintendent with regard to scheduling and performing the transitional areas of the project.

Highway Department Storage Building – Town of Boston, NY

**BID FORM – HIGHWAY DEPARTMENT STORAGE BUILDING**  
8500 Boston State Road, Town of Boston, NY

October 27, 2017

This Bid is submitted to:

**Town of Boston**  
8500 Boston State Road  
Boston, NY 14025

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner on the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**Bidder's Acknowledgements:**

Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 45 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

**Bidder's Representations:**

Bidder has examined and carefully studied the Bidding Documents as prepared by the Engineer and all Addenda to those Documents. Receipt is acknowledged of the following addenda, if any:

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

The Undersigned, has visited the site of the proposed project, and has familiarized himself/herself with all the general and local conditions affecting the cost, progress and performance of the work.

Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work. Bidder will submit written evidence of its authority to do business in the State of New York not later than the date of its execution of the agreement. The contract will be funded wholly or partially with taxpayer funds, and as such, is subject to all state and federal rules and regulations pertinent thereto. Wages paid on the project shall be the higher of the NYS or Federal prevailing rate in effect at the time.

Highway Department Storage Building – Town of Boston, NY

**Basis of Bid:**

Bidder will complete the Work in accordance with the Contract Documents for a Lump Sum of

\$\_\_\_\_\_ (numerical)

\_\_\_\_\_ **Dollars** (written).

**Contract Times:**

Bidder agrees that the Work will be substantially complete and ready for utilization on or before January 31, 2017 and finally complete and ready for final payment on or before February 28, 2018. Also see Item 20 in the Instructions to Bidders. Bidder accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to complete the Work within the Contract Times.

**Attachments to this Bid:**

The following documents are attached to and made a condition of this Bid:

1. Required Bid security in the form of a bid bond or cashier's check in the amount of 5% of the Bid amount.
2. Non-Collusion Certificate

Highway Department Storage Building – Town of Boston, NY

**Bidder's Representations:**

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders and the General Conditions.

**Bid Submittal**, This Bid is submitted by:

**An Individual**

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
By (individual's signature) (Seal)

\_\_\_\_\_  
Doing business as

**A Partnership**

\_\_\_\_\_  
Partnership Name (typed or printed)

\_\_\_\_\_  
By (general partner's signature – attach evidence of authority to sign) (Seal)

\_\_\_\_\_  
Name (typed or printed)

**A Corporation**

\_\_\_\_\_  
Corporation Name (Seal)

\_\_\_\_\_  
State of Incorporation

\_\_\_\_\_  
Type (General Business, Professional, Service, Limited Liability)

\_\_\_\_\_  
By (Signature – attach evidence of authority to sign)

\_\_\_\_\_  
Name (typed or printed) (Seal)

\_\_\_\_\_  
Title (Corporate Seal)

\_\_\_\_\_  
Attest (Signature of Corporate Secretary)

Highway Department Storage Building – Town of Boston, NY

Date of Qualification to do business in New York State is \_\_\_\_\_.

**Bidder's Business address:**  
(Required of all Bidders)

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Submitted on \_\_\_\_\_, 2015  
Date

**NON-COLLUSIVE BIDDING CERTIFICATION**

(a) By signing of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury that to the best of their knowledge and belief:

(1) The prices in this bid have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any other competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the opening directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

SIGNED: \_\_\_\_\_

TITLE: \_\_\_\_\_

FIRM: \_\_\_\_\_

DATE: \_\_\_\_\_

**LEGAL NOTICE  
NOTICE TO BIDDERS  
TOWN OF BOSTON**

**NOTICE IS HEREBY GIVEN THAT** sealed proposals will be received and considered by the Town Board of the Town of Boston, County of Erie, State of New York on the following:

**2018 ¾ TON 4WD DOUBLE CAB PICKUP TRUCK**

Bid specifications may be obtained at the Office of the Town Clerk Monday thru Friday 9 am – 4 pm and Saturday 9 am – 12 pm (716-941-6113 ext. 0).

A bid for the **trade in of one used 2015 3/4/Ton 4WD Chevy Pickup Truck** is requested. This truck may be inspected at the Boston Highway Garage. Call (716) 941-5869 to schedule an appointment.

Sealed bids must be clearly marked and submitted to the Office of Dawn M. Boncal, Boston Interim Town Clerk, 8500 Boston State Road, Boston, New York 14025 either by mail or in person by Friday October 20, 2017 at which time all bids will be publicly opened and read aloud in the Boston Town Hall, 8500 Boston State Road, Boston, New York 14025.

All sealed bids must include a delivery date, which shall be 90 days from the bid award date. Each day after shall incur a \$100 penalty. A statement of Non-Collusion must accompany the bid.

The Town Board and Highway Superintendent shall be the sole judges of all proposals. The Boston Town Board reserves the right to accept or reject any and all bids and to accept the bid, which their opinion meets the intent of the specifications and is in the best interest of the Town of Boston.

**Dated:**

**Published:**

**BY ORDER OF THE TOWN BOARD**

**DAWN M. BONCAL, INTERIM TOWN CLERK**




## quote on 1025r

Daniel Berges <DBerges@landproequip.com>

Fri 9/29/2017 9:25 AM

Inbox

To: Robert Telaak <hwysuper@townofboston.com>;

 1 attachments (41 KB)

1025rboston.pdf;

Attached is the quote for the 1025R tractor with the trade. it is on state contract with all the information on the quote.

Thanks Dan

Dan Berges  
Turf Sales Specialist  
LandPro Equipment  
336 Route 240  
Springville NY 14141  
716-592-4058  
716-592-0894 FAX

RECEIVED  
BOSTON TOWN CLERK  
SEP 29 11:19:55

**ALL PURCHASE ORDERS MUST BE MADE OUT  
TO (VENDOR):**

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580; DUNS#: 60-7690989

**ALL PURCHASE ORDERS MUST BE SENT  
TO DELIVERING DEALER:**

LandPro Equipment LLC  
336 Vaughn Street  
Springville, NY 14141  
716-592-4058  
mailspringville@landproequip.com

**Quote Summary****Prepared For:**

Town Of Boston Highway Supt  
8500 Boston State Rd  
Boston, NY 14025

**Delivering Dealer:**

**LandPro Equipment LLC**  
Dan Berges  
336 Vaughn Street  
Springville, NY 14141  
Phone: 716-592-4058  
dberges@landproequip.com

**Quote ID:** 16146083**Created On:** 29 September 2017**Last Modified On:** 29 September 2017**Expiration Date:** 27 October 2017

Equipment Summary	Suggested List	Selling Price	Qty	Extended
JOHN DEERE 1025R Sub-Compact Utility Tractor (18 PTO hp) <b>Contract:</b> NY Piggyback NJPA Landscaping and Grounds Related Equipment PC66663 (PG XN) <b>Price Effective Date:</b> September 29, 2017	\$ 13,804.00	\$ 11,457.32 X	1 =	\$ 11,457.32
JOHN DEERE 60D 7-Iron Mid Mount Side Discharge Mower (1 Family Tractors) <b>Contract:</b> NY Piggyback NJPA Landscaping and Grounds Related Equipment PC66663 (PG XN) <b>Price Effective Date:</b> September 29, 2017	\$ 2,237.00	\$ 1,856.71 X	1 =	\$ 1,856.71
JOHN DEERE 3-Bag Power Flow System <b>Contract:</b> NY Piggyback NJPA Landscaping and Grounds Related Equipment PC66663 (PG XN) <b>Price Effective Date:</b> September 29, 2017	\$ 2,307.61	\$ 1,915.31 X	1 =	\$ 1,915.31
<b>Equipment Total</b>				<b>\$ 15,229.34</b>

Trade In Summary	Qty	Each	Extended
JOHN DEERE X740 ULT TURF 2WS	1	\$ 2,700.00	\$ 2,700.00
PayOff			\$ 0.00
Total Trade Allowance			\$ 2,700.00
<b>Trade In Total</b>			<b>\$ 2,700.00</b>
<b>Salesperson : X</b> _____	<b>Accepted By : X</b> _____		

*Confidential*



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**ALL PURCHASE ORDERS MUST BE MADE OUT  
TO (VENDOR):**

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580; DUNS#: 60-7690989

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**ALL PURCHASE ORDERS MUST BE SENT  
TO DELIVERING DEALER:**

LandPro Equipment LLC  
336 Vaughn Street  
Springville, NY 14141  
716-592-4058  
mailspringville@landproequip.com

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\* Includes Fees and Non-contract items

**Quote Summary**

Equipment Total	\$ 15,229.34
Trade In	\$ (2,700.00)
SubTotal	<b>\$ 12,529.34</b>
Est. Service	\$ 0.00
Agreement Tax	
Total	\$ 12,529.34
Down Payment	(0.00)
Rental Applied	(0.00)
<b>Balance Due</b>	<b>\$ 12,529.34</b>

Salesperson : X \_\_\_\_\_

Accepted By : X \_\_\_\_\_

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*Confidential*



**JOHN DEERE**

# Selling Equipment

Quote Id: 16146083

Customer Name: TOWN OF BOSTON HIGHWAY SUPT

**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580; DUNS#: 60-7690989

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**

LandPro Equipment LLC  
336 Vaughn Street  
Springville, NY 14141  
716-592-4058  
mailspringville@landproequip.com

## JOHN DEERE 1025R Sub-Compact Utility Tractor (18 PTO hp)

**Contract:** NY Piggyback NJPA Landscaping and Grounds  
Related Equipment PC66663 (PG XN)

**Suggested List \***

\$ 13,804.00

**Price Effective Date:** September 29, 2017

**Selling Price \***

\$ 11,457.32

\* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
028JLV	1025R Sub-Compact Utility Tractor (18 PTO hp)	1	\$ 13,884.00	17.00	\$ 2,360.28	\$ 11,523.72	\$ 11,523.72
<b>Standard Options - Per Unit</b>							
0202	United States	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	English Operator's Manual	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
1795	Less Loader	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
3749	Less Backhoe	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
4061	Less iMatch Quick Hitch	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
Category 1							
5203	26x12-12 (4PR, R3 Turf, 1 Position)	1	\$ -48.00	17.00	\$ -8.16	\$ -39.84	\$ -39.84
6203	18x8.50-10 (4PR, R3 Turf, 1 Position)	1	\$ -32.00	17.00	\$ -5.44	\$ -26.56	\$ -26.56
<b>Standard Options Total</b>			<b>\$ -80.00</b>		<b>\$ -13.60</b>	<b>\$ -66.40</b>	<b>\$ -66.40</b>
<b>Value Added Services Total</b>			<b>\$ 0.00</b>			<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>Suggested Price</b>						<b>\$ 11,457.32</b>	
<b>Total Selling Price</b>			<b>\$ 13,804.00</b>		<b>\$ 2,346.68</b>	<b>\$ 11,457.32</b>	<b>\$ 11,457.32</b>

## JOHN DEERE 60D 7-Iron Mid Mount Side Discharge Mower (1 Family

**Contract:** NY Piggyback NJPA Landscaping and Grounds  
Related Equipment PC66663 (PG XN)

**Suggested List \***

\$ 2,237.00

**Price Effective Date:** September 29, 2017

**Selling Price \***

\$ 1,856.71

\* Price per item - includes Fees and Non-contract items



JOHN DEERE

# Selling Equipment

Quote Id: 16146083

Customer Name: TOWN OF BOSTON HIGHWAY SUPT

ALL PURCHASE ORDERS MUST BE MADE OUT  
TO (VENDOR):

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580; DUNS#: 60-7690989

ALL PURCHASE ORDERS MUST BE SENT  
TO DELIVERING DEALER:

LandPro Equipment LLC  
336 Vaughn Street  
Springville, NY 14141  
716-592-4058  
mailspringville@landproequip.com

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
5325M	60D 7-Iron Mid Mount Side Discharge Mower (1 Family Tractors)	1	\$ 2,237.00	17.00	\$ 380.29	\$ 1,856.71	\$ 1,856.71
<b>Standard Options - Per Unit</b>							
0202	United States	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	English	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
1100	Attaching Parts (Mechanical Mower Lift)	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
2000	Manual PTO Connection	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>Standard Options Total</b>			<b>\$ 0.00</b>		<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>Suggested Price</b>							<b>\$ 1,856.71</b>
<b>Total Selling Price</b>			<b>\$ 2,237.00</b>		<b>\$ 380.29</b>	<b>\$ 1,856.71</b>	<b>\$ 1,856.71</b>

## JOHN DEERE 3-Bag Power Flow System

Contract: NY Piggyback NJPA Landscaping and Grounds  
Related Equipment PC66663 (PG XN)

Suggested List \*

\$ 2,307.61

Price Effective Date: September 29, 2017

Selling Price \*

\$ 1,915.31

\* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
140LGX	3-Bag Power Flow System	1	\$ 1,534.00	17.00	\$ 260.78	\$ 1,273.22	\$ 1,273.22
<b>Standard Options - Per Unit</b>							
0202	United States	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	English	1	\$ 0.00	17.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>Standard Options Total</b>			<b>\$ 0.00</b>		<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>Dealer Attachments/Non-Contract/Open Market</b>							
BLV10028	Hitch Plate for 3 Bag MCS	1	\$ 54.57	17.00	\$ 9.28	\$ 45.29	\$ 45.29
BM24514	60 In. High Performance Power Flow	1	\$ 719.04	17.00	\$ 122.24	\$ 596.80	\$ 596.80
<b>Dealer Attachments Total</b>			<b>\$ 773.61</b>		<b>\$ 131.51</b>	<b>\$ 642.09</b>	<b>\$ 642.09</b>



JOHN DEERE

## Selling Equipment

Quote Id: 16146083

Customer Name: TOWN OF BOSTON HIGHWAY SUPT

**ALL PURCHASE ORDERS MUST BE MADE OUT  
TO (VENDOR):**

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580; DUNS#: 60-7690989

**ALL PURCHASE ORDERS MUST BE SENT  
TO DELIVERING DEALER:**

LandPro Equipment LLC  
336 Vaughn Street  
Springville, NY 14141  
716-592-4058  
mailspringville@landproequip.com

<b>Suggested Price</b>		<b>\$ 1,915.31</b>		
<b>Total Selling Price</b>	<b>\$ 2,307.61</b>	<b>\$ 392.29</b>	<b>\$ 1,915.32</b>	<b>\$ 1,915.31</b>

**TOWN OF BOSTON**  
**APPLICATION FOR USE OF FACILITY**

**This Application is subject to Approval by the Town Board**

**\*\*\*Application, deposit, plans, layouts and any additional proof from other agencies must be completed and submitted at time of application. Must be a Boston Resident to request use.\*\*\***

Name/Organization Boston Historical Society Date 29 Sept / 2017

Name of person responsible for facilities Kathy Prackajlo  
Title President

Applicant Address 5900 Old Orchard Dr., Hingham 01905

Applicant Daytime Phone # 440-4478 # Of Attendees: \_\_\_\_\_

Date(s) Requested\* 14 Nov. 2017 Time 7-9 Type of Event Board Meeting  
17 April 2018 Time 5-9 Pot Luck dinner  
Set Up 5 Take Down 9 am (17 April)

**Sporting Leagues — Please attach Schedule**

**\*\*Certificate of Insurance from your organization must be submitted at least 1 week before your 1st sporting event\*\***

**\*\*\*Please confirm that your dates do not conflict with any Sporting Leagues\*\*\***

Baseball—Josh Haeick	649-6170	Football—Chris Desiderio	312-0334
Softball—Paul DiCorso	941-6994	Soccer—John Stressinger	972-0606

**I, THE UNDERSIGNED, REQUEST PERMISSION TO USE THE FOLLOWING: (check all that apply)**

<input checked="" type="checkbox"/> South Boston Park Shelter	<input type="checkbox"/> Boston Town Park
<input checked="" type="checkbox"/> Community Room - 14 Nov.	<input type="checkbox"/> Lions Shelter
<input checked="" type="checkbox"/> Town Hall Community Room w/ Kitchen (17 April)	<input type="checkbox"/> Small Shelter
<input type="checkbox"/> Other _____	<input type="checkbox"/> Bathroom Facilities
	<input type="checkbox"/> Town Fields

**WILL YOUR EVENT HAVE ANY OF THE FOLLOWING: (Check all that apply)**

<input type="checkbox"/> Parade	- Who will provide traffic control? _____ (Submit proof in writing from that agency at time of application)
<input type="checkbox"/> Parking (over 50)	- Please submit parking Plan: _____ (This must be approved by Park's Superintendent before submittal to Town Clerk with application)
<input type="checkbox"/> Rides	(Certificate of Insurance from your insurance company must be submitted 1 week before use begins)
<input type="checkbox"/> Fireworks	(Certificate of Insurance from Firework Vendor must be submitted 1 week before your event)
	- Who will provide Fire Stand By? _____ (Submit proof in writing from that agency at time of application)
<input type="checkbox"/> Vendors (over 5)	- Please submit Layout _____ (This must be approved by Park's Superintendent before submittal to Town Clerk with application)
<input type="checkbox"/> Other	- Please indicate on your plan _____ (This must be approved by Park's Superintendent before submittal to Town Clerk with application)

RECEIVED  
BOSTON TOWN CLERK  
79 SEP 29 AM 3:15

Alcoholic Beverages:  
(IF SERVING ALCOHOL, CHECK ALL  
THAT APPLY)

Are you serving alcohol?  
Are you having a Private Party?  
Are you having a Public Special Event?

☐ Yes ☒ No  
☐ Yes ☒ No  
☒ Yes ☐ No

**PLEASE NOTE:** ALL parties must submit a Certificate of Insurance 1 week before your event.  
Public Special Events serving alcohol must also submit a copy of your NYS Liquor  
License 1 week before your event.

Certificates of Insurance: You must list the Town of Boston as additionally insured and the dates of the event must be on the Certificate of Insurance. Your insurance agent can help you with this. The following is a list of Liability amounts needed:

Private Party (Host Liquor)	\$ 500,000
Public Special Event (Liquor Legal)	\$1,000,000
Ride Vendor	\$1,000,000
Fireworks	\$1,000,000
Sporting Leagues	\$1,000,000

**FEES & DEPOSIT:** A **\$100** deposit/processing fee and **\$25** per day bathroom use fee must be included with this application. These funds will be utilized to cover the cost of bathroom supplies, final clean up and administrative costs. A refund of **\$50** will be returned when facilities are cleaned to the satisfaction of the inspecting authority and, if applicable, return of keys.

**KEYS:** Keys may be picked up on the business day before the scheduled event and should be returned the first business day immediately following.

**COMMUNITY EVENTS SIGN:** If your organization needs to use the Community Announcement sign near the Emergency Squad Bldg, the "Request to use Coming Events Sign" application must be completed and submitted to the Highway/Parks Dept. This form can be obtained from the Town Clerk's Office or at [www.townofboston.com](http://www.townofboston.com).

Requests may be submitted after September 1st the year before your event.

I agree that all facilities used will be properly cleaned to the best of my ability upon completion of the event and that I will be responsible for any damages caused to any of the facilities or grounds. I will submit to the Town Clerk all Certificates of Insurance and NYS Liquor License if necessary at least 1 week prior to my event. I have contacted the above mentioned sporting leagues and there are no conflicts with dates.

SIGNATURE OF APPLICANT: Katherine E. Prackajlo

Upon Completion, please submit to Town Clerk

\*\*\*\*\*

DEPOSIT AND FEE REC'D \_\_\_\_\_ APPROVED/DENIED : \_\_\_\_\_  
(date) (date)

INSPECTION: \_\_\_\_\_ DEPOSIT RETURNED: \_\_\_\_\_  
(date) (date)



## LAND LEASE AGREEMENT

**THIS LAND LEASE AGREEMENT** ("Lease") is dated as of the date last executed below (the "Effective Date") between **the Town of Boston** ("you"), and **Up State Tower Co., L.L.C.**, a Maryland limited liability company ("we" or "us").

You agree to lease a portion of the real property described on **Exhibit A** (the "Property") to us and we agree to rent it from you so that we can construct and operate a communications facility as described on **Exhibit B**. For the mutual promises provided in this Lease, you and we agree to the terms in this Lease.

1. **LEASE OF PREMISES.** You agree to lease to us, and we agree to lease from you, an approximately 60 ft. x 60 ft. portion of the Property located at Latitude 42.649951, Longitude -78.745554, commonly known as 8500 Boston State Road, and as more particularly set forth on **Exhibit B** (the "Premises"). In addition, you agree to grant easements in, under and across the Property to us: (i) for entering, exiting and accessing the Premises, by foot, car and truck, by people working with us or for us, or people to whom we have assigned this Lease, (ii) to install utility services at the Premises, and (iii) for installing and taking care of communications equipment, utility wires, poles, cables, conduits, and pipes necessary for our use of the Premises, extending from the nearest public right-of-way, over, under and across any property of yours to the Premises (collectively, the "Easements") in the location(s) shown on **Exhibit B**; however, if any utility company requires any utility Easement to be located in a location other than what is shown on **Exhibit B**, you agree to relocate the utility Easement to the location required by the utility company. The Easements are non-exclusive easements and we can construct a roadway over the Easements. If you or your other tenants damage the Easements, then you or your other tenants will have to share in the reasonable costs to repair the Easements.

2. **USE.** We can use the Premises for sending and receiving signals and installing, building, taking care of, operating, replacing and upgrading our communications fixtures, e.g. a pole or tower, and our related equipment, cables, antennas, equipment shelters or cabinets and fencing and any other items we need to successfully and securely use the Premises (collectively, the "Communications Facility"). We can alter, replace, expand and upgrade the Communications Facility at any time during the term of this Lease. We agree to follow all applicable laws and regulations when we build or modify the Communications Facility. We agree to keep the Communications Facility in good condition and repair. You will allow us 24-hours-a-day, 7-days-a-week access to the Premises and the Easements during the Term.

3. **TERM.** The initial term of this Lease (the "Initial Term") is four (4) years, beginning on the day: (i) we begin construction of the Communications Facility, or (ii) six (6) months after the date that we receive all governmental approvals necessary, including any state or federal requirements, for the operation of the Communications Facility (the "Approvals"), whichever is earlier (the "Beginning Date"). This Lease will be automatically renewed, upon the same terms and conditions, for nine (9) additional terms of five (5) years each (the "Renewal Terms"), unless we notify you that we're not going to renew at least thirty (30) days prior to the end of the then-current Term. "Term" means the Initial Term and any Renewal Terms.

4. **RENT.** Commencing on the Beginning Date, we will pay you monthly rent ("Rent") with partial months prorated. Rent will be sent to you every month at your address in Section 24(g). Rent for the initial term will be calculated and paid based on the following schedule:

\$200.00 per month for us and one cellular carrier tenant using the Communications Facility;  
\$400.00 per month for us and two cellular carrier tenants using the Communications Facility;  
\$600.00 per month for us and three cellular carrier tenants using the Communications Facility;  
\$800.00 per month for us and four cellular carrier tenants using the Communications Facility; or  
\$1,000.00 per month for us and five cellular carrier tenants using the Communications Facility.

A cellular carrier tenant shall be any tenant that is using the Communications Facility for cellular service and is paying us for such use of the Communications Facility. We shall notify you of the addition of any new cellular carrier tenant(s) or the loss of any existing cellular carrier tenant(s) within twenty (20) Business Days of such addition or loss. In the first year of each Renewal Term, the monthly Rent will increase by two percent (2%) over the Rent paid during the previous Term.

**5. FEASIBILITY PERIOD.**

(a) From the Effective Date until the Beginning Date (the "Feasibility Period"), we may conduct tests and inspections of the Property, survey the Property (if desired), and get title reports from a title company chosen by us (all of which will be at our own expense), to determine if the Property is suitable for our use. We won't be responsible for any Property condition discovered during our investigation, but we will repair any damage to the Property caused by our investigation.

(b) You will cooperate with us, support any required zoning applications, and sign all documents required to permit our use and investigation of the Premises and the Easements.

(c) If we decide for any reason that the Property isn't suitable for our use, we can terminate this Lease by sending you written notice prior to the Beginning Date. If we terminate this Lease, neither you nor us will have any further obligation to each other, except as otherwise expressly provided herein.

**6. MAINTENANCE/UTILITIES.**

(a) We will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. You will maintain the Property and access thereto and all areas of the Premises where we do not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. You will also maintain any landscaping on the Property, including any landscaping we install as required by any law or regulation.

(b) We will pay for all utilities services we use at the Premises, and we can (at our expense) install or improve utility services at the Premises. You agree to help us get the necessary utility services to the Premises.

**7. ASSIGNMENT/SUBLEASING.** We can assign, transfer, license or sublease all or part of our rights in the Premises pursuant to this Lease, as long as we let you know and as long as the party to whom we assign or transfer such rights agrees to comply with this Lease. Additionally, we can mortgage, assign or grant a security interest in this Lease or our Communications Facility to anyone making a loan to us, as long as they agree to comply with this Lease.

**8. TRANSFER WARRANTY AND EXCLUSIVE USE.**

(a) You agree not to sell, lease, or transfer the Property, or grant any interest in the Property, in a way that we think hurts or unreasonably limits our use of the Premises and the Easements. Unless we give our approval in writing in advance, you will not:

- i. Assign the Rent to anyone who is in a business similar to ours;
- ii. Assign any of the rights to this Lease except when you sell the underlying Property;
- iii. Sell or transfer the Premises or this Lease separately from the Property; or
- iv. Sell or transfer any portion of the Property separately from the remainder of the Property.

(b) You will not lease, sell, license, or transfer any portion of the Property, or any other property that you or any affiliate of yours owns or controls all or part of, within five (5) miles of the Premises, for anyone else to build or operate a communications tower or facility similar to the Communications Facility, or that in any way may adversely affect or interfere with the Communications Facility, our operations, or our rights under this Lease.

(c) You will not, nor will you permit your employees, tenants, licensees, invitees, agents or independent contractors to, interfere in any way with the Communications Facility, our operations or our rights under this Lease. You will fix any such interference within ten (10) days of receipt of notice from us of such interference.

(d) You will sign and we will file publicly the Memorandum of Lease attached hereto as **Exhibit D**.

(e) If a court finds anything in this Lease to be overbroad or otherwise unreasonable, instead of rejecting it entirely the Court will enforce it only to the extent narrow or reasonable enough to be permitted.

9. **TAXES.** You'll pay all real estate taxes and assessments on the Property on time. If you don't, we can (but don't have to) pay the taxes, and then either offset the amount we pay against the Rent or have you immediately reimburse us. We'll pay all personal property taxes on the Communications Facility on time. We have the right to contest (at our expense) the amount of any such taxes, and you agree to cooperate in our efforts to do so.

10. **REMOVAL OF COMMUNICATIONS FACILITY.** Title to the Communications Facility will remain personal to and be vested in us, regardless of whether the Communications Facility is considered a fixture. We can remove the Communications Facility from the Property at any time during the Term of this Lease and for up to sixty (60) days after this Lease expires. If we don't, all our personal property remaining on the Premises after that time will become your property. We don't have to remove any slabs or foundations installed by us, nor do we have to replace any vegetation.

11. **RIGHT OF FIRST REFUSAL.** Before you sell the Property, the Premises, or the Easements, you have to first offer to sell us the Property or any portion of the Property you intend to sell, on the same conditions as the sale you want to make to a third party. If we decide not to purchase the Property, or the portion offered for sale, you have to close on the sale within one hundred eighty (180) days, or the Property has to be offered to us again before you can sell. Such right of first refusal shall be reflected in the Memorandum of Lease attached as **Exhibit D**.

12. **INSURANCE.** We will carry commercial general liability insurance insuring us against liability for personal injury, death or damage to personal property caused by our use of the Premises and the Easements, with combined single limits of \$1,000,000.

13. **TERMINATION.** We can terminate this Lease any time before the Beginning Date. We can also terminate this Lease by giving you written notice if: (a) we can't get the required Approvals, or (b) any Approval is canceled, terminated, or expires, or (c) you don't deliver to us any non-disturbance agreement or subordination agreement you've agreed to in this Lease, or (d) you don't own the Property and have authority to sign this Lease, or (e) we determine that the Property contains Hazardous Substances (as defined in Section 15) that weren't introduced to the Property by us, or (f) you don't comply with this Lease, or (g) your use of the Property results in interference with, or the degradation of a transmission signal to or from, the Communications Facility and you don't fix the interference within ten (10) days of receiving notice from us. If we terminate this Lease for any of these reasons we don't lose our rights under Section 14 of this Lease.

14. **INDEMNITY.** Both of us will indemnify and hold harmless each other from all claims and losses, to the extent the claims or losses are caused by (a) acts or omissions in operations or activities on the Property, the Premises or the Easements by the indemnifying party or the employees, agents, contractors, licensees, tenants (other than us if you are the indemnifying party) and/or subtenants of the indemnifying party, or (b) a breach by the indemnifying party under this Lease that has not been cured. However, this indemnification doesn't cover claims or losses arising from the negligence or intentional misconduct of the indemnified party. A party that seeks indemnification must promptly give the other party notice of any legal action, but a delay in notice won't relieve an indemnifying party of any liability to an indemnified party, except to the extent the indemnifying party can show that the delay prejudiced the defense of the action. The indemnifying party may participate in or assume the defense. If the indemnifying party elects to assume the defense, then the indemnifying party must give the other party notice of its election; may select counsel satisfactory to the other party; is not liable to the other party for any fees of other counsel or any other expenses incurred by the other party in defending the action, other than reasonable investigation costs; and must not compromise or settle the action without the other party's consent. The indemnified party must not unreasonably withhold its consent to any proposed settlement, and has no liability with respect to any compromise or settlement effected without its consent. If an indemnifying party doesn't give notice of its election to assume the defense of an action within ten (10) days after it receives notice of the action, then the indemnifying party is bound by any determination made in the action or by any compromise or settlement that the other party may effect. Notwithstanding anything to the contrary in this Lease, you and we hereby waive any claims that one of us may have against the other with respect to consequential, incidental, or special damages.

**15. HAZARDOUS SUBSTANCES.**

(a) You represent and warrant that there are no Hazardous Substances on the Property, defined as any hazardous, toxic or dangerous substances, chemicals or waste pursuant to any applicable law or regulation, including but not limited to asbestos-containing materials and lead paint. You will be responsible for (and conduct any investigation and remediation required by law) all releases of Hazardous Substance caused solely by you, or any of your employees, agents, contractors, representatives or affiliates, that have happened in the past or that happen during the Term of this Lease.

(b) We promise you that we won't: (i) bury any Hazardous Substances underground or discharge any into the sewage system at the Premises, or (ii) store Hazardous Substances on the Premises, except minimal quantities used in the ordinary course of business in compliance with all applicable environmental laws.

(c) Both of us will indemnify and hold harmless each other from all claims and losses that the indemnified party may incur due to the existence or discovery of any Hazardous Substances on the Property, or the migration of any Hazardous Substance to other properties, or the release of any Hazardous Substance into the environment, that arise from the indemnifying party's activities on the Property. This indemnification obligation includes, without limitation, costs of investigation of site conditions and any cleanup, remedial, removal or restoration work required by the government. We will both be responsible under this paragraph even after this Lease expires or is terminated.

**16. CASUALTY/CONDEMNATION.** If there is a condemnation (or deed in lieu of condemnation) of the Premises, the Easements or the Property or if any of them are damaged by a casualty event (or even a portion if that makes the Premises or the Easements unsuitable for our use), then you will provide notice to us within two (2) Business Days of such condemnation or casualty, and we can, in our sole discretion, terminate this Lease. If we don't terminate, you will promptly repair any damage or destruction caused by the condemnation or casualty event, and we won't have to pay Rent until you finish the repairs.

**17. QUIET ENJOYMENT.**

(a) You promise to allow us quiet enjoyment of the Premises and the Easements during the Term as long as we pay the Rent and fulfill the requirements of this Lease. Except in cases of emergency, you will not have access to the Premises unless accompanied by our personnel. You will not allow any adjacent property you own to interfere with our use of the Premises or the Easements.

(b) You promise us that: (i) you are the fee owner of the Property; (ii) your ownership is free and clear of all liens, claims and encumbrances other than any which don't interfere with our use of the Premises and the Easements; (iii) you have the lawful right and authority to sign this Lease; (iv) your execution and performance of this Lease will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease, license or other agreement binding upon you; and (v) you have obtained and delivered to us the consents of all parties that hold any lien on or interest in the Premises or the Easements.

**18. DEFAULT.** If either of us is in default under this Lease for a period of (i) twenty (20) Business Days after receiving written notice of a default regarding non-payment, or (ii) sixty (60) days after receiving notice of any other default, then the one of us that isn't in default may initiate the dispute resolution procedure set forth in Section 23 of this Lease. If a default that doesn't involve the non-payment of money can't reasonably be cured in sixty (60) days, this Lease can't be terminated if the defaulting party begins to cure the default within the sixty (60) day period and diligently proceeds to cure the default as soon as practicable.

**19. COLLATERAL ASSIGNMENT.**

(a) We may, without your consent, collaterally mortgage and grant a security interest to any lender (a "Lender"), as security for any loan, in all of our interest in: (i) this Lease, (ii) the Premises, (iii) the Easements, (iv) the Communications Facility, (v) any other personal property owned by us and located at the Property, and (vi) all subleases and licenses by us of all and any portion of the Premises and the Easements and the benefits of those. We can also obtain, at our sole expense, a title insurance policy insuring our leasehold interest in the Premises and our easement interest in the Easements.

(b) A Lender may: (i) enforce its rights under its leasehold mortgage and other loan and security documents (a "Security Instrument") against our interests, (ii) acquire title to our interest in the Premises and the Easements under this Lease in any lawful way, (iii) pending foreclosure of such Security Instruments, take away from us possession of the Premises and the Easements, and (iv) obtain, at the Lender's or our sole expense, a title insurance policy insuring those Security Instruments. In connection with a Lender's title insurance policy, you will promptly sign and deliver to the title company any affidavits and certificates that the title company may reasonably request. If a Lender acquires our interest in this Lease by foreclosure or otherwise, then the Lender can assign this Lease without your consent.

20. **ESTOPPEL CERTIFICATES.** Within ten (10) days after we ask you for it in writing, you will deliver to us a letter addressed to us and any Lender we specify, in a form required by the Lender, confirming the status of this Lease and any other details regarding this Lease that we might reasonably request. We may request such a letter as often as a Lender requires one.

21. **MORTGAGEE PROTECTION.** If we fail to cure a default by the time required in this Lease, you will send each Lender that holds a Security Instrument an additional notice of our default. We will provide you with the address for each Lender that requires notice. The Lender will then have fifteen (15) days to cure defaults involving non-payment and thirty (30) days to cure other defaults (or longer if such default requires more than thirty (30) days to cure, as long as the cure has begun). You agree to give the Lender access to the Premises and the Easements so it can cure a default. Any cure by a Lender will be the same as a cure by us.

22. **SUBORDINATION AND NON-DISTURBANCE.** If any lender of yours holds a mortgage or security interest against all or part of the Premises or the Easements, you will request that lender to sign and deliver to us an agreement where the lender and us agree that (i) this Lease is subordinate to the mortgage and we will treat the lender as our landlord if the lender acquires the Property; and (ii) if that happens, the lender agrees to honor this Lease. If you are not able to obtain that agreement from your lender, we can terminate this Lease.

23. **ARBITRATION.** In the event of a dispute or default hereunder, the parties will first seek to resolve such dispute by conversations between the applicable management of the respective parties. If the parties are unable to resolve such dispute within fifteen (15) Business Days following written notice of such dispute or the date upon which either party is in default (or such longer period as the parties may agree, each in their sole discretion) then such dispute shall be settled by binding arbitration, before a single arbitrator administered by the American Arbitration Association, and the rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties may agree upon at the time. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrators. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

24. **MISCELLANEOUS**

(a) We promise that we are authorized to do business in the state in which the Property is located and that the person signing this Lease on our behalf is authorized to enter into this Lease for us.

(b) This Lease and its attachments contain the entire understanding between us with respect to the subject matter of this Lease.

(c) Each of us may sign different copies of this Lease, and each signed copy will be considered an original, and all the copies taken together will be considered the same agreement.

(d) The terms and conditions of this Lease will extend to and bind the heirs, personal representatives, successors and assigns of both you and us.

(e) If a dispute arises out of this Lease, then the prevailing party will be entitled to actual attorneys' fees and costs.

(f) With the execution of this Lease, you will sign, have notarized and deliver to us (for us to file publicly) a Memorandum of Lease (the "MOL") in the form of **Exhibit D**.

(g) All required notices must be in writing and sent by United States Mail, certified or registered with return receipt requested, or by any nationally recognized overnight courier service for priority delivery, to the addresses set forth below, to be effective when properly sent and received, refused or returned undelivered. Notices shall be sent to:

<b>For Us:</b>	Up State Tower Co., LLC 4915 Auburn Ave, Suite 208 Bethesda, MD 20814	<b>For You:</b>	Town of Boston 8500 Boston State Road Boston, NY 14025
And:	<a href="mailto:notices@upstatetowerco.com">notices@upstatetowerco.com</a>		<a href="mailto:supervisorsoffice@townofboston.com">supervisorsoffice@townofboston.com</a>

(h) This Lease will be governed by and interpreted by the laws of the state in which the Property is located.

(i) Neither we nor you will disclose the financial or other terms of this Lease to anyone else (other than employees, attorneys, lenders and accountants) without the other's written permission.

(j) All of the attached Exhibits are part of this Lease for all purposes. We both agree that **Exhibit A** (the legal description of the Property), **Exhibit B** (the description of the Premises and the Easements) and **Exhibit C** (the description of the Communications Facility) may be attached to this Lease and the MOL in preliminary form. When the final exhibits to be used in our applications for the Approvals are prepared, they will also be attached to this Lease and will be the final **Exhibits A, B and C** to this Lease and the MOL.

(k) Each of us will be responsible for paying our own broker fees, if any.

(l) This Lease can only be amended by a written document that has been sign by both us and you.

(m) The waiver of a breach of any provision of this Lease, including but not limited to the failure to insist upon strict performance of any of the covenants or conditions of this Lease, will not be considered a waiver of any other breach by any party.

(n) Each provision of this Lease must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the Lease will remain in full effect.

(o) For purposes of this Lease, "Business Days" are defined as Monday through Friday excluding weekends and public holidays.

[Signatures are on the following page.]

The parties sign this Lease effective as of the Effective Date.

**WITNESS:**

**YOU:**

Town of Boston

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**WITNESS:**

**US:**

UP STATE TOWER CO., L.L.C.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A TO LAND LEASE AGREEMENT**

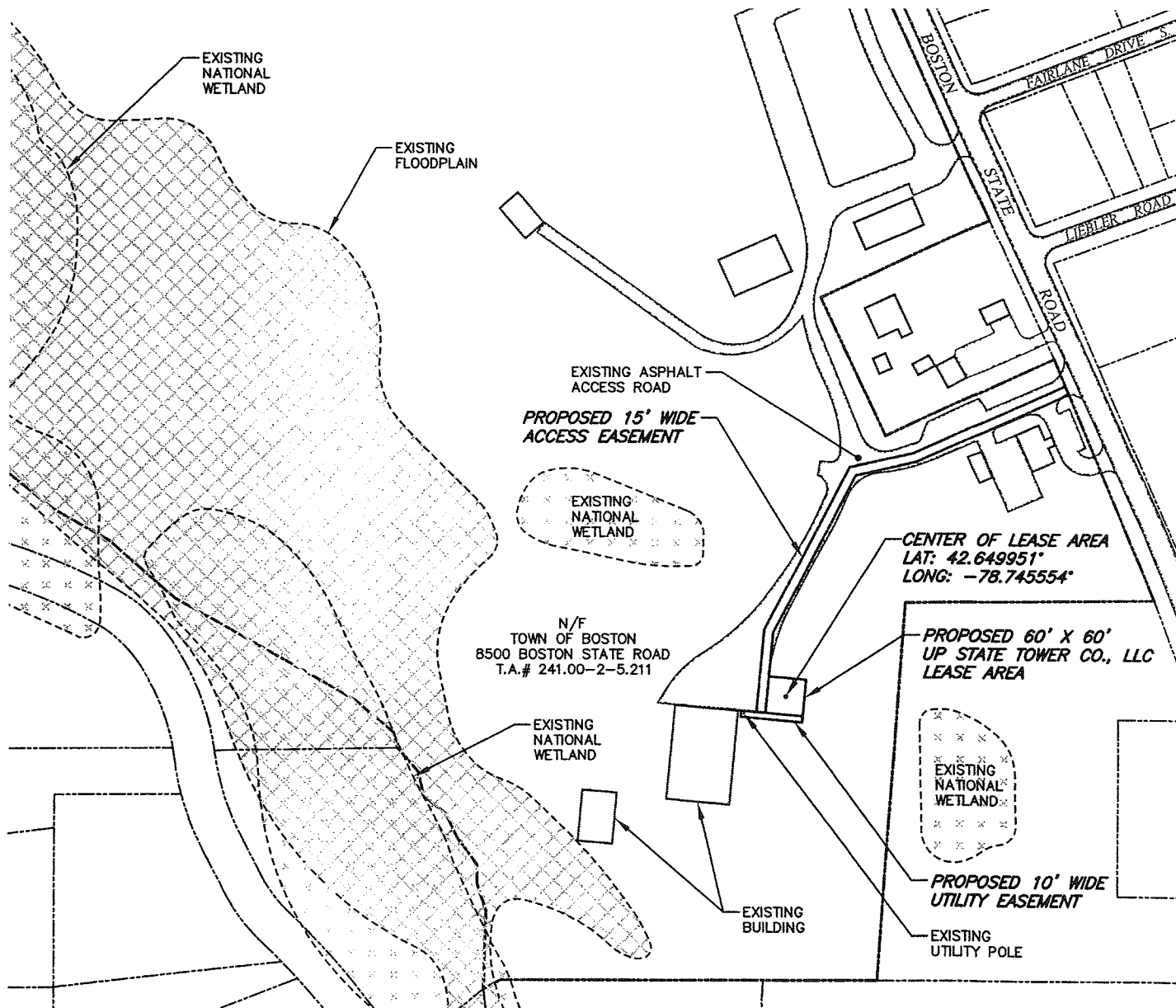
LEGAL DESCRIPTION OF PROPERTY



**EXHIBIT B TO LAND LEASE AGREEMENT**

**DESCRIPTION OF THE PREMISES  
AND THE EASEMENTS**

That certain 3,600 square foot parcel or tract of land, together with non-exclusive easements for access 24 hours a day, seven days a week and for utilities services and facilities, located in Boston, Erie County, State of New York, and more particularly described as follows:



**EXHIBIT C TO LAND LEASE AGREEMENT**

**DESCRIPTION OF THE COMMUNICATIONS FACILITY**

A wireless communications tower and base, transmitting and receiving antennas, cables, wires, utility lines, equipment shelters and buildings, electronics equipment, generators and other equipment, improvements and personal property, fencing and landscaping around the tower compound, a gate to the tower compound, and, if required by any county, state or federal agency/department with jurisdiction over the construction and operation of the Communications Facility, a location based system (including, without limitation, antenna(s), coaxial cable, base units and other associated equipment).

**EXHIBIT D TO LAND LEASE AGREEMENT**

MEMORANDUM OF LEASE

**[See MOL attached hereto]**

PREPARED BY AND UPON  
RECORDATION PLEASE RETURN TO:

Up State Tower Co LLC  
4915 Auburn Avenue, Suite 208  
Bethesda MD 20814  
Att: Brian Gelfand

Tax ID No.: 241.00-2-5.211

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## MEMORANDUM OF LEASE

**Site Name/Location:** BUF-627 Boston State  
8500 Boston State Road

This Memorandum of Lease, dated as of \_\_\_\_\_, 20\_\_\_\_, evidences that a Land Lease Agreement (the "Lease") dated as of \_\_\_\_\_, 20\_\_\_\_, was made and written between The Town of Boston ("Lessor"), with an address at 8500 Boston State Road, Boston, NY 14025, and **Up State Tower Co., L.L.C.** ("Lessee"), a Maryland limited liability company with an address at 4915 Auburn Avenue, Suite 208, Bethesda, Maryland 20814, and the terms and conditions of such Lease are incorporated herein by this reference. Nothing in this Memorandum of Lease shall be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Lease. In the event of any inconsistency between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

Such Lease provides in part that Lessor leases to Lessee a certain parcel of real property located at 8500 Boston State Road, Town of Boston, County of Erie, State of New York, more particularly described in Exhibit A attached hereto (the "Tower Site"). The Tower Site is situated within a larger parcel of real property that is owned by Lessor and more particularly described in Exhibit A-1 attached hereto. Pursuant to the Lease, Lessor has also granted to Lessee one or more easements for non-exclusive rights of access to the Tower Site and for electric and telephone facilities to the Tower Site (the "Easements"). The Lease term shall commence on the earlier of the date (the "Beginning Date") that: (i) Lessee begins construction of the Communications Facility (as such term is defined in the Lease) at the Tower Site, or (ii) is six (6) months after the date that Lessee receives all Approvals (as such term is defined in the Lease) necessary for the construction of the Communications Facility, and ends on the 5<sup>th</sup> anniversary of such Beginning Date. Such term is subject to ten (10) additional five (5) year extension periods.

Before Lessor may sell the Tower Site, the Property, the Easements, or any portion thereof to any third party, Lessor must make such offer to Lessee, upon the terms and conditions and subject to the limitations more particularly set forth in the Lease.

Additionally, Lessor must obtain Lessee's prior written consent before Lessor may do any of the following:

- i. Assign the Rent under the Lease to any other person or entity who is in a business similar to that of Lessee;
- ii. Assign any of the rights to the Lease without the transfer of the underlying Property;
- iii. Sell or transfer the Premises or the Lease separately from the Property, such that the leasehold estate is separated from the Property; or
- iv. Sell or transfer any portion of the Property separately from the remainder of the Property.

Upon the cancellation, termination or expiration of the Lease, Lessee will make, execute and deliver to Lessor an instrument releasing this Memorandum of Lease, which instrument shall in form and substance be satisfactory to Lessor and shall be in recordable form.

Lessee does hereby make, constitute and appoint Lessor Lessee's true and lawful attorney-in-fact for the limited, specific and exclusive purpose of executing, delivering and recording a termination of this Memorandum of Lease in the event that Lessee has not signed and returned to Lessor, within ten (10) business days after the cancellation, termination or expiration of the Lease in accordance with the terms thereof, a signed termination of this Memorandum of Lease. This power of attorney is coupled with an interest and shall be irrevocable until this Memorandum of Lease has been validly released of record. The power of attorney set forth in this paragraph is hereby expressly limited to the specific matters and rights set forth in such paragraph.

This Memorandum of Lease may be executed in counterparts, each of which, when executed, shall be deemed an original instrument, but all of which taken together shall constitute one and the same agreement. Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Lease.

IN WITNESS WHEREOF, the parties have executed the Memorandum of Lease as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED IN  
THE PRESENCE OF:**

**LESSOR:**

**Town of Boston**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SIGNED, SEALED AND DELIVERED IN  
THE PRESENCE OF:**

**LESSEE:**

**Up State Tower Co., L.L.C.**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT – LESSOR**

*[Insert State-specific acknowledgements; below are for NY]*

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
My commission expires:

**ACKNOWLEDGEMENT – LESSEE**

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

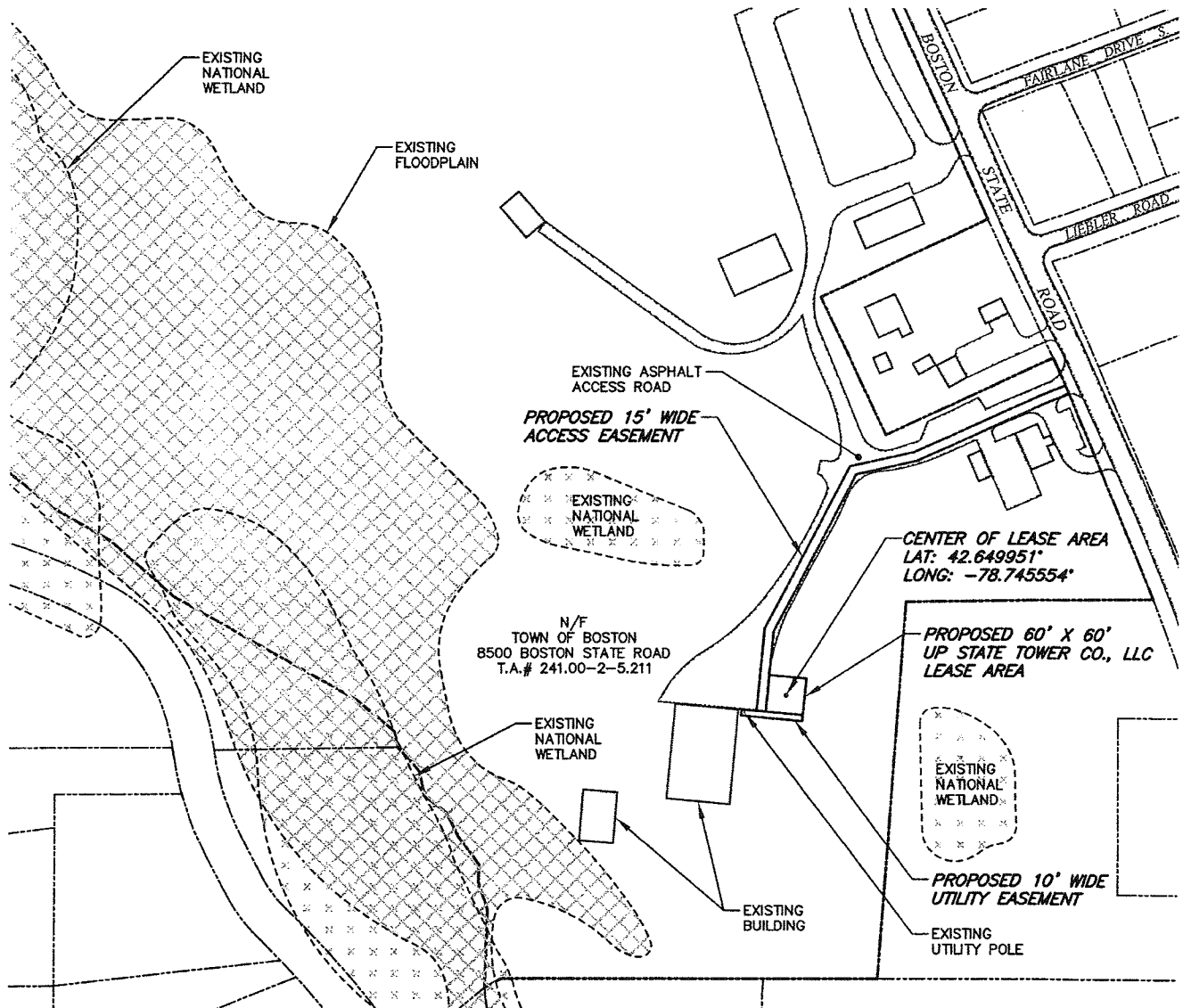
On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
My commission expires:

## EXHIBIT A

### DESCRIPTION OF TOWER SITE

That certain 3,600 square foot parcel or tract of land, together with non-exclusive easements for access 24 hours a day, seven days a week and for utilities services and facilities, located in Boston, Erie County, State of New York, and more particularly described as follows:



The Tower Site is located within a larger parcel(s) or tract(s) of land located in the Town of Boston, County of Erie, State of New York: (i) which is owned by the Town of Boston; and (ii) which is more particularly described in Exhibit A-1, attached hereto and by this reference made a part hereof.

**EXHIBIT A-1**

**DESCRIPTION OF LARGER PARCEL OF PROPERTY**  
**WITHIN WHICH TOWER SITE IS LOCATED**

That certain lot or parcel of land situated in the Town of Boston, County of Erie, State of New York, bounded and described as follows:

**[INSERT PROPERTY DESCRIPTION]**



## LAND LEASE AGREEMENT

**THIS LAND LEASE AGREEMENT** ("Lease") is dated as of the date last executed below (the "Effective Date") between the **Town of Boston** ("you"), and **Up State Tower Co., L.L.C.**, a Maryland limited liability company ("we" or "us").

You agree to lease a portion of the real property described on **Exhibit A** (the "Property") to us and we agree to rent it from you so that we can construct and operate a communications facility as described on **Exhibit B**. For the mutual promises provided in this Lease, you and we agree to the terms in this Lease.

1. **LEASE OF PREMISES.** You agree to lease to us, and we agree to lease from you, an approximately 60 ft. x 60 ft. portion of the Property located at Latitude 42.611130, Longitude -78.733090, commonly known as Brown Hill Road, and as more particularly set forth on **Exhibit B** (the "Premises"). In addition, you agree to grant easements in, under and across the Property to us: (i) for entering, exiting and accessing the Premises, by foot, car and truck, by people working with us or for us, or people to whom we have assigned this Lease, (ii) to install utility services at the Premises, and (iii) for installing and taking care of communications equipment, utility wires, poles, cables, conduits, and pipes necessary for our use of the Premises, extending from the nearest public right-of-way, over, under and across any property of yours to the Premises (collectively, the "Easements") in the location(s) shown on **Exhibit B**; however, if any utility company requires any utility Easement to be located in a location other than what is shown on **Exhibit B**, you agree to relocate the utility Easement to the location required by the utility company. The Easements are non-exclusive easements and we can construct a roadway over the Easements. If you or your other tenants damage the Easements, then you or your other tenants will have to share in the reasonable costs to repair the Easements.

2. **USE.** We can use the Premises for sending and receiving signals and installing, building, taking care of, operating, replacing and upgrading our communications fixtures, e.g. a pole or tower, and our related equipment, cables, antennas, equipment shelters or cabinets and fencing and any other items we need to successfully and securely use the Premises (collectively, the "Communications Facility"). We can alter, replace, expand and upgrade the Communications Facility at any time during the term of this Lease. We agree to follow all applicable laws and regulations when we build or modify the Communications Facility. We agree to keep the Communications Facility in good condition and repair. You will allow us 24-hours-a-day, 7-days-a-week access to the Premises and the Easements during the Term.

3. **TERM.** The initial term of this Lease (the "Initial Term") is four (4) years, beginning on the day: (i) we begin construction of the Communications Facility, or (ii) six (6) months after the date that we receive all governmental approvals necessary, including any state or federal requirements, for the operation of the Communications Facility (the "Approvals"), whichever is earlier (the "Beginning Date"). This Lease will be automatically renewed, upon the same terms and conditions, for nine (9) additional terms of five (5) years each (the "Renewal Terms"), unless we notify you that we're not going to renew at least thirty (30) days prior to the end of the then-current Term. "Term" means the Initial Term and any Renewal Terms.

4. **RENT.** Commencing on the Beginning Date, we will pay you monthly rent ("Rent") with partial months prorated. Rent will be sent to you every month at your address in Section 24(g). Rent for the initial term will be calculated and paid based on the following schedule:

\$200.00 per month for us and one cellular carrier tenant using the Communications Facility;  
\$400.00 per month for us and two cellular carrier tenants using the Communications Facility;  
\$600.00 per month for us and three cellular carrier tenants using the Communications Facility;  
\$800.00 per month for us and four cellular carrier tenants using the Communications Facility; or  
\$1,000.00 per month for us and five cellular carrier tenants using the Communications Facility.

A cellular carrier tenant shall be any tenant that is using the Communications Facility for cellular service and is paying us for such use of the Communications Facility. We shall notify you of the addition of any new cellular carrier tenant(s) or the loss of any existing cellular carrier tenant(s) within twenty (20) Business Days of such addition or loss. In the first year of each Renewal Term, the monthly Rent will increase by two percent (2%) over the Rent paid during the previous Term.

**5. FEASIBILITY PERIOD.**

(a) From the Effective Date until the Beginning Date (the "Feasibility Period"), we may conduct tests and inspections of the Property, survey the Property (if desired), and get title reports from a title company chosen by us (all of which will be at our own expense), to determine if the Property is suitable for our use. We won't be responsible for any Property condition discovered during our investigation, but we will repair any damage to the Property caused by our investigation.

(b) You will cooperate with us, support any required zoning applications, and sign all documents required to permit our use and investigation of the Premises and the Easements.

(c) If we decide for any reason that the Property isn't suitable for our use, we can terminate this Lease by sending you written notice prior to the Beginning Date. If we terminate this Lease, neither you nor us will have any further obligation to each other, except as otherwise expressly provided herein.

**6. MAINTENANCE/UTILITIES.**

(a) We will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. You will maintain the Property and access thereto and all areas of the Premises where we do not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. You will also maintain any landscaping on the Property, including any landscaping we install as required by any law or regulation.

(b) We will pay for all utilities services we use at the Premises, and we can (at our expense) install or improve utility services at the Premises. You agree to help us get the necessary utility services to the Premises.

**7. ASSIGNMENT/SUBLEASING.** We can assign, transfer, license or sublease all or part of our rights in the Premises pursuant to this Lease, as long as we let you know and as long as the party to whom we assign or transfer such rights agrees to comply with this Lease. Additionally, we can mortgage, assign or grant a security interest in this Lease or our Communications Facility to anyone making a loan to us, as long as they agree to comply with this Lease.

**8. TRANSFER WARRANTY AND EXCLUSIVE USE.**

(a) You agree not to sell, lease, or transfer the Property, or grant any interest in the Property, in a way that we think hurts or unreasonably limits our use of the Premises and the Easements. Unless we give our approval in writing in advance, you will not:

- i. Assign the Rent to anyone who is in a business similar to ours;
- ii. Assign any of the rights to this Lease except when you sell the underlying Property;
- iii. Sell or transfer the Premises or this Lease separately from the Property; or
- iv. Sell or transfer any portion of the Property separately from the remainder of the Property.

(b) You will not lease, sell, license, or transfer any portion of the Property, or any other property that you or any affiliate of yours owns or controls all or part of, within five (5) miles of the Premises, for anyone else to build or operate a communications tower or facility similar to the Communications Facility, or that in any way may adversely affect or interfere with the Communications Facility, our operations, or our rights under this Lease.

(c) You will not, nor will you permit your employees, tenants, licensees, invitees, agents or independent contractors to, interfere in any way with the Communications Facility, our operations or our rights under this Lease. You will fix any such interference within ten (10) days of receipt of notice from us of such interference.

(d) You will sign and we will file publicly the Memorandum of Lease attached hereto as **Exhibit D**.

(e) If a court finds anything in this Lease to be overbroad or otherwise unreasonable, instead of rejecting it entirely the Court will enforce it only to the extent narrow or reasonable enough to be permitted.

9. **TAXES.** You'll pay all real estate taxes and assessments on the Property on time. If you don't, we can (but don't have to) pay the taxes, and then either offset the amount we pay against the Rent or have you immediately reimburse us. We'll pay all personal property taxes on the Communications Facility on time. We have the right to contest (at our expense) the amount of any such taxes, and you agree to cooperate in our efforts to do so.

10. **REMOVAL OF COMMUNICATIONS FACILITY.** Title to the Communications Facility will remain personal to and be vested in us, regardless of whether the Communications Facility is considered a fixture. We can remove the Communications Facility from the Property at any time during the Term of this Lease and for up to sixty (60) days after this Lease expires. If we don't, all our personal property remaining on the Premises after that time will become your property. We don't have to remove any slabs or foundations installed by us, nor do we have to replace any vegetation.

11. **RIGHT OF FIRST REFUSAL.** Before you sell the Property, the Premises, or the Easements, you have to first offer to sell us the Property or any portion of the Property you intend to sell, on the same conditions as the sale you want to make to a third party. If we decide not to purchase the Property, or the portion offered for sale, you have to close on the sale within one hundred eighty (180) days, or the Property has to be offered to us again before you can sell. Such right of first refusal shall be reflected in the Memorandum of Lease attached as **Exhibit D**.

12. **INSURANCE.** We will carry commercial general liability insurance insuring us against liability for personal injury, death or damage to personal property caused by our use of the Premises and the Easements, with combined single limits of \$1,000,000.

13. **TERMINATION.** We can terminate this Lease any time before the Beginning Date. We can also terminate this Lease by giving you written notice if: (a) we can't get the required Approvals, or (b) any Approval is canceled, terminated, or expires, or (c) you don't deliver to us any non-disturbance agreement or subordination agreement you've agreed to in this Lease, or (d) you don't own the Property and have authority to sign this Lease, or (e) we determine that the Property contains Hazardous Substances (as defined in Section 15) that weren't introduced to the Property by us, or (f) you don't comply with this Lease, or (g) your use of the Property results in interference with, or the degradation of a transmission signal to or from, the Communications Facility and you don't fix the interference within ten (10) days of receiving notice from us. If we terminate this Lease for any of these reasons we don't lose our rights under Section 14 of this Lease.

14. **INDEMNITY.** Both of us will indemnify and hold harmless each other from all claims and losses, to the extent the claims or losses are caused by (a) acts or omissions in operations or activities on the Property, the Premises or the Easements by the indemnifying party or the employees, agents, contractors, licensees, tenants (other than us if you are the indemnifying party) and/or subtenants of the indemnifying party, or (b) a breach by the indemnifying party under this Lease that has not been cured. However, this indemnification doesn't cover claims or losses arising from the negligence or intentional misconduct of the indemnified party. A party that seeks indemnification must promptly give the other party notice of any legal action, but a delay in notice won't relieve an indemnifying party of any liability to an indemnified party, except to the extent the indemnifying party can show that the delay prejudiced the defense of the action. The indemnifying party may participate in or assume the defense. If the indemnifying party elects to assume the defense, then the indemnifying party must give the other party notice of its election; may select counsel satisfactory to the other party; is not liable to the other party for any fees of other counsel or any other expenses incurred by the other party in defending the action, other than reasonable investigation costs; and must not compromise or settle the action without the other party's consent. The indemnified party must not unreasonably withhold its consent to any proposed settlement, and has no liability with respect to any compromise or settlement effected without its consent. If an indemnifying party doesn't give notice of its election to assume the defense of an action within ten (10) days after it receives notice of the action, then the indemnifying party is bound by any determination made in the action or by any compromise or settlement that the other party may effect. Notwithstanding anything to the contrary in this Lease, you and we hereby waive any claims that one of us may have against the other with respect to consequential, incidental, or special damages.

15. **HAZARDOUS SUBSTANCES.**

(a) You represent and warrant that there are no Hazardous Substances on the Property, defined as any hazardous, toxic or dangerous substances, chemicals or waste pursuant to any applicable law or regulation, including but not limited to asbestos-containing materials and lead paint. You will be responsible for (and conduct any investigation and remediation required by law) all releases of Hazardous Substance caused solely by you, or any of your employees, agents, contractors, representatives or affiliates, that have happened in the past or that happen during the Term of this Lease.

(b) We promise you that we won't: (i) bury any Hazardous Substances underground or discharge any into the sewage system at the Premises, or (ii) store Hazardous Substances on the Premises, except minimal quantities used in the ordinary course of business in compliance with all applicable environmental laws.

(c) Both of us will indemnify and hold harmless each other from all claims and losses that the indemnified party may incur due to the existence or discovery of any Hazardous Substances on the Property, or the migration of any Hazardous Substance to other properties, or the release of any Hazardous Substance into the environment, that arise from the indemnifying party's activities on the Property. This indemnification obligation includes, without limitation, costs of investigation of site conditions and any cleanup, remedial, removal or restoration work required by the government. We will both be responsible under this paragraph even after this Lease expires or is terminated.

16. **CASUALTY/CONDEMNATION.** If there is a condemnation (or deed in lieu of condemnation) of the Premises, the Easements or the Property or if any of them are damaged by a casualty event (or even a portion if that makes the Premises or the Easements unsuitable for our use), then you will provide notice to us within two (2) Business Days of such condemnation or casualty, and we can, in our sole discretion, terminate this Lease. If we don't terminate, you will promptly repair any damage or destruction caused by the condemnation or casualty event, and we won't have to pay Rent until you finish the repairs.

17. **QUIET ENJOYMENT.**

(a) You promise to allow us quiet enjoyment of the Premises and the Easements during the Term as long as we pay the Rent and fulfill the requirements of this Lease. Except in cases of emergency, you will not have access to the Premises unless accompanied by our personnel. You will not allow any adjacent property you own to interfere with our use of the Premises or the Easements.

(b) You promise us that: (i) you are the fee owner of the Property; (ii) your ownership is free and clear of all liens, claims and encumbrances other than any which don't interfere with our use of the Premises and the Easements; (iii) you have the lawful right and authority to sign this Lease; (iv) your execution and performance of this Lease will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease, license or other agreement binding upon you; and (v) you have obtained and delivered to us the consents of all parties that hold any lien on or interest in the Premises or the Easements.

18. **DEFAULT.** If either of us is in default under this Lease for a period of (i) twenty (20) Business Days after receiving written notice of a default regarding non-payment, or (ii) sixty (60) days after receiving notice of any other default, then the one of us that isn't in default may initiate the dispute resolution procedure set forth in Section 23 of this Lease. If a default that doesn't involve the non-payment of money can't reasonably be cured in sixty (60) days, this Lease can't be terminated if the defaulting party begins to cure the default within the sixty (60) day period and diligently proceeds to cure the default as soon as practicable.

19. **COLLATERAL ASSIGNMENT.**

(a) We may, without your consent, collaterally mortgage and grant a security interest to any lender (a "Lender"), as security for any loan, in all of our interest in: (i) this Lease, (ii) the Premises, (iii) the Easements, (iv) the Communications Facility, (v) any other personal property owned by us and located at the Property, and (vi) all subleases and licenses by us of all and any portion of the Premises and the Easements and the benefits of those. We can also obtain, at our sole expense, a title insurance policy insuring our leasehold interest in the Premises and our easement interest in the Easements.

(b) A Lender may: (i) enforce its rights under its leasehold mortgage and other loan and security documents (a "Security Instrument") against our interests, (ii) acquire title to our interest in the Premises and the Easements under this Lease in any lawful way, (iii) pending foreclosure of such Security Instruments, take away from us possession of the Premises and the Easements, and (iv) obtain, at the Lender's or our sole expense, a title insurance policy insuring those Security Instruments. In connection with a Lender's title insurance policy, you will promptly sign and deliver to the title company any affidavits and certificates that the title company may reasonably request. If a Lender acquires our interest in this Lease by foreclosure or otherwise, then the Lender can assign this Lease without your consent.

20. **ESTOPPEL CERTIFICATES.** Within ten (10) days after we ask you for it in writing, you will deliver to us a letter addressed to us and any Lender we specify, in a form required by the Lender, confirming the status of this Lease and any other details regarding this Lease that we might reasonably request. We may request such a letter as often as a Lender requires one.

21. **MORTGAGEE PROTECTION.** If we fail to cure a default by the time required in this Lease, you will send each Lender that holds a Security Instrument an additional notice of our default. We will provide you with the address for each Lender that requires notice. The Lender will then have fifteen (15) days to cure defaults involving non-payment and thirty (30) days to cure other defaults (or longer if such default requires more than thirty (30) days to cure, as long as the cure has begun). You agree to give the Lender access to the Premises and the Easements so it can cure a default. Any cure by a Lender will be the same as a cure by us.

22. **SUBORDINATION AND NON-DISTURBANCE.** If any lender of yours holds a mortgage or security interest against all or part of the Premises or the Easements, you will request that lender to sign and deliver to us an agreement where the lender and us agree that (i) this Lease is subordinate to the mortgage and we will treat the lender as our landlord if the lender acquires the Property; and (ii) if that happens, the lender agrees to honor this Lease. If you are not able to obtain that agreement from your lender, we can terminate this Lease.

23. **ARBITRATION.** In the event of a dispute or default hereunder, the parties will first seek to resolve such dispute by conversations between the applicable management of the respective parties. If the parties are unable to resolve such dispute within fifteen (15) Business Days following written notice of such dispute or the date upon which either party is in default (or such longer period as the parties may agree, each in their sole discretion) then such dispute shall be settled by binding arbitration, before a single arbitrator administered by the American Arbitration Association, and the rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties may agree upon at the time. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrators. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

#### 24. **MISCELLANEOUS**

(a) We promise that we are authorized to do business in the state in which the Property is located and that the person signing this Lease on our behalf is authorized to enter into this Lease for us.

(b) This Lease and its attachments contain the entire understanding between us with respect to the subject matter of this Lease.

(c) Each of us may sign different copies of this Lease, and each signed copy will be considered an original, and all the copies taken together will be considered the same agreement.

(d) The terms and conditions of this Lease will extend to and bind the heirs, personal representatives, successors and assigns of both you and us.

(e) If a dispute arises out of this Lease, then the prevailing party will be entitled to actual attorneys' fees and costs.

(f) With the execution of this Lease, you will sign, have notarized and deliver to us (for us to file publicly) a Memorandum of Lease (the "MOL") in the form of **Exhibit D**.

(g) All required notices must be in writing and sent by United States Mail, certified or registered with return receipt requested, or by any nationally recognized overnight courier service for priority delivery, to the addresses set forth below, to be effective when properly sent and received, refused or returned undelivered. Notices shall be sent to:

<b>For Us:</b>	Up State Tower Co., LLC 4915 Auburn Ave, Suite 208 Bethesda, MD 20814	<b>For You:</b>	Town of Boston 8500 Boston State Road Boston, NY 14025
And:	<u><a href="mailto:notices@upstatetowerco.com">notices@upstatetowerco.com</a></u>		<u><a href="mailto:supervisorsoffice@townofboston.com">supervisorsoffice@townofboston.com</a></u>

(h) This Lease will be governed by and interpreted by the laws of the state in which the Property is located.

(i) Neither we nor you will disclose the financial or other terms of this Lease to anyone else (other than employees, attorneys, lenders and accountants) without the other's written permission.

(j) All of the attached Exhibits are part of this Lease for all purposes. We both agree that **Exhibit A** (the legal description of the Property), **Exhibit B** (the description of the Premises and the Easements) and **Exhibit C** (the description of the Communications Facility) may be attached to this Lease and the MOL in preliminary form. When the final exhibits to be used in our applications for the Approvals are prepared, they will also be attached to this Lease and will be the final **Exhibits A, B and C** to this Lease and the MOL.

(k) Each of us will be responsible for paying our own broker fees, if any.

(l) This Lease can only be amended by a written document that has been sign by both us and you.

(m) The waiver of a breach of any provision of this Lease, including but not limited to the failure to insist upon strict performance of any of the covenants or conditions of this Lease, will not be considered a waiver of any other breach by any party.

(n) Each provision of this Lease must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the Lease will remain in full effect.

(o) For purposes of this Lease, "Business Days" are defined as Monday through Friday excluding weekends and public holidays.

[Signatures are on the following page.]

The parties sign this Lease effective as of the Effective Date.

**WITNESS:**

**YOU:**

Town of Boston

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**WITNESS:**

**US:**

UP STATE TOWER CO., L.L.C.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A TO LAND LEASE AGREEMENT**

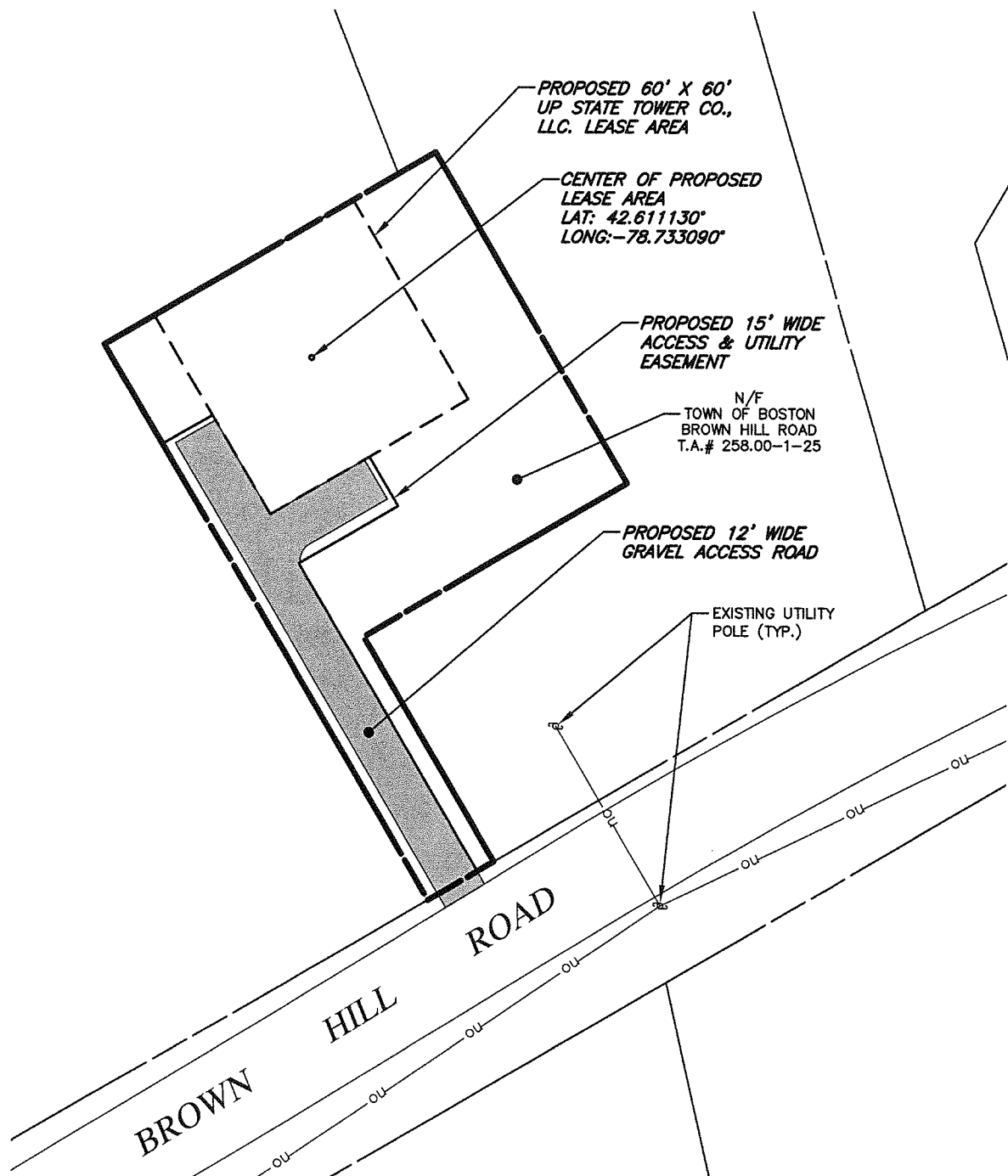
LEGAL DESCRIPTION OF PROPERTY



**EXHIBIT B TO LAND LEASE AGREEMENT**

**DESCRIPTION OF THE PREMISES  
AND THE EASEMENTS**

That certain 3,600 square foot parcel or tract of land, together with non-exclusive easements for access 24 hours a day, seven days a week and for utilities services and facilities, located in Boston, Erie County, State of New York, and more particularly described as follows:



**EXHIBIT C TO LAND LEASE AGREEMENT**

**DESCRIPTION OF THE COMMUNICATIONS FACILITY**

A wireless communications tower and base, transmitting and receiving antennas, cables, wires, utility lines, equipment shelters and buildings, electronics equipment, generators and other equipment, improvements and personal property, fencing and landscaping around the tower compound, a gate to the tower compound, and, if required by any county, state or federal agency/department with jurisdiction over the construction and operation of the Communications Facility, a location based system (including, without limitation, antenna(s), coaxial cable, base units and other associated equipment).

**EXHIBIT D TO LAND LEASE AGREEMENT**

MEMORANDUM OF LEASE

**[See MOL attached hereto]**

PREPARED BY AND UPON  
RECORDATION PLEASE RETURN TO:

Up State Tower Co LLC  
4915 Auburn Avenue, Suite 208  
Bethesda MD 20814  
Att: Brian Gelfand

Tax ID No.: 241.00-2-5.211

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## MEMORANDUM OF LEASE

**Site Name/Location:** BUF-625 Boston Brown Hill  
Brown Hill Road

This Memorandum of Lease, dated as of \_\_\_\_\_, 20\_\_\_\_, evidences that a Land Lease Agreement (the "Lease") dated as of \_\_\_\_\_, 20\_\_\_\_, was made and written between The Town of Boston ("Lessor"), with an address at 8500 Boston State Road, Boston, NY 14025, and **Up State Tower Co., L.L.C.** ("Lessee"), a Maryland limited liability company with an address at 4915 Auburn Avenue, Suite 208, Bethesda, Maryland 20814, and the terms and conditions of such Lease are incorporated herein by this reference. Nothing in this Memorandum of Lease shall be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Lease. In the event of any inconsistency between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

Such Lease provides in part that Lessor leases to Lessee a certain parcel of real property located at Brown Hill Road, Town of Boston, County of Erie, State of New York, more particularly described in Exhibit A attached hereto (the "Tower Site"). The Tower Site is situated within a larger parcel of real property that is owned by Lessor and more particularly described in Exhibit A-1 attached hereto. Pursuant to the Lease, Lessor has also granted to Lessee one or more easements for non-exclusive rights of access to the Tower Site and for electric and telephone facilities to the Tower Site (the "Easements"). The Lease term shall commence on the earlier of the date (the "Beginning Date") that: (i) Lessee begins construction of the Communications Facility (as such term is defined in the Lease) at the Tower Site, or (ii) is six (6) months after the date that Lessee receives all Approvals (as such term is defined in the Lease) necessary for the construction of the Communications Facility, and ends on the 5<sup>th</sup> anniversary of such Beginning Date. Such term is subject to ten (10) additional five (5) year extension periods.

Before Lessor may sell the Tower Site, the Property, the Easements, or any portion thereof to any third party, Lessor must make such offer to Lessee, upon the terms and conditions and subject to the limitations more particularly set forth in the Lease.

Additionally, Lessor must obtain Lessee's prior written consent before Lessor may do any of the following:

- i. Assign the Rent under the Lease to any other person or entity who is in a business similar to that of Lessee;
- ii. Assign any of the rights to the Lease without the transfer of the underlying Property;
- iii. Sell or transfer the Premises or the Lease separately from the Property, such that the leasehold estate is separated from the Property; or
- iv. Sell or transfer any portion of the Property separately from the remainder of the Property.

Upon the cancellation, termination or expiration of the Lease, Lessee will make, execute and deliver to Lessor an instrument releasing this Memorandum of Lease, which instrument shall in form and substance be satisfactory to Lessor and shall be in recordable form.

Lessee does hereby make, constitute and appoint Lessor Lessee's true and lawful attorney-in-fact for the limited, specific and exclusive purpose of executing, delivering and recording a termination of this Memorandum of Lease in the event that Lessee has not signed and returned to Lessor, within ten (10) business days after the cancellation, termination or expiration of the Lease in accordance with the terms thereof, a signed termination of this Memorandum of Lease. This power of attorney is coupled with an interest and shall be irrevocable until this Memorandum of Lease has been validly released of record. The power of attorney set forth in this paragraph is hereby expressly limited to the specific matters and rights set forth in such paragraph.

This Memorandum of Lease may be executed in counterparts, each of which, when executed, shall be deemed an original instrument, but all of which taken together shall constitute one and the same agreement. Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Lease.

IN WITNESS WHEREOF, the parties have executed the Memorandum of Lease as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED IN  
THE PRESENCE OF:**

**LESSOR:**

**Town of Boston**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SIGNED, SEALED AND DELIVERED IN  
THE PRESENCE OF:**

**LESSEE:**

**Up State Tower Co., L.L.C.**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT – LESSOR**

*[Insert State-specific acknowledgements; below are for NY]*

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
My commission expires:

**ACKNOWLEDGEMENT – LESSEE**

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

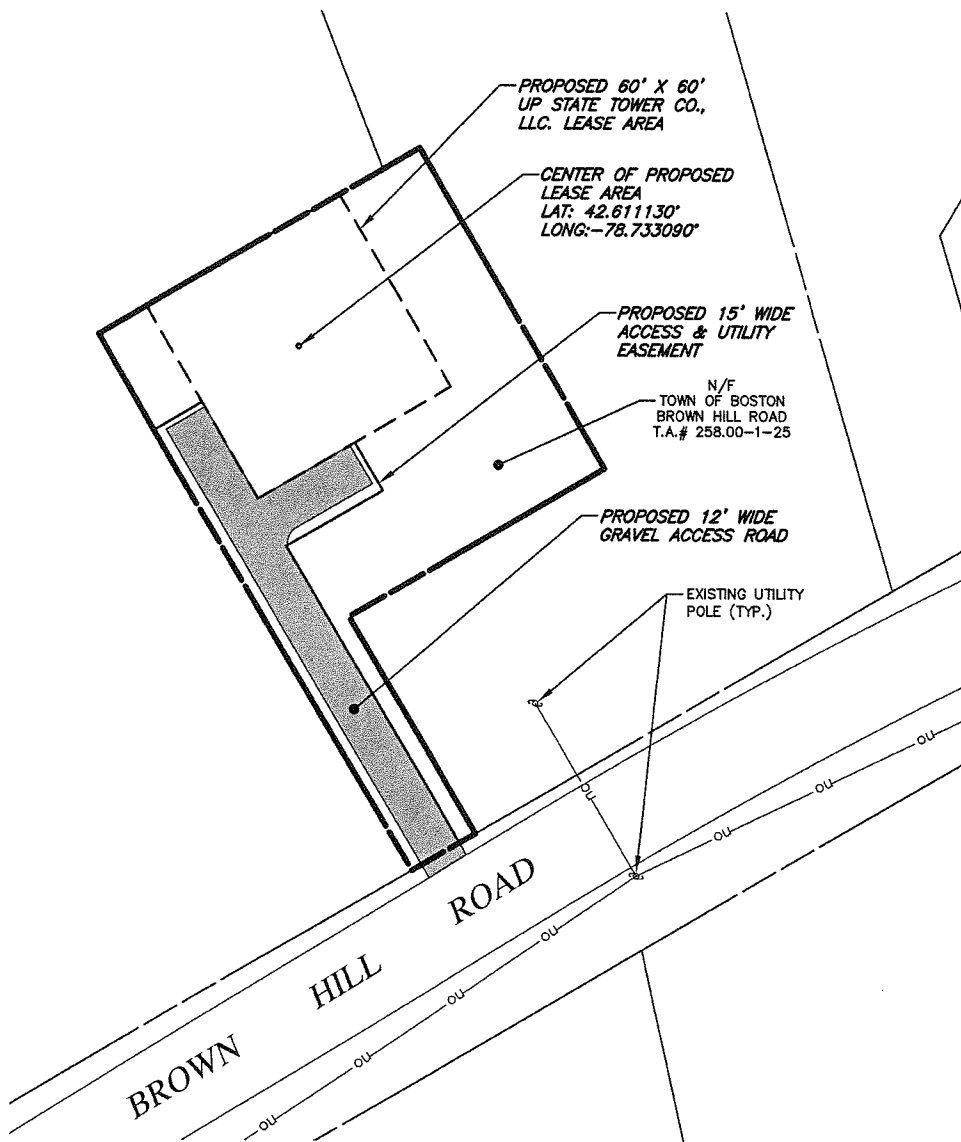
On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
My commission expires:

## EXHIBIT A

### DESCRIPTION OF TOWER SITE

That certain 3,600 square foot parcel or tract of land, together with non-exclusive easements for access 24 hours a day, seven days a week and for utilities services and facilities, located in Boston, Erie County, State of New York, and more particularly described as follows:



The Tower Site is located within a larger parcel(s) or tract(s) of land located in the Town of Boston, County of Erie, State of New York: (i) which is owned by the Town of Boston; and (ii) which is more particularly described in Exhibit A-1, attached hereto and by this reference made a part hereof.

**EXHIBIT A-1**

**DESCRIPTION OF LARGER PARCEL OF PROPERTY**  
**WITHIN WHICH TOWER SITE IS LOCATED**

That certain lot or parcel of land situated in the Town of Boston, County of Erie, State of New York, bounded and described as follows:

**[INSERT PROPERTY DESCRIPTION]**



# Bid Tabulation

## Football Press Box

09/29/2017

Opened by Councilman Jeffrey Genzel

Witnessed by: Town Clerk Dawn Boncal

<u><b>Contractor</b></u>	<u><b>Amount</b></u>
Trason Development	\$120,000.00
Pat White Construction	\$78,000.00