

## **LEASE AND USE AGREEMENT FOR RADIO ANTENNAS ON CITY-OWNED PROPERTY**

This Lease and Use Agreement for Radio Antennas on City-Owned Property (“Agreement”) is made by and between the City of North Port, Florida, a municipal corporation of the State of Florida (“Landlord”) and Community Broadband Radio Association, Inc., a Florida Not for Profit Corporation (“Tenant”).

### **RECITALS**

**WHEREAS**, Tenant desires to lease a portion of the Public Works property owned by Landlord and located at 1100 N. Chamberlain Boulevard, North Port, Florida, 34286 (the “Public Works Property”); and

**WHEREAS**, Tenant desires to lease a portion of the City Hall property owned by Landlord and located at 4970 City Hall Boulevard, North Port, Florida, 34286 (the “City Hall Property”); and

**WHEREAS**, Tenant desires to utilize leased portions of the Public Works Property and the City Hall Property (collectively, the “Leased Premises”) for the purpose of installing, maintaining, and operating a Landlord-approved radio antenna and associated equipment to transmit radio signals for WKDW radio station twenty-four hours a day, 365 days a year; and

**WHEREAS**, Tenant will provide Landlord unrestricted access to utilize Tenant’s antennas and equipment to broadcast messaging to the North Port Community as deemed appropriate by the Landlord.

**NOW, THEREFORE**, for and in consideration of the mutual covenants specified herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

### **1. PREMISES**

Landlord hereby leases, lets, and provides access for installation unto Tenant, and Tenant hereby agrees to lease from Landlord, the following portion of the building on the Leased Premises as set forth in **Exhibit A**:

#### **A. Site 1 – Public Works Property**

- 1) Antenna Location – Approximately eight feet by eight feet (8’ x 8’), totaling 64 square feet of space, to install an antenna.
- 2) Broadcast Equipment – Approximately two feet by two feet by five feet (2’ x 2’ x 5’), totaling 20 cubic feet of space within the information technology closet, located inside the Public Works Administration building.

#### **B. Site 2 – City Hall Property**

- 1) Antenna Location – Approximately three feet by three feet (3’ x 3’), totaling 9 square feet of space, located on the roof of City Hall to install an antenna.
- 2) Broadcast Equipment – Approximately two feet by two feet by five feet (2’ x 2’ x 5’), totaling 20 cubic feet within the information technology closet or similar secured space, located inside City Hall.

## 2. USE OF THE PREMISES

- A. Business Use. Tenant will use the Leased Premises only for the purpose of installing, maintaining, and operating the Landlord-approved antenna and equipment used to provide radio communication, which Tenant is legally authorized to provide.
- B. Operation. Tenant shall have the right, at its sole cost and expense, to operate and maintain the antenna and equipment on the Leased Premises in accordance with good engineering practices and with all applicable Federal Communications Commission rules and regulations. Tenant's installation of the antenna and equipment shall be done according to plans approved by Landlord and as set forth in **Exhibit A**. Any damage done to the Leased Premises or other Landlord-owned property during the installation or during operations by the Tenant shall be repaired at Tenant's expense within 30 days after notification of damage. The antenna and equipment shall remain the exclusive property of the Tenant, unless otherwise provided in this Agreement.
- C. Landlord Broadcasting. During an event of great public impact, Tenant will provide Landlord unrestricted access to utilize either or both Site 1 and Site 2 to broadcast messaging to the North Port Community as deemed appropriate by the Landlord.
- D. Maintenance Improvement Expense. All modifications to the Leased Premises and all improvements made for Tenant's benefit shall be at the Tenant's expense, except for those improvement as outlined in Section 6.A. below. Tenant must maintain all improvements, including but not limited to the antenna, facilities, and equipment, in a good state of operational repair, at least equal to the standard of maintenance of the Landlord's facilities on or adjacent to the Leased Premises. If Tenant's antenna(s) are mounted, connected, or attached to a Landlord-owned structure, the antenna(s) shall, at all times, be painted, at Tenant's expense, the same color as the structure, or as otherwise approved in writing by the Landlord.
- E. Common Areas. Tenant and its employees, agents, licensees, and invitees will have use of the Leased Premises as outlined herein and the right to use, in common with the Landlord, the common areas and parking spots as required for installation and maintenance of Tenant's antenna and broadcast equipment, subject to rules and regulations for the use thereof as Landlord prescribes from time to time.
- F. Disturbance or Improper Use. Tenant acknowledges the Landlord's Public Works Property and City Hall Property are used to provide continuous and uninterrupted service to the community. Tenant must actively use, operate, and conduct its business from the antenna on the Leased Premises to further the mission of Landlord's Public Works Property and City Hall Property. Tenant further agrees not to use the Leased Premises, or permit the Leased Premises to be used, for any unlawful business or practice or in a manner that disturbs the regular use of Public Works Property or City Hall Property.
- G. Policies and Procedures. Landlord may, from time to time, issue policies and/or procedures related to the Leased Premises. Tenant agrees to abide by all issued policies and/or procedures.
- H. Hazardous Materials Prohibited. To the best of Landlord's knowledge, as of the commencement date of this Agreement, no hazardous materials or conditions exist at the Leased Premises. Except as otherwise provided herein, Tenant, its agents, licensees, and invitees will not use, handle, store, display or generate hazardous materials (materials that are ignitable, corrosive, toxic or reactive) in or on the Leased Premises. "Hazardous materials" will mean those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.*; the



Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; in the regulations adopted and promulgated pursuant thereto; and in the applicable laws, regulations and ordinances enacted by the State of Florida, Sarasota County, and/or the City of North Port.

### 3. TERM AND TERMINATION

- A. Term. Commencing on the date of the last party to ratify and approve this agreement ("Effective Date"), the term of this Agreement will be five (5) years ("Initial Term"). After the Initial Term, unless otherwise terminated, this Agreement will automatically renew for additional one-year terms as of the anniversary of the Effective Date, for a maximum of five (5) renewal terms. In no event will this lease extend for more than ten (10) years, including the Initial Term and all renewal terms. Upon termination or expiration of this Agreement, Tenant shall have thirty days to remove its broadcast equipment from the Leased Premises, and any disturbed area must be returned to a condition as good or better than preinstallation of the equipment, as determined by Landlord. If Tenant fails to remove the broadcast equipment within the allotted time, the property will vest to the Landlord. In addition, the Tenant will be liable for cost of said removal of property.
- B. Termination by Landlord.
- 1) With or Without Cause. Except as otherwise provided herein, the Landlord may terminate this Agreement at any time, with or without cause and without penalty or premium, upon ninety (90) days written notice from the City Manager or designee.
  - 2) Broadcast Method. Tenant must notify Landlord in writing at least 30 days prior to changing the broadcast method of Tenant's station. The Landlord may immediately terminate this Agreement upon the change in broadcast method by providing Tenant with written notice from the City Manager or designee.
- C. Termination by Tenant. Except as otherwise provided herein, the Tenant may terminate this Agreement at any time, with or without cause and without penalty or premium, upon ninety (90) days written notice.

### 4. PAYMENTS DUE TO LANDLORD

- A. Rental Amount. Landlord, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, and/or the covenants and agreements herein contained, does hereby option to lease and if exercised pursuant to the terms hereunder lease, let and demise unto Tenant, and Tenant does hereby lease from Landlord, the Leased Premises.
- B. Security Deposit. No security deposit is required in connection with this Agreement.
- C. Telecommunications. Tenant agrees to pay all network internet connection charges required to ensure its broadcasting ability at the Leased Premises.
- D. Taxes. Tenant shall pay Landlord annually all taxes that may be levied and assessed upon the Leased Premises attributable to any improvement thereto made by Tenant, the equipment installed thereon, or upon this Agreement (sales taxes) or the amounts paid under the terms of this Agreement, or any rights

arising under this Agreement. If any taxes are paid by Landlord, Tenant shall reimburse Landlord for the amount of any such tax payment within thirty (30) days of receipt of documentation.

## 5. SIGNAGE

- A. Tenant will not paint, display, inscribe, maintain, or affix any signs to the Leased Premises and will not make changes to any sign, fixture, advertisement, notice, lettering, or direction on any part of the outside of the building or common areas without Landlord's written consent. Tenant will bear all expenses associated with the purchase, maintenance, installation, repair, and removal of this signage and advertising.

## 6. MAINTENANCE AND REPAIRS

### A. Landlord Responsibility.

- 1) Landlord agrees to provide for all building operating and maintenance costs and common area maintenance necessary to keep the Leased Premises in good repair and order including the following amenities and services: (i) all maintenance and repairs required for structural portions of the building including the foundation, common areas, exterior and interior walls, glass windows, building grounds, maintenance and repair of exterior area; (ii) all maintenance and repairs required to mechanical and plumbing systems, air conditioning (HVAC) or utility lines, electrical lines, wires and equipment supplied by Landlord; (iii) all building operating, maintenance and repair expenses to Leased Premises including, but not limited to, lease management overhead, fees, insurance and taxes, other than those payable by Tenant as provided herein, and capital costs, sidewalk, walkways, driveway and surface parking area, landscaping and lawn care, window cleaning, pest control, and HVAC service; (iv) exterior lighting; (v) repairs or damage to the Leased Premises resulting from malfunctioning of building heating and air conditioning (HVAC) equipment, plumbing or electrical fixtures; and (vi) all charges for water, sewer, electric, and trash collection services to the Leased Premises.
- 2) Landlord must provide and install, at that Landlord's expense, the concrete base required to anchor the antenna at the Public Works Property as specified in the agreed antenna plans as set forth in **Exhibit A**.
- 3) Landlord must provide the electrical connection and pay the electrical service fee for the antennae at both the Public Works Property and the City Hall Property.

### B. Tenant Responsibility.

- 1) Tenant, at its expense, must supply and maintain all broadcast equipment required for the antennae connection, except for any items listed in Section 6.A. above.
- 2) Tenant must maintain all equipment in a clean and healthy condition and notify Landlord immediately when maintenance or repair of the Leased Premised is needed. Tenant will leave the Leased Premises in as good or better condition as when received, except for reasonable wear and tear, loss by fire or other casualty, and acts of God, and will remove all trash and debris and leave Leased Premises in broom-swept condition.
- 3) Tenant must secure an independent network internet connection or similar to ensure its broadcasting ability at the Tenant's sole expense.



- C. Tenant Negligence. Landlord is not responsible for the cost of any repairs necessitated by the negligent acts or omissions of Tenant, its directors, officers, agents, employees, licensees, or invitees. Tenant must reimburse Landlord for any repairs upon written demand.

## **7. ALTERATIONS AND IMPROVEMENTS**

- A. With Landlord's written consent, Tenant, at Tenant's expense, will have the right to upgrade equipment and make structural improvements to the Leased Premises provided the same are pre-approved by Landlord at both the planning and building phase. All improvements and alterations will become Landlord's property and will remain upon and be surrendered with the Leased Premises upon termination or expiration of this Agreement.
- B. If Tenant makes any alteration or improvement to the Leased Premises without Landlord's written consent, Tenant will restore Premises substantially to its original or better condition as approved by Landlord, unless Landlord provides written notice that a particular alteration or improvement will remain intact.
- C. Landlord covenants and agrees that no part of the antenna or equipment placed by the Tenant on the Leased Premises or other real property owned by the Landlord shall become, or be considered as being, affixed to or a part of the Landlord's real property, any and all provisions and principles of law to the contrary notwithstanding. All improvements of every kind and nature constructed, erected or placed by Tenant on the Leased Premises shall be and remain the property of Tenant and may be removed at any time during the term of this Agreement by Tenant, provided that same can be removed without damage to Leased Premises.

## **8. RIGHT OF ENTRY**

- A. The Tenant must provide Landlord with no less than twenty-four (24) hour written notice to enter the Leased Premises at reasonable hours to install, operate, remove, maintain, clean, or repair the antenna and broadcast equipment at the Leased Premises, provided Tenant will not unreasonably interfere with Landlord's business at the Leased Premises. Access to the Leased Premises will be coordinated by the Landlord and a Landlord representative will accompany the Tenant as needed. Only authorized employees or agents of the Tenant will be permitted to enter the Leased Premises.
- B. In the case of an emergency in which the Tenant needs to access the Leased Premises without providing twenty-four (24) hour written notice, the Tenant will contact the Landlord as provided for in Section 13. The Landlord will make all reasonable efforts to grant the Tenant access.

## **9. DESTRUCTION OF THE PREMISES**

In the event that the Leased Premises is totally destroyed by fire, act of God, or other casualty, or any substantial portion of the Leased Premises is so damaged or destroyed thereby rendering same unfit for Tenant's purposes for at least sixty (60) consecutive days, Landlord may terminate this Agreement upon written notice to Tenant and the rights of all parties hereunder will cease, except any rights and liabilities that may have accrued to the date of the destruction.

## 10. INSURANCE, PROPERTY LOSS AND DAMAGE

Before any installation of broadcasting equipment, Tenant must procure and maintain, during the life of this Agreement, the insurance listed below, unless otherwise specified. The policies of insurance must be primary and written on forms acceptable to the Landlord and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida, and meet a minimum financial AM Best and Company rating of not less than "Excellent."

- A. Comprehensive General Liability Insurance. Tenant will procure and maintain for the duration of this Agreement, general liability insurance coverage per occurrence, combined single limit for bodily injury, and property damage liability, including premises and operations, on the Premises with limits of not less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate per policy year. The aggregate will apply separately to the Premises and will not be shared among other locations. Tenant's liability insurance policy will be the primary coverage on the Premises and Landlord will be named as an additional insured under the policy. Tenant's general liability coverage will also include coverage for its guests and invitees while on the Property.
- B. All Risk/Special Perils/Casualty Insurance. Tenant will procure and maintain for the duration of this Agreement, all risk/special perils/casualty (to include sinkhole) property insurance (or the equivalent) to cover loss on the Premises resulting from damage to or destruction of personal property contents. The policy will cover one hundred percent (100%) of the replacement cost of Tenant's tangible personal property and content and will include an agreed value endorsement to waive coinsurance.
- C. Workers' Compensation Coverage. Tenant will procure and maintain for the duration of this Agreement, for all employees, subcontractors, or other persons engaged in work under this Agreement, and shall not be less than:

Coverage A: Workers Compensation      All State and Federal Statutory Limits Apply

Coverage B: Employers Liability      \$500,000 each accident  
   \$500,000 each employee  
   \$500,000 policy limits for diseases

- D. Commercial General Liability. Tenant will procure and maintain for the duration of this Agreement coverage that must include bodily injury, and property damage liability for premises, operations, products and completed operation, personal and advertising injury, independent contractors, contractual liability covering this Agreement, contract or lease, broad form property damage and property damage resulting from explosion, collapse or underground exposures with the following minimum limits:

\$1,000,000 each occurrence  
\$1,000,000 general aggregate  
\$1,000,000 products and completed ops  
\$100,000 damage to rented premises

- E. Commercial Auto Liability: Tenant will procure and maintain for the duration of this Agreement for the ownership, maintenance and use of all its owned, non-owned, leased or hired vehicles with limits of not less than:

\$300,000 each accident for property damage and bodily injury with contractual liability coverage



- F. Certificates of Insurance and Renewal Policies. Within ten (10) days of procurement, Tenant will supply Landlord with certificates of insurance showing that all coverage required pursuant to this Agreement is in full force and effect. All certificates of insurance will be provided to the City Clerk's Office of the City of North Port, together with a copy of this Agreement. From time to time, Tenant will procure and pay for renewals of this insurance before it expires. Tenant will deliver to Landlord the renewal policy at least ten (10) days before the existing policy expires.
- G. Other Requirements. All policies must be issued by companies of recognized responsibility licensed to do business in Florida and must contain a provision that prohibits cancellation unless Landlord is given at least ten (10) days' prior written notice of cancellation by the insurance company. Landlord is not responsible for any premium payments or deductibles on Tenant's policies. Landlord reserves the right, upon written notice to Tenant, to review, alter, and amend the insurance requirements herein as needed.

## 11. INDEMNIFICATION

- A. TENANT REIMBURSEMENT, INDEMNIFICATION, AND ASSUMPTION OF DEFENSE. Tenant will reimburse Landlord and its officers, commissioners, agents, employees, and representatives (collectively, "Landlord Parties") for and will indemnify, defend, and hold harmless Landlord Parties from and against any and all loss or damage sustained by, liability or costs of any kind, and claims or causes of action asserted against Landlord Parties arising in whole or in part out of or by reason of:
- (i) Any accident or occurrence in or on the Leased Premises, any use of or business conducted in or on the Leased Premises, or any hidden or apparent defect in the Leased Premises; or
  - (ii) Any damage to or loss of any property of Tenant or any person occupying the Leased Premises or any of their respective officers, directors, shareholders, affiliates, agents, employees, sublessees, subtenants, or contractors (collectively, "Tenant Parties"), whether the damage to or loss of property occurs on the Leased Premises or on any other part of the Public Works Property and City Hall Property; or
  - (iii) Any act, omission, negligence, or fault of Tenant Parties, whether occurring on the Leased Premises or on any other part of Public Works Property and City Hall Property.

Tenant's reimbursement and indemnity obligations will include, but not be limited to, any and all penalties, assessments, fines, damages, interest, settlement amounts, judgments, losses, reasonable attorneys' fees and other costs and expenses, whether incurred in negotiations, at the trial level, on appeal, or in the collection of attorneys' fees. In the event of any claim, action, or proceeding, the indemnified Landlord Parties shall have the right to select the attorneys to represent them in matter and the cost shall be borne by Tenant.

- B. ASSUMPTION OF LIABILITY AND WAIVER. Because of Tenant's insurance obligations under this Agreement, Tenant assumes full responsibility and liability for the condition of the Leased Premises for the duration of this Agreement, and Tenant waives all rights and claims against and holds harmless Landlord Parties for any and all property loss or damage occurring anywhere on the Leased Premises and any and all personal injury or death occurring in or about the Leased Premises. As part of its waiver, Tenant waives all rights and claims against Landlord Parties arising from:

- (i) Theft, vandalism, criminal acts, or lack of security (Tenant hereby acknowledges that it is solely responsible for its own security, and that Landlord is not required to provide or to continue to provide any security equipment, devices, or services);
- (ii) Any acts or omissions of other tenants of the Public Works Property or City Hall Property or any other property owned or managed by Landlord;
- (iii) Any freezing, bursting, or leaking of, or water otherwise coming out of pipes or sprinklers, leaks in the roof, or the lack of a sprinkler system or fire prevention system, or the failure of a sprinkler system or fire prevention system to work properly (Tenant hereby acknowledges that it has sole responsibility for insuring over loss or damage caused by malfunctions or failures to function of the sprinkler system or fire prevention system);
- (iv) Any lack of or failure of the plumbing, heating, air conditioning, or any other mechanical system (including, but not limited to, those described in (iii) above); and
- (v) Any failure to cause the Leased Premises to comply with laws or otherwise to be in a condition suitable for Tenant's use.

This provision and Tenant's reimbursement and indemnification obligations set out above will apply notwithstanding the fact that Landlord is the owner of the Leased Premises, and even if the incident that is the subject of the waiver, reimbursement, or indemnification arises from the negligence of Landlord Parties or Landlord's contractors. This section will not exclude liability if the exclusion of that liability is prohibited by the laws of the State of Florida.

- C. INSURANCE COVERAGE NOT A LIMITATION. Tenant's insurance coverage and the limits required in this Agreement may or may not be adequate to protect Landlord and the insurance coverage will not be deemed a limitation on Tenant's liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this indemnity provision, the prevailing party must be reimbursed all costs, expenses, and reasonable attorney fees through all proceedings (at both trial and appellate levels).
- D. LANDLORD RIGHTS, PRIVILEGES, AND IMMUNITIES. Nothing in this Agreement will be deemed to affect the rights, privileges and immunities of Landlord as set forth in Florida Statutes Section 768.28. This Agreement does not constitute a waiver of sovereign immunity or consent by Landlord to suit by third parties.
- E. SURVIVAL OF COVENANTS. The terms of this section will survive the termination of this Agreement.
- F. LANDLORD COOPERATION AND NOTICE. Landlord will provide all available information and assistance that Tenant may reasonably require regarding any claim. In the event of a claim, Landlord must promptly notify Tenant in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided for receipt of notices in this Agreement.

## 12. DEFAULT AND REMEDIES

- A. Tenant Default. The occurrence of any one of the following events will constitute a default of Tenant:



- (i) Abandonment or improper maintenance of the Leased Premises for a period of ten (10) consecutive days;
  - (ii) Failure to pay internet services or any other monies due and continuing for a period of ten (10) days after the same is due;
  - (iii) Filing a voluntary petition in bankruptcy;
  - (iv) Receivership, attachment, or other judicial seizure of substantially all of Tenant's assets on the Leased Premises;
  - (v) Failure to execute and deliver to Landlord any estoppel certificate, certificate of incumbency or Agreement amendment within the time periods and in the manner required by Landlord;
  - (vi) An assignment or sublease, or attempted assignment or sublease, of this Agreement or the Leased Premises;
  - (vii) Failure in the performance of any agreements or obligations in this Agreement;
  - (viii) Failure to perform or observe any other condition or obligation of this Agreement and to cure the failure within thirty (30) days following Landlord's written notice to Tenant; or
  - (ix) Failure to notify Landlord in writing at least 30 days prior to changing the broadcast method of Tenant's station.
- B. Landlord Default. Landlord will be in default if Landlord fails to perform or observe any condition or obligation of this Agreement within thirty (30) days following Tenant's written notice to Landlord, provided that:
- (i) If the nature of the default reasonably requires more than thirty (30) days, Landlord will not be in default hereunder if Landlord has promptly commenced and is diligently pursuing a cure; and
  - (ii) If the nature of the default poses an imminent danger to persons or property, then the period of time for cure will be a reasonable period of time in light of the circumstances.
- C. Landlord Remedies. In the event of Tenant's default, Landlord may take the following action:
- (i) Terminate this Agreement;
  - (ii) Re-enter the Leased Premises, terminate Tenant's right of possession of the Leased Premises, and re-let all or any part of the Leased Premises;
  - (iii) Cure the default on behalf of Tenant and Tenant will pay the reasonable costs of the cure upon written demand; and/or
  - (iv) Pursue any other remedy available under the law.
- D. No Waiver of Landlord's Remedies. Any act of forbearance by Landlord concerning any breach or default by Tenant, will not constitute a waiver of Landlord's right to pursue remedies for default, including proceeding with an eviction claim. Landlord's acceptance of any act of forbearance or waiver of any

breach or default of this Agreement by Tenant will not be construed as a continuing waiver or consent to any subsequent breach, or default by Tenant and will not bar Landlord's right to demand strict compliance with that provision or any other provision of this Agreement. No course of dealing between Landlord and Tenant will constitute a waiver of any of Landlord's rights or any of Tenant's obligations as due hereunder.

E. Tenant Remedies. In the event of Landlord's default, Tenant has the following remedies:

- (i) Cure the default on behalf of Landlord, and Landlord will pay the reasonable costs of the cure upon written demand; and/or
- (ii) Pursue any other remedy available under the law.

F. Mitigation. Both parties agree to mitigate their damages upon default.

### 13. NOTICES

Except as specified elsewhere in this Agreement, all notices provided for in the Agreement must be in writing and transmitted by FedEx, UPS, or by certified mail, return receipt requested to the following. A party may update its notice information by providing written notice to the other party.

Tenant: Community Broadband Radio Association, Inc.  
Robert Malloy, Director  
12737 Tamiami Trail  
North Port, FL, 34287  
(941)564-8739 telephone

Landlord: City of North Port, Florida  
City Manager  
4970 City Hall Blvd.  
North Port, Florida 34286  
(941)429-7000 telephone

With copies of Notices to:

City of North Port, Florida  
City Attorney  
4970 City Hall Blvd.  
North Port, Florida 34286

### 14. RADON GAS

Pursuant to Florida Statutes Section 404.056(5), Landlord is required to provide the following notice:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.



## **15. SUBLEASE AND ENCUMBER**

Tenant will not transfer, sublet, underlet, mortgage, pledge or encumber this Agreement.

## **16. FORCE MAJEURE**

Should performance of any obligation (other than payment obligations) created under this Agreement become illegal or impossible by reason of:

- A. A strike or work stoppage, unless caused by a negligent act or omission of any party;
- B. An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
- C. An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;
- D. A declared emergency of the federal, state, or local government; or
- E. Any other cause not enumerated that is beyond the reasonable control of the non-performing party;

then the performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected party provides reasonable notice of the event of force majeure and exercises all reasonable diligence to eliminate the cause of force majeure.

## **17. HOLDING OVER**

If Tenant should remain in possession of the Leased Premises after the expiration of the Initial Term or any Renewal Term of this Agreement, without the exercise of an option of the execution by Landlord and Tenant of a new agreement, then Tenant shall be deemed to be occupying the Leased Premises as a tenant-at-sufferance. Tenant will be responsible for all costs and legal fees borne by the Landlord to cure the matter.

## **18. TERMINATION FOR SCRUTINIZED COMPANIES**

By executing this Agreement and each and every Renewal Term hereof (if renewal is separately provided for herein), pursuant to Section 287.135, Florida Statutes, Tenant certifies, represents, and warrants that: (a) it is not on the Scrutinized Companies that Boycott Israel List, and (b) it is not engaged in a Boycott of Israel, and that all such certifications were true at the time it submitted its bid or proposal for this Agreement, as of the Effective Date of this Agreement, and as of the effective date of any Renewal Term of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Landlord may terminate this Agreement immediately if: (1) Tenant is found to have submitted a false certification regarding (a) or (b) above in accordance with Section 287.135, Florida Statutes, or (2) Tenant has been placed on the Scrutinized Companies that Boycott Israel List or is or has been engaged in a Boycott of Israel. Such termination shall be in addition to any and all remedies available to the Landlord at law or in equity. The term "Boycott of Israel" used in this section is defined as in, and the Scrutinized Companies that Boycott Israel List is the list maintained pursuant to, Section 287.135, Florida Statutes.

## 19. PUBLIC RECORDS

- A. Notwithstanding any other term of the Agreement, the Parties recognize that the Landlord is a governmental entity which is subject to the public records and open meetings laws of the State of Florida, and nothing contained herein shall be construed as authorizing or agreeing to any action which would violate such laws. The determination of the applicability of statutory exemptions to a particular record will be made by the Landlord, in its sole and absolute discretion.
- B. IF TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7063 OR HOTLINE (941) 429-7270; E-MAIL: publicrecordsrequest@northportfl.gov.**

## 20. MISCELLANEOUS

- A. Authority to Execute Agreement. The signature by any person to this Agreement will be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
- B. Permits. Tenant must obtain all appropriate and applicable permits, approvals, zoning changes, variances and other governmental permits and approvals necessary to comply with this Agreement. Tenant is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission. Tenant must comply with all applicable state, federal, and local laws and regulations in its performance under this Agreement.
- C. Covenants. Tenant covenants and agrees that the antenna and broadcast equipment, including but not limited to installation and operation, will not damage the Leased Premises or interfere with the business operation of the Landlord at the Leased Premises. In the event there is interference by Tenant, Tenant will promptly take all necessary steps to cure and eliminate same within a reasonable period of time. If Tenant is unable to eliminate such interference, Tenant agrees to remove its antenna and broadcast equipment from the Leased Premises and this Agreement shall immediately terminate without further notice.
- D. Binding Effect/Counterparts. By the signatures affixed hereto, the parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and will inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.
- E. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.
- F. No Agency. Nothing contained herein will be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the parties, it being understood and agreed that



neither the method of computation of rent, or any other provisions contained herein, or any acts of the parties will be deemed to create any relationship between them other than that of Landlord and Tenant. It is understood and agreed that no provision contained herein, or any acts of the parties, will be deemed to create any relationship between them other than that as detailed herein. Tenant retains sole and absolute discretion and judgment in the manner and means of carrying out its radio broadcast, within the established rules and regulations of applicable state, federal, and local laws and regulations.

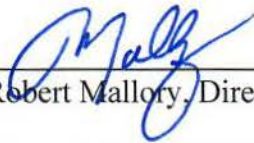
- G. Severability. If a court holds any provision of this Agreement to be illegal, invalid, or unenforceable the remaining provisions will be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition, or covenant will not be construed as a waiver of a subsequent breach by the other party.
- H. Headings. The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Agreement and do not affect its construction.
- I. Complete Agreement. This Agreement and attached exhibits incorporate and include all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.
- J. Amendment. No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. Any amendments changing Landlord's financial obligations under this Agreement shall require approval by the City Commission. The City Commission hereby authorizes the City Manager or City Manager's authorized designee to approve and execute all Agreement amendments on behalf of Landlord that do not change Landlord's financial obligations under this Agreement.
- K. Assignment. Tenant will not assign this Agreement or any right or responsibility herein unless with the prior written consent of the City Manager or designee.
- L. Nondiscrimination. The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. Tenant will not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

**IN WITNESS WHEREOF**, the parties have executed this Lease and Use Agreement for Radio Antennas on City-Owned Property as follows.

*(This space left intentionally blank; signature pages follow)*

**TENANT:**

Community Broadband Radio Association, Inc.  
12737 Tamiami Trail  
North Port, Florida 34287

  
\_\_\_\_\_  
Robert Mallory, Director

**ACKNOWLEDGEMENT**

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 19<sup>th</sup> day of Aug, 2024, by Robert Mallory (name of person acknowledging), as Executive Director (title) for CBRA, Inc (entity).

My commission expires: 02-24-2025  
(Notary Seal)

Dianne Shehadeh  
Notary Public Dianne Shehadeh

\_\_\_\_ Personally Known OR  Produced Identification  
Type of Identification Produced FD





Approved by the City Commission of the City of North Port, Florida on \_\_\_\_\_, 2024.

LANDLORD:  
CITY OF NORTH PORT, FLORIDA

\_\_\_\_\_  
A. JEROME FLETCHER II, ICMA-CM, MPA  
CITY MANAGER

ATTEST

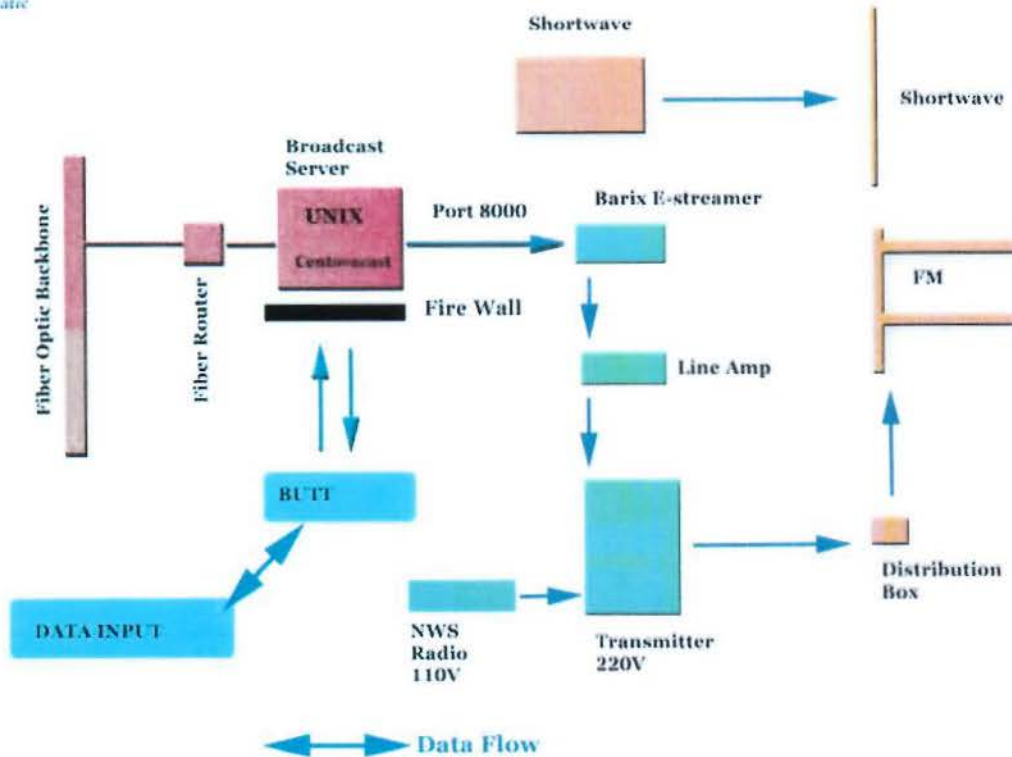
\_\_\_\_\_  
HEATHER FAUST, MMC  
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

\_\_\_\_\_  
AMBER L. SLAYTON, B.C.S.  
CITY ATTORNEY

**EXHIBIT A**  
**Lease and Use Agreement for Radio Antenna on City-Owned Property**

WKDQ 97.5 FM  
 Transmission  
 Schematic



**I. TRANSMISSION SPECIFICATIONS**

**Broadcast Server**

Designed to our specifications, this Unix server is located in Phoenix, AZ at the Codero Secure Data facility. The server sits directly on the fiber optic backbone with no other servers or routers between us and the internet which provides us with unlimited bandwidth.

The server has one active outgoing port (#8000) that sends the audio data out a full duplex stereo. This is a “one way” data port and does not accept incoming data. The port is controlled by the broadcast software Centovacast.

The server has one bi-directional port (#62) which allows us to access Centovacast for programming and only accepts Centovacast requests. The server has a second bi-directional port (#81) which accepts encrypted BUTT communication. All other ports are closed and can only be opened by Codero technicians.

**The server only runs it's operating system and Centovacast. No other software is hosted for security.**



## **Barix X-streamer**

The Barix box is a secured, dedicated firmware computer that listens for the audio stream from the Broadcast server and sends it to the FM Transmitter . The Barix is also a “one way” data stream that is programmed only to receive and transmit the data stream to the transmitter.

## **FM Transmitter**

The transmitter is FCC certified and operates on a 220V line. The transmitter auto-resets after any line and power losses or surges.

## **Distribution Box**

The DB controls the stereo signal to the dual antenna array

## **Dual FM Antenna**

The array creates an omni-directional, vertical and horizontally polarized FM signal. The array allows for maximum broadcast distance of a full duplex stereo signal

## **Shortwave**

The system contains the required hardware for the shortwave repeater.

## **BUTT**

This is the software that allows a secure and encrypted connection to the Broadcast Server and converts the recorded programming to a live broadcast. Both live and pre-recorded audio is simulcast on FM and on the internet stream.

## **Data Input**

Data can only be sent to the Broadcast server through the encrypted BUTT software and through the encrypted Centovacast radio automation software.

## II. ANTENNA INSTALL SPECIFICATIONS

The tower is basically a telescoping flag pole. Unlike a typical flag pole with significant wind resistance from the flag, the antenna array and tower have negligible wind resistance allowing for a less robust foundation. Note in the Tower Manual, the foundation design is for earthquake resistance. US Tower had provided a re-engineered foundation plan for wind resistance that was used for the current tower installation.

However, rather than placing the bottom tube directly into the concrete foundation, we use an engineered plate and sleeve that allows for the tower to be relocated or dismounted for repair.

There are two options for install:

1. Our current foundation and plate/sleeve stilled directly into the ground.
2. A surface sleeve and plate with wall brackets to attach directly to the building.

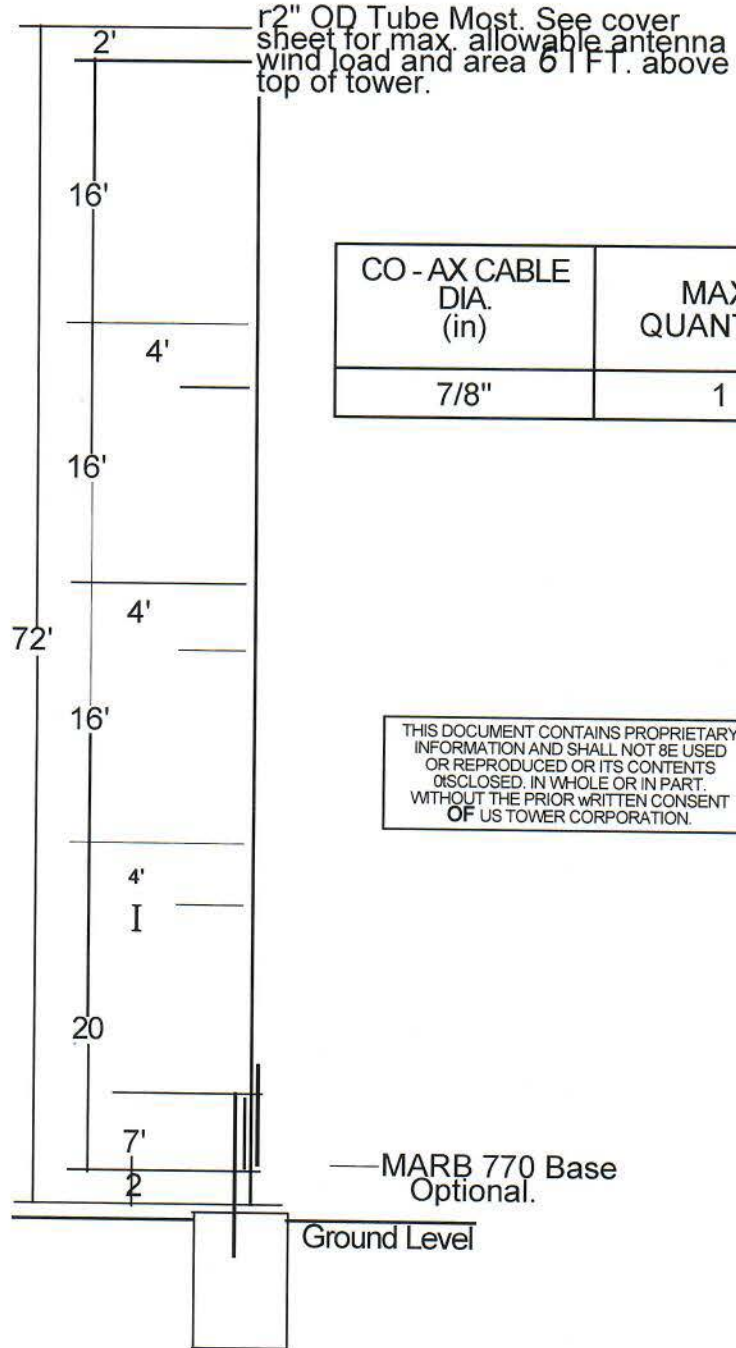
Ideally, the free standing installation is the easiest and the strongest.





## MA-770 TOWER ELEVATION

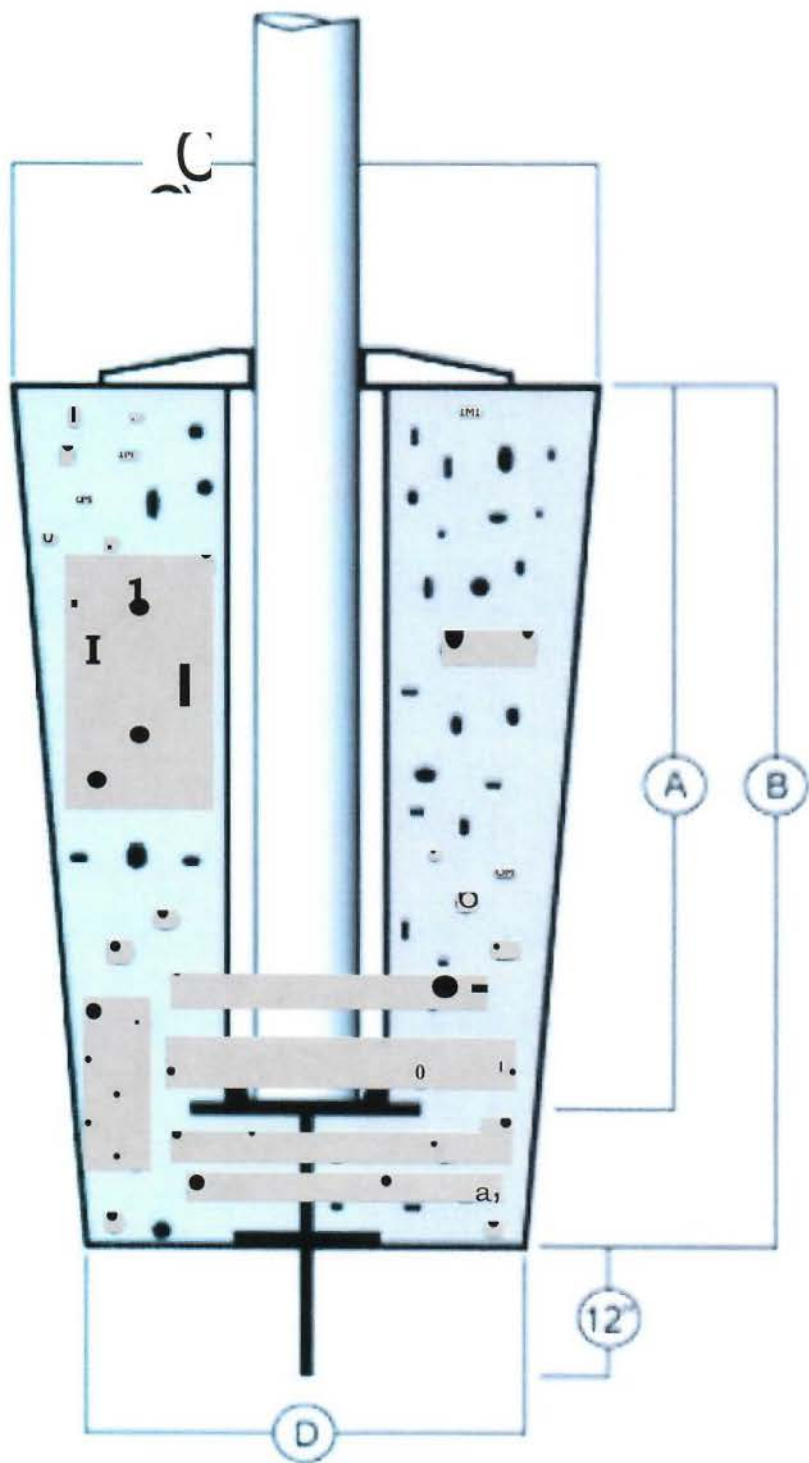
SECTION NO.	MA X	I 6	MA 4 4	MA 3
TUBE SIZE	ROUND TUBE 8' OD X 0.135" WALL	ROUND TUBE 6.625" OD X 0.135" WALL	ROUND TUBE 4 1/2" OD X 0.120" WALL	8' X 8' X 1/2" X 1/2"



CO - AX CABLE DIA. (in)	MAX. QUANTITY
7/8"	1

THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION AND SHALL NOT BE USED OR REPRODUCED OR ITS CONTENTS DISCLOSED, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF US TOWER CORPORATION.

e")



C = 4'0" B = 6'0" D = C

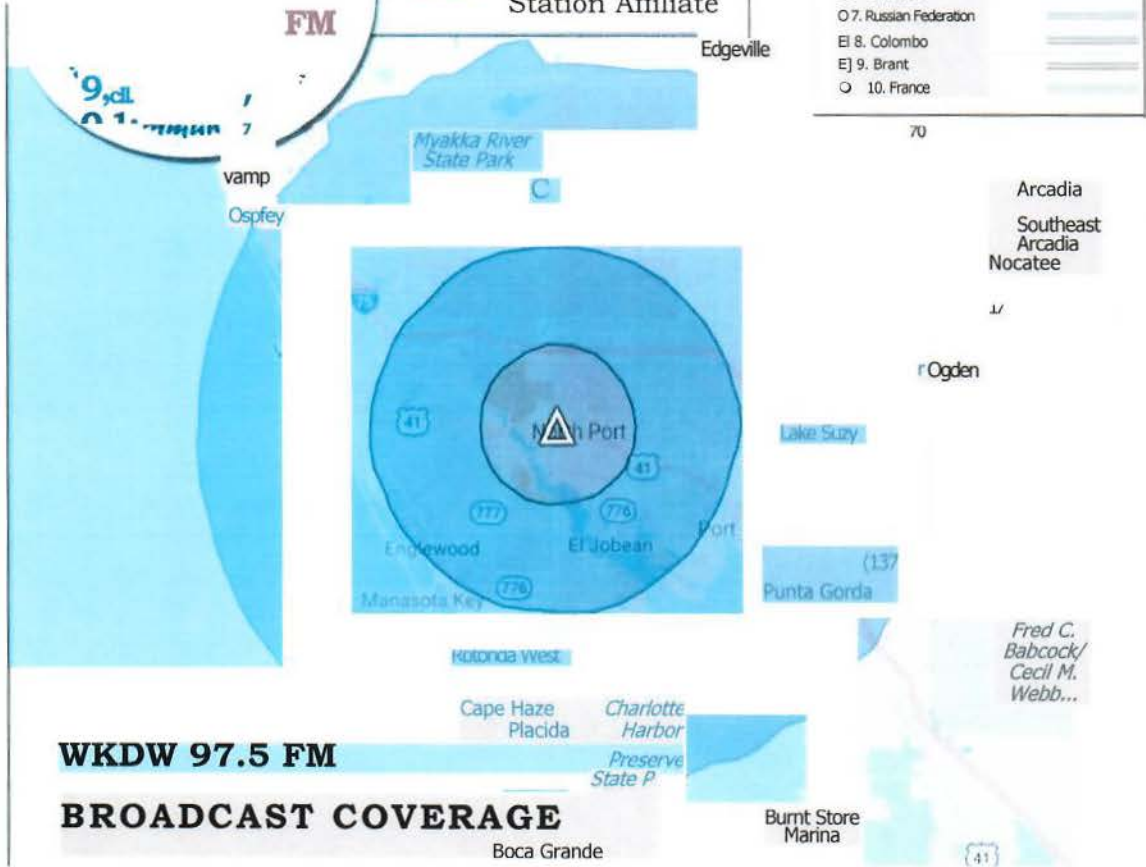


1101

**abc NEWS RADIO**  
Station Affiliate

FM

- Country
- El 1. Urged States
  - O 2. Germany
  - O 3. Cuba
  - O 4. Canada
  - ID 5. Unknom
  - O 6. Mexico
  - O 7. Russian Federaton
  - El 8. Colombo
  - EJ 9. Brant
  - O 10. France



## SITE 1

1100 N. Chamberlain Boulevard, North Port, Florida, 34286

### A. Site 1 – Public Works Property

- 1) Antenna Location – Approximately eight feet by eight feet (8' x 8'), totaling 64 square feet of space, to install an antenna.
- 2) Broadcast Equipment – Approximately two feet by two feet by five feet (2' x 2' x 5'), totaling 20 cubic feet of space within the information technology closet, located inside the Public Works Administration building.







## SITE 2

4970 City Hall Boulevard, North Port, Florida, 34286

### B. Site 2 – City Hall Property

- 1) Antenna Location – Approximately three feet by three feet (3' x 3'), totaling 9 square feet of space, located on the roof of City Hall to install an antenna.
- 2) Broadcast Equipment – Approximately two feet by two feet by five feet (2' x 2' x 5'), totaling 20 cubic feet within the information technology closet or similar secured space, located inside City Hall.

