

# **Schedule D**

# **Tower Lease**

## **SCHEDULE D**

### **TOWER AGREEMENT**

THIS TOWER AGREEMENT is made and entered into as of this 1st day of July, 2002, by and between the **CITY OF CLEARWATER, FLORIDA**, a **Florida Municipal Corporation** (herein "City" or "The City"), and **M/A-COM Private Radio Systems, Inc.**, a **Delaware corporation** (herein "M/A-COM"), having its general offices at 3315 Old Forest Road, Lynchburg, Virginia 24501. All terms defined herein shall be for the sole purpose of the Tower Agreement.

1. **Premises:** The City hereby grants to M/A-COM and M/A-COM hereby accepts from the City an exclusive License to use not more than 7219 square feet of land area situated within the chain link fenced boundaries enclosing each of the City's two (2) existing radio communications towers.

(08A8 - DUNEDIN)

(a) Communication Tower – operational upon the grounds of the City's Northeast Water Pollution Control Plant, 3290 S.R. 580 and McMullen Booth Road (herein, "WPC site") located at Latitude 28°01'54" North and Longitude 82°42'16" West, and at

(b) Communication Tower – operational at 1400 Young Street upon the grounds of park property under lease by the City from the Florida Department of Transportation by virtue of that certain 99 year lease dated January 19, 1976 and that certain Modification of Lease dated January 26, 1986, all being recorded in O.R. Book 6275, Pages 1880 through 1888, in the Public Records of Pinellas County, Florida, located at Latitude 27°56'42" North, and Longitude 82°47'13" West (herein, "Missouri site").

The communications towers, together with the land upon which they are located, are referred to herein as the "Premises." Final site specific engineering plans and load factor calculations regarding the respective site is subject to final approval by authorized City officials prior to commencement of any construction or installation of any communications equipment by M/A-COM, its employees, agents or contractors.

2. **Communications Equipment:** The City hereby grants permission to M/A-COM to install and operate such communications equipment, building, electrical generator using propane fuel and associated equipment on and within the Premises as M/A-COM deems appropriate.

In this agreement, all of the equipment, buildings, panels, generators, cables, wires, antennas, and accessories are referred to collectively as "Communications Equipment" or "Communications Centers."

3. **Term:** The primary term ("Primary Term") of this Agreement shall be for twenty (20) years commencing on July 1, 2002 (the "Commencement Date") and terminating at Midnight, September 30, 2022, subject to extensions as set forth in Paragraph 8 below. The Commencement Date as set forth herein shall coincide and be identical with the first day of the first month in which M/A-COM intends to enter upon the Premises, but in no event later than 90 days following the date of this Agreement as first above written. M/A-COM shall provide written notice of the intended Commencement Date to the office of the City Attorney, 112 South Osceola Avenue, Clearwater, Florida 34616 not later than ten (10) business days prior to said Commencement Date.

4. **Consideration.** Contemporaneous with the execution of this License Agreement, the City and M/A-COM are entering into a Service and Access Agreement (the "Service Agreement"). M/A-COM's fulfillment of its obligations pursuant to the Service Agreement and this License Agreement is in total consideration of this License Agreement. There shall be no additional consideration due from M/A-COM to the City.

5. **Use:** M/A-COM will use the Premises for the purpose of constructing and operating Communications Centers as provided herein. M/A-COM will abide by all local, state and federal laws and obtain all permits and licenses necessary to operate the systems. M/A-COM shall use the Premises for no other purposes without the prior written consent of the City.

6. **Access:** M/A-COM shall have ingress and egress to the Premises on a 24-hour basis for the purposes of maintenance, installation, repair and removal of said Communications Equipment. Provided, however, the only authorized engineers or employees of M/A-COM, or persons under M/A-COM's direct supervision, will be permitted to enter the said Premises, and their entry shall be for the purpose of installing, removing, or repairing the Communications Equipment and for no other purpose. M/A-COM shall notify City in advance of its need to install, remove, or repair the Communications Equipment located on the Premises, except in the case of an emergency in which event notification shall be given as soon as reasonably possible. Access requiring entrance into or onto the communications towers shall be coordinated with the General Services Department of the City with respect to the communications towers.

7. **Utilities at M/A-COM's Cost:** M/A-COM shall be solely responsible for and promptly pay all charges for electricity, telephone and any other utility used or consumed by M/A-COM on the Leased Premises. The City shall advise M/A-COM and fully cooperate with any utility company or the City requesting an easement over and across the Premises or other lands owned by the City in order that such utility company may provide service to M/A-COM. If additional easement is required to provide such utility services to the Missouri site, the City will cooperate with M/A-COM in seeking the grant of such easement from the State of Florida Department of Transportation. M/A-COM shall have an electrical current meter installed at the Premises and have the right to run underground or overhead utility lines, in compliance with the City's Land Development Code, directly from the utility source to the Communications Equipment. The cost of such meter and of installation, maintenance

**CITY OF CLEARWATER, FLORIDA**

---

and repair thereof shall be paid by M/A-COM. M/A-COM and the utility company providing services to M/A-COM shall have access to all areas of the Premises, or other lands of the City, necessary for installation, maintenance and repair of such services; provided, that access requiring entrance into or onto the communications towers shall be coordinated with the General Services Department of the City.

8. **Extensions:** M/A-COM and the City must mutually agree to terms to extend this License by one (1) additional term of five (5) years.

9. **Holding Over:** If M/A-COM requires use of the Premises after expiration of the primary term or any extension of this License, without the exercise of an option or the execution by the City and M/A-COM of a new License, then M/A-COM shall be deemed to be occupying the Premises as a tenant-at-sufferance on a month-to-month basis, subject to all the covenants and obligations of this License at monthly rent rate of \$3,125. The payment of such monthly rental amount shall be due and payable by the first day of the month succeeding the expiration of the final month of the License term previously granted by the City.

10. **Notices:**

- (a) Any notice shall be in writing and shall be delivered by hand or sent by United States registered or certified mail, postage prepaid, addressed as follows:

**CITY**

City Manager  
City of Clearwater  
P. O. Box 4748  
Clearwater, FL 34618-4748

**M/A-COM**

M/A-COM Private Radio  
Systems, Inc.  
P. O. Box 2000  
Lynchburg, VA 24501  
Attn: General Manager

Copy to City Clerk:

Copy to: General Counsel

- (b) Either party may change its address and telephone number(s) to which notice shall be given by delivering notice of such change as provided above. Notice shall be deemed given when delivered if delivered by hand, or when postmarked if sent properly by mail.

11. **Liability and Indemnity:** M/A-COM agrees to indemnify and hold the City harmless from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from the negligence or willful misconduct of M/A-COM or M/A-COM's agents, employees or contractors occurring during the term of this License or any extensions in or about the Premises. M/A-COM agrees to use and occupy the Premises at its own risk and hereby releases the City, its agents and employees, from all claims for any damage or injury brought on by M/A-COM to the full extent permitted by

**CITY OF CLEARWATER, FLORIDA**

---

law. The City agrees to indemnify and save M/A-COM harmless from all claims (including cost and expenses of defending against such claims) arising or alleged to arise from the negligence or willful misconduct of the City or The City's agents and/or employees occurring during the term of this License, subject to any defense or limitation pursuant to Section 768.28, Florida Statutes.

12. **Termination:**

(a) Either party shall have the right to terminate this License at any time as follows:

(1) By either party, if the approval of any court or other governmental authority necessary for the construction or operation of the Communications Equipment or other infrastructure changes cannot be obtained, or is not obtained after due diligence, or is revoked.

(2) By either party, in the event of a material breach of any of the provisions of this Agreement, subject to Paragraph 13 below.

(3) If either party determines that the cost of obtaining or retaining the approval of any court or other governmental authority necessary to such party for the construction or operation of the Communication Equipment is prohibitive, or if either party determines that the property is not appropriate for its Communications Equipment for technological, planning or environmental reasons, including, but not limited to, signal interference.

(4) If either party in the event that any government or public body shall take all or such part of the Premises thereby making it physically or financially infeasible for the Premises to be used in the manner it was intended to be used by this Agreement.

(b) The party terminating this Agreement shall give written notice of termination to the other party not less than thirty (30) days in advance of the effective date of termination. In the event termination is by the City, the City shall also give such 30 days advance written notice to the State Technology Office, Attention: Contract Manager, State Technology Office, 4030 Esplanade Way, Tallahassee, FL 32339-2301. Upon termination, neither party will owe any further obligation under the terms of this License or the Service Agreement, except that M/A-COM shall be responsible for restoring the areas occupied by M/A-COM to its original conditions as near as practicable, save and except normal wear and tear and acts beyond M/A-COM's control and for making any payments accruing to the date of termination to the City.

(c) Upon termination of this License, the term hereby granted and all rights and interest of M/A-COM in the Premises shall end. Such termination shall be

without prejudice to the City's right to collect from M/A-COM any rental or additional rental which has accrued prior to such termination together with all damages, including, but not limited to, the damages specified in subparagraph (b) of this paragraph which are suffered by the City because of M/A-COM's breach of any covenant under this License.

**13. Defaults and Remedies:**

(a) Notwithstanding anything in this License to the contrary, M/A-COM shall not be in default under this License until thirty (30) days after receipt of written notice thereof from the City; provided, however, where any such default cannot reasonably be cured within thirty (30) days, M/A-COM shall not be deemed to be in default under the License if M/A-COM commences to cure such default within said thirty (30) day period and thereafter diligently pursues such cure to completion.

(b) In the event of M/A-COM's failure to comply with any material provision of this License, the City may, at its option, terminate this License without affecting its right to sue for damages to which the City may be entitled. Should the City be entitled to collect damages and be forced to do so through its attorney, or by other legal procedures, the City shall, upon receipt of a favorable ruling, be entitled to its reasonable costs and attorneys' fees thereby incurred upon said collection.

(c) Notwithstanding anything in this agreement to the contrary, and specifically including the language in 13 (a) hereof, this agreement shall be null and void if M/ACOM or any approved assignee of M/A-COM FILES A VOLUNTARY PETITION IN BANKRUPTCY OR HAS AN INVOLUNTARY PETITION filed against it or makes an assignment for the benefit of creditors.

**14. Taxes:** The CITY shall pay when due any and all taxes or fees that may be levied and assessed upon the Premises attributable to any improvement thereto made by M/A-COM, the Communications Equipment installed thereon, or upon this Agreement. If any such tax is paid by M/A-COM, the CITY shall reimburse M/A-COM for the amount of any such tax payments within sixty (60) days of receipt of sufficient documentation indicating the amount Paid. Upon written request by the CITY, M/A-COM shall furnish evidence of payment of all such taxes.

**15. Early Termination:** Should this License be terminated prior to expiration of the Primary Term for any reason other than default of M/A-COM pursuant to Paragraph 13 hereof, the City shall continue to provide to M/A-COM free and unfettered access to the Premises so that M/A-COM may continue to serve existing Third Party Tower Tenants or add new or additional Third Party Tower Tenants as well as maintaining its equipment mounted on or about the Premises during the Primary Term

**CITY OF CLEARWATER, FLORIDA**

---

16. **Tests:** M/A-COM is hereby given the right to survey, soil test, radio coverage test, and conduct any other investigations needed to determine if the surface and location of the Premises is suitable for construction and installation of the Communications Equipment prior to the Commencement Date as defined in Paragraph 3. The terms of Paragraph 11 shall also apply.

17. **Fixtures:** The City covenants and agrees that no part of the improvements constructed, erected or placed by M/A-COM on the Premises or other real property owned by the City shall be or become, or be considered as being, affixed to or a part of the City'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 M/A-COM on the Premises shall be and remain the property of the CITY

18. **Assignment and Sublicensing:** M/A-COM may assign or sublicense the Premises or any part thereof without the consent of the City but consistent with the Ordinances of the City only if M/A-COM remains liable for fulfillment of all its obligations under this License and the nature of the use is not changed and the assignment is made to an affiliate of M/A-COM. Notice shall be given to the City by MACOM of the assignment and sublicensing within fifteen days. All other assignments shall require the City's prior written consent, which consent shall not be unreasonably withheld. M/A-COM shall not use the Premises as security for any loans.

19. **Memorandum of License Agreement:** Following the execution of this License, either party, at its sole expense, shall be entitled to file the Memorandum of License Agreement (attached as Exhibit "D") of record in the public records of Pinellas County, Florida.

20. **Other Conditions:**

(a) The City acknowledges that following the execution of this License, M/A-COM will contact appropriate local governmental agencies for the purpose of obtaining all building permits and approvals, zoning changes and approvals, variances, use permits and other governmental permits and approvals ("Local Permits") necessary for the construction, operation and maintenance of the Communications Equipment on the Premises. The City agrees to fully cooperate with M/A-COM in obtaining the local permits and, without limiting the generality of the foregoing, to execute any applications, maps, certificate or other documents that may be required in connection with the local permits.

(b) Whenever under the License the consent or approval of either party is required or a determination must be made by either party, no such consent or approval shall be unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

**CITY OF CLEARWATER, FLORIDA**

(c) The City covenants that M/A-COM shall, upon observing the covenants and conditions herein upon its part to be observed, peaceably and quietly hold and enjoy the Premises during the term of this License or as it may be extended without hindrance or ejection by the City, any person or persons claiming under the City, or any other Licensee or tenant of the City.

(d) M/A-COM covenants and agrees that M/A-COM's Communications Equipment and installation, operation and maintenance will:

(1) Not negligently, damage the Communication Towers.

(2) Not interfere with the operation of the City's radio or other communications equipment, or that of other Licensees or tenants currently utilizing the towers or Premises for such purposes within 100 yards of the Premises. In the event there is interference by M/A-COM, M/A-COM will promptly take all steps necessary to correct and eliminate same with a reasonable period of time. If M/A-COM is unable to eliminate such interference caused by it within a reasonable period of time, M/A-COM agrees, subject to the provisions of Sections 12 and 13 hereof, to remove its antennas from the City's property and this Agreement shall terminate.

(3) Comply with all applicable rules and regulations of the Federal Communications Commission and the ordinances of the City, including but not limited to the building and electrical codes of the City.

(e) If the Premises are damaged by reason of the fault or negligence of the City so as to render it substantially unusable for M/A-COM's use, the City, at its expense, shall restore the City's towers and/or buildings to their condition prior to such damage. Provided, however, in the event the City fails to repair the Premises within the said ninety- (90) day period, M/A-COM shall have the right to terminate this License and the Service Agreement with no further obligations hereunder. If the Premises are damaged due to any other reason, it shall be M/A-COM's responsibility, at its expense and option, to restore such Premises.

(f) During the term of this License, the City will not grant a similar license to any other party.

21. **Radon Gas Notification:** As required by Section 404.056(8), Florida Statutes, M/A-COM shall take notice of the following:

**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

**CITY OF CLEARWATER, FLORIDA**

---

regarding radon and radon testing may be obtained from your county public health unit.

22. **Entire Agreement and Binding Effect:** This Schedule and any attached schedules signed or initialed by the parties together with the Service Agreement constitute the entire agreement between the City and M/A-COM concerning the subject matter hereof and this agreement supersedes and replaces any prior or contemporaneous license, agreement, promise, license, negotiations or writing concerning such subject matter. This License shall not be amended or changed except by written instrument signed by both parties. Paragraph captions herein are for convenience only, and neither limit nor amplify the provisions of this License. The provisions of this License shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties, but this provision shall in no way alter the restriction hereon in connection with assignment and sublicensing by M/A-COM.

**CITY OF CLEARWATER, FLORIDA**

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date and year first above written.

M/A-COM PRIVATE RADIO SYSTEMS,  
INC.

E. Sue Tomlin

By Roger Boucher

WITNESS

Print Name E. Sue Tomlin

Name: Roger Boucher

Title: VP and General Counsel

Suzanne Jones

WITNESS

Print Name Suzanne Jones

STATE OF Virginia:  
City Richmond OF Richmond:

BEFORE ME, the undersigned, personally appeared Roger Boucher  
the June 5, 2002 of M/A-COM Private Radio Systems, Inc., a Delaware  
corporation, who acknowledged the foregoing instrument on behalf of the corporation.

Kerri L. Sissney

Notary Public

Print/type name: Kerri Sissney

My commission expires: \_\_\_\_\_

Personally known ✓

OR


Provided Identification ✓

Type of Identification Provided D.L.

Kerri L. Sissney  
NOTARY PUBLIC  
Commonwealth of Virginia  
My Commission Expires 4/30/04

Countersigned:

CITY OF CLEARWATER,  
FLORIDA



Name: Brian J. Aungst

Title: Mayor-Commissioner

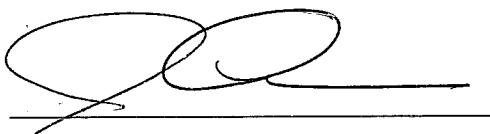
By 

for Name: William B. Horne II

Title: City Manager

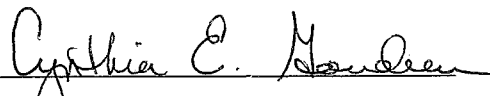
Approved as to form:

Attest:



Name: John Carassas

Title: Asst City Attorney



Name: Cynthia E. Goudeau

Title: City Clerk

STATE OF FLORIDA:  
COUNTY OF PINELLAS:

BEFORE ME, the undersigned personally appeared Brian Aurst the Mayor of the CITY OF CLEARWATER, Florida, who executed the foregoing instrument and acknowledges the execution thereof to be his/her free act and deed for the use and purposes herein set forth, and who is personally known to me.

WITNESS my hand and seal this 25 day of June, 2002



Denise A. Wilson  
MY COMMISSION # CC914107 EXPIRES  
June 18, 2004  
BONDED THRU TROY FAIN INSURANCE, INC.

Denise A. Wilson  
Notary Public  
Print/type name: Denise A. Wilson

STATE OF FLORIDA:  
COUNTY OF PINELLAS:

BEFORE ME, the undersigned personally appeared Garrison Brunk the Acting City Manager of the CITY OF CLEARWATER, Florida, who executed the foregoing instrument and acknowledges the execution thereof to be his/her free act and deed for the use and purposes herein set forth, and who is personally known to me.

WITNESS my hand and seal this 24 day of June, 2002



Denise A. Wilson  
MY COMMISSION # CC914107 EXPIRES  
June 18, 2004  
BONDED THRU TROY FAIN INSURANCE, INC.

Denise A. Wilson  
Notary Public  
Print/type name: Denise A. Wilson