

## **REQUEST FOR PROPOSAL (RFP) LEASE OF SPACE ON WATER TANK**

This Request for Proposal (RFP) is made pursuant to Massachusetts General Laws, Chapter 30B, Section 16, pertaining to lease of Real Property. The Town of Westborough is seeking formal proposals from Federally Licensed Communication Companies (FCC) to enter a non-exclusive lease of space at the Town's municipal water tank located off of Friberg Parkway in Westborough, MA.

LOCATION – 100 FRIBERG PARKWAY WESTBOROUGH, MA Shown on Assessor's Map 35, Parcel 146 and on a certain Plan entitled "Subdivision Plan of Land in Westborough, MA. dated May 28, 1982, prepared by BSC Engineering recorded in Plan Book 512, Plan Number 98 and comprising of 1.081 acres more or less. The location of the water tank is more fully described in "Exhibit H" attached hereto. The lease will be for the purpose of installing antennas for wireless communication and related apparatus at the site.

### **I. CONTRACT DURATION:**

The Town of Westborough and the Contractor shall enter into an initial five (5) year contract to lease the space. The lease may be extended by the Town with options for up to three (3) additional five (5) year terms for a possible lease of twenty (20) years.

### **II. GENERAL REQUIREMENTS:**

By submission of a proposal, the proposer agrees if its proposal is accepted, to enter into a lease with the Town of Westborough (the "Town") that incorporates all the terms and conditions of this RFP and Town Agreement. The Lessee will be responsible to obtain any and all required permitting pursuant to federal, state, and local regulations and codes, including zoning, and all costs of construction, maintenance, and insurance of their facilities and employees or contractors during construction and throughout the duration of the lease.

The Lessee is responsible for compliance with all Department of Environmental Protection (DEP) Regulations related to the installation. Lessee shall submit all data required for DEP application and approval directly to DEP with the Town Manager being copied on all forms.

### **III. SITE INSPECTIONS:**

1. The Town makes no representations of any kind with respect to the site, adequacy to support the equipment, or the appropriateness of the site for use as a site for wireless communication equipment.
2. Any bidder who is licensed by the Federal Communications Commission (FCC) to provide wireless telecommunications service can conduct testing at the site

with the submission of documentation of insurance in an amount satisfactory to the Town of Westborough. In addition, the Town will require the bidder to provide a "Hold Harmless Agreement" and coordinate access to the site through the Public Works Office (DPW). All insurance certificates and Hold Harmless Agreement must be in place prior to arranging for site access with the DPW.

3. Each proposer will be responsible for determining the adequacy of the structure to support the proposer's equipment, ground apparatus and the suitability of the site for use as a wireless communication equipment site.
4. The Town will require the Proposer at his/her own expense(s) to retain the services of the Town's selected engineering firm for the Water Department who will work with the Proposer to co-ordinate for a structural evaluation and wind load analysis of the existing tank and loads to hold additional antenna installations. The initial submission cover letter must include acceptance of this requirement and willingness to complete payment for said services.

#### IV. STIPULATIONS:

1. The Town will not allow welding of any kind on to the tank surfaces. Surfaces disturbed by any connecting system shall be prepared and recoated to meet with the approval of the Town's consultant. All Equipment and recoating on the tank will have to match the existing color of the tank. The aesthetic look of the tank with the equipment installed on them is important to the Town.
2. The location of all proposed equipment shall not interfere with access to or maintenance of the structure. Any support equipment located remotely from this tank shall be mounted in a separate, freestanding building adjacent to the tank.
3. Submission of a proposal shall be conclusive evidence that the proposer has examined the site and the RFP documents and is familiar with all the conditions of the proposed lease(s). Upon finding any omissions or discrepancy in the RFP documents, the proposer shall notify the Town Manager in writing, so that any necessary addenda may be issued.
4. Failure of the proposer to completely investigate the site and/or to be thoroughly familiar with the RFP documents (including plans, specifications, and all addenda) shall in no way relieve him or her from any obligation with respect to the proposal.
5. The proposal must minimize the aesthetic impact of telecommunications equipment installed on the water tank and ground. The proposal must indicate a proposed installation, which would be least intrusive in terms of visual impact by means of camouflage, landscaping or other methods. The proposal shall utilize methods of installation that also minimize complications and expense during future maintenance and coating repairs.

## V. SUBMISSION REQUIREMENTS:

To be considered “responsive” all Proposals shall include, at a minimum, the following:

1. Cover letter, scaled drawings, plans, and other documents to clearly outline the scope of the installation and the equipment necessary for the Lessee's use of the premises. At minimum the specifications for the antennae and appurtenances including a detailed description as to all equipment and the method of installation.
2. Need to acknowledge in the cover letter acceptance that detailed drawings prepared by a Massachusetts Registered Professional Engineer and explanations of the connecting systems for equipment to be installed on the tank and ground apparatus will need to be approved by the Town before awarding the lease.
3. Photos showing examples of existing equipment locations on other existing water tank telecommunication installations that would be similar to the proposal, if any.
4. Include a list of the locations of all wireless communication facilities the proposer has installed on municipal or state owned property in the Commonwealth Massachusetts over the past three (3) years, and the name, address and telephone number of the owner of the site(s). If the proposer has not yet installed facilities in Massachusetts, it may provide information about sites of comparable facilities, which it has installed in other states including contact name and telephone number.
5. Furnish evidence of Federal Communications and any State Licenses to operate. Any such cellular communications systems' transmitters' and receivers' frequencies shall not interfere with local radio, TV, public safety, public works, national defense or similar operations.
6. A complete cover letter outlining the proposal, price, and other details including a letter of transmittal signed by the individual authorized to negotiate for and contractually bind the proposer, stating that the offer is effective initially for a minimum of forty-five (45) calendar days from the submission of proposals, or until it is formally withdrawn, or a lease is executed, or this RFP is cancelled, whichever occurs first. Each proposal must be submitted with a price sheet (Exhibit G) indicating the initial five (5) year annual lease payments, percentage increase/decrease for potential renewals.

In addition, the proposal cover letter should also include acceptance to contract with the Town's selected engineer for the required structural and coating analysis of the tank to support another antenna. The cost and expenses for the review and analysis despite the end results of the report and recommendations will not be reimbursable to the Proposer. The report from the engineer on the proposed

plan will be forwarded to the Town with a recommendation as to the tank's capacity and load structure to accept or reject the proposed installation(s).

7. A completed and signed non-collusion statement. See exhibit A
8. A signed state tax affidavit form. See exhibit B
9. A signed Corporate Vote required at Contract execution. See exhibit C
10. A statement of intent to comply with the Town Zoning Bylaws. Available for view on the Town's website: [www.town.westborough.ma.us](http://www.town.westborough.ma.us). See exhibit D - this also includes a sample of Foreign Corporation to be used with Contract execution (if applicable).
11. Completed disclosure of beneficial interest in real property transaction as required by Massachusetts General Laws, Ch. 7, § 40J. (non-profit) See exhibit E
12. Proposer should review and indicate acceptance of the Town's sample agreement in the cover letter. See exhibit F
13. A completed Request for Proposal Form and submission check list. See exhibit G
14. The Proposer shall submit at minimum three (3) references from similar installations to the ones being proposed. See sample exhibit I
15. A copy of the audited financial statements for the proposer's most recent fiscal year (in separate envelope). Please mark outside envelope not for public record.
16. A Bid Bond (issued by an insurance company licensed to do business in the Commonwealth of Massachusetts) or a Certified Check made payable to the "Town of Westborough" in the amount of \$1,000 must accompany this bid. The Bid Bond/Check shall become the property of the Town if proposal after acceptance, is not carried out within 60 days of execution of Agreement. The Town's Agreement will require a \$100,000 Performance Bond within ten (10) days of contract execution.
17. A sealed envelope containing one (1) original un-bound and three (3) copies of the proposals are to be submitted by deadline of submission.
18. The Town will accept proposals until 11:00 am on Thursday, October 14, 2011 addressed to James J. Malloy, Town Manager, Town of Westborough 34 W. Main Street, Westborough, MA 01581. All Proposals shall be sealed and labeled as "Property Lease – Route 9 Tank Lease".

#### VI. RATING EVALUATION:

Each proposal must satisfy all of the Proposal Submission Requirements in order to be considered as "responsive". A "responsive rating" shall be given to all proposals received prior to the deadline for submittal, having submitted all the appropriated signed documents, and the required information the Town has requested.

Failure of the Bidder to submit completed and signed required forms, acknowledge receipt of any addenda, or provide the required documentation may be deemed non-responsive and result in rejection of the proposal.

## VII. EVALUATION AND SELECTION CRITERIA:

The evaluation of bid proposals will address the responsiveness of the bid proposal, the responsibility of the bidder, the design of the facility for visual aesthetics, structural capability of the tank, ground placement of equipment, access by other parties and the total price.

### SELECTION

Firms will be further evaluated using the Evaluation Criteria by the measure set forth below. A rating of Advantageous or Highly Advantageous will be assigned to responses.

Firm's submitting a set of scaled drawings of the equipment on tower and ground location, specifications on equipment/wiring etc., and a statement indicating the Firm's willingness to contract with the Town's Engineer and accept the recommendation of the engineer for installation on the Tower will be considered as "responsive".

Firm's having received a favorable acceptance of the planned submitted including installation, specifications, and equipment from the Town's Engineer will be considered "advantageous".

Firm's having received a favorable acceptance of the planned submitted including installation, specifications, equipment from the Town's Engineer and having offered the highest overall lease payment(s) over the possible twenty (20) year term will be rated "highly advantageous" and recommended to the Town Manager for the Board of Selectmen's vote. In ascertaining the highest overall annualized rental value, the Town will consider the annual rent, including escalation clauses and/or extended term rentals.

The vote of the Board of Selectmen shall be final.

## VIII. MINIMUM LEASE REQUIREMENTS:

All prospective Proposers shall be required to accept the following minimum lease requirements.

1. The rent for the tower will be the annual rent plus any yearly increase for inflation as stipulated in the Lease Agreement, plus any amount due because of third party leases or rentals, as stipulated in the Lease Agreement.

A minimum bid of \$35,000 rent per year for each year of the initial five (5) year term. The extended renewal terms each at the Option of the Town should be indicated on the Lease Proposal Form using one of the following: a rent escalation percentage; or structured payment term.

2. All Proposals shall specify the rent for the first five (5) year term (initial base rent) of the lease. (Exhibit G) Rent Payments shall be payable annually in advance based on the Agreement.
3. The initial term of the Lease shall be five (5) years commencing on the date of execution of a Lease, with three (3) five-year lease term renewal extension options. The Town shall retain the sole discretion in the exercise of each option to extend the Lease, as required by MGL Chapter 30B. The Town shall offer a four (4) month advance notification as to any renewal options.
4. The successful bidder shall not assign this contract or any interest therein, without prior written consent of the Town.
5. The Lessee shall not be permitted to begin construction or installation of equipment before executing a Lease Agreement and obtaining all necessary permits and approvals as further provided in this RFP. The prospective Lessee will have to satisfy and get approval of proposed site and installations from the FCC, the Town Building Commissioner and Zoning Board of Appeals (if required), as well as, the Department of Public Works, and the Department of Environmental Protection.
6. The Lessee shall agree that the site leased shall be used only for the purpose of constructing, maintaining and operating wireless antennae and/or antenna arrays, and equipment facility, if needed, and all necessary appurtenances, structures, including separate power meter, radio/electronic equipment, connecting cable, coaxial cables, wires and associated appurtenances. In no instance can the Lessee use the land for any purpose not directly related to this function. Any such facility must be secured in a manner as to address any reasonable safety, noise, and aesthetic raised by the Town of Westborough.
7. The Lessee shall have installed communication equipment of the types and frequencies that will not cause "measurable interference", as defined by the Federal Communications Commission to present or future municipal communications equipment of the Town or to the residents of Westborough. If the Lessee's equipment causes such interference, the Lessee shall eliminate

such interference immediately upon notification and not resume until the problem is resolved.

8. The Lessee must include with the proposal a scaled drawing and description of the area that they will need for their equipment, wires, conduit, and utility services. Details of cable and conduit locations, mounting and attachments methods (bolted, welded) and structure penetrations (if applicable) must be included.
9. The Town shall have aesthetic control over the proposed development plan and shall approve all plans and specifications prior to construction. Such review and approval shall be above and beyond all required review and approval under applicable federal, state, local laws, rules and regulations. Said aesthetic control shall include, but not limited to, review and approval of all equipment and appurtenance design and specifications, and site area landscaping design and specifications. The Town shall also have control over the volume of noise emissions produced by the antennae and related equipment so as to eliminate any nuisance that may exist to the neighborhoods surrounding the sites.
10. The Lessee shall maintain insurance satisfactory to the Town covering the facility as required in the Lease Agreement and shall hold harmless and indemnify the Town for any damages from construction or use of the facility. In addition, the Tenant shall provide a bond or surety satisfactory to the Town of Westborough in the amount of One-Hundred Thousand Dollars to secure Tenant's performance of its obligations.
11. The Town or agents of the Town may, at reasonable times, upon reasonable prior notice to the Lessee, enter to view the Leased Premises. In the event of an emergency or perceived emergency, the Town may enter to make repairs or to inspect without prior notice to the lessee. Annually, the Town shall conduct an inspection of the Leased Premises.
12. The proposer agrees and shall ensure that the installation of its equipment and its use will not interfere with the use of the Town's property for any purpose for which the site is being used at the commencement of the Lease.
13. The proposer shall also agree that its use of the site will not interfere with use of the site for wireless communication equipment by the Town or by other lessees and will make such changes or modifications to its equipment as may be required by the Town to eliminate or minimize such interference; provided, however, that any lessee of the site shall be entitled to be reimbursed by a subsequent lessee for any costs incurred in relocating or modifying the equipment to eliminate interference with equipment installed by such subsequent lessee.
14. Co-location of telecommunication providers shall be required. The facility shall be designed to accommodate other providers, if possible. The winning bidder shall

make every effort to accommodate the antenna space needs of other perspective lessees to the Town.

15. A Certificate of Insurance must be provided to the Town indicating general liability, automobile liability and worker's compensation coverage (per State Law). The Certificate of Insurance must name the Town as an additional insured under the liability and automobile insurance for the entire term of the Lease. The Town will require limits of two-million under the general liability and automobile insurance coverage. (See sample agreement on insurance specifics)
16. The Lessee shall assume full responsibility for all utility costs for the antennae and associated apparatus and pay all costs associated with installation, maintenance, and insurance of equipment and employees or contractors during construction and throughout the duration of the lease.
17. Following initial antenna installation, Lessee shall not access the tank without first providing notice of the date and time of the visit to the DPW Sewer and Water Operations Manager at the Department of Public Works. The Department's activities and uses at the site shall have priority over the Lessee's access rights.
18. No signs or advertisements shall be allowed per Town Code.
19. The Lessee must provide the Town with Material Safety Data Sheets (MSDS) for all materials proposed to be used at the site.
20. The Contractor shall be responsible for removal and replacement of equipment as needed by the Owner during any future maintenance of the structure.
21. The Town will require pre and post construction inspections with documentation prior to final approval. An inspector selected by the Town will conduct these inspections.

#### IX. RULE FOR AWARD OF LEASE:

The award of this lease if any, will be made on the basis of a "responsive proposal" whose submitted Plan receives a favorable recommendation and approval by the Town's Engineer together with the highest overall annualized (rental) value over the possible twenty (20) year period of the lease. In ascertaining the highest overall annualized rental value, the Town will consider the annual rent, including escalation clauses and/or extended term rentals. The Town Manager will make a recommendation to the Board of Selectmen for awarding a bid. Payments are due annually in advance.

The Town retains sole discretion in the exercise of each option to renew. The Town reserves the right to reject any and all proposals as determined to be in the best interests of the Town and to waive any informalities.



#### X. TAXES:

The Lessee shall be responsible for paying any and all other property taxes separately levied or assessed against the improvements constructed by the lessee on the Leased Premises.

#### XI. TERMINATION:

At the end of the Lease Period, the lessees shall remove all personal property and equipment installed at the site, including any utility connections, and shall restore the site to its pre-existing condition. Such removal shall be completed upon the expiration of the Lease period in accordance with Town Agreement. If the Town does not require removal of all personal property including utility connections installed by the lessee, it may require the lessee to transfer title of such property and connections to the Town by appropriate written documentation.

#### XII. RETURN OF PROPOSALS:

All proposals received by the Town prior to the deadline for submission of proposals will be returned upon presentation of a signed request and proof of representation to the Town Manager. All proposals received at the deadline for submission for consideration by the Town will remain public record of the Town and will not be returned.

#### XIII. PROPOSAL MODIFICATION:

Proposals may be corrected, modified or withdrawn if a written request is received in advance signed by the appropriate representative of the Firm.

#### XIV. INSURANCE REQUIREMENTS:

Upon notice of award and acceptance of a contract, the Contractor shall submit to the Town of Westborough a copy of the Company's Professional Liability Insurance and a Certificate of Insurance indicating General Liability, Automobile Liability naming the Town as an additional insured and Workers Compensation (per State Law).

#### XV. ADDITIONAL INFORMATION/ADDENDA/AGREEMENT FORMAT:

##### Questions

The Town will respond to any questions if received three (3) days in advance of the deadline for the proposal submittal by means of an addenda. All questions should be faxed (508 366-3099) or emailed to [jmalloy@town.westborough.ma.us](mailto:jmalloy@town.westborough.ma.us). If there is a need to clarify a section in the proposal the Town will forward an Addendum to all bidders of record. It shall be the responsibility of all Firms to ensure the receipt of any

addenda issued. No addenda shall be issued less than two (2) days before the proposal submittal deadline.

All Firms are requested to acknowledge receipt of any addenda that the Town may issue in the cover letter of the Firm's proposal.

#### Weather Issues

If at any time of the scheduled proposal submittal deadline that the Town Hall is closed due to uncontrolled events such as fire, snow ice, wind, or building evacuation, the proposal deadline will be postponed until 2:00 PM on the next normal business day. Proposals will be accepted until that time.

#### XVI. REQUIRED FORMS:

All proposers are required to submit all the required forms designated in the submittal requirements. Samples are listed in this section.

**EXHIBIT A**  
**CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

\_\_\_\_\_  
Name of person signing bid or proposal

\_\_\_\_\_  
Name of Business

**EXHIBIT B**  
**CERTIFICATE OF COMPLIANCE WITH STATE TAX LAWS**

Pursuant to M.G.L. Chapter 62C, Sec. 49A, and M.G.L. Ch. 151A, Section 19A, I certify under the penalty of perjury that \_\_\_\_\_ has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Social Security Number/  
Or Corporate Officer Federal Identification  
Number

Corporate Name: \_\_\_\_\_  
(if applicable)

Name and Title: \_\_\_\_\_  
Of Corporate Officer  
(if applicable)

\*Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant. For all corporations, a certified copy of the vote of the Board of Directors must be provided.

\*\*Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed or extended. This request is made under the authority of Massachusetts General Laws, Ch. 62C, § 49A.

**EXHIBIT C SAMPLE  
CERTIFICATE OF VOTE**

The Town requires Firms to complete the following and attach to any future contracts. If a corporation, complete below or attach to each signed copy of a contract a notarized copy of vote of corporation authorizing the signatory to sign this contract. If attesting clerk is same as individual executing contract, have signature notarized below.

At a duly authorized meeting of the Board of Directors of the \_\_\_\_\_

\_\_\_\_\_ Held on \_\_\_\_\_

(Name of Corporation) (Date)

At which all the Directors were present or waived notice, it was VOTED That,

\_\_\_\_\_  
(Name) (Officer)

Of this company be and hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its corporate seal thereto, and such execution of any contract or obligation in this company's name on its behalf by such

\_\_\_\_\_  
(Officer)

Of the company, shall be valid and binding upon this company.

I hereby certify that I am the Clerk of the \_\_\_\_\_

That \_\_\_\_\_ is the duly elected Officer of said company, and that the above vote has not been amended or rescinded in full force and elect as of the date of this contract.

A true copy,

ATTEST \_\_\_\_\_

Clerk

Place of Business \_\_\_\_\_

Corporate \_\_\_\_\_

Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS

DAY OF \_\_\_\_\_, 2011

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT D SAMPLE- FOREIGN CORPORATION  
CERTIFICATE OF FOREIGN CORPORATION**

The undersigned hereby certifies that it has been duly established, organized, or chartered as a corporation under the laws of:

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(Jurisdiction)

The undersigned further certifies that it has complied with the requirements of MGL Ch. 30, §39L and with the requirements of MGL Ch. 181 relative to the registration and operation of foreign corporations within the Commonwealth of Massachusetts.

Name of person signing proposal

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Signature of person signing proposal

Corporate Seal

**EXHIBIT E  
TOWN OF WESTBOROUGH MASSACHUSETTS  
LAND-LEASE INSTALLATION OF EQUIPMENT  
DISCLOSURE STATEMENT**

Under the provisions of MGL Ch. 7 § 40J This Disclosure Statement is made pursuant to the provisions of MGL Ch. 7, § 40J, which requires that where real property shall be rented or sold to, or rented and purchased from, the Town of Westborough, this Statement, signed under the penalties of perjury, be filed by the lessor, lessee, seller or purchaser (as the case may be) with the deputy commissioner of capital planning and operations. Such agreement to sell or lease shall not be valid, nor shall any payment be made thereunder, until the parties have fully complied with this Section 40J.

1. The real estate matter to which this statement is made is:

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2. The true names and addresses of all persons who have made a direct or indirect beneficial interest in said property are as follows, identifying any such person who is an official elected to public office in the Commonwealth of Massachusetts and the office held.

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3. During the term of a rental agreement, any change of interest in such property shall require full disclosure under this Section 40J.

4. Any renewal or extension of an agreement of sale or lease shall require full disclosure under this Section 40J.

5. This Statement must be filed with:

Division of Capital and Operations (DCAM)  
Office of the Deputy Commissioner, 15th Floor  
1 Ashburton Place  
Boston, MA 02108

Town Manager  
Town of Westborough  
34 W. Main Street  
Westborough, MA 01581

Signed under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_.

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**EXHIBIT F**  
**LEASE AGREEMENT**  
**Space on Upper Union Street Water Tower for**  
**Personal Wireless Communications**

Facility: \_\_\_\_\_ Wireless LEASE AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Westborough, a municipal Corporation with administrative offices located at 34 W. Main Street, Westborough, MA 01581 (hereinafter: "Landlord" or "Municipality") Landlord, and \_\_\_\_\_ by and through its \_\_\_\_\_, \_\_\_\_\_ Inc., a duly organized \_\_\_\_\_ corporation doing business within Massachusetts with a place of business at \_\_\_\_\_ and a duly-licensed personal wireless service provider (hereinafter: "Tenant" or Provider"), Tenant:

1. PREMISES: The lease premises consist of the space on the top of the Town of Westborough's Water Tower at 100 Friberg Parkway for the attachment of personal wireless antennae and space at the base of said tower for the construction and maintenance of a personal wireless facility accessory building, in accordance with the plan and specifications attached hereto as "Exhibit A".
2. TERM: The initial lease term is \_\_\_\_\_ years (\_\_\_\_\_ months) commencing on the \_\_\_\_\_ months) commencing on first day of the month following the award approval of the Board of Selectmen of the lease agreement.

The initial lease term may be further extended for \_\_\_\_\_ five-year periods PROVIDED THAT the Westborough Board of Selectmen so votes and PROVIDED FURTHER THAT the annual rent during any extension shall not be less than the annual rent during the initial lease term. Tenant shall be entitled to terminate this lease prior to the expiration of the lease term only upon demonstrating to Landlord's satisfaction that its federal license to operate has been revoked through no fault of the Provider or that other adverse government action outside of the Provider's control prevents it from continuing to provide personal wireless service.

3. RENT: The annual rent to be paid by Tenant to Landlord is \_\_\_\_\_ Dollars (\$) which Tenant shall pay in one lump sum payment in advance, for the first year: at the inception of the Lease term and, for subsequent years: on the anniversary date thereof. Tenant's rental obligation hereunder is absolute, without any right to withhold or deduct for any claimed offset or breach on Landlord's part.
4. UTILITIES AND SITE ACCESS: Landlord represents that the premises are presently serviced by underground electrical and telephone conduits and an access road. Landlord hereby authorizes Tenant, at its sole expense, to perform



excavation for utilities and to pave or otherwise perform site work subject to Landlord's prior review and approval of the work.

5. **USE OF PREMISES:** Tenant shall use the premises only as provided in paragraph one and the plan and specifications incorporated therein as "Exhibit A"; no other use shall be permitted. Tenant shall make no modifications or additions to either its panel antennae array or accessory building, as shown in "Exhibit A" without Municipality's prior written approval which, in the case of modifications only, shall not unreasonably be withheld. Tenant shall coordinate with each of the other existing original tenants pursuant to Exhibit A to provide co-location without radio frequency interference. Tenant's antennae and equipment shall remain its property, subject to Tenant's compliance with the provisions of this Lease and Landlord's remedies in event of Tenant's default specified in Paragraph (17).
6. **MUNICIPALITY'S RIGHTS OF ACCESS:** Tenant shall not block or interfere with Municipality's access to water tower for inspection, maintenance and/or repairs but shall fully cooperate with Municipality, PROVIDED THAT, except in case of emergency, Municipality shall provide Tenant with forty-eight hours' prior notice of its intent to access the water tower.
7. **CO-LOCATION: COORDINATION AND NON-INTERFERENCE COTENANTS:** Tenant shall coordinate with other co-tenants in locating and installing its facilities pursuant to "Exhibit A" and shall cooperate with co-tenants and shall not generate radio frequency interference; this provision shall create reciprocal rights of enforcement among co-tenants but Municipality shall have no obligation for enforcement nor other liability to any co-tenant hereunder.
8. **ASSIGNMENT/SUBLETTING:** Tenant shall be entitled to assign or transfer its rights under this lease to an entity which is licensed by the FCC to operate a wireless communications facility and which is a parent, subsidiary or affiliate of Tenant or is merged or consolidated with Tenant or purchases more than a fifty percent (50%) interest in the ownership or assets of tenant, with Landlord's prior written approval which shall not be unreasonably withheld; no other assignments are permitted. No subletting is permitted.
9. **LIABILITY INSURANCE:** Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease, and during any extensions thereof, a policy of comprehensive public liability and property damage insurance insuring Tenant and Municipality as an additional named insured, against any claim of liability arising out of Tenant's use or occupancy of the Premises. Such insurance shall further provide coverage of not less than two million dollars (\$2,000,000) single limit coverage. Coverage will be subject to review and reasonable increase at the request of the Municipality every five (5) years. Certificates of such insurance shall be delivered to Municipality at or prior to the commencement date, and certificates of renewals or replacements thereafter shall be furnished to

Municipality prior to the expiration date of each such insurance policy. All such policies of insurance shall contain an endorsement that they may not, for any reason be cancelled or terminated for failure or refusal to renew by the insurance company or by Tenant, except only if the insurance companies issuing such policies shall notify the Municipality in writing by certified or registered mail no less than ten (10) days prior to the effective date of such proposed cancellation, termination or failure or refusal to renew. In the event that any such policy is proposed to be terminated, not renewed or otherwise canceled for any reason whatsoever, be it by the insurance company or the Tenant, the Tenant shall also immediately and prior to the effective date of such termination, cancellation or nonrenewal provide equivalent substitute policies in like qualified companies and in like amounts to the Municipality. Upon failure to so provide such substitute policies the Municipality may secure equivalent insurance coverage and the Tenant shall, upon demand, pay the total premium charges thereon either directly to the insurance companies or reimburse the Municipality for the premiums if paid by the Municipality.

10. INDEMNIFICATION: Tenant agrees to indemnify, hold harmless and defend Municipality from and against any and all liability, loss, damage or expense, including attorney's fees, arising from Tenant's activities, including but not limited to construction, installation, maintenance and repair of wireless facilities, damage to the municipal water tower, contamination of public water supply, injury or damage to Tenant's employees, contractors or other third parties or to their property excepting only that occasioned by direct conduct of Municipality or its employees, PROVIDED THAT this provision shall not apply to the extent that coverage is afforded by either Tenant's or Landlord's public liability insurance carrier and PROVIDED FURTHER THAT Landlord and Tenant shall each instruct their respective insurers to waive any right of recovery by way of subrogation arising from an insurer's payment of a covered loss.
11. SURETY REQUIREMENTS: Tenant shall provide a bond, evidence of insurance coverage, or other surety satisfactory to Municipality in the amount of one-hundred thousand dollars (\$100,000) to secure Tenant's performance of its obligations hereunder, including but not limited to its obligations not to impair the structural integrity of the water tower, not to contaminate the public water supply and to remove all its equipment at the termination of the Lease.
12. TENANT'S OBLIGATIONS UPON TERMINATION OF LEASE: Tenant at the termination of the Lease term shall peaceably surrender the premises and shall remove all equipment and structures from the water tower and restore the area actually used by Tenant to the condition it was in prior to Tenant's attachments within sixty (60) days following said termination.
13. ENVIRONMENTAL: Tenant shall not use, store, or dispose of hazardous materials, as defined by federal statute, MGL Ch.21E and federal state regulations. Tenant shall prepare and execute a written Radio Frequency

Energy Exposure Management Plan (RFEEMP) in cooperation with the existing other original co-tenants and Municipality within thirty (30) following the Lease inception.

14. **SPECIFIC PROVISIONS RELATING TO WATER TOWER/PUBLIC WATER SUPPLY:** Tenant shall do nothing to impair or compromise the structural integrity of the water tower. Tenant shall do nothing that causes or has a significant potential to cause contamination to the public water supply. Tenant shall at all times provide Municipality with access to the water tower and water supply for inspection, maintenance and repair. Tenant shall fully cooperate with Municipality in the event of an emergency involving the water tower or public water supply including, without limitation, the temporary suspension of transmissions. For purposes of protecting the public water supply and preventing unauthorized access thereto, Tenant shall inform Municipality's police department by telephone prior to dispatching any personnel to the site, and shall exercise all necessary precautions to keep the site locked and secured.
15. **TENANT COVENANTS:** Tenant covenants with Landlord as follows:
  - a. Tenant shall pay the full annual rent when due; Tenant agrees that it has no right to withhold rent or deduct from rent for any claimed offset due it from Landlord.
  - b. Tenant shall coordinate with co-tenants in the co-location of its antennae and shall not cause radio frequency interference to co-tenants.
  - c. Tenant shall not cause or permit damage to the water tower or contamination of the public water supply.
  - d. Tenant shall provide Municipality with continuous, independent access to water tower and public water supply.
  - e. Tenant shall remove obsolete structures promptly and shall peaceably surrender the premises and remove all of its structures and equipment at the end of the lease term.
  - f. Tenant shall maintain all structures and equipment in good repair.
  - g. Tenant shall maintain public liability insurance at all times.
  - h. Tenant shall take all necessary action to prevent/minimize worker access/exposure to radio frequency radiation.
  - i. Tenant shall not cause or permit pollution or contamination of the site.
  - j. Tenant shall cooperate with maintenance/repairs of the water tower.

16. **TENANT'S DEFAULT AND LANDLORD'S REMEDIES:** This Lease is made on condition that if Tenant should neglect or fail to pay the rent due hereunder within ten (10) days after receipt by Tenant of notice from Municipality of such nonpayment, or if the Tenant shall neglect or fail to perform or observe any of the other terms, provisions, conditions or covenants herein contained and on the Tenant's part to be performed or observed for a period of thirty (30) days after receipt by the Tenant of notice of such neglect or failure, or if any assignment shall be made of the Tenant's property for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of all or any part of the Tenant's property by a Court of competent jurisdiction, or if a petition is filed by the Tenant under any bankruptcy laws for relief or composition of its debts, or if the Tenant is declared bankrupt then, and in any of said cases, the Municipality lawfully may immediately or at any time thereafter and without demand or notice enter upon the Premises or any part thereof in the name of the whole and repossess the same, including all equipment and trade fixtures therein and/or annexed thereto, as of the Municipality's former estate and expel the Tenant and those claiming through or under the Tenant and remove its effects, forcibly if necessary, without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or proceeding breach of covenants, and upon such entry, may terminate this Lease; and the Tenant covenants in case of such termination to pay and be liable for, on the days originally fixed for the payment thereof, amounts equal to the several installments of rent and other charges reserved as would under the terms of this Lease become due if this Lease had not been terminated or if Municipality had not entered or reentered as aforesaid, and the Tenant covenants to pay and be liable for all losses and damages suffered by reason of such termination, including, but not limited to, the costs of legal counsel retained by the Municipality and all expenses of the Municipality for enforcement hereunder. In addition to all other legal and equitable remedies, Landlord shall have the right to remove equipment/structures at Tenant's expense, and the right to declare equipment/structures abandoned and take ownership thereof, all without liability to Landlord. Landlord shall also have the right to declare any surety forfeited and to apply same to any expenses Landlord incurs on account of Tenant's default.
17. **Notices:** Any notices required hereunder shall be in writing and served by in-hand delivery or certified mail, return-receipt requested, in the case of Landlord, to:

Town Manager  
Town of Westborough  
34 W. Main Street  
Westborough, MA 01581

and, in the case of Tenant, to:

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18. **APPLICABLE LAW AND VENUE:** This Lease shall be interpreted in all respects according to the law of the Commonwealth of Massachusetts. Any judicial proceeding relating to this Lease or any of the parties' rights or obligations hereunder shall be brought only in the Massachusetts Trial Court: Superior Court Department, Worcester County or District Court.
19. **MISCELLANEOUS:** This Lease represents the full and complete agreement and understanding of the parties; all prior and contemporaneous agreements are merged herein. Any modifications of the terms of this Lease shall only be effective if in writing and signed by the duly-authorized representatives of both Landlord and Tenant. This Lease shall be binding upon and shall inure to the benefit of the parties' respective representatives, successors, transferees and assigns. The captions contained herein are for convenience only, do not form a part of the Lease and shall have no legal effect.

WITNESS our hands and seals the date above written.  
TOWN OF WESTBOROUGH, Landlord

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by its Town Manager

**EXHIBIT G**  
**LEASE PROPOSAL FORM**  
**LEASE FOR INSTALLATION OF TELECOMMUNICATIONS APPARATUS**

PROPOSAL OF: \_\_\_\_\_  
(Name of Company) Hereinafter called the "Bidder" organized and existing under the laws of the State of \_\_\_\_\_, doing business as a \_\_\_\_\_ (Corporation; partnership; or an individual).

BIDDER shall pay the Town of Westborough lease space as follows:

First year lease payment: \$ \_\_\_\_\_  
Second year lease payment: \$ \_\_\_\_\_  
Third year lease payment: \$ \_\_\_\_\_  
Fourth year lease payment: \$ \_\_\_\_\_  
Fifth year lease payment: \$ \_\_\_\_\_

Total value to be paid during the initial term five (5) year(s): \$ \_\_\_\_\_

Total value of first five (5) year lease term in words:

• TOWN'S OPTIONS:

• Renewal Term(s)

Rent Escalation each Five (5) Year Term: \_\_\_\_\_

If consistent for each five (5) year renewal options to be paid annually. OR

Extended Term Rentals – List payment amount to be paid annually per agreement if Town elects option(s) for future renew(s).

Second Five Year Renewal Term \_\_\_\_\_ x 5 years = \_\_\_\_\_

Third Five Year Renewal Term \_\_\_\_\_ x 5 years = \_\_\_\_\_

Fourth (final) Five Year Renewal Term \_\_\_\_\_ x 5 years = \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title of individual signing Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone - email

Acknowledge receipt of any Addenda(s): \_\_\_\_\_

**SUBMITTAL CHECK LIST:**

Cover letter	Yes ____	No ____
Bid Bond	Yes ____	No ____
Scaled drawings	Yes ____	No ____
Required Signed Forms	Yes ____	No ____
Minimum Bid	Yes ____	No ____
Licensed Bidder w/FCC	Yes ____	No ____
Reference list	Yes ____	No ____
Hold price 45 calendar days	Yes ____	No ____
Accept Town Agreement	Yes ____	No ____
Completed Proposal Form	Yes ____	No ____
Accept structural analysis	Yes ____	No ____
Audited Financials (separate)	Yes ____	No ____
Advance payment	Yes ____	No ____

## **EXHIBIT H SITE INFORMATION**

The water tank owned by the Town of Westborough is located off Friberg Parkway, Westborough, MA shown on Assessor's Map 35, Parcel 146 and comprising of 1.081 acres more or less.



WORCESTER DISTRICT REGISTRY  
OF DEEDS, WORCESTER, MA  
PLAN BOOK 54, PLAN 98  
Page 183 of 183  
9 h 20 m 18  
Sheet 1 of 2  
ATTEST  
*Anthony J. [Signature]*  
( 44 )

APPROVAL, UNDER SUBDIVISION  
CONTROL, LAW REQUIRED

*W. J. [Signature]*

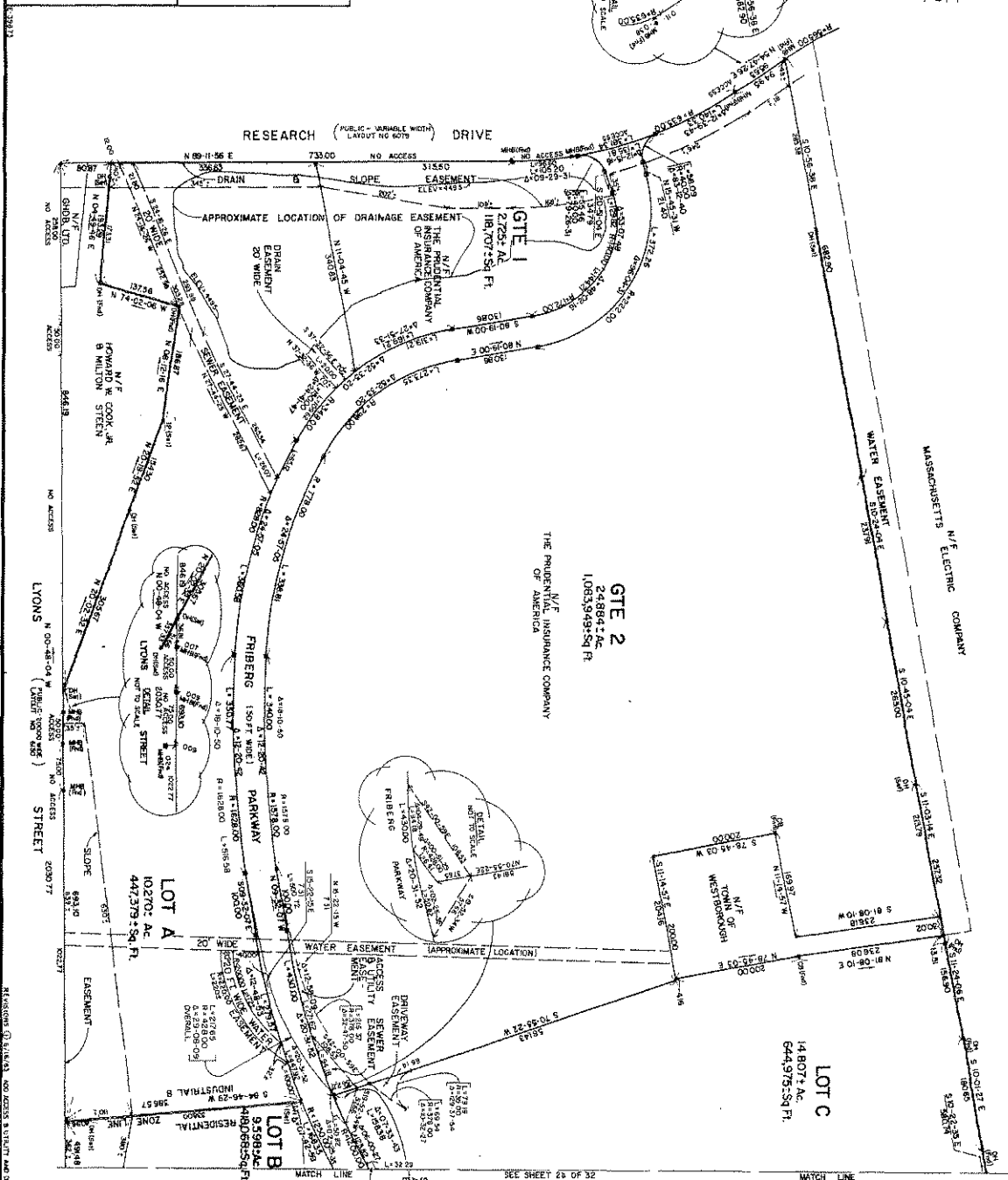
*W. J. [Signature]*

*W. J. [Signature]*

WESTBOROUGH PLANNING BOARD

DATE *1/12/83*

RECEIVED  
JAN 20 1964  
U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C.



THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA

GTE 2  
24,884 ± Ac  
1,083,949 ± Sq F

LOT C  
14,807 ± A.C.  
644,975 ± Sg Ft

[illegible]

(LEGEND)

CB	CONCRETE BOUND
CI	CAST IRON
DH	DRILL HOLE
FD	FOUND
IP	IRON PIPE
MHB	MASS HOLLOW BOUND
D	DRAIN
IT	INDICATES STONE BOUND WITH DRILL HOLE TO BE SET

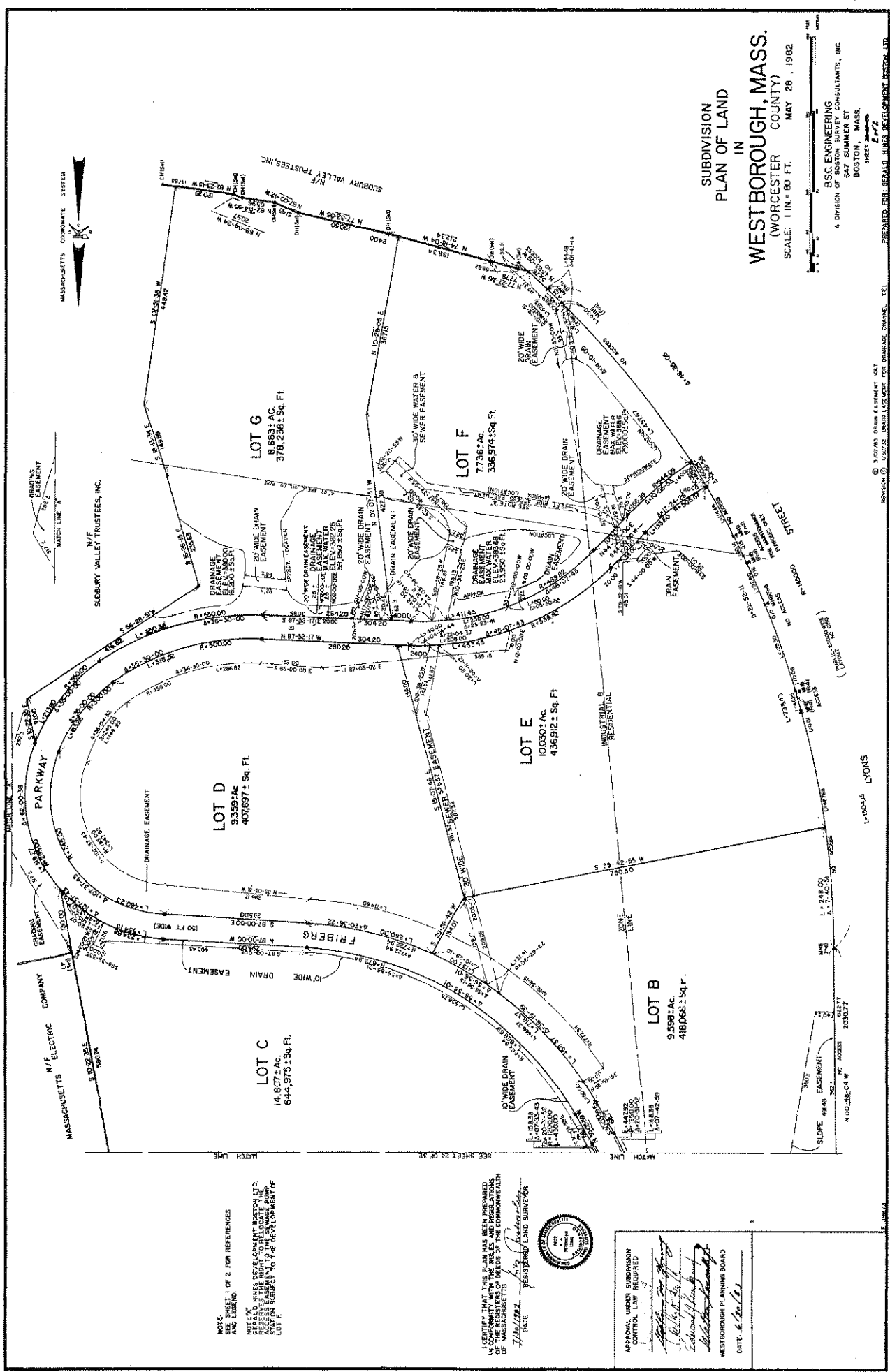
7/20/1982  
DATE by: J. J. Johnson  
REGISTERED LAND SURVEYOR



SUBDIVISION  
PLAN OF LAND  
IN  
WESTBOROUGH, MASS  
(WORCESTER  
COUNTY)  
SCALE: 1 IN. = 80 FT.  
MAY 28, 1982

**B.S.C. ENGINEERING**  
A DIVISION OF BOSTON SURVEY CONSULTANTS, INC.  
647 SUMMER ST.  
BOSTON, MASS.

48-120



SUBDIVISION  
PLAN OF LAND  
IN  
WESTBOROUGH, MASS.  
(WORCESTER COUNTY)  
SCALE: 1 IN = 80 FT. MAY 28, 1982

BSC ENGINEERING  
A DIVISION OF BOSTON SURVEY CONSULTANTS, INC.  
647 SUMMIT ST.  
BOSTON, MASS.  
SHEET 2 OF 2  
PREPARED FOR: GERALD HINES DEVELOPMENT, INC., LTD.

NOTE:  
SHEET 1 OF 2 FOR REFERENCES  
AND TIES  
GERALD HINES DEVELOPMENT, INC., LTD.  
BOSTON, MASS.  
SUBMITTER'S CERTIFICATE TO THE SEWAGE PUMP  
AND TIES  
SUBJECT TO THE DEVELOPMENT OF  
LOT 1

I CERTIFY THAT THIS PLAN WAS PREPARED  
IN CONFORMANCE WITH THE RULES AND REGULATIONS  
OF THE REGISTERED PROFESSIONAL LAND SURVEYORS  
OF THE COMMONWEALTH OF MASSACHUSETTS  
DATE 7/10/82 FOR GERALD HINES DEVELOPMENT, INC., LTD.



APPROVAL UNDER SUBDIVISION  
CONTROL LAW REQUIRED  
DATE 6/10/82  
WESTBOROUGH PLANNING BOARD

REVISION D: 11/20/82 DRAIN EASEMENT FOR DRAINAGE CHANNEL KEY

LYONS

11-10045

11-10045

## REFERENCE FORM EXHIBIT I

Bidder\_\_\_\_\_

Bidder must provide references for all contracts performed within the past five years of similar size and scope of this contract:

Reference:

Contact \_\_\_\_\_

Address\_\_\_\_\_City, \_\_\_\_\_State\_\_\_\_\_

Telephone Number\_\_\_\_\_

Description and date(s) of project:\_\_\_\_\_

General Contractor:\_\_\_\_\_