

# COUNCIL DECISION REQUEST

SUBJECT: PUSD Computer Network Integration Project Agreement

MEETING DATE: July 23, 2009

PAYSON GOAL: NEW:            EXISTING: X

ITEM NO.:

TENTATIVE SCHEDULE: Immediate

SUBMITTED BY: Buzz Walker

AMOUNT BUDGETED: -0-

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED: -0-

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED: -0-



EXHIBITS (If Applicable, To Be Attached): Water Storage Tank Site Lease Agreement

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**POSSIBLE MOTION; I MOVE TO AUTHORIZE THE MAYOR TO SIGN ALL DOCUMENTS NECESSARY TO ALLOW FOR THE USE OF THE AIRPORT WATER STORAGE TANK SITE BY STRATEGIC COMMUNICATIONS, INC. FOR THE INSTALLATION OF ANTENNAS NECESSARY TO PROVIDE COMPUTER NETWORK INTEGRATION FOR THE PAYSON UNIFIED SCHOOL DISTRICT.**

**SUMMARY OF THE BASIS FOR POSSIBLE MOTION:** The Payson Unified School District (PUSD) participates in a federal E Rate program wherein a designated service provider, Strategic Communications, Inc., installs and maintains electronic equipment that allows for the integration of computer networking facilities located at Julia Randall Elementary School, Frontier Elementary School, Payson Elementary School, Payson Junior High School, Payson High School and the PUSD District office. The placement of four small antennas on the Airport water storage tank located at 1100 N. Falconcrest Drive is critical to this effort as it is the ideal location for line of sight communications to all PUSD campuses. Equipment to be installed consists of a small electronics cabinet and three 24" and one 36" antennas. In keeping with past Town of Payson and PUSD practice for sharing of facilities owned by each entity the Water Department recommends that no lease fee be charged to STC because their activities on the water tank site are performed for the sole benefit of the PUSD. No other customers will be served by the equipment installed under this agreement. The impact to the water tank site is minimal. The Payson Water Department is pleased to be a participant in this important PUSD effort.

**PROS:** Allows for enhanced computer network capabilities for the various Payson Unified School District campuses.

**CONS:** N/A

**PUBLIC INPUT (if any):** N/A

**BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach**

JUL 23 2009 I. 2\*

## AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between Strategic Technology Communications, Inc., an Arizona Corporation (hereinafter "STC"), and the TOWN OF PAYSON, an Arizona municipal corporation (hereinafter "Town").

### RECITALS

- I. STC provides wireless internet services, including broadband services, and desires to provide such services to the Payson Unified School District (hereinafter "PUSD").
- II. The Town owns its own water facilities, serving the Town. The Town's water facilities include several water tanks.
- III. STC and the Town desire to enter into an agreement whereby STC can locate its equipment and facilities for providing wireless internet services on and near one of the Town's water tanks.

### AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm, and agree as follows:

4. Premises. The Town agrees to provide STC with an area having a footprint of five feet by five feet, five feet tall, near an existing water tank, or to allow STC to mount equipment to the exterior of the existing masonry building, as mutually agreed upon near the base of the Airport Water Tank located at 1100 N. Falconcrest Drive (as more particularly described in Exhibits A attached hereto) ('the Tank') for the purpose of installing a concrete pad and construction of enclosures ('Facilities'). The Town shall also provide STC with areas on the side of the Tank (as more particularly described in Exhibits B, C, D and E attached hereto) for the attachment of transmitting facilities (Exhibit F and G attached hereto) necessary for line of sight communication to various PUSD facilities ('Facilities'). The areas on the side of the Tank shall not exceed twenty four (24) square feet in the aggregate, nor shall any facilities extend more than six (6) vertical feet above the top of any Tank, nor more than six (6) feet from the side of any Tank. The actual Facilities to be installed, and the manner of installation, shall be the types described and pictured in Exhibits D, E, and F, and shall be subject to the prior approval of the Town before installation (both as to type of Facilities and installation method) for conformity to Exhibits A through F, and the interests of the Town.
5. Term. The initial term of this Agreement shall be five (5) years commencing upon the date of the Agreement. The Agreement shall automatically renew for five (5) additional periods of one (1) year each unless either party notifies the other party of its intention to not renew the Agreement. Such notice of non-renewal shall be in writing and made at least ninety (90) days prior to the expiration of the initial term and each extended term thereafter.
6. Installation and Maintenance. All improvements installed pursuant to this Agreement shall be installed at the sole expense of STC and nothing in this Agreement shall require the Town, nor be construed to require the Town to incur any expense in regards to construction or installation of any of STC's equipment. STC shall maintain the Facilities installed in a neat, clean, safe and reasonable condition. STC shall only use self supporting lift platform equipment for the installation, service, maintenance, and removal of any facilities on the Tank. At no time may any

equipment used to install, service, maintain, or remove the facilities, be placed on or against the Tank. STC shall be responsible for and shall reimburse the Town for any damage caused to the Tank as a result of any acts of STC, STC's employees, STC's contractors, or STC's facilities. STC, upon termination of this Agreement, shall, within ninety (90) days, remove all of its Facilities and restore the premises to its original condition, except that any poured concrete pad may remain in place.

7. Necessary Permits and Approvals. It is understood and agreed that STC's ability to install and use the Facilities is contingent upon it obtaining all necessary permits or other approvals required by Federal, State, or Local laws. The Town will cooperate with STC in its effort to obtain such approvals but STC and not the Town shall be and remain solely responsible for obtaining the same.
8. Contract Payment. There shall be no payments due the Town by STC so long as their sole customer is PUSD.
9. Termination. Except as otherwise provided herein, this Agreement may be terminated without any penalty or further liability, except for accrued and unpaid rent owed by STC, as follows:
  1. upon thirty (30) days written notice by either party if the other party commits a material breach of this Agreement and fails to cure such material breach within thirty (30) days after notice of such breach is given by the other party.
  2. during the first ninety (90) days of the Agreement, if STC determines that the Premises is unacceptable for use under STC's design or engineering specifications. Notice of unacceptability shall be immediately provided to the Town, upon such a determination by STC.
  3. immediately upon written notice by STC if the Facilities are destroyed or damaged so as to substantially and adversely affect the effective use of the Facilities.
  4. at the end of the then current term or extended term upon notice of intention not to renew, pursuant to Paragraph Five.
  5. in the event that any application necessary for the installation or operation of the Facilities is finally rejected or any certificate, permit, license, or approval issued to STC is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that STC, in its sole discretion, will be unable to use the Premises for its intended purposes, STC shall have the right to terminate this Agreement. Notwithstanding any other provision in this Agreement, all payment obligations of STC pursuant to this Agreement shall terminate the month following written notice from STC that any governmental authority has determined that a permit will not be issued to allow construction of the Facilities.
10. Remedies. In addition to any other remedies at law or in equity, upon a breach by STC in the performance of any obligation of STC to be performed under this Agreement, the Town shall have the right to demand (1) cessation of all activities of STC in connection with the facilities described in paragraph 1, or (2) removal of all facilities and equipment at STC's sole cost from such premises, or (3) both cessation and removal.

11. Non-exclusivity. The Town retains the right to allow other telecommunication facilities and other providers to locate antennas, wires, cables, other telecommunications devices, and other non-telecommunications facilities and devices, on or near the Water Tank, as long as the subsequent locators do not interfere physically, electromagnetically, or otherwise with STC's ability to provide the services set forth in this Agreement. Should a situation occur wherein an entity approved by the Town of Payson wishes to utilize the equipment mounts associated with STC equipment, STC agrees to co-operate with that entity in accomplishing co-location of equipment with that entity and at no cost to the Town. This Agreement does not provide STC with any exclusive right.
12. Indemnity. STC agrees to indemnify, save and hold harmless and its sole cost defend the Town and any of its departments, agencies, officers, or employees from any and all claims for costs, damages, or liability incurred or claimed to have been incurred by any of the above and from any other damage, cost or liability, including but not limited to, attorneys' fees and costs of litigation, to any person or property whatsoever, which is caused by an activity, condition, or event arising out of the performance or nonperformance of any provision of this Agreement or arising in any other manner from this Agreement, its subject matter or the operations of STC, its servants, employees, volunteers, agents and/or contractors pursuant to this Agreement. Such costs incurred by the Town or any of its departments, agencies, officers, or employees shall include, in the event of legal action, court costs, expenses of litigation, and reasonable attorneys' fees. When any of the above costs, damage, or liability occurs as aforesaid, STC assumes the burden of proof that the activity, condition, or event did not cause such cost, damage, or liability and shall pay from STC's funds any judgment, arbitration or other award entered against the Town, its departments, agencies, officers or employees, or any of them without contribution therefrom. Notwithstanding the foregoing, the Town shall bear responsibility for its own negligence in connection with or in performance of this Agreement, and that of its officers, officials, employees, contractors, or agents.
13. Right of Entry. The Town agrees to and does hereby grant STC the right of entry, during the term of this Agreement, for access from the roadway to STC's facilities, identified in Exhibit A, for the installation and maintenance of communications Facilities described in Paragraph One and wires, cables, conduits and pipes appurtenant thereto. The Town shall have the right to reasonably limit such access to ensure that the security and integrity of the Town's water system is maintained.
14. New Water Facilities and Maintenance. The Town retains the right to build and construct additional water storage and delivery buildings, water tanks, equipment, and systems. If such new construction interferes with STC's ability to provide the services contemplated in this agreement, STC shall have the right to (1) relocate its facilities to a mutually agreeable location at its own expense, or (2) if a mutually agreeable location cannot be established, to terminate this Agreement upon thirty (30) days notice. Additionally, the Town retains the right to perform all necessary maintenance (including regularly scheduled maintenance) on its water storage and delivery systems and to protect the same from acts of terrorism or sabotage.
15. Non-interference. STC agrees to and shall not utilize its Facilities, personnel and/or its property in any manner which interferes in any way with operations conducted by or permitted by the Town, including, but not limited to, delivery of water, operations of the Payson Municipal Airport or aircraft operated in conjunction there with, and/or police, fire, and other emergency operations of the Town. The Town shall have the right to immediately shut down STC's operations in the event of any interference with the Town's emergency, public safety, or airport operations. STC further agrees to install Facilities of the type of frequency which will not cause measurable interference to the Town, other users of the subject property, neighboring land

owners, residents and/or aircraft in the vicinity. In this connection, STC agrees to use its best efforts to maintain good and non-intrusive relations with the properties surrounding its Facilities and the residents thereof. In the event STC causes any interference to the Town, other users, neighboring land owners, residents, or aircraft, STC will take all steps necessary to correct and eliminate all such interference. Failure to do so shall constitute a material breach of this Agreement.

16. Operations. STC shall install the Facilities and commence operations no later than ninety (90) days after the date of execution of this Agreement and shall maintain such operations, uninterrupted, except as expressly provided in this Agreement, continuously thereafter.
17. Time of Essence and Successors. Time is of the essence of this Agreement and all of its parts. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
18. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Town or STC of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.
19. Insurance. STC shall procure and maintain, during the term of the Agreement, liability insurance coverage for both property damage and bodily injury in a minimum amount for each occurrence in the amount of \$1,500,000.00. All such insurance shall be written by insurance underwriters authorized to do business in the State of Arizona and shall be satisfactory to the Town. STC shall furnish the Town with a certificate from the insurance carrier showing such insurance to be in full force and effect and said certificate shall provide for at least ten (10) days notice prior to any actual date of cancellation or termination of required coverage.
20. Notices. Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to STC and the Town at the addresses set forth below or at such other address as a party may designate in writing. The date notice is given shall be the date on which notice is delivered, if notice is given by personal delivery, or the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail or by express delivery service. Notice shall be deemed to have been received on the date on which the notice is delivered, if notice is given by personal delivery, one business day following such deposit with the express delivery service if notice is sent by express delivery service or three days following such deposit in the mail if notice is sent through the United States mail.

Town of Payson  
Attention: Town Manager  
303 North Beeline Highway  
Payson, Arizona 85541

Strategic Technology Communications, Inc.  
Attention: Ryan McCaigue  
13828 N. 41<sup>st</sup> Place  
Phoenix, AZ 85032

21. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.
22. Taxes. STC shall pay any personal property taxes or taxes in lieu of real property taxes and taxes levied pursuant to Title 42, Chapter 6, Article 5 (A.R.S. §42-6201 et. seq.) assessed on, or any portion of such taxes directly attributable to its Facilities. The Town shall pay any real property taxes or other fees and assessments attributable to the Property. STC shall pay any increase in real property taxes applicable to its facilities.
23. Sale of Property. Should the Town, at any time during the term of this Agreement decide to sell or lease all or any part of the Premises, this Agreement shall be subject thereto.
24. Assignment. Neither this Agreement, nor any of the right hereunder may be sold, assigned, or transferred by STC without the prior approval and consent of the Town, which may be withheld for any or no reason and STC shall have no recourse against the Town on account of the withholding of consent. Any attempt to sell, assign, or transfer any right in this Agreement in violation of this paragraph shall be void and shall terminate this Agreement.
25. Time Periods. Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Payson time) on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.
26. Headings and Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.
27. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, whether oral or written, are superseded by and merged into this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by STC and the Town.
28. Severability. If any provision of this Agreement is declared void or unenforceable by a Court of competent jurisdiction, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.
29. Cancellation. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein and which provides for cancellation of contracts by the Town for certain conflicts of interest.
30. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. Any dispute, controversy, claim or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission, with the written consent of both Parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona, or any such dispute, controversy, claim or cause of action may be mediated or may be litigated in the Superior Court of Gila County, Arizona. The venue for any

such dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue and jurisdiction and waive any right that Gila County is an inconvenient forum or improper forum based upon lack of venue. Neither Party shall be entitled to recover any of its attorneys' fees, costs or expert witness fees from the other party incurred in any such dispute, controversy, claim or cause of action, but each party shall bear its own attorneys' fees, costs and/or expert witness fees, whether the same is resolved through arbitration, litigation in a court or otherwise.

31. Authority of Signers and Counterparts. This Agreement is executed by the individuals whose names are affixed hereto and the parties certify to each other that each is a validly existing entity authorized to do business in the State of Arizona and that such individuals are authorized to sign the Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
32. No Partnership. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the parties. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a signatory hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder against either party, or otherwise.
33. Binding Obligation. STC represents to the Town that this Agreement constitutes a legal, valid, and binding obligation of STC, enforceable against STC in accordance with its Terms.
34. Plain Meaning. This Agreement shall be construed according to its plain meaning. Both parties acknowledge that each has had the opportunity to retain and seek the assistance of counsel in the drafting, review, and execution of this Agreement and no presumption in favor of or against the party drafting this Agreement shall be applied in its interpretation.
35. Premises Review. STC represents and acknowledges that it has familiarized itself with the Premises and has solely determined the Premises to be suitable for its Facilities and operations and has not relied upon any representations of the Town or any of its employees, if any, in choosing the Premises as a site for its operations, or in the placement of its Facilities or operations thereon.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

**Strategic Technology Communications, Inc.,  
an Arizona corporation**

**TOWN OF PAYSON,  
an Arizona municipal corporation**

By \_\_\_\_\_  
Debbie Long, President

By \_\_\_\_\_  
Kenny J. Evans, Mayor

### **APPROVAL AS TO FORM**

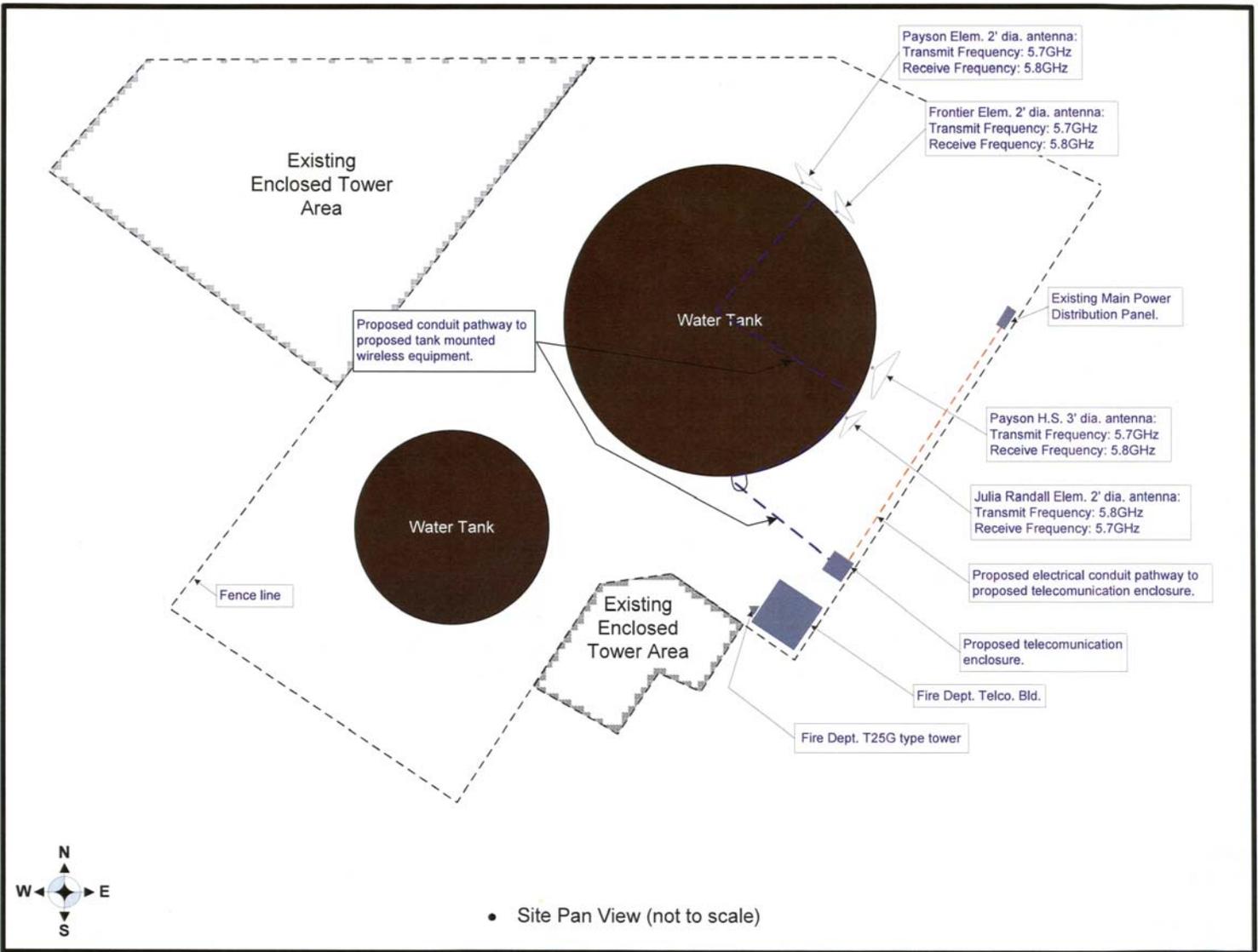
The Town of Payson Legal Department has reviewed this agreement and approved it as to form. When reviewing this agreement for form, the Legal Department considers whether the following situations have been addressed:

36. Identification of parties;
37. Offer and acceptance;
38. Existence of consideration (we do not review to determine if consideration is adequate);
39. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the agreement or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the agreement.

Dated: June 30, 2009.

By \_\_\_\_\_  
Samuel I. Streichman, Town Attorney



• Site Pan View (not to scale)



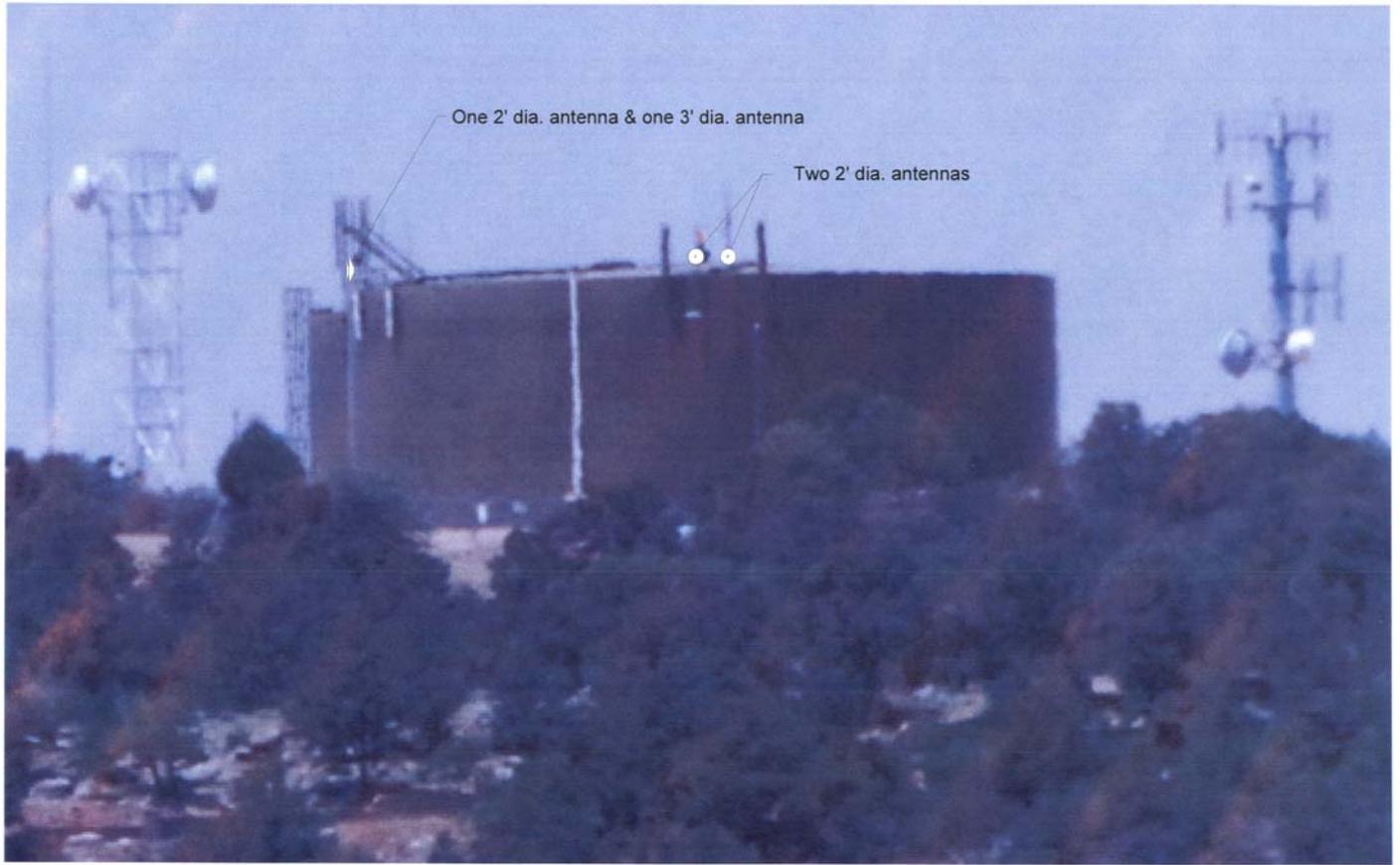
- The view above is looking north from the Payson High School.
- The 2' dia. antenna on the left (west) is for the proposed Julia Randall wireless link.
- The 3' dia. antenna in the center is for the proposed High School wireless link.
- The two 2' dia. antennas on the right (east) are for the proposed Frontier and Payson Elem. School wireless links.



- The view above is looking north from the Payson High School.



- The view above is looking West from the Payson Elem. School.



- The view above is looking West from the Payson Elem. School.

**STC / Payson USD Wireless proposed transmit / receive frequency plan.**

**Julia Randall Elem. School to Airport Water Tank link.**

**Julie Randall Elem.**

TX: 5.7 GHz

RX: 5.8 GHz

**Airport Water Tank.**

TX: 5.8 GHz

RX: 5.7 GHz

**Payson High School to Airport Water Tank link.**

**Payson High School**

TX: 5.8 GHz

RX: 5.7 GHz

**Airport Water Tank.**

TX: 5.7 GHz

RX: 5.8 GHz

**Frontier Elem. School to Airport Water Tank link.**

**Frontier Elem.**

TX: 5.7 GHz

RX: 5.8 GHz

**Airport Water Tank.**

TX: 5.8 GHz

RX: 5.7 GHz

**Payson Elem. School to Airport Water Tank link.**

**Payson Elem.**

TX: 5.8 GHz

RX: 5.7 GHz

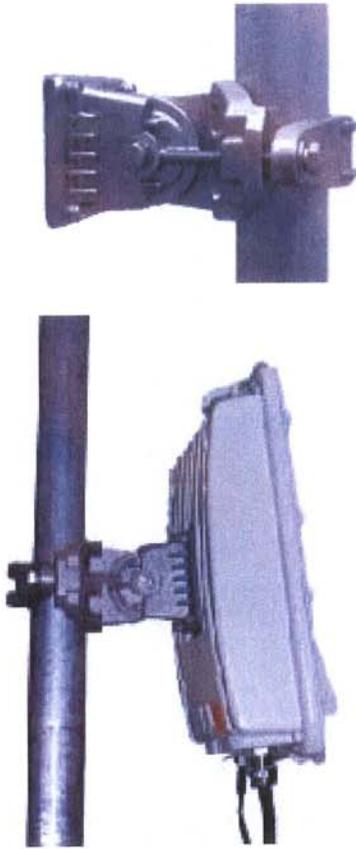
**Airport Water Tank.**

TX: 5.7 GHz

RX: 5.8 GHz

## Mast, Tower or Building Installation

**Step 2:** Offer the ODU (with pre-fitted mounting bracket) to the bracket strap and affix using the captive M8 bolt. Tighten to ensure the assembly grips, but can be adjusted on the pole.



**Step 3:** Adjust the elevation and azimuth of the unit before tightening to the required torque settings of 14 Nm (11 lbft) for both bolts.



**CAUTION:** Attach the free end of one earth bonding lead (large tag M10) to the tower metal work. On no account must this be attached to the mounting bracket bolts

More information: *PTP 600 Series User Guide*

Section: "Mounting the ODUs"

# COUNCIL DECISION REQUEST

minutes): N/A

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**FUNDING:**

Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

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