

Introduced by: Mayor  
Date: 07/06/21  
Hearing: 08/03/21  
Action: Enacted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-27**

**AN ORDINANCE AUTHORIZING A WISP TOWER AND GROUND LEASE  
AGREEMENT AT CERTAIN LOCATIONS WITH SPITwSPOTS, INC.**

**WHEREAS,** SPITwSPOTS, Inc. is proposing to install single provider towers and equipment at borough owned locations in the communities of Sterling and Funny River; and

**WHEREAS,** the purpose of the agreement would be to expand wireless internet connectivity in the borough;

**WHEREAS,** suitable sites have been identified near borough solid waste and Central Emergency Services operating sites known as the Sterling Transfer Site, the Funny River Transfer Site, CES Sterling Station #3, and CES Funny River Station #5; and

**WHEREAS,** SPITwSPOTS, Inc. has the capability to assist KPB with communication equipment installations and services that would benefit KPB operations through the information technology services available between the sites and save costs to KPB through the services provided; and

**WHEREAS,** communication tower lease agreements have been negotiated on terms which would provide wireless internet connectivity services to KPB, with a cash rent alternative should connectivity be discontinued; and

**WHEREAS,** entering into a WISP (Wireless Internet Service Provider) Tower and Ground Lease Agreement with this provider benefits borough infrastructure while also providing a community-wide benefit in expanding existing wireless internet infrastructure and connectivity in the borough; and

**WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of July 12, 2021 recommended approval by unanimous consent;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That the assembly finds that entering into a WISP Tower and Ground Lease Agreement with SPITwSPOTS, Inc., pursuant to KPB 17.10.100(I), authorizing the negotiated lease of borough lands, is in the best interest of the borough at the following locations:

- A. Lot 2 Sterling Fire Station Subdivision, Plat No. 86-139, Kenai Recording District (Parcel 063-680-15);
- B. Gov Lots 3 & 4 Section 10, T5N, R9W, S.M. lying north of the Sterling Highway, excepting that portion per Q/D Book 380, Page 957 (Parcel 063-860-17);
- C. Lot 5 Salmon Bend Subdivision FRVFD Addition, Plat No. 2002-24, Kenai Recording District (Parcel 066-170-31);
- D. Lot 1A, Block 2 Beacon Subdivision, Plat No. 92-10, Kenai Recording District (Parcel 066-010-21);

This finding is based on the following facts:

- 1. The borough will receive a fair market rent, or a fair value in services in lieu of cash rent, for the term of the lease.
- 2. The land will be used to provide new wireless internet provider sites that will improve internet connectivity services in rural areas of the Kenai Peninsula Borough.
- 3. That the proposed wireless internet service facilities and improvements are compatible with the sites.

**SECTION 2.** Pursuant to KPB 17.10.230, the assembly authorizes an exception to the requirements of KPB 17.10.080, KPB 17.10.090 and KPB 17.10.110 governing classification, disposition, and notice with respect to leasing of borough lands, based on the following facts:

- 1. That special circumstances or conditions exist.
  - a. The proposed lease agreement is solely with SpitwSpots, Inc, for the purpose of constructing or installing new broadband wireless internet tower sites.
  - b. The lease agreement is for ancillary uses that do not conflict with, or that do enhance, the primary use of the properties.

2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
  - a. The notice requirement is intended to make the public aware of an opportunity to purchase borough property, which is unnecessary since the intent of the disposal is to lease the property solely to SpitwSpots, Inc,
  - b. The communications uses are not primary factors in the land classification system.
3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.
  - a. Lease of wireless internet communications sites on the subject parcels to SpitwSpots, Inc, is compatible with the current land uses and surrounding land uses.
  - b. The development of communications infrastructure on these sites will benefit the KPB operations on those sites, and provide a community-wide benefit by expanding the availability of wireless internet service connectivity.

**SECTION 3.** Based on the foregoing and pursuant to KPB 17.10.100(I), the mayor is hereby authorized to execute a WISP Tower and Ground lease Agreement for the properties identified in Section 1 that contains terms and conditions substantively similar to the the agreement attached to this ordinance.

**SECTION 4.** SPITwSPOTS, Inc. shall have 120 days from the date of enactment of this ordinance to execute the lease agreement(s).

**SECTION 5.** That rent revenue from the subject lease shall be submitted to the borough finance department and deposited as follows:

Funny River Fire Station: Central Emergency Service Area account 211.00000.00000.36316.

All other sites: Land Trust account 250.00000.00000.36316.

**SECTION 6.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF AUGUST, 2021.**

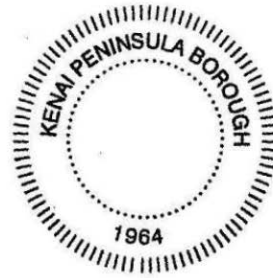


\_\_\_\_\_  
Brent Hibbert, Assembly President

ATTEST:



\_\_\_\_\_  
Jonni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert  
No: None  
Absent: None

## WISP TOWER AND GROUND LEASE AGREEMENT

This WIRELESS INTERNET SERVICE PROVIDER (WISP) TOWER AND GROUND LEASE AGREEMENT (this "Agreement") is entered into by and between the Kenai Peninsula Borough, a municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter the "**KPB**" or "Lessor"), and SPITwSPOTS, Inc., an Alaska business corporation, whose mailing address is PO Box 15364, Homer, AK 99603 (hereinafter "**SWS**" or "Lessee"). The Effective Date of this Agreement shall be the date the KPB executes the Agreement.

### PART I. BACKGROUND

1. **Purpose.** The KPB owns certain real property located in the Kenai Peninsula Borough, in the state of Alaska, that is more particularly described and/or depicted in Exhibit 1 attached hereto (the "Property"). For good and valuable consideration, the parties agree that the KPB will grant the SWS the right to use a portion of the Property in accordance with the terms of this Agreement.

2. **Authorized Contact.** All communications about this Agreement shall be directed as follows, any reliance on a communication with a person other than the listed below is at the party's own risk.

#### **KPB**

Name: Kenai Peninsula Borough  
Attn: Land Management Division  
Mailing Address: 144 N. Binkley St.  
Soldotna, AK 99669

#### **LESSEE**

Name: SPITwSPOTS, Inc.  
Attn: McKenzie McCarthy  
369 E. Pioneer Avenue  
Suite B  
Homer, AK 99603

3. **Contract Documents.** As authorized by KPB Ordinance 2021-\_\_\_\_\_, this Agreement is the final and complete understanding of the parties. The following exhibits and appendices are attached and are considered part of this Agreement as well as anything incorporated by reference or attached to those exhibits or appendices:

Appendix A: Lease Provisions Required by KPB 17.10

Exhibit 1: Description of the "Property" and the "Leased Premises"

Exhibit 2: Leased Premises site sketch or maps

Exhibit 3: Memorandum of Lease

**If in conflict, the Agreement shall control. If in conflict, the order of precedence shall be: the Agreement, Appendix A, Exhibit 1, Exhibit 2, and then Exhibit 3.**

**4. Definitions.**

4.1. The term “Leased Premises” means the area within the Property that may be used by SWS for the uses, purposes and upon the terms and conditions of this Agreement as more particularly described and shown on Exhibit 1 and Exhibit 2.

4.2. The term “Property” means the real property owned by the Kenai Peninsula Borough that is subject to this Agreement wherein a portion of the real property or vertical space of a tower at the Property, whatever the case may be, is leased to SWS pursuant to the terms of this Agreement.

4.3. The term “Site” refers to the individual area set out in Section 5.1 used to construct and install the WISP Facilities.

4.4. The terms “WISP Facilities” or “WISP Facility” includes erecting, installing, operating and maintaining radio or communications tower for wireless internet connectivity purposes, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment; and

4.5. The term “WISP Communications Equipment” includes antenna, dishes, mounting structures, flexible transmission, lines, cables, radio, amplifiers, filters and other transmission equipment shelters or cabinets and any integrally related components thereto (including interconnect transmission equipment, transmitter(s), receiver(s) and accessories) and such other associated software as may be necessary.

4.6. The term “WISP” means Wireless Internet Service Provider.

**PART II. PROPERTY DESCRIPTION; USE; RENT**

**5. Description of Property.**

5.1. Subject to the terms and conditions of this Agreement, KPB hereby leases to SWS the following generally described property and/or vertical space:

a) CES Sterling Station #3. A certain portion of the Property containing approximately \_\_\_square feet (\_\_\_\_) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.

b) CES Funny River Station #5. A certain portion of the Property containing approximately \_\_\_square feet (\_\_\_\_) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.

c) Sterling Solid Waste Transfer Site. A certain portion of the Property containing approximately \_\_\_square feet (\_\_\_\_) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.

d) Co-Location at Funny River Solid Waste Transfer Site Tower. The exclusive use of the top twenty feet (20') of the tower structure at the Site, including the air space above, and necessary related ground space for equipment cabinets and integrally related components, as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of its WISP Communication Equipment.

5.2. The Leased Premises description may be adjusted by mutual written agreement of the parties, subject to the condition that the adjusted description may not conflict with the predominant use of the property, and may not impair or constrict public ingress or egress to the property and related compatible uses.

## **6. Allowed Use.**

6.1. *CES Sterling Station #3; CES Funny River Station #5; Sterling Solid Waste Transfer Site.* The Leased Premises are being leased for the purpose of erecting, installing, operating and maintaining a radio or communications tower for the purpose of wireless internet service connectivity, including but not limited to transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment (collectively, the "WISP Facilities"). SWS may, subject to the foregoing, make any improvement, alteration or modification to the Leased Premises as are deemed appropriate by SWS for the permitted use herein. SWS will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth which interferes with SWS's use of the Leased Premises for the intended purposes. Notwithstanding Section 14 below, SWS will have the exclusive right to install and operate, or contract for the installation, operation and maintenance, upon the Leased Premises a WISP Facility, which may include a guyed, partially guyed, or self-supporting tower, related buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary.

6.2. *Funny River Solid Waste Transfer Site.* The Leased Premises are being leased for the purpose of SWS' exclusive use of the top twenty feet (20') of the tower structure at the Site, including the air space above, and necessary related ground space for equipment cabinets and integrally related components, as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of its WISP Communications Equipment. This Agreement shall not grant SWS the right to install or construct a separate tower facility at the Site. Notwithstanding any contrary indications in this Agreement, with regard to the Funny River Solid Waste Site, this Agreement only and exclusively grants collocation rights to SWS on the already existing tower facility at the Site, unless the parties agree otherwise in writing.

## **7. Rent; In-Kind Services.**

7.1. *Rent.* In the event the in-kind services described in Section 7.2 below fail or are otherwise disconnected for a period greater than one (1) consecutive week of any month or months during the term of this Agreement, SWS shall pay to KPB a monthly rent payment of 750.00 and No/100 Dollars (\$750.00) ("Rent") per Site, at the address set forth above on or before the fifth (5th) day of each calendar month in which Rent is due as a result of failed connectivity of the in-kind services. On each anniversary of the Effective Date, Rent shall adjust annually by Three percent (3%) over the prior year's Rent amount.

7.2. *In-Kind Services as Payment in Lieu of Cash Rent.* As part of the Rent, the SWS shall provide the Kenai Peninsula Borough with 100mbit download / 50mbit upload ethernet

network connectivity per Site between a Kenai Peninsula Borough facility serviceable from the Leased Premises and central network location at 144 North Binkley Street, Soldotna, AK, or another location if agreed upon in writing by the parties and providing that such connectivity standards may be updated from time to time by written mutual agreement.

7.3. *In-Kind Services Effective Date; Option Payment.* The in-kind services as rent payment as provided in Section 7.2 shall become effective within 60 days of commencement of construction or improvement activities within the Leased Premises. If the WISP Facility is not constructed, completed and operational by July 1, 2022, in lieu of cancellation of this Agreement pursuant to Section 9.6 below, SWS shall owe an option payment of \$3,500, payable by August 1, 2022, and shall pay rent in accordance with Section 7.1 paid monthly until it is able to complete the WISP Facility and provide in-kind services pursuant to Section 7.2.

## **8. Term.**

8.1. The initial term will be five (5) years (the "Initial Term"), commencing on the Effective Date.

8.2. SWS will have the option to extend the term of this Agreement for four (4) successive terms of five (5) years each (each, a "Renewal Term"). Each Renewal Term will commence automatically, unless SWS delivers notice to KPB, not less than thirty (30) days prior to the end of the then-current Term, of SWS's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

8.3. Should SWS or any assignee, sublessee or licensee of SWS hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

## **PART III. TERMINATION; SECURITY; ACCESS; REMOVAL**

**9. Termination; Cancellation.** This Agreement may be terminated or cancelled, without penalty or further liability, as follows:

9.1. by SWS within 180 days of executing this Agreement, upon written notice to KPB, if SWS is unable to obtain, or maintain any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by SWS; or if SWS in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

9.2. by SWS within 90 days of executing this Agreement, upon written notice to KPB, if SWS determines, in its sole discretion, due to the title reports or survey results, that the condition of the Leased Premises is unsatisfactory for its intended uses;

9.3. by SWS upon written notice to KPB for any reason or no reason, at any time prior to commencement of any construction, which includes access clearing, or improvements on the Leased Premises by SWS; or



9.4. by SWS upon sixty (60) days' prior written notice to KPB for any reason or no reason, so long as SWS pays KPB a termination fee equal to six (6) months' Rent, at the then-current rate, and subject to removal requirements contained within Section 13. No such termination fee will be payable on account of the termination of this Agreement by SWS under any termination provision contained in any other Section of this Agreement.

9.5. By KPB, upon written notice to SWS, if SWS is in breach of any term of this Agreement and fails to cure the breach within 30 days of the date a Notice of Breach is sent to SWS.

9.6. By KPB, upon written notice to SWS, if by July 1, 2022, a WISP Facility is not constructed, installed, and operational within the Leased Premises as contemplated under Section 6. This provision is subject to Section 7.3 above.

**10. Taxes.** SWS shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the WISP Facilities located on the Leased Premises, including private leasehold or possessory interest taxes as may be assessed by the KPB Assessing Department.

**11. Fence & Site Security.** Notwithstanding Section 4 above, the SWS will install a locked, sight-obscuring fence at least six feet (6') in height around the perimeter of the Leased Premises to protect against unauthorized access to the Leased Premises. The fence must be of a color that blends in with the surrounding landscape (i.e. brown, green or similar color). SWS may also elect, at its expense, to construct such other enclosures and/or fences as SWS reasonably determines to be necessary to secure its improvements, including the tower(s), building(s), guy anchors, and related improvements situated upon the Leased Premises. SWS may also undertake any other appropriate means to restrict access to its communications towers, buildings, applicable guy anchors, applicable guy wires, and related improvements, including, without limitation, posting signs for security purposes.

## **12. Access, Maintenance, And Utilities.**

12.1. **Access.** During the Term, SWS, and its guests, agents, customers, lessees, sublessees and assigns will have the unrestricted, exclusive right to use, and will have free and unfettered access to, the Leased Premises seven (7) days a week, twenty-four (24) hours a day. KPB for itself, its successors and assigns, hereby grants and conveys unto SWS, its customers, employees, agents, invitees, sublessees, sublicensees, successors and assigns a nonexclusive easement to the extent depicted on Exhibit 2 (a) for ingress and egress, and (b) for the construction, installation, operation and maintenance of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of and access to the Leased Premises, subject to the terms and conditions herein set forth. KPB agrees to cooperate with SWS's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, SWS may utilize such utilities and services. Upon SWS's request, KPB will execute and deliver to SWS requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of SWS's request.

12.2. **Maintenance.** SWS will keep and maintain the Leased Premises in good condition.

12.3. **Utilities.** SWS is solely responsible for installing separate meters for utility use and payment, as applicable, and shall not connect to any KPB-owned electrical, communication, or other utility without KPB's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

**13. Equipment, Fixtures and Removal.** The WISP Facilities will at all times be the personal property of SWS and/or its sublessees and licensees, as applicable. SWS or its customers shall have the right to erect, install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as SWS may deem necessary or appropriate, and such property, including the equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, will not be deemed to be part of the Leased Premises, but will remain the property of SWS or its customers. Unless otherwise agreed to in writing by the parties, within ninety (90) days after the expiration or earlier termination of this Agreement, or upon cessation, abandonment, or non-use of the tower for communication purposes for a period of 6 consecutive months following construction of the tower (the "Removal Period"), SWS must remove its improvements and restore the Leased Premises to grade in a natural condition free of contamination, reasonable wear and tear excepted, which shall include removal of all concrete and other foundation materials to a depth of ten feet (10') below grade, and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent on a prorated per diem basis, at the rate in effect upon the expiration or termination of this Agreement. Any property not so removed shall be deemed abandoned and may be removed and disposed of by KPB in such manner as KPB will determine, without any obligation on the part of KPB to account to SWS for any proceeds therefrom. Time is of the essence.

#### **PART IV. ASSIGNMENT; KPB COLLOCATION; WARRANTIES**

**14. Assignment.** SWS may assign this Agreement to any person or entity, at any time with prior written consent of KPB's mayor which will not be unreasonably withheld or delayed so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days' written notice to KPB, SWS may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with SWS, or (b) in connection with the sale or other transfer of substantially all of SWS's assets in the FCC market area where the Leased Premises is located.

**15. Co-Locate Rights Reserved by KPB.** KPB reserves the right to install communication equipment on SWS's tower. Ninety (90) days prior to the exercise of this reservation, KPB shall provide SWS with a complete inventory of equipment and proposed vertical location. SWS shall confirm KPB's equipment will not interfere with SWS's or then-existing sublessee's equipment or propose an alternate location. Upon installation of KPB's equipment on the Leased Premises, any future sublessee's equipment shall not interfere with KPB's communication equipment, provided such equipment is properly installed and lawfully operated. Notwithstanding the foregoing, KPB's right to install equipment on SWS's tower will be subject to SWS's reasonable determination that, at the time in which KPB proposes to install its equipment, SWS's tower shall have sufficient space and structural capacity to accommodate the additional loading associated with KPB's proposed equipment installation. In connection with the foregoing, each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, instruments and documents, as

the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Section 15 and the consummation of the transactions contemplated hereby.

## **16. Covenants, Warranties And Representations.**

16.1. KPB represents and warrants that KPB is the owner in fee simple of the Property, free and clear of all liens and encumbrances except as to those which may have been disclosed to SWS in writing prior to the execution hereof, and that KPB alone has full right to lease the Leased Premises for the Term.

16.2. KPB will not do or knowingly permit anything during the Term that will unreasonably interfere with or negate any SWS's quiet enjoyment and use of the Leased Premises or cause SWS's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws. KPB will cooperate with SWS in any effort by SWS to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. KPB agrees to promptly execute any necessary applications, consents or other documents as may be reasonably necessary for SWS to apply for and obtain the proper zoning approvals required to use and maintain the Leased Premises and the Communication Facilities.

16.3. Subject to Section 12 above, SWS will have access to all utilities required for the operation of SWS's improvements on the Leased Premises that are existing on the Property.

16.4. KPB has not granted any third party licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Leased Premises; there are no outstanding options or rights of first refusal to purchase the Property or any portion thereof or interest therein, or any equity or interest in KPB if KPB is an entity; and there are no parties (other than KPB) in possession of the Leased Premises except as to those that may have been disclosed to SWS in writing prior to the execution hereof.

16.5. Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

## **17. Waivers.**

17.1. KPB hereby waives any and all lien rights it may have, statutory or otherwise, in and to the WISP Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws. KPB will not assert any claim whatsoever against SWS for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by KPB as a result of the construction, maintenance, operation or use of the Leased Premises by SWS.

17.2. EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

## **PART V. INSURANCE; INDEMNIFICATION; MISCELLANEOUS TERMS**

**18. INSURANCE.** Insurance coverage required under this Agreement shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Agreement shall remain in effect for the life of this Agreement and shall be a part of the contract price. If SWS's policies contain higher limits, the KPB shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) calendar days' prior written notice to the Borough. Certificates of Insurance, acceptable in form and content, will be delivered to the Borough at the time of submission of the signed Agreement and updated certificates shall be provided upon insurance coverage renewal, where applicable. SWS shall provide and maintain:

18.1. Commercial General Liability (CGL): The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

18.2. Umbrella / Excess policy: With limits of \$2,000,000 per occurrence and in the aggregate. SWS may use any combination of primary and excess insurance to meet the total limits required. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

18.3. Worker's Compensation Insurance: For all employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each accident, FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each person and FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) policy limit. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.

18.4. Property Insurance: Insuring against all risks of loss to any SWS improvements at full replacement cost with no insurance penalty provision. SWS shall have the right to self-insure such Property Insurance.

18.5. Automobile Liability: The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This

policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.

18.6. Full policies. At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska.

18.7. No Representation of Coverage Adequacy. By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect SWS, sublessee, and/or contractor or subcontractor(s) of any tier, and such coverage and limits shall not be deemed as a limitation on the liability of the Contractor and subcontractor(s) of any tier under the indemnities granted to the Borough in this Agreement.

18.8. Self-insurance. Notwithstanding the foregoing, SWS may self-insure any required coverage under the same terms as required by this Agreement.

**19. Waiver of Subrogation.** To the extent allowed by law, SWS hereby grants to KPB a waiver of any right of subrogation which any insurer of said SWS may acquire against the KPB by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the KPB has received a waiver of subrogation endorsement from the insurer. It is the Lessors sole and strict responsibility to notify its insurer of this obligation and obtain a waiver of subrogation endorsement from the insurer, if required.

**20. Lessee Liabilities.** In addition to other liabilities under this Agreement, the SWS has the following liabilities and agrees:

20.1. The SWS assumes all risk of loss, damage or destruction to SWS's improvements on the Leased Premises.

20.2. The SWS will comply with all applicable federal, state, and local laws or regulations, including relevant environmental laws, as well as public health and safety laws and other laws relating to the sitting, permitting, construction, operation and maintenance of any facility, improvement or equipment on the Leased Premises.

20.3. The KPB has no duty, either before or during the lease term, to inspect the Leased Premises or warn of hazards and if the KPB inspects the Leased premises, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This Section shall survive the termination or revocation of this Agreement, regardless of cause.

(d) The SWS has an affirmative duty to protect from damage the Property and interests of the KPB related to this Agreement.

## **21. Indemnification.**

(a) SWS agrees to defend, indemnify, and hold harmless KPB, its employees, public officials, and volunteers, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the SWS. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without

limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of SWS arise immediately upon notice to the KPB of any action, claim, or lawsuit. KPB will notify SWS in a timely manner of the need for indemnification but such notice is not a condition precedent to SWS's obligation and may be waived where the SWS has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against KPB relating to the SWS's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, SWS's duty to indemnify, defend, and hold harmless KPB as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of KPB, its employees, public officials, and volunteers.

(b) To the extent allowed by law and subject to a specific appropriation by the KPB Assembly for this purpose, KPB agrees to defend, indemnify, and hold harmless SWS, its employees, affiliates, officers, directors, successors and assigns, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the KPB. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of KPB arise immediately upon notice to the SWS of any action, claim, or lawsuit. SWS will notify KPB in a timely manner of the need for indemnification but such notice is not a condition precedent to KPB's obligation and may be waived where the KPB has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against SWS relating to the KPB's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, KPB's duty to indemnify, defend, and hold harmless SWS as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of SWS, its employees, its employees, affiliates, officers, directors, successors and assigns. SWS further acknowledges the following: (1) KPB currently has no appropriation currently available to it to defend and indemnify SWS under this provision; (2) the enactment of any such appropriation remains in the sole discretion of the KPB Assembly; and (3) the KPB Assembly's failure to make such an appropriation creates no further obligation or duty on behalf of KPB.

**22. Inspection.** The KPB reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Lease. Except in case of emergency, KPB shall provide SWS with at least forty-eight (48) hours' prior written notice of KPB's intention to enter upon and inspect the Leased Premises. SWS reserves the right to have a representative present at all times during KPB's inspection.

**23. Force Majeure.** The time for performance by KPB or SWS of any term, provision, or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of KPB or SWS, as the case may be.

**24. Default.** The failure of SWS or KPB to perform any of the covenants of this Agreement will constitute a default. The non-defaulting party must give the other written notice of such default, and the defaulting party must cure such default within thirty (30) days after receipt of such notice. Should the defaulting party fail to cure a default under this Agreement, the other party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

**25. Lessee Mortgages.**

25.1. KPB consents to the granting by SWS of a lien and security interest (each, a "SWS Mortgage") in SWS's interest in this Agreement and all of SWS's personal property and fixtures attached to the real property described herein to one or more lenders (any such lender, and any successor, assign, designee or nominee of such lender, hereinafter a "Lender") only to the extent and amount necessary to maintain improvements on the Leased Premises. The SWS may not encumber the leasehold interest or the Leased Premises to finance projects or improvements outside of the Leased Premises. KPB agrees to recognize Lender as SWS hereunder upon any such exercise by Lender of its rights of foreclosure. Any such encumbrance shall be subordinate to KPB's rights and interest in the Leased Premises and the Property. Any such encumbrance shall be limited to the SWS's interest in the Leased Premises. It is a material breach of this Agreement for SWS to attempt to encumber any interest in KPB's title to or interest in the Leased Premises or the Property.

25.2. KPB acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of SWS under this Agreement. No Lender shall become liable under the provisions of this Agreement unless and until such time as the Lender assumes ownership of the leasehold estate created hereby and agrees to comply with the terms and conditions of this Agreement or any extensions and modifications thereof.

## **26. Miscellaneous.**

26.1. *Survival.* If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

26.2. *Non-waiver.* Failure of party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a party's rights hereunder, will not waive such rights.

26.3. *Governing Law.* This Agreement will be governed by and construed in accordance with the laws of the State of Alaska.

26.4. *Bind and Benefit.* This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

26.5. *Memorandum.* A short-form Memorandum of Lease may be recorded at KPB or SWS's option in the form as depicted in Exhibit 3, attached hereto. KPB will promptly execute any Memorandum of Lease or Memorandum of Amendment to Lease, or corrective amendments thereto, upon written request of SWS.

26.6. *W-9.* As a condition precedent to payment, the KPB agrees to provide the SWS with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

26.7. *Counterparts.* This Agreement may be executed in counterpart, and may be executed by electronic signature in compliance with AS 09.43 and 15 USC 7002, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

26.8. *Entire Agreement.* This Agreement and exhibits, appendices or incorporated attachments hereto, constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

**PART VI. EXECUTION**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date (date last signed by a party hereto).

**LESSOR:** The Kenai Peninsula Borough

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

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

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

**LESSEE:** SPITwSPOTS, Inc.

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

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

Its: \_\_\_\_\_

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

ATTEST:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

\_\_\_\_\_  
Sean Kelley, Deputy Borough Attorney



**LESSOR ACKNOWLEDGEMENT**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2021, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

**LESSEE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

On the \_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of SPITwSPOTS, Inc., an Alaska corporation, the SWS named in the attached instrument, and as such was authorized to execute this instrument on behalf of the SWS.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## EXHIBIT 1

### DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 1

The Property is legally described as follows:

#### INSERT LEGAL DESCRIPTION OF PROPERTY

- a) CES Sterling Station #3.
- b) CES Funny River Station #5.
- c) Sterling Solid Waste Transfer Site.
- d) Funny River Solid Waste Transfer Site

The Leased Premises are described and/or depicted as follows:

- a) CES Sterling Station #3. A certain portion of the Property containing approximately \_\_\_square feet (\_\_\_\_) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.
- b) CES Funny River Station #5. A certain portion of the Property containing approximately \_\_\_square feet (\_\_\_\_) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.
- c) Sterling Solid Waste Transfer Site. A certain portion of the Property containing approximately \_\_\_square feet (\_\_\_\_) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.
- d) Co-Location at Funny River Solid Waste Transfer Site Tower. The exclusive use of the top twenty feet (20') of the tower structure at the Site, including the air space above, and necessary related ground space for equipment cabinets and integrally related components, as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of its WISP Communication Equipment

**EXHIBIT 2**

Leased Premises

(Attached)

INSERT SITE SURVEY DIAGRAM / SITE SKETCH / MAPS

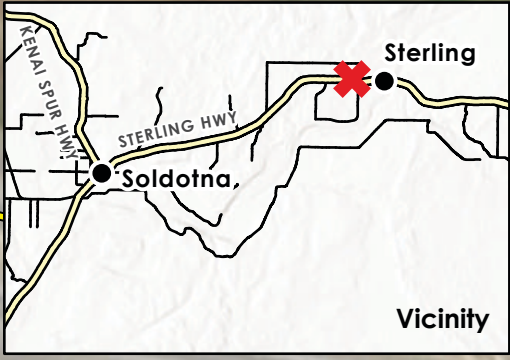
**APPENDIX A – PLACE HOLDER TO INSERT AS ATTACHMENT  
MEMORANDUM OF LEASE – PLACEHOLDER, IF NECESSARY**



MCCALL RD




-150.800052, 60.537658



# Tower Location

## CES Station 3 - Sterling

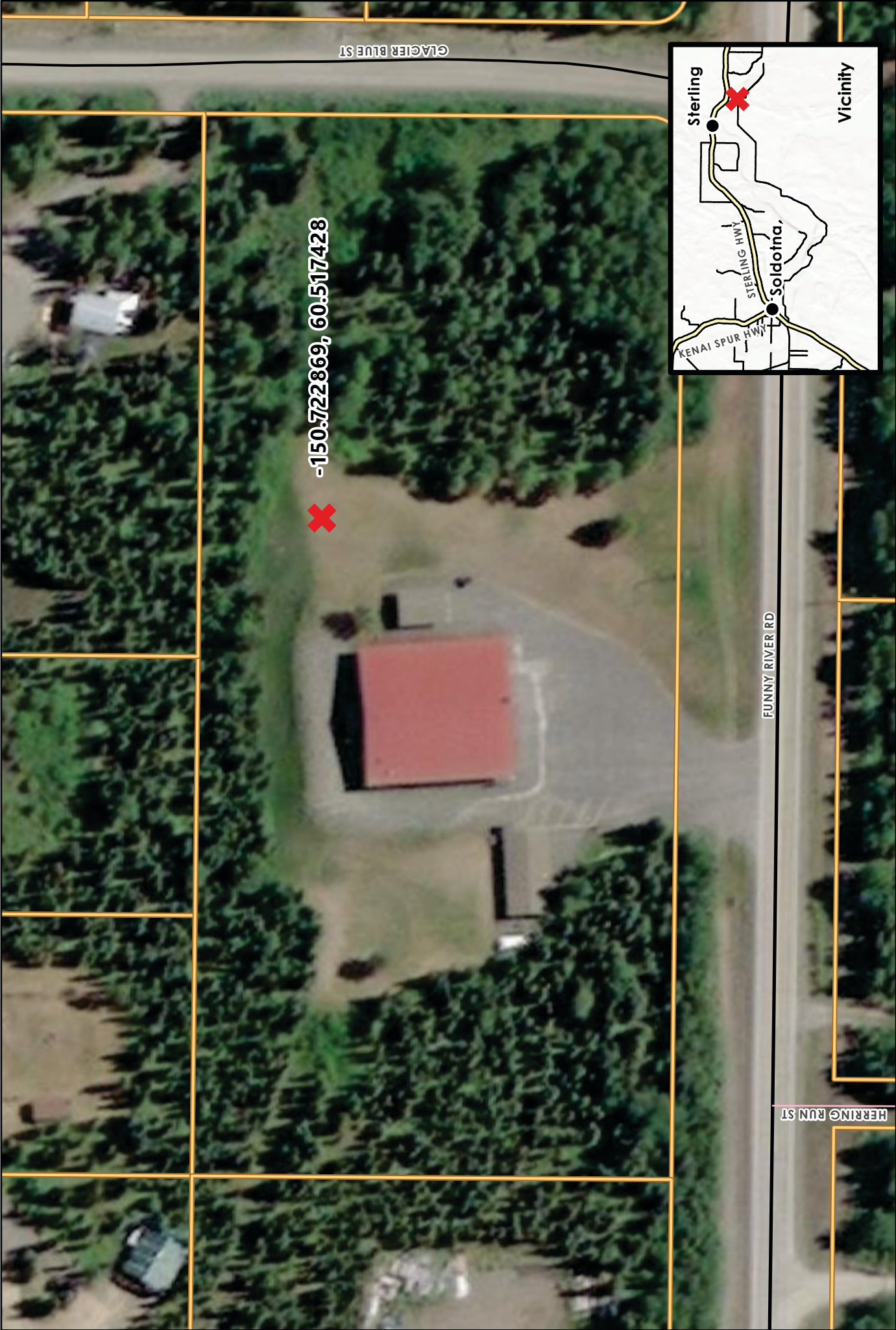
 Tower Location

 Parcel Boundaries

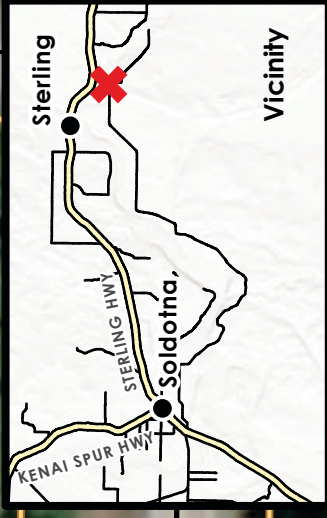
0 100 US Feet









-150.722869, 60.517428




# Tower Location

## CES Station 5 - Funny River

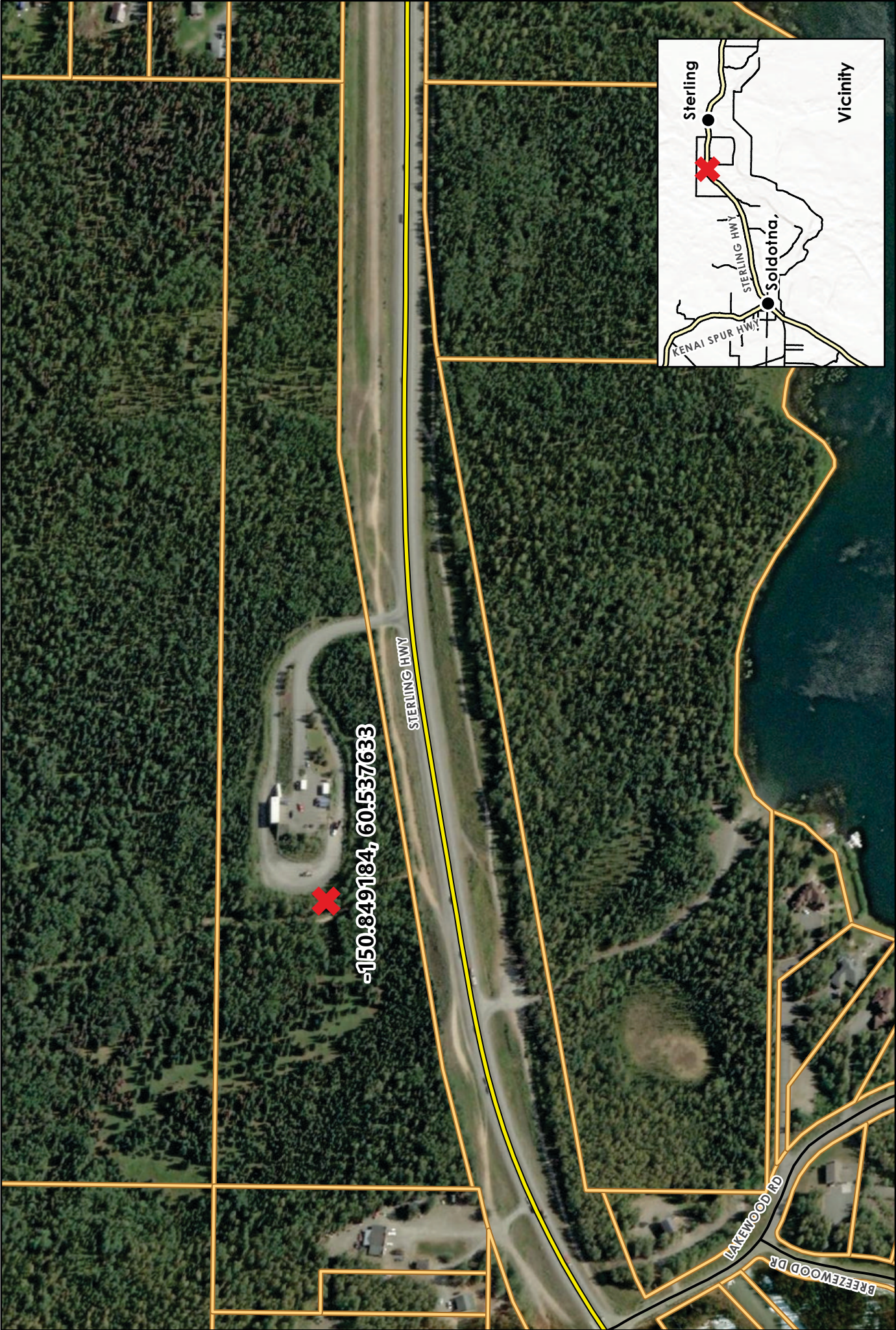
 Tower Location

 Parcel Boundaries

0 100 US Feet







# Tower Location Sterling Transfer Station

**X** Tower Location

**▭** Parcel Boundaries

0 500 US Feet



Funny River Solid Waste  
Existing KPB Tower

