

ENTRY & TESTING AGREEMENT

THIS ENTRY & TESTING AGREEMENT (“Agreement”), made this ____ day of _____, 2018, by and between **Solid Waste Disposal District (SWDD)**, a dependent special district of INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called Owner), whose address is 1325 74th Avenue SW, Vero Beach, FL 32968 (collectively and individually, “SWDD”) and **Comtech Systems, Inc.** on its own behalf and on behalf of its wholly-owned subsidiaries and affiliates (collectively and individually, “Company”) having an office at 212 Outlook Point Drive, Suite 100, Orlando, FL 32809

WHEREAS, Indian River County Solid Waste Disposal District (SWDD) owns, manages, and operates the facilities (“Sites”) identified in the attached **Exhibit A**; and

WHEREAS, Company desires to determine the viability and feasibility of the certain Site, as a communications facility and to do so it is necessary for employees, agents, or independent contractors of Company to enter upon and inspect the Site and/or temporarily locate communications equipment on the Site to conduct industry standard due diligence tests and studies specifically including drive testing or similarly related activities; and

WHEREAS, the Solid Waste Disposal District and Company wish to define the rights, duties and liabilities between them and to assure that the interests of SWDD are adequately protected;

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, the parties agree as follows:

1. Access. Prior to obtaining access for itself and or its agents or independent contractors to any Site listed in the attached **Exhibit A**, Company shall provide to SWDD a written description of the activities to be performed at the Site and the equipment to be temporarily located at the Site including its intended location within the Site. SWDD shall, within forty-eight (48) hours of receipt of said descriptions and an insurance certificate per item 2, approve or deny Company’s request for access to the Site(s). SWDD failure to respond to Company’s request within the time period set forth above shall constitute a denial of Company’s request for access to the Site to perform the specified work. Company’s access to the Site hereunder shall commence within thirty (30) calendar days of SWDD approval and end ninety (90) calendar days but to not exceed one-hundred and twenty (120) calendar days commencing upon initial entry to the Site by Company and/or its contractor. Company agrees that its activities and equipment or that of its agents or independent contractors will not cause damage to, or in any way interfere with the operation of, other equipment and systems then in operation at the Site. COMPANY OR ITS AGENTS MAY NOT PERFORM ELEVATED WORK AT THE SITE.

2. Insurance. Company shall maintain, at its expense, General Liability Insurance with a combined single limit of \$1,000,000 for bodily injury and property damage and a \$2,000,000 aggregate. Contractor shall provide a certificate of insurance to INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT evidencing SWDD as a certificate holder and as an additional insured, and shall contain a provision for thirty (30) days’ notice to SWDD of cancellation or material change in the policy. Contractor shall also maintain Auto Liability Insurance in an amount no less than \$1,000,000.00 combined single limit for bodily injury and/or property damage. Contractor shall maintain Statutory Workers’ Compensation Insurance and Employer’s Liability to statutory limits.

- **General Liability:** \$1m occurrence / \$2m aggregate
- **Auto Liability:** \$1m
- **Workers Comp:** Statutory
- **Endorsement must appear on certificate:** “INDIAN RIVER COUNTY SWDD” and all of its parent companies, joint ventures, subsidiaries, and affiliates and property owners are named as additional insured.

- **Certificate Holder:** The insurance “Certificate Holder” shall be addressed to Pinnacle Towers LLC, Legal Department, 2000 Corporate Drive, Canonsburg, Pa 15317

3. Indemnification. Company shall indemnify and hold SWDD, its parent, all of its subsidiary and affiliate companies, and property owners harmless against any claim of liability or loss from bodily injury and/or property damage resulting from or arising out of Company’s and/or any of its contractors, servants, agents or invitees acts or omissions during its exercise of rights hereunder, and any breach of the terms, covenants and conditions of this Agreement, including, but not limited to any claim of liability or loss associated with any Environmental Hazards as defined in this Agreement, excepting, however such claims or damages to the extent due to or caused by the sole negligence or willful misconduct of SWDD, or its independent contractors, servants, agents or invitees. If SWDD is made a party to any litigation commenced by or against Company for any of the above reasons, then Company shall protect and hold SWDD harmless and pay all costs, penalties, charges, damages, expenses and reasonable attorneys’ fees incurred or paid by SWDD in connection therewith.
4. Environmental Matters. Company and its agents and independent contractors shall not bring to, transport across or use any Environmental Hazards on any Site without SWDD’s prior written approval. Company’s use of any approved substances constituting Environmental Hazards must comply with all applicable laws, ordinances and regulations governing such use. The term “Environmental Hazards” means hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyl (PCB), petroleum or other fuels (including crude oil or any fraction or derivative thereof) and underground storage tanks. The term “hazardous substances” shall be defined in the Comprehensive Environmental Response, Compensation and Liability Act, and any regulations promulgated pursuant thereto. The term “pollutants” shall be as defined in the Clean Water Act, and any regulations promulgated pursuant thereto.
5. Payment. Company shall pay to SWDD the amount of \$150.00 per calendar day that the Comtech equipment is on the SWDD site as consideration for the rights granted to Company herein. Such payment shall be made upon full execution of this Agreement and payable based on the duration of use at a net term of 30 calendar days.
6. Renewal and Termination. The Company may request in writing to SWDD Managing Director to renew the agreement at least four (4) times per year. The request for renewal shall not be unreasonably refused. The Agreement shall terminate after two (2) years.
7. Radio Frequency Exposure Safety.
 - i. Company represents and warrants and shall cause its agents, independent contractors, servants, and invitees to represent and warrant that they are fully aware of and knowledgeable about the inherent dangers of working on or near tower, rooftop, or other wireless communication sites that are “live”, i.e., that are actively receiving and/or transmitting radio signals that may create radio frequency radiation (“RFR”) (hereinafter “Live Sites”).
 - ii. Company shall implement all procedures and take all measures necessary to ensure that only those Company’s employees or agents or its independent contractor’s employees or agents who make the representations set forth in this subsection i., and who have satisfactorily completed RFR safety training in accordance with FCC OET 65, the most current applicable updates in OSHA regulations and guidelines, and commonly recognized industry practices, may enter a Live Site or perform work on a Live Site. SWDD shall have no responsibility whatsoever to monitor access to the Live Sites, or to monitor the performance of work on such Live Sites, by Company’s or its lower tier contractor’s employees or agents, or to verify training of the same.
 - iii. The presence at, or performance of any work on a Live Site by any of Company’s or its lower tier contractor’s employees or agents (i) who have not made the above representations, and (ii) who have not satisfactorily completed RFR safety training, shall constitute a material breach of this Agreement. Upon such material breach, SWDD shall have the right to immediately terminate this Agreement, and Company shall be liable to SWDD for any damages and costs incurred a result of said termination.

8. Compliance. Company and its agents and independent contractors shall comply with all laws, statutes, ordinances, rules and regulations, which are applicable to the jurisdiction in which the Site is located.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written, intending to be legally bound hereby.

Owner:

Contractor:

INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT

COMTECH SYSTEMS, INC.

By: _____
Peter D. O'Bryan, Chairman

Date: _____

By:  _____ 9 Mar 2018
John W. Boelke, Vice President of Contracts

APPROVED:

By: _____
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

ATTEST:

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk

Exhibit "A"

Authorized Sites

<u>B.U. #</u>	<u>Site Address</u>
1	1325 74 th Ave SW, Vero Beach FL32968

