

LEASE AGREEMENT FOR  
COMMUNICATION EQUIPMENT ATTACHMENTS ON  
DICKERSON GENERATING STATION  
SOUTHERN EXHAUST STACK

between

MIRANT MID-ATLANTIC, LLC

and

MONTGOMERY COUNTY, MARYLAND

Dated as of October 9, 2001

10/09/01 10:10 AM  
J. WOODRUFF

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## LEASE AGREEMENT

LEASE AGREEMENT (the "Agreement") made this 9<sup>TH</sup> day of OCTOBER, 2001 between MIRANT MID-ATLANTIC, LLC ("MIRANT"), ("Landlord"), a Delaware limited liability company, and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland, (the "COUNTY") ("Tenant"); (MIRANT MID-ATLANTIC, LLC and the COUNTY together "the PARTIES" and individually being a "PARTY").

### WITNESSETH

WHEREAS, the PARTIES have agreed to enter into an Agreement, under the terms of which MIRANT will permit the COUNTY to install and maintain communications antennae ("Antennae") and associated base station, equipment and cabinets ("Equipment") being collectively the antennae facility ("Antennae Facility"), to attach nine (9) antennae at three (3) different levels on the existing 700 foot tall smokestack ("Smokestack") as shown in Exhibit "A" (Detailed Design Document For Montgomery County, Dickerson, Remote Simulcast Site) and Exhibit "B" (Construction Drawings) located on MIRANT's property at the Dickerson Generating Plant, 21200 Martinsburg Road, Dickerson, Maryland 20842 (the "Property"). The COUNTY also shall install and operate Equipment in a 12' x 27' portable equipment building ("Equipment Building") which is to be installed by the COUNTY and will be located at the base of the Smokestack hereby being the base station ("Base Station") and is herewith part of the Antennae Facility.

WHEREAS, the PARTIES desire to enter into this Agreement to permit the COUNTY to enter onto the Property by means of a designated route for access to the Smokestack to install and maintain the Antennae Facility subject to the conditions of this Agreement and to provide for the payment of compensation to MIRANT for the use of the Smokestack and Base Station site for the Antennae Facility.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement as if fully set forth; and for the payment of ONE DOLLAR (\$1.00) to MIRANT by the COUNTY; and for the payment of fees by the COUNTY to MIRANT for the use of the Smokestack and Base Station as provided in this Agreement; and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the PARTIES, the PARTIES agree as follows:

### **ARTICLE 1: GRANT AND EXTENT OF AGREEMENT:**

MIRANT hereby grants to the COUNTY a nonexclusive right to use, occupy and maintain, subject to all of the terms and conditions of this Agreement, the installation and the operation of nine (9) communications antennae on the Smokestack at the following heights: One (1) Antenna at 500 feet, Two (2) Antennae at 325 feet, Six (6) Antennae at 300 feet as shown in Exhibit "A" (Detailed Design Document For Montgomery County, Dickerson, Remote Simulcast Site) and Exhibit "B" (Construction Drawings). The COUNTY shall also have the

right to utilize a twelve by twenty seven (12' x 27') foot area to locate a portable Equipment Building. No work will take place on the Property until and unless detailed construction drawings, structural analysis, site plans showing the specific leased premises and all requisite technical information is submitted by the COUNTY to MIRANT, and all such documents are approved by MIRANT. No work will proceed until MIRANT issues a work commencement notice, which will be issued after all plans and technical information are received and approved by MIRANT.

The COUNTY will have the right of ingress to and egress from the Property, on foot or by motor vehicle, including trucks, 24 hours a day, seven days a week. All access to the Property shall be at the locations prescribed by MIRANT, which shall normally be through the manned gate to the generating station. It is agreed that only employees or agents of the COUNTY, authorized by the COUNTY, will be permitted to access the Base Station area. At the sole discretion of MIRANT, the COUNTY may be denied access to the Antennae Facility in emergency situations that create health and safety risks or that adversely affect MIRANT's electric system operations.

It is understood that the COUNTY, its agents, contractors or subcontractors are not permitted to climb any structure for any purpose or otherwise access any of their Antennae Facility located above ground level without a MIRANT escort present. Only MIRANT or contractors authorized by MIRANT are permitted to climb the Smokestack. Construction, maintenance and repair of the COUNTY's Antennae Facility located above ground level must be done by MIRANT or with a MIRANT escort present.

MIRANT, at its sole discretion, shall determine whether it will install antennae and associated equipment attached on the Smokestack or require that the COUNTY make the installation as pre-approved by MIRANT. The COUNTY shall have the right to install, operate, maintain, repair, replace (with like or equivalent items only) and remove the COUNTY's Antennae Facility from the Property in accordance with this Agreement. The COUNTY's Antennae Facility shall remain the sole personal property of the COUNTY and shall not be deemed to be a fixture. The COUNTY shall remove its Antennae Facility from the Property in accordance with this Agreement prior to the expiration of the Agreement Term (Agreement Term being defined in Article 2). The COUNTY does not have the right to sublease the Antennae Facility or any portion of said Antennae Facility.

#### **ARTICLE 2: TERM:**

This Agreement is effective for a term of five (5) years, commencing on October 1, 2001 and ending on September 30, 2006 (the "Agreement Term").

#### **ARTICLE 3: PAYMENT OF RENT:**

During the Agreement Term, the COUNTY must pay rent (which MIRANT intends to use for charitable purposes) in equal monthly installments, as provided in this paragraph. The rent schedule for the Agreement Term is:

Year 1- October 1, 2001 through September 30, 2002	\$5,050.00/month	\$60,600.00/year
Year 2- October 1, 2002 through September 30, 2003	\$5,150.00/month	\$61,800.00/year
Year 3- October 1, 2003 through September 30, 2004	\$5,250.00/month	\$63,000.00/year
Year 4- October 1, 2004 through September 30, 2005	\$5,350.00/month	\$64,200.00/year
Year 5- October 1, 2005 through September 30, 2006	\$5,450.00/month	\$65,400.00/year

Each monthly payment must be made in advance of the first (1<sup>st</sup>.) day of the month for which it is due, beginning on October 1, 2001, and ending on September 30, 2006. All checks for the rent then due must be made payable to: MIRANT, and mailed to:

MIRANT MID-ATLANTIC, LLC

901 F. Street, N.W.  
7<sup>th</sup> Floor  
Washington, D.C. 20004  
Attn: Accounts Payable

MIRANT will charge the COUNTY a late payment fee of Two Hundred Fifty Dollars (\$250.00) for any installment of rent that the COUNTY fails to pay within twenty (20) calendar days after the first day of the month for which the payment is due. The COUNTY must pay any then due late payment fees as part of the rent installment then currently overdue. MIRANT shall have the right to terminate this Agreement for default, and pursue any other legal remedies available to MIRANT under the laws of the State of Maryland if the COUNTY fails to timely pay two (2) or more installments of rent during any calendar year following notice and an opportunity to cure as provided in this Agreement. In order to invoke its right to terminate for late payment or nonpayment under this Agreement, MIRANT must send the COUNTY written notice of the COUNTY's failure to pay an installment of rent when due, and provide the COUNTY with 10 days to cure the failure to timely pay rent when due.

The COUNTY will pay as additional rent, fees and payments required pursuant to this Agreement including its pro rata share of any real estate taxes assessed against the Antennae Facility within 30 days of receipt of an invoice from MIRANT documenting the payment of real estate taxes for the Antennae Facility. The COUNTY will pay as additional rent any taxes paid by MIRANT for the COUNTY's personal property in the Antennae Facility within 30 days after receipt of an invoice documenting payment of the personal property tax by MIRANT.

**ARTICLE 4: NO ELECTRICAL OR MAGNETIC INTERFERENCE:**

The COUNTY agrees that it will operate its Antennae Facility in a manner that will not interfere with MIRANT's existing or future communications systems or the existing communications system of any other tenant sharing the use of the Property. Should MIRANT identify that such harmful interference is being caused by the COUNTY's Antennae Facility after commercially reasonable investigation, the COUNTY shall immediately disable the Equipment causing the interference, and take every reasonable step to mitigate and eliminate said

interference. If the interference is not corrected within thirty (30) calendar days after receipt of notification of said interference, the part of the Antennae Facility causing such interference shall remain disabled except for limited testing (which shall only be undertaken after notice to MIRANT given reasonably in advance of such testing) or will be removed by the COUNTY from the Property. Should harmful interference persist after the County's repeated attempts to eliminate such interference, MIRANT shall have the right to terminate this Agreement upon one hundred twenty (120) calendar days prior written notice to the County of MIRANT'S intent exercise it's right to terminate. MIRANT agrees that if any party (other than MIRANT) whose right to use the Property is subsequent in time to the COUNTY's right as determined by this Agreement causes interference with the COUNTY's use of their Antennae Facility as contemplated by this Agreement, then MIRANT, upon receipt of written notification from the COUNTY specifying the interference, agrees to immediately require the interfering party to immediately disable the interfering equipment and to otherwise use commercially reasonable efforts to eliminate said interference, or to eliminate any such interference caused by its use. If the interference is not eliminated within thirty (30) calendar days after receipt of said notification of interference from MIRANT (or such time as may reasonably be required with the exercise of due diligence provided that such repairs are begun within thirty (30) calendar days), MIRANT shall cause the interfering party to disable the interfering equipment except for limited testing or to remove the interfering equipment. The foregoing in no way prohibits MIRANT from modifying or otherwise effecting changes to any of its facility, its communications or other systems which are used in connection with its electric generating operations, including without limitation relocation of any of its facilities or equipment, which rights MIRANT expressly retains. Should any such MIRANT changes create unsatisfactory results for the COUNTY, the COUNTY shall have the right to terminate this Agreement upon thirty (30) calendar days with prior written notification to MIRANT of the COUNTY's intent to exercise its right to terminate. Any notification to MIRANT or the COUNTY under this Article shall be given as provided in Article 17 and shall be effective upon receipt of such notice by the receiving party. All rents paid to said termination date shall be retained by MIRANT, provided, however that all rents paid in advance as of said termination date shall be returned to the COUNTY.

#### **ARTICLE 5: UTILITY SERVICE:**

The COUNTY agrees to pay for all costs associated with the operation of the Antennae Facility including all costs relating to the connection, disconnection and consumption or use of any utilities in connection with the COUNTY's construction, installation, operation and maintenance of telephone and electrical wiring and outlets used by the COUNTY. The electric lines or other utilities serving the COUNTY'S Antennae Facility must have a separate metering device to be paid for by the COUNTY. MIRANT will supply an emergency electric generator of 100KW capacity for backup electric service. MIRANT will maintain the generator, comprising all normal factory- recommended scheduled maintenance, at no additional cost above the rental rate to the COUNTY. The COUNTY shall reimburse MIRANT for all non-routine maintenance and repair work required in keeping the generator operational within 30 days after MIRANT submits an invoice to the COUNTY documenting the costs of the non-routine maintenance or repair.

**ARTICLE 6: TAXES AND FEES:**

Real Estate and personal property taxes assessed due to the COUNTY's use of the Antennae Facility will be paid as additional rent as provided in Article 4, above. The COUNTY shall pay its share of the real estate taxes and/or other fees and costs within thirty (30) calendar days after receipt of the MIRANT, invoices or receipts evidencing such charges. The COUNTY shall have the right to appeal such taxes levied, to the appropriate governmental agency, if the COUNTY considers such taxes to be high or excessive. MIRANT shall bear no cost of said tax appeal but agrees to reasonably cooperate with the COUNTY with such appeal.

**ARTICLE 7: SCOPE OF WORK:**

In connection with the COUNTY's use of the Antenna Facility, the COUNTY agrees to provide engineering services, intermodulation studies, Smokestack structural analysis, design and construction of antennae support brackets, design and construction of base station support brackets (as applicable) and supply all studies and materials in connection with the installation of the COUNTY's Antennae Facility. If the structural analysis, prepared by a licensed engineer, approved by MIRANT, indicates that structural modifications or other work is necessary on the Smokestack, said licensed engineer shall certify in writing that said modifications have been completed prior to the installation of the Antennae. The COUNTY shall install the brackets, antennae, jumpers and coaxial cable for the Antennae Facility. The COUNTY shall provide grounding for all Antennae Facility installed by or on behalf of the COUNTY, and test all parts of the Antennae Facility prior to installation and after installation. The provision of services by MIRANT hereunder shall be subject to the availability of MIRANT's personnel based on the requirements of its electric utility and other business activities, and more particularly delineated in Article 9 (Maintenance) as required by this Agreement and shall be at the COUNTY's expense in accordance with Article 8 (Reimbursement, Compensation, Payment) hereof.

Any construction proposed by the COUNTY on the Property must be approved in advance by MIRANT. Contractors employed by the COUNTY must meet MIRANT's insurance liability requirements and shall otherwise be subject to MIRANT's approval.

The COUNTY's Antennae Facility shall be installed and removed at the sole expense of the COUNTY and in accordance with the construction plans and specifications prepared by the COUNTY and approved by MIRANT, such approval will not be unreasonably delayed, conditioned or withheld. All modifications to MIRANT's Property that are required and the escort service expense incurred due to the COUNTY's installation and maintenance of its Antenna Facility shall be refunded to MIRANT by the COUNTY. MIRANT shall have a maximum of thirty (30) calendar days for the first submittal and fifteen (15) calendar days for subsequent revision submittals to review said construction plans and approve them or to advise the COUNTY in writing of necessary changes or reason for denial. The COUNTY shall not commence construction until written approval has been received from MIRANT. All plans and specifications shall be in compliance with local and other applicable building codes. The COUNTY shall affect immediate repairs at its expense, for any damages to the Antennae Facility

and/or the Property which are a direct result of the COUNTY's activities, ordinary wear and tear excepted. If the COUNTY fails to make such repairs, MIRANT shall have the right to make all necessary repairs, and the COUNTY shall reimburse and compensate MIRANT for such services in accordance with Article 8 (Reimbursement, Compensation, Payment) below.

The Property shall not be used by the COUNTY or any of its officers, agents, servants, employees, contractors or subcontractors to release, store, dispose of, treat any toxic or hazardous substance, materials or wastes as defined by federal, state or local law or regulatory authority.

A third party of MIRANT's choice shall inspect the Antennae Facility inclusive of modifications and certify in writing that all pre-approved work was accomplished as previously approved.

Any review or approvals by MIRANT which are required by or referenced in this Agreement are for the sole purpose of concept review only. Any such reviews or approvals of MIRANT shall not in any way be, or be deemed to be, an indication of any knowledge or expertise by MIRANT or its representatives in any area of the work undertaken by or on behalf of the COUNTY under this Agreement, or an approval of any architectural, civil, structural, electrical, mechanical, plumbing, engineering, fire protection, safety or design aspects, requirements or specifications, all of which are, and shall remain, the responsibility of the COUNTY. Notwithstanding any provision of this Agreement, MIRANT shall not be deemed to have assumed the responsibilities of the COUNTY nor shall the COUNTY presume that MIRANT or its representatives have any knowledge or expertise in any area of the work performed by or on behalf of the County under this Agreement. Neither any action nor inaction by MIRANT or its representatives with respect to the design or construction of the work performed by or on behalf of the COUNTY under this Agreement shall relieve the COUNTY of its duties and responsibilities under this Agreement.

#### **ARTICLE 8: REIMBURSEMENT, COMPENSATION, PAYMENT:**

Upon request, MIRANT will prepare and submit to the COUNTY an estimate of the cost to perform the services ("Work Estimate") contemplated by Article 7 (Scope of Work) hereof, with respect to the deployment of the Antennae Facility, any portion of the work specified, by the COUNTY ("Deployment Request"). The Work Estimate shall specify that subject to the requested items to be installed being available, and being furnished to MIRANT by the COUNTY and the COUNTY's agreement to pay the Work Estimate specified therein being adjusted subject to the actual cost of Deployment, the requested items to be installed shall be installed within approximately thirty (30) calendar days of the date of MIRANT's receipt of the following two (2) items: i) Work Estimate executed by the COUNTY, ii) payment of one-half (1/2) of the estimated cost to perform the Deployment Request.

For the performance of services pursuant to Article 7 (Scope of Work) hereof, the COUNTY shall pay to MIRANT in the manner and at the times herein specified, compensation at rates set forth in Exhibit C hereto (the "Rate Schedule"). Such Rate Schedule shall be subject

to adjustment to reflect current market rates for such services on January 1 of each year by MIRANT upon sixty (60) calendar days' prior written notice to the COUNTY. Rates for personnel or equipment not set forth in the Rate Schedule (as modified from time to time) will be determined on a time and materials basis as agreed to by MIRANT and the COUNTY as and when the use of such personnel and equipment are requested hereunder. The hours and expenses incurred by MIRANT's employees in connection with performance of such services shall be auditable, and the COUNTY shall have the right, upon reasonable prior notice to MIRANT within three (3) months after billing and payment for such services, to perform an audit for the purpose of reasonably verifying the hours and expenses constituting the cost (including overhead and profit) of such services based upon MIRANT's accounting system in effect from time to time. The COUNTY shall reimburse MIRANT for all direct expenses incurred by MIRANT in the performance of services hereunder, including without limitation for materials and supplies consumed, equipment rentals and subcontractors. A 15% overhead/administration charge and 15% profit shall be added to all direct expenses billed to the COUNTY and paid to MIRANT in connection with the installation and removal of the COUNTY's Antennae Facility. On or as soon as practicable after the completion of any services performed with respect to the Agreement, MIRANT shall prepare and submit to the COUNTY an invoice covering services performed and costs incurred during the previous period. The COUNTY shall pay all amounts within thirty (30) calendar days after the COUNTY receives such invoice. Such costs to the extent actually incurred shall be paid whether or not the COUNTY's Antennae Facility is constructed and installed. Rental payments shall be due in advance, without any further prior notice on or before the first day of each month during the term of the Agreement. Payments due from the COUNTY under this Agreement shall be sent to MIRANT at the payment address set forth in Article 3, unless otherwise requested by MIRANT In a written notice, sent in accordance with Article 17.

#### **ARTICLE 9: MAINTENANCE:**

In the event of an emergency affecting both electrical and telecommunications facilities at (or requiring access to) the same location, MIRANT reserves the right to deny access to the COUNTY's communication repair personnel until access is safe. MIRANT will operate and maintain its facilities in accordance with industry standards and applicable law.

Maintenance and routine startup on the standby generator will be performed by MIRANT on a schedule followed by MIRANT for the maintenance of other backup generators. This unit will be included in the maintenance schedule. No work shall be performed on the Smokestack by the COUNTY unless written approval is obtained from MIRANT. At the sole discretion of MIRANT, or its pre-approved agents, the COUNTY may be allowed to perform work on the Smokestack with an escort from MIRANT.

MIRANT acknowledges that the COUNTY is constructing and using the Antennae Facility as part of the COUNTY's Emergency Communications System. MIRANT agrees to give the COUNTY 24 hours' notice for any routine maintenance that will interrupt the operation of the Antennae Facility. Notice under this Paragraph must be made by MIRANT to:

DIST Communications Maintenance Section  
277 Derwood Circle

Rockville, MD 20850  
Attn: Gene Cummins  
(240) 773-8000 (Telephone during normal working hours, 8:00 a.m. to 4:00 p.m.,  
M-F, except holidays)  
(240) 777- 0744 (Telephone weekdays after 4:00 p.m. and before 7:00 a.m., as well as  
weekends and holidays)  
(301) 279-1134 (Telefacsimile)  
[cummig@co.mo.md.us](mailto:cummig@co.mo.md.us) (e-mail address)

The COUNTY acknowledges that the security of MIRANT's facility is of the utmost importance to MIRANT, the general public and the COUNTY.

**ARTICLE 10: INSPECTIONS:**

The COUNTY shall allow MIRANT or its agent, to enter the Base Station at any reasonable time and in a manner so as not to interfere with the COUNTY's operations, for the purpose of conducting inspections and performing work.

**ARTICLE 11: HOLD HARMLESS:**

Subject to the notice and damages limitations in the Local Government Tort Claims Act ("LGTC"), §§ 5-301 et seq of Md. Code Ann. Cts. & Jud. Proc. (1998 Volume), the COUNTY agrees to indemnify MIRANT and hold MIRANT harmless for any claims, damages, or actions based on any intentional or negligent act of the COUNTY in the COUNTY's use of the Antennae Facility as permitted under this Agreement.

**ARTICLE 12: INSURANCE:**

The COUNTY expressly reserves the right to self-insure. The COUNTY is a member of the Montgomery County Self-Insurance Program; Article 20-37 of the Montgomery County Code (1994), as amended, restricts the legal defense fund to members of the Fund and does not allow for outside entities. The COUNTY's certificate of insurance evidences limits of insurability for general liability coverage in the amounts of \$500,000 aggregate and \$200,000 each occurrence and \$20,000 per person, \$40,000 per accident for bodily injury and \$10,000 for property damage for automobile liability and State statute limits for workman's compensation. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, as determined by the LGTCA. This insurance policy must be maintained continuously by the COUNTY during the full term of this Agreement and during any extension of the said term. The COUNTY shall deliver to MIRANT a certificate of insurance evidencing the coverage above described within fifteen (15) days after execution of this Agreement.

The COUNTY will require its contractors, who conduct any operations or perform any work permitted by this Agreement or in connection with the Antennae Facility or any activity connected therewith will maintain insurance coverage with limits at least equal to, and coverage at least as broad as, those listed below and that they include MIRANT as additional insured on

their coverages.

- (a) Commercial General Liability Insurance with the following coverage; premises - operations, personal injury, blanket contractual liability, independent contractors and broad form property damage. The combined single limit of such coverage shall be in an amount not less than Two Million Dollars (\$2,000,000.00) annual aggregate, if any for bodily injury and property damage;
- (b) Workers' Compensation Insurance in accordance with State and local statutory limits, including employer's liability in an amount not less than One Million Dollars (\$1,000,000.00) per accident.

Before any of the work is started under this Agreement, the COUNTY shall furnish, on behalf of itself and any contractors, copies of all insurance policies intended to meet the requirements of this Agreement. Properly executed Certificates of Insurance may be substituted for the copies of insurance policies provided that such Certificates contain positive statements of compliance with all of the terms of this Agreement which apply to the type of insurance represented by the Certificate. Such policies or Certificates of Insurance shall be sent to Manager, Corporate Insurance and Risk Management. Insurance policies which expire during the term of this Agreement, shall be renewed or replaced with no gaps in coverage, and evidence of such renewal or replacement shall be provided under the same conditions as prescribed above. Any insurance maintained by MIRANT will be excess of the COUNTY's and the COUNTY's Contractors' insurance and will not contribute or pay on any claim until the COUNTY's and the COUNTY's contractors' insurance is exhausted. If the COUNTY or the COUNTY's contractors chooses to maintain deductibles or retentions with respect to any coverage, the COUNTY or the COUNTY's contractor choosing to maintain such deductibles or retentions shall pay all costs that insurance would have paid, until the deductible or retention is satisfied and the insurer assumes liability.

Furthermore, the County shall obtain and maintain, during the full term of this Agreement and any extension thereof, a commercial general liability policy, including bodily injury and property damage, with a combined single limit of ONE MILLION (\$1,000,000.00) DOLLARS per occurrence. MIRANT shall be named as additional insured. The County releases MIRANT and its principals, employees, representatives and agents, from any injuries to any person or damage to the Property or to the Antennae Facility thereon caused by, or that result from, risks insured against by any insurance policies or Montgomery County Self Insurance Program maintained by the County and in force at the time of any such loss of damage. The County shall cause each insurance policy obtained by the County to provide that the insurance company waives all right of recovery by way of subrogation in connection with any damage or injury covered by any such policy.

**ADDITIONAL INSURED AND CERTIFICATE HOLDER:**

Mirant Mid-Atlantic, LLC  
7<sup>th</sup> Floor

901 F Street, NW  
Washington, D.C. 20004

**ARTICLE 13: NON-APPROPRIATION:**

This Agreement is subject to the annual appropriation of funds by the County Council of Montgomery County, Maryland. This Agreement shall terminate automatically on July 1 of any year for which the COUNTY, for whatever reason, does not appropriate funds to operate this project as stated. The COUNTY shall give at least thirty (30) calendar days written notice to MIRANT of the lack of appropriation. MIRANT shall not make or be entitled to any claim for reimbursement of any kind, whether for improvements or prepaid items for any amount of money for which there has been no appropriation of funds. MIRANT shall be reimbursed for the cost incurred for the removal of the COUNTY's Antennae Facility, if said Antennae Facility has not been removed by the COUNTY prior to the termination date of this Agreement.

**ARTICLE 14: GOVERNING LAW:**

This agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland. The Parties agree to abide by the non-discrimination in employment provisions in Federal, State and County law.

**ARTICLE 15: BROKERAGE FEES AND COMMISSIONS:**

MIRANT and the COUNTY represent that they have not retained anyone to solicit or secure this Agreement from either of the PARTIES no commission or other fees are due to any person or entity as the procuring cause of entering into this Agreement.

**ARTICLE 16: NO EMPLOYMENT OF PUBLIC EMPLOYEE:**

MIRANT understands that unless authorized under Section 11B-54 of the Montgomery County Code (1994), as amended, it is unlawful for any person transacting business with the COUNTY, to employ a public employee for employment contemporaneous with his or her public employment.

**ARTICLE 17: NOTICES:**

Except as provided in Article 9, any notice given under this Agreement will be deemed sufficient if sent by certified mail, return receipt requested or delivered by hand by any receipted messenger service or any receipted, nationally recognized commercial or governmental overnight delivery service. Notices to the Parties shall be sent to:

**MIRANT MID-ATLANTIC, LLC**

Hula C. Edmonds P.E.  
Director – Generation Operations West  
Mirant Mid-Atlantic, LLC  
21200 Martinsburg Rd.  
Dickerson, MD 20842

**COUNTY**

Montgomery County Government  
Division of Facilities & Services  
Leasing Management  
101 Orchard Ridge Drive, 2<sup>nd</sup> Floor  
Gaithersburg, MD 20878  
Tel. 240-777-6080  
Fax. 240-777-6047

And copy to:

Richard Koch  
Chief Operating Officer  
Mirant Mid-Atlantic, LLC  
7<sup>th</sup> Floor  
901 F Street, N.W.  
Washington, D.C. 20004

Montgomery County Government  
County Attorney’s Office  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, MD 20850

**ARTICLE 18: TERMINATION:**

The COUNTY may terminate this Agreement in the event the COUNTY is unable to obtain needed building or other related permits or agreements.

**ARTICLE 19: QUIET POSSESSION:**

Upon execution of this Agreement and payment of each monthly installment when due, the COUNTY will be entitled to peaceful and nonexclusive possession and use of the Antennae Facility for the purposes set out in this Agreement.

**ARTICLE 20: COVENANTS BY MIRANT AND THE COUNTY**

MIRANT covenants that it has good and sufficient title to the Property; and that the person executing this Agreement on behalf of MIRANT has full authority to enter into and execute this Agreement, and to bind MIRANT. MIRANT has no knowledge of any liens or judgements affecting MIRANT’s title to the Property or of any covenants, easements or restrictions that prohibit the use of the Property by the COUNTY as set forth in this Agreement.

The COUNTY covenants that it will obtain all the required permits and licenses and to comply with all laws and regulations required by Governmental Agencies associated with the installation and maintenance of the Antenna Facility; and that the person executing this Agreement on behalf of the COUNTY has full authority to enter into and execute this Agreement, and to bind the COUNTY.

The COUNTY may choose to obtain an examination and report of title and zoning on the Property prior to the effective date of this Agreement, and may terminate the Agreement if the results of any such examination of the title and zoning of the Property demonstrates that the

COUNTY will not be permitted to use the Property for the purposes as set forth in this Agreement

**ARTICLE 21: FULL AGREEMENT OF THE PARTIES:**

This Agreement contains the entire agreement of the PARTIES. The PARTIES will not be bound by any verbal or oral agreements or understandings that have not been expressly incorporated into this Agreement.

**ARTICLE 22: MODIFICATION:**

This Agreement can only be modified by a written modification agreement signed by the PARTIES. Any addition or modification to this Agreement must be made in writing and signed by the PARTIES.

**ARTICLE 23: BINDING NATURE:**

This Agreement shall inure to the benefit of and bind the successors and assigns of the PARTIES as limited by the terms of this Agreement.

**ARTICLE 24: NOT A PARTNERSHIP:**

This Agreement is intended only to create a Landlord/Tenant relationship between the PARTIES for the utilization of Property has necessitated by the installation of the Antennae Facility. As a result of entering into this Agreement, MIRANT may not be construed or held to be a partner or joint venturer of the COUNTY in the conduct of the COUNTY's business. The relationship of the PARTIES is and will remain that of Landlord and Tenant.

**ARTICLE 25: DISCLOSURE AND RECORDING:**

The PARTIES to this Agreement hereby agree that this Agreement shall not be recorded in the Land Records of Montgomery County. The COUNTY will abide by the law requiring advertisement of leases entered into by the COUNTY and will provide copies of the Agreement to persons requesting copies of the Agreement under the Maryland Public Information Act, §§ 10-611 et seq of Md. Code Ann. State Gov't (199 Repl. Vol.), as well as under County law requiring the disclosure of public records to persons requesting disclosure. However, the COUNTY will not disclose this Agreement or its contents unless required to do so by law.

**ARTICLE 26: WAIVER:**

The failure of either of the Parties hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance, shall not be construed as a general waiver of relinquishment on its part of any such provision, but the same shall nevertheless be and remain in

full force and effect.

**ARTICLE 27: SMOKESTACK MARKING AND LIGHTING REQUIREMENTS**

MIRANT acknowledges that it, and not the COUNTY, shall be responsible for compliance with all Smokestack registration, marking and lighting requirements of the Federal Aviation Administration (FAA) or the Federal Communications Commission (FCC). However, in the event that the compliance requirements are due solely to the COUNTY's use and or improvements due to the installation or maintenance of the Antennae Facility, the COUNTY shall be responsible for all such compliance requirements during the Agreement Term.

**ARTICLE 28: ENVIRONMENTAL LAWS:**

The COUNTY represents, warrants and agrees that it will conduct its activities on the Property in compliance with all applicable environmental laws. MIRANT represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Property in compliance with all applicable environmental laws and that to the best of MIRANT's knowledge, the Property is free of hazardous substances as of the date of this Agreement.

Subject to the notice and damages limitations in the LGTCA, the COUNTY agrees to defend, indemnify and hold MIRANT harmless from and against any and all claims, causes of action, demands and liability including, but not limited to damages, costs, expenses, assessments, penalties, fines, losses, and judgments that MIRANT may suffer due to any hazardous substance on the Property generated by the COUNTY's activities on the Property.

MIRANT agrees to defend, indemnify and hold the COUNTY harmless from and against any and all claims, causes of action, demands and liability including, but not limited to damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorneys' fees that the COUNTY may suffer due to any hazardous substance on the Property generated by MIRANT's activities on the Property.

These indemnifications specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. The provisions of this section will survive the expiration or termination of this Agreement.

**ARTICLE 29: DEFAULT:**

If either party shall fail or neglect to keep and perform any of the terms of this Agreement and such failure or neglect continues after sixty (60) calendar days of prior written notice to the defaulting party specifying the default, then this Agreement may be terminated by the non-defaulting party, provided that with respect to any breach by the COUNTY of the covenants set forth in Article 2 (Rent) the covenants set forth therein shall govern. The non-defaulting party may in addition pursue any legal remedies available to it at law and in equity.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement on the date first above written.

WITNESS:

BY: [Signature]

LANDLORD :  
MIRANT MID-ATLANTIC, LLC

BY: Hula Edmonds

DIRECTOR,  
OPERATIONS  
WEST

Date: 10/09/2001

WITNESS:

BY: [Signature]  
Scott W. Reilly

TENANT:

BY: [Signature]  
William Mooney, Assistant  
Chief Administrative Officer

Date: 9/28/01

APPROVED AS TO FORM AND  
LEGALITY OFFICE OF THE  
COUNTY ATTORNEY

BY: [Signature]

Date: 9/28/2001

RECOMMENDED BY:

BY: [Signature], Jr  
J. Ronald Smith, Chief  
Division of Facilities and Services

Date: 9/28/01

# EXHIBIT "A"

Detailed Design Document

For

Montgomery County

Dickerson

Remote Simulcast Site

**Revised 2-06-00**

**Revised 2-11-00**

**Revised 3-08-00**

**Revised 2-20-2001**

## Site Description

The MIRANT Dickerson site will serve as a remote simulcast site for the Montgomery County Astro Radio System. The Dickerson site will interconnect into the system by 6 GHz microwave links. The microwave dishes and the antennae for the Astro Radio System will be mounted on an existing 700 foot tall Smokestack at the Dickerson facility. The infrastructure equipment will be housed in a Motorola supplied shelter that will be installed on a concrete slab at the base of the Smokestack; see attached drawings for details.

Details of the equipment and the physical installation are as follows:

### 1. Antenna Systems

In order to install the COUNTY Antennae on the Smokestack two new platforms will be designed, constructed, and installed on the 700 foot tall Smokestack. These new platforms will be installed on the same side as the existing platform. There will be a cable rack and a climbing ladder installed on the Smokestack to secure the antenna cables and to provide access to the platforms at a later date. An ice bridge will be constructed between the County shelter and the Smokestack. Transmission lines will run on the outside of the smokestack from the cable ladder to the ice bridge and then to the COUNTY shelter.

One six-foot microwave dish, with radome, will be mounted on a new platform at the 325-ft level on the Smokestack. A second six-foot microwave dish, with radome, will be mounted on a new platform at the 500-ft level on the Smokestack. There will also be a receive antenna and a Smokestack top amplifier mounted on the 325 foot platform. The lower platform, at 300 feet, will provide mounting for four 800 MHz trunked antennae and two VHF antennae. The two VHF antennae will be inverted and mounted from the lower supports of the platform. Surge suppressers will be installed on all RF transmission lines that enter the Equipment Building.

The attached drawing details the placement of the Antennae and the added platforms. Data sheets for the Antennae are also attached.

Antenna information is as follows:

Antenna Function	Antenna Type	# Of Ant.	Cable Type	Height	Orientation
800 MHz Receive	BMR12-A	1	7/8" LDF	325 Ft.	315 Degrees
800 MHz Transmit	BMR12-A	3	1 5/8" LDF	300 Ft.	315 Degrees
VHF Paging	DB-224E	1	1 5/8" LDF	300 Ft	315 Degrees
Data Tx/RX	S2-973A	1	1 5/8" LDF	300 Ft	315 Degrees
VHF Simulcast	DB-224E	1	1 5/8" LDF	300 Ft	315 Degrees
MW to Seneca	PAR6-65A	1	EWP63	325 Ft.	76 Degrees
MW to Quince	PAR6-65A	1	EWP63	500 Ft.	118 Degrees

## 2. Site Power

MIRANT will provide back-up generator power for the Montgomery County Shelter. Montgomery County needs approximately 100 KW to support the equipment in the Equipment Building and for future expansion. MIRANT needs to provide an isolation transformer between the County's Equipment Building and the generator feed.

Montgomery County is responsible for obtaining the 120/240 VAC 1 Phase or 120/208 VAC 3 Phase power to the Equipment Building.

A ten-minute, 15 & 7.5 KW UPS with bypass switch and a sixty-minute, 1.4 KW UPS with bypass switch are being provided to provide additional back-up power for the Equipment Building, by the County.

## 3. Site Grounding

The new equipment will be installed according to the Motorola R56 Installation Standards. The County Equipment Building will have a ground ring installed around the building, which will be connected into the existing site ground system. All antenna transmission lines will be grounded at the base of the Smokestack and at the antennae terminations.

## 4. Equipment Building

Details of the Equipment Building and the electrical distribution within it are attached.

The following equipment will be installed in the Dickerson site Equipment Building:

Quantity	Equipment Description
20	Trunked Quantar 100 Watt Base Stations for the trunked system
2	Conventional Quantar 100 Watt Base Stations for NPSPAC Calling and Tac channels
1	VHF Quantar 150 Watt Base station for simulcast paging
1	VHF Quantar 150 Watt Base station for the Fire VHF simulcast channel
3	Cellwave 10 channel transmit combiners
1	TX/RX Receive multicoupler with redundant smokestack top amplifier and remote control
1	MOSCAD alarm equipment and interface to the channel bank
1	TeNSr channel back to support the simulcast and conventional systems interface to the prime sites
1	Rack space and power outlet for 1 data stations
5	Rack space and power outlets for 5 future trunked base stations
1	Rack space for a 10 channel transmit combiner to support the 5 future channels
1	GPS/Rubidium Standard
1	Remote Trunked controller
1	Larus route switch powered from MW power supply

2	Microwave Radio and one power supply system
2	AC DATA AC surge suppresser for the AC feed into the shelter

The weight of the equipment to be installed in the Equipment Building is as follows:

Equipment Description	Location	Weight
Quantar Repeater rack	Row 1 Rack 1	950
Transmit Combines/ Receiver Multicoupler	Row 1 Rack 2	458
Quantar Repeater rack	Row 1 Rack 3	950
Transmit Combines/NPSPAC	Row 1 Rack 4	640
Remote Controller	Row 2 Rack 5	360
Channel bank. MOSCAD, Misc	Row 2 Rack 6	243
.Data Base Station and Paging	Row 2 Rack 7	652
VHF Simulcast	Row 2 Rack 8	547
Microwave Radio to Quince Orchard	Row 3 Rack 9	300
Microwave Radio To MCCF	Row 3 Rack 10	300
Microwave Radio Power supply	Row 3 Rack 11	792
Future 5 channels and Combiner	Row 4 Rack 12	740
1 KW UPS, Battery Box	Row 4	548
15 KW UPS, Battery Box	Against outside wall	1300
7.5 KW UPS, Battery Box	Against outside wall	1040

## 5. Equipment Building Specifications

- 12 foot by 27 foot fiberglass building with a ceiling height of 9 foot 3 inches.
- Granacrylic exterior finish over seamless fiberglass coating. Specialized external treatments for s specific location can be quoted at an additional cost. (Ref. Bucket 4, 3.2).
- The floor, wall, and roof section will be insulated as follows(Ref.Bucket 4, 3.1):
 

Floor	R 13
Walls	R-19
Roof	R-19
- Skid assembly sandblasted, primed, and panted.
- The interior walls and ceiling will be sheathed with ½” white nupoly board.
- Light colored industrial grade vinyl floor covering.
- One 36” X 84 “ aluminum exterior door of fully insulated and welded construction, with continuos hinge, passage lockset, deadbolt lockset and fiberglass weather hoods. A steel door can be provided if desired at no additional cost.
- Hydraulic door closer.
- Power distribution panels, wiring and surge suppressers
- Grounding per Motorola R 56 Standards.
- Eight 80-watt surfaces mounted fluourescent light fixtures with RFI suppression filters.

- One exterior door light with vandal resistant lens and photo cell control with override switch.
- One emergency light.
- Three normal 60,000 BTU wall mounted air conditioning units with low ambient and compressor anti-cycle control, integral 10 KW resistance heat strips and permanent expanded metal dust filters.
- TrTripexor controls allowing approximately equal operation time on each air condition unit.
- One portable 5 pound dry chemical fire extinguisher
- One portable 10 pound CO2 fire extinguisher.
- 10 Port Polyphaser bulkhead
- One four foot stepladder
- One hand held eye wash station
- One first aid kit

#### **Shelter Alarms**

- One line voltage smoke detector
- One intrusion alarm with form C contacts
- One High temperature alarm with form C contacts
- One Low Temperature alarm with form C contacts
- AC Power Fail
- AC Power Resume

**Exhibit C**  
**MIRANT STANDARD RATE SCHEDULE**

<u>Personnel/Equipment*</u>	<u>Basic Hourly Rate**</u>
Overhead line mechanic	\$48.75
Underground line cable mechanic	\$47.50
Conduit Mechanic	\$46.75
Electronic Technician	\$86.65
 C&M Electrical Mechanic	 \$53.00
 Field Engineer & Technical Assistant	 \$58.00
Drafting	\$58.00
Engineering	\$100.00
 Transportation Class	
2 - Automobiles	\$ 2.60
3 - Light Trucks	\$ 4.10
4 - Medium Trucks	\$13.95
 5 - Heavy Trucks	 \$37.85
6 - Aerial Devices	\$25.75

\* Use of equipment or personnel not set forth in this Schedule will be at rates determined on a time and materials basis to be agreed upon by the parties as and when such services or equipment is requested.

\*\* The foregoing rates are 1999 rates for standard workday, do not include overtime or similar charges, and are subject to annual adjustment. Non-standard workday charges or allowances will be in accordance with MIRANT's standard practices. The Lessee will also be responsible for all direct expenses incurred by MIRANT in providing services hereunder.

MH-M1  
668501-526157

NEW 12'x27'  
ENCLOSURE

NEW 1000V  
GEN SET

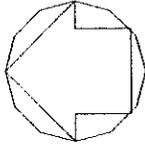
FD  
8W

2W

EXIST.  
MICROWAVE  
HOUSE

MOT  
GEN

FUEL



700' COMMON  
STACK

