

LEASE AGREEMENT FOR  
COMMUNICATION EQUIPMENT ATTACHMENTS ON  
TAKOMA Substation 27  
COMMUNICATION TOWER

between

POTOMAC ELECTRIC POWER COMPANY

and

MONTGOMERY COUNTY, MARYLAND

Dated as of 3-30, 2001

*JF*  
*FLB*  
*28 March 01*

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*W. G. B.*  
*28 March 01*

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*WFTL 3*  
*28 March 01*

LEASE AGREEMENT

LEASE AGREEMENT (the "Agreement") made this 30th day of March, 2001 between POTOMAC ELECTRIC POWER COMPANY ("PEPCO"), ("Landlord"), a District of Columbia and Virginia Corporation, having its principal offices at 1900 Pennsylvania Avenue, N.W. Washington, D.C. 20068 and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland, (the "COUNTY") ("Tenant"); (PEPCO 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 PEPCO 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 communications tower ("Tower") as shown in Exhibit "A" (Detailed Design Document For Montgomery County, Takoma Park, Remote Simulcast Site) and Exhibit "B" (Construction Drawings) located on PEPCO's property at Substation #27 (Takoma Park ), 6601 New Hampshire Avenue, Takoma Park, Maryland 20783 (the "Property"). The COUNTY also shall install and operate Equipment in an existing PEPCO building ("Equipment Building") which is located at the base of the Tower.

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 Tower to install and maintain Antennae and to the Equipment Building to install and maintain Equipment subject to the conditions of this Agreement and to provide for the payment of compensation to PEPCO for the use of the Tower and Equipment Building.

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 PEPCO by the COUNTY; and for the payment of fees by the COUNTY to PEPCO for the use of the Tower and Equipment Building 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:**

PEPCO 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 Tower at the following heights: One (1) Antenna at 350 feet, four (4) Antennae at 200 feet, Two (2) Antennae at 150 feet, and Two (2) Antennae at 100 feet as shown in Exhibit "A" (Detailed Design Document For Montgomery County, Takoma Park, Remote Simulcast Site) and Exhibit "B" (Construction Drawings). The COUNTY shall also have the right to utilize a nominal nineteen foot by nineteen foot (19' x 19') fenced area ("Equipment Area") totaling approximately three hundred and sixty one (361) square feet of area of the Equipment Building. The Equipment Area will be utilized by the COUNTY for the

*Handwritten signature:* J.P. Markert

installation of various components of the Antennae Facility that are located at ground level. PEPCO will install, at the COUNTY's expense, an open-air wall, by means of a seven(7') foot high chain link fence, in the Equipment Building to separate the COUNTY's area from the remainder of the Equipment Building. The COUNTY can only access the Antennae Facility when accompanied by an escort as provided in this Agreement during the Agreement Term (Agreement Term being defined in Article 2). PEPCO will maintain the exterior of the Equipment Building, the heating/air conditioning system and assume the cost of the house electric service. The COUNTY shall maintain the exterior door to the Equipment Building that they are designated to utilize and assume the cost for a separate electric service for the operation of their Equipment. 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 PEPCO, and all such documents are approved by PEPCO. No work will proceed until PEPCO issues a work commencement notice, which will be issued after all plans and technical information are received and approved by PEPCO.

It is agreed that only employees or agents of the COUNTY, authorized by the COUNTY, will be permitted to access the Equipment Area.. At the sole discretion of PEPCO, the COUNTY may be denied access to the Antennae Facility in emergency situations that create health and safety risks or that adversely affect PEPCO'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 without a PEPCO escort present. Only PEPCO or contractors authorized by PEPCO are permitted to climb the Tower. Construction, maintenance and repair of the COUNTY's Antennae Facility must be done by PEPCO or with a PEPCO escort present.

PEPCO, at its sole discretion, shall determine whether it will install Antennae and associated equipment attached on the Tower or require that the COUNTY make the installation as pre-approved by PEPCO. 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 April 1, 2001 and ending on March 31, 2006 (the "Agreement Term").

*Handwritten signature and date:*  
28 March 01

**ARTICLE 3: PAYMENT OF RENT:**

During the Agreement Term, the COUNTY must pay rent in equal monthly installments, as provided in this paragraph. The rent schedule for the Agreement Term is:

Year 1- April 1, 2001 through March 31, 2002	\$5,550.00/month	\$66,600.00/year
Year 2- April 1, 2002 through March 31, 2003	\$5,800.00/month	\$69,600.00/year
Year 3- April 1, 2003 through March 31, 2004	\$6,050.00/month	\$72,600.00/year
Year 4- April 1, 2004 through March 31, 2005	\$6,300.00/month	\$75,600.00/year
Year 5- April 1, 2005 through March 31 2006	\$6,550.00/month	\$78,600.00/year

Each monthly payment must be made in advance of the first (1st) day of the month for which the payment is due, except for the first month or partial month as the case may be, which rental payment shall be due within seven (7) calendar days of the execution of this Agreement. In any month during the Agreement Term where only a part of the month is included in the Agreement Term, the rental payment shall be prorated by multiplying the then current monthly rental installment rate by the fraction that has the number of days of the month that occur within the Agreement Term as its numerator and the total number of days of the month in its denominator. All payments in respect to this Agreement are to be by check made payable to: Potomac Electric Power Company, and mailed to:

Potomac Electric Power Company  
c/o Real Estate Department  
3400 Benning Road, N.E., Building 56  
Washington, DC 20019  
Attn: D. B. Collison

PEPCO will charge the COUNTY a late payment charge of Two Hundred Fifty Dollars (\$250.00) for any installment of rent that the COUNTY fails to pay within ten (10) calendar days after the first (1<sup>st</sup>) 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. PEPCO shall have the right to terminate this Agreement for default, and pursue any other legal remedies available to PEPCO 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, PEPCO must send the COUNTY written notice of the COUNTY's failure to pay an installment of rent when due, and provide the COUNTY with ten (10) calendar 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 Tower and the COUNTY's Equipment Area within thirty (30) calendar days of receipt of an invoice from PEPCO documenting the payment of real estate taxes for the Tower and/or Equipment Area. The COUNTY will pay as additional rent any taxes paid by PEPCO for the COUNTY's personal property in the Antennae Facility within thirty (30) calendar days after receipt of an invoice documenting payment of the personal property tax by PEPCO.

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**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 PEPCO's existing communications systems or the existing communications system of any other tenant sharing the use of the Property. Should such harmful interference be identified as being caused by the COUNTY's Antennae Facility based on acceptable industry engineering practices, 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 or will be removed by the COUNTY from the Property. PEPCO agrees that if any party (other than PEPCO) 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 PEPCO, 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 the best 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 PEPCO (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), PEPCO 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 PEPCO from modifying or otherwise effecting changes to any of its facility, its communications or other systems which are used in connection with its electric utility operations, including without limitation relocation of any of its facilities or equipment, which rights PEPCO expressly retains. Should any such PEPCO changes create unsatisfactory results for the COUNTY, the COUNTY shall have the right to terminate this Agreement upon thirty (30) calendar days prior written notification to PEPCO of the COUNTY's intent to exercise its right to terminate. Notification to PEPCO shall be by certified mail and shall be effective upon receipt of such notice by PEPCO as evidenced by the return receipt. All rents paid to said termination date shall be retained by PEPCO, provided, however that all rents paid in advance as of said termination date shall be returned to the COUNTY.

PEPCO shall notify the COUNTY of any interference problems caused by the COUNTY at the following address:

Attention: Facilities Services Section  
Montgomery County Dept. of Public Works  
101 Orchard Ridge Drive, 2<sup>nd</sup>.Floor  
Gaithersburg, Maryland 20878  
Tel. (240) 777-6080  
Fax No. (240) 777-6047

The COUNTY shall notify PEPCO of any interference problems caused by PEPCO or by any of the other tenants located on PEPCO's Tower at the following address:

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28 March 01*

Potomac Electric Power Company  
Real Estate Department  
D. B. Collison, Manager  
3400 Benning Road, N.E., Building 56  
Washington , D.C. 20019  
Tel. 202-388-2775  
Fax 202-388-2648

**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. PEPCO will supply an emergency electric generator of 80 KW capacity for backup electric service. PEPCO 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 PEPCO for all non-routine maintenance and repair work required in keeping the generator operational with thirty (30) calendar days after PEPCO submits an invoice to the COUNTY documenting the cost 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 3, 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 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. PEPCO 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, tower 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 COUNTY'S Antennae Facility. If the structural analysis, prepared by a licensed engineer, approved by PEPCO, indicates that structural modifications or other work is necessary on the structure, 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,

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antennas, jumpers and coaxial cable for the Antennae Facility. The COUNTY shall provide grounding for all of the 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 PEPCO hereunder shall be subject to the availability of PEPCO'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 PEPCO. Contractors employed by the COUNTY must meet PEPCO's insurance liability requirements and shall otherwise be subject to PEPCO'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 PEPCO. All modifications to PEPCO'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 PEPCO by the COUNTY. PEPCO 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 PEPCO. 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, PEPCO shall have the right to make all necessary repairs, and the COUNTY shall reimburse and compensate PEPCO 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.

PEPCO, at the COUNTY's expense shall have a third party of PEPCO's choice inspect the Antennae Facility inclusive of Tower modifications and certify in writing that all pre-approved work was accomplished as previously approved.

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

Upon request, PEPCO 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 PEPCO by the COUNTY and the COUNTY's agreement to pay the Work Estimate specified therein being adjusted subject

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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 PEPCO '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 PEPCO 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 PEPCO 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 PEPCO and the COUNTY as and when the use of such personnel and equipment are requested hereunder. The hours and expenses incurred by PEPCO's employees in connection with performance of such services shall be auditable, and the COUNTY shall have the right, upon reasonable prior notice to PEPCO 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 PEPCO's accounting system in effect from time to time. The COUNTY shall reimburse PEPCO for all direct expenses incurred by PEPCO 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 the PEPCO 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, PEPCO 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. All payments due from the COUNTY under this Agreement shall be sent to PEPCO's Real Estate Department, attention D. B. Collison, 3300 Benning Road, NE, Building 56, Washington, DC 20019, unless designated to another location in writing.

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

PEPCO may perform maintenance and restoration work with respect to the COUNTY's Antennae Facility located on the Property. Upon the reasonable request of the COUNTY, subject to the availability of PEPCO's personnel, PEPCO agrees to use its best efforts to provide emergency service within four (4) hours of a verbal request by the COUNTY and non-emergency service within twelve (12) hours of a verbal request by the COUNTY. The COUNTY shall compensate PEPCO for such requested maintenance and restoration work in accordance with Article 8 (Reimbursement, Compensation, Payment). In the event of an emergency affecting both electrical and telecommunications facilities at (or requiring access to) the same location, PEPCO reserves the right to deny access to the COUNTY's communication repair personnel until access is safe. PEPCO will operate and maintain its facilities in accordance with industry standards and

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applicable law.

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

PEPCO acknowledges that the COUNTY is constructing and using the Antennae Facility as part of the COUNTY's Emergency Communications System. PEPCO agrees to give the COUNTY 24 hours' notice for any routine maintenance of the Antennae Facility that will interrupt the operation of the Antennae Facility. Notice under this Paragraph must be made by PEPCO 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 contact weekdays between the hours of 4:00 p.m. and  
8:00 a.m. and the 24 hour contact on 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 PEPCO'S sub-station facility is of the utmost importance to PEPCO, the general public and the COUNTY. The following are the contact areas for situations where PEPCO escorts are required for the COUNTY to gain access to the Antennae Facility.

Normal work hours, i.e. 7 am until 4 p.m., Monday through Friday  
D. B. Collison, Mgr. Real Estate Dept. 202-388-2775, 2773, 2774 or 2776

All other Times

Transmission Operations Dispatcher, Transmission System Operations  
301-469-5341

**ARTICLE 10: INSPECTIONS:**

The COUNTY shall allow PEPCO or its agent, to enter the Equipment Area 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 maintenance work.

**ARTICLE 11: HOLD HARMLESS:**

Subject to the notice and damages limitations in the Local Government Tort Claims Act ("LGTCA"), §§ 5-301 et seq of Md. Code Ann. Cts. & Jud. Proc. (1998 Volume), the COUNTY agrees to indemnify PEPCO and hold PEPCO 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 PEPCO 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 PEPCO as additional insured on their coverage's.

1. 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;
2. 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,

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28 March 01*

Corporate Insurance and Risk Management, Potomac Electric Power Company, 1900 Pennsylvania Avenue, N. W., Washington, D. C. 20068, with a copy to Manager, Real Estate Dept., Attention D. B. Collison, 3400 Benning Road, N.E. Washington, D.C. 20019. 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. All insurance provided in compliance with the requirements of this Agreement shall be endorsed to be primary with respect to any other insurance maintained by Pepco. Any insurance maintained by PEPCO 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.

**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 PEPCO of the lack of appropriation. PEPCO 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. PEPCO 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:**

PEPCO 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.

*Handwritten signature and date:*  
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**ARTICLE 16: NO EMPLOYMENT OF PUBLIC EMPLOYEE:**

PEPCO 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:**

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:

PEPCO

Potomac Electric Power Company  
Real Estate Department  
D. B. Collison, Manager  
3400 Benning Road, NE, Building 56  
Washington, D.C. 20019  
Tel. 202-388-2775  
Fax. 202-388-2648

COUNTY

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

**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 PEPCO AND THE COUNTY**

PEPCO covenants that it has good and sufficient title to the Property; and that the person executing this Agreement on behalf of PEPCO has full authority to enter into and execute this Agreement, and to bind PEPCO. PEPCO has no knowledge of any liens or judgements affecting PEPCO'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.

*M. E. B.  
L. P. Murcher*

The COUNTY covenants that it will obtain all the required permits and licenses and 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 Property has necessitated by the installation of the Antennae Facility. As a result of entering into this Agreement, PEPCO 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 hereto hereby agree that this Agreement shall not be recorded in the Land Records of Montgomery County. PEPCO claims and asserts that this Agreement is "confidential commercial information" pursuant to the provisions of the Maryland Public Information Act, §§10-611 et seq of Md. Code Ann. State Gov't. The COUNTY shall not disclose to others this

*Handwritten signature: M. P. B. 2/28/2011*

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: TOWER MARKING AND LIGHTING REQUIREMENTS**

PEPCO acknowledges that it, and not the COUNTY, shall be responsible for compliance with all tower 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. PEPCO 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 PEPCO'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 PEPCO 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 PEPCO may suffer due to any hazardous substance on the Property generated by the COUNTY's activities on the Property.

PEPCO 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 PEPCO'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.

*19 FEB  
28 March 01*



**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: Audrey Jones

LANDLORD :

POTOMAC ELECTRIC POWER COMPANY

BY: Robert C. Grantley  
Robert C. Grantley, Group Vice President  
Customer Service & Power Distribution  
Date: \_\_\_\_\_

WITNESS:

BY: Rebecca S. Demaruk

TENANT:

BY: William M. Mooney  
William Mooney, Assistant  
Chief Administrative Officer

Date: 3/30/01

APPROVED AS TO FORM AND  
LEGALITY OFFICE OF THE  
COUNTY ATTORNEY

BY: Gileen S. Bosman

Date: 3/28/2001

RECOMMENDED BY:

BY: J. Ronald Smith, for  
J. Ronald Smith, Chief  
Division of Facilities and Services

Date: 3/29/01

*Handwritten:* NFB  
28 March 01

# **EXHIBIT A**

Detailed Design Document

For

Montgomery County

**Takoma Park**  
Pepco Substation #27

Remote Simulcast Site

Revised 2-12-00

Revised 3-08-00

Revised 2-20-01

*Handwritten:*  
RFB  
28 March 01

## Site Description

The PEPCO Takoma Park (Substation #27) site will serve as a remote simulcast site for the Montgomery County Astro Radio System. The Takoma Park site will interconnect into the system by a Montgomery County provided ATM network. The Antennas for the Astro Radio System will be mounted on the existing 225-foot Tower at the Takoma Park facility. The infrastructure equipment will be housed in the existing PEPCO Equipment Building at the base of the Tower.

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

### 1. Antenna Systems

There will also be a receive antenna and a Tower top amplifier mounted on the 225 foot level. The 200 foot level will provide mounting for four (4) 800 MHz trunked Antennae (three current and one future). The two (2) VHF Antennae will be mounted at the 150-foot level. The 800 MHz data Antenna will be mounted at the 100-foot level. A yagi for the PG County mutual aid control station will be mounted on the Tower at the 100 ft level.

Transmission lines will run on the existing ice bridge from the base of the Tower into the Equipment Building.

The attached Tower drawing details the placement of the Antenna. 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	225Ft.	315 Degrees
800 MHz Transmit	BMR12-A	3-1F	1 5/8" LDF	200 Ft.	315 Degrees
VHF Paging	DB-224E	1	1 5/8" LDF	150 Ft	315 Degrees
VHF Simulcast	DB-224E	1	1 5/8" LDF	150 Ft	315 Degrees
PG Mutual Aid	TDD7280	1	1/2" LDF	100 Ft	180 Degrees
Data Tx/RX	S2-973A	1	1 5/8" LDF	100 Ft	315 Degrees

**NOTE:** The orientation of the tower needs to be determined before the final Antennae system design can be completed.

## 2. Site Power

The Equipment required to backed up for 10 minutes will be powered from a 30 KW UPS. The Equipment required to backed up for 60 minutes will be powered from a 1.4 KW UPS. The County will supply all Equipment.

PEPCO will provide back-up generator power for the Montgomery County Antennae Facility. Montgomery County requires approximately 80 KW to support the equipment in the shelter and for future expansion.

Montgomery County is responsible for obtaining the 120/208 VAC 3 Phase power to the equipment room

## 3. Site Grounding

The new equipment will be installed according to the Motorola R56 Standards. All Antenna transmission lines will be grounded at the base of the Tower and at the Antenna termination.

## 4. Equipment Area

Details of the Equipment Area location in the PEPCO Equipment Building and the electrical distribution within the Equipment Building are attached.

The following Equipment will be installed in the Takoma Park (Substation 27) Equipment Area:

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 tower 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 and power supply
1	Rack space and power outlets for the Arinc provided Fiber equipment.
1	AC DATA AC surge suppresser for the AC feed into the room

**NOTE:** The present mutual aid plan has Montgomery County installing a UHF base station (MCPD) at the Takoma Park site for use in communication with PG County. The channel bank plan has a voice card assigned for this base station along with a BIM in the ECC CEB. The base station, antenna, and transmission line will be installed by others and is not a part of the design.

## 5. Equipment Area Renovations

Cable racks will be installed at the eight-foot level.

Existing HVAC systems will be used to provide environmental control for the proposed equipment.

High and Low temperature, Fire, Intrusion, AC power failure, and Surge suppresser alarms will be provided and interface into the MOSCAD alarm equipment.

Summary of Changes and Impact from Original Design

**Takoma Park Change # 1 Date 02-06-00**

- This change also replaces the original quoted multiple Exide 8.75 KW UPSs with a Best Products unit 30 KW 10 min UPS.
- Revise the Detail Design Document to reflect these above changes.
- PEPCO will provide a generator.
- Add Mutual aid station and antenna

*MFB*  
*28 March 01*

**Exhibit C**  
**PEPCO 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 PEPCO's standard practices. The Lessee will also be responsible for all direct expenses incurred by PEPCO in providing services hereunder.

*Handwritten signature:*  
J. B. Marchant