

**SECOND AMENDMENT TO LICENSE AGREEMENT**

This Second Amendment to License Agreement (“Second Amendment”), being made this 10th day of May, 2013, between **MONTGOMERY COUNTY, MARYLAND**, a body corporate and politic and a political subdivision of the State of Maryland, (hereinafter designated as the “COUNTY”) and **APC REALTY AND EQUIPMENT COMPANY, LLC** with a principal mailing address at 6391 Sprint Parkway, MailStop: KSOPHT0101-Z2650, Overland Park, Kansas 66251 (hereinafter designated as the “LICENSEE”). (LICENSEE and COUNTY, together, the “PARTIES”.)

**WHEREAS**, the COUNTY and LICENSEE entered into a License Agreement dated November 23, 1999, for property located at 26149 Ridge Road, Damascus, Maryland (the “Agreement”); and

**WHEREAS**, the COUNTY and LICENSEE entered into an Amendment to License Agreement dated October 1, 2004 (the “First Amendment”); and

**WHEREAS**, a copy of the Agreement and First Amendment is attached hereto and made a part hereof as Exhibit B; and

**WHEREAS**, the LICENSEE desires to install new fiber optic cable from a point outside the Property to serve the LICENSEE’s Equipment located within the Premises.

**NOW THEREFORE**, in consideration of the premises and intending to be legally bound hereby, the PARTIES hereto agree to the following changes and modifications to the Agreement.

**1. FIBER INSTALLATION:**

- A. The COUNTY hereby consents to the installation, operation, and maintenance by LICENSEE, at LICENSEE’s sole cost and expense, of fiber optic cable and other equipment (“Fiber Installation”) at the Property.
- B. The LICENSEE agrees to pay the COUNTY a one-time fee of Three Thousand and 00/100 Dollars (\$3,000.00) due and payable upon full execution of the Second Amendment.
- C. The Fiber Installation will be in substantial conformance with the Sprint AAV Design for Damascus Depot attached hereto and made a part hereof as Exhibit A. The County will not be responsible for any cost or expense associated with the Fiber Installation.
- D. LICENSEE shall coordinate the Fiber Installation with the Facility Manager of the

Damascus Depot. LICENSEE shall not interfere with COUNTY's activities at the Property.


- E. LICENSEE shall repair any damage to the Property caused by the installation, operation, maintenance, or removal of the Fiber Installation during the Term of the License Agreement which shall include restoration of the Property to its prior condition.
- F. LICENSEE agrees to comply with all applicable laws and obtain any necessary permits.
- G. LICENSEE shall indemnify, hold harmless and defend the County from and against any and all claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees, arising from or out of the installation, operation, maintenance, or removal by LICENSEE of the Fiber Installation, except to the extent caused by the gross negligence or willful misconduct of the County, its employees, agents, or contractors.
- H. Neither party shall be liable to the other party for any lost profits, special, incidental, punitive, exemplary or consequential damages.
- I. Any obligation or liability of the County arising in any way from this Second Amendment is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in Maryland law, as amended.
- J. Upon one hundred twenty (120) days advanced notice, LICENSEE agrees to relocate all or part of the Fiber Installation, at its expense, in the event the COUNTY needs use of the Property for redevelopment or other governmental use.

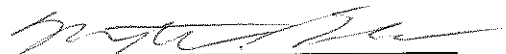
2. Except as modified herein, all other terms and conditions of the Agreement will remain in full force and effect.

[Signature Page Follows]

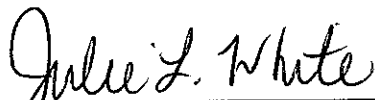
IN WITNESS WHEREOF, the PARTIES hereto have set their hands and affixed their respective seals the day and year above written.


LICENSEE:  
APC REALTY AND EQUIPMENT COMPANY, LLC

  
Witness

BY:   
Name: Matthew Bell  
Title: Manager Real Estate  
Date: 4/29/2013

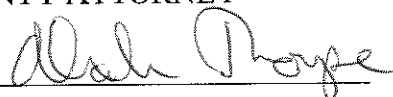
COUNTY:  
MONTGOMERY COUNTY, MARYLAND

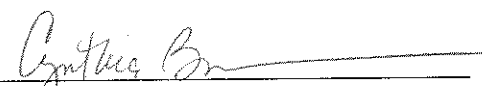
  
Witness

By:   
Name: Ramona Bell-Pearson  
Title: Assistant Chief Administration Officer  
Date: May 10, 2013

APPROVED AS TO FORM AND  
LEGALITY OFFICE OF THE  
COUNTY ATTORNEY

RECOMMENDED BY:

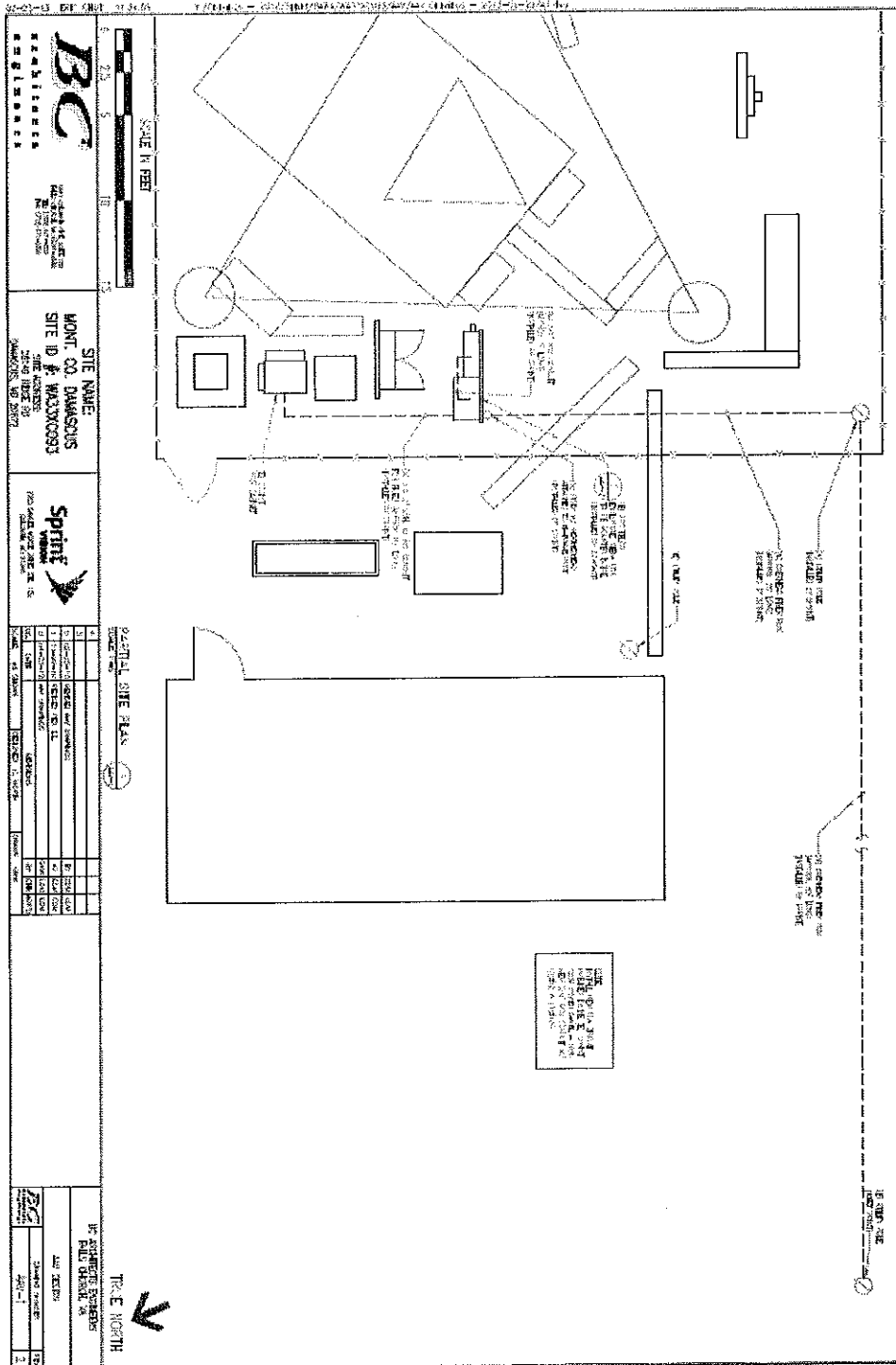
By:   
Associate County Attorney


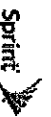
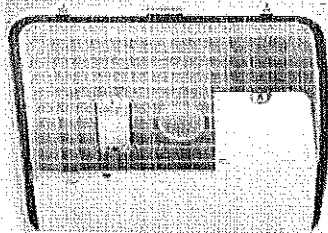
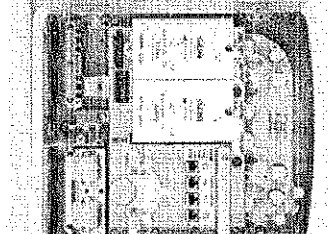
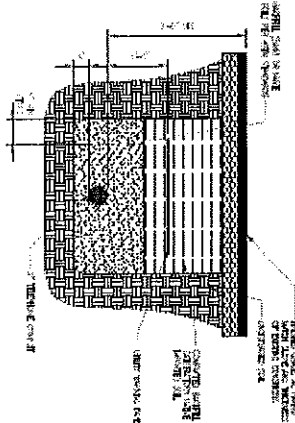
By:   
Cynthia Brenneman, Director  
Office of Real Estate

Date: 5/7/13

Date: 5/6/13

# Exhibit A



		<p><b>SITE NAME:</b> MONT. CO. DAMASCUS <b>SITE ID #:</b> WA33XC093</p>	
<p><b>DATE:</b> 11/11/11</p>	<p><b>PROJECT:</b> 20110111/20110111/20110111/20110111</p>	<p><b>CONTRACT:</b> 11111111111111111111</p>	<p><b>SCALE:</b> 1/4" = 1'-0"</p>
			
<p><b>CONTRACT - 11111111111111111111</b></p>			
<p><b>PROPERTY DETAIL</b></p>			
			
<p><b>BY: [Signature]</b></p>		<p><b>DATE: 11/11/11</b></p>	

**Exhibit B**

**See attached License Agreement and First Amendment to License Agreement**

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("Agreement") is made this 23<sup>rd</sup> day of November, 1999, by and between MONTGOMERY COUNTY, MARYLAND, a body corporate and politic (herein after designated "LICENSOR"), and APC REALTY AND EQUIPMENT COMPANY, LLC, a Delaware limited liability company, (hereafter designated "LICENSEE").

WITNESSETH

NOW THEREFORE, for and in consideration of the fees herein after reserved and other good and valuable covenants and obligations as hereinafter contained, LICENSOR and LICENSEE agree as follows.

1. (a) LICENSOR hereby grants to LICENSEE a non-exclusive license to occupy and use, subject to all of the terms and conditions hereof, space for a communications facility consisting of the equipment listed in Section 5 hereof ("Equipment") to be installed on the tower at 26149 Ridge Road, Damascus, Montgomery County, Maryland, as more particularly described on Exhibit A attached hereto and made part hereof ("Property"). The designated location of the Equipment on the Property is shown on Exhibit B attached hereto and made a part hereof ("Premises"). No variation is to be permitted without the consent of Licensor. LICENSEE shall have the right of reasonable ingress and egress to the Property to install and maintain utility wires, pipes, cables, conduits, or other connections for use of its Equipment.

(b) At LICENSEE'S sole cost and expense and with minimal disruption to LICENSOR, LICENSEE may install, erect, maintain and operate the Equipment and supporting structures thereto on the Premises. In connection therewith, LICENSEE may complete all work necessary to prepare the Premises for operation of the Equipment, including but not limited to installation of transmission lines and appurtenances. Notwithstanding affixation to the Premises, title to the Equipment and all structures, transmission lines, cables, wires and conduits associated therewith installed by Licensee shall remain in the LICENSEE. LICENSEE may remove all or part of the Equipment at its sole expense on or before the expiration or earlier termination of this Agreement and shall make any necessary repairs to the Premises, normal wear and tear excepted, necessitated by such removal, as determined by Licensor..

2. After completion of installation of the Equipment on the Premises, Licensee shall have an as-built drawing of the Premises made which shall be attached hereto and made a part hereof. Cost of such work shall be borne by the LICENSEE.

3. (a) This agreement shall be for the term of five (5) years ("Initial Term") commencing on the date (the "Commencement Date") which is 60 days after the issuance of a building permit issued with respect to the activities contemplated herein.

(b) This agreement may be renewed by the mutual agreement of the or LICENSOR and the LICENSEE for two (2) additional five (5) year terms ("Renewal Terms"), provided that the parties hereto reach an agreement no later than three (3) calendar months prior to the end of the Initial Term or the then current Renewal Term on the terms of this Agreement for the next five (5) year term, subject to a determination by the County that it can grant such an extension. The parties agree to negotiate in good faith and that the renegotiated license fee shall be based on a reasonable determination of the fair market value for substantially similar licenses in the Washington, D.C./Montgomery County areas.

(c) The annual license fee ("License Fee") for the initial five year term shall be as set forth below, payable in monthly installments, according to the following schedule: Year 1- \$21,600.00 / \$1,800 per month; Year 2- \$22,248.00/\$1,854.00 per month; Year 3-\$22,920.00/\$1,910.00 per month; Year 4- \$23,616.00/\$1,968.00 per month; Year 5-\$24,312.00/\$2,026.00 per month, without set off or deduction or demand for payment, and is payable to Montgomery County, Maryland, Leasing Management, P.O. Box 62077, Baltimore, Maryland 21264-2077, or at such other place as the LICENSOR may, from time to time, designate in writing at least thirty (30) days in advance of any fee payment date. The first month's License Fee shall be paid on the Commencement Date and thereafter paid in advance on the first day of each month, partial months to be prorated. Any License Fee payment or portion thereof received later than ten (10) days from the date when it becomes due and payable shall be subject to a late fee of five percent (5%) of the fee payment in question. Should LICENSEE'S failure to pay continue for more than thirty (30) calendar days after a monthly payment becomes due and payable, LICENSOR shall have the right to terminate this Agreement for default, and pursue any other legal remedies available to LICENSOR at law or under the terms of this Agreement.

(d) LICENSOR'S Tax Identification Number is 52-6000980

4. Upon the expiration or earlier termination of this Agreement, the LICENSEE shall, within thirty (30) days of such expiration or termination, remove all of its equipment and facilities from the Property and Premises, and shall vacate and discontinue its use of the Property and the Premises. Licensee shall pay rent at the same rate as in effect immediately prior to such expiration or termination until such equipment and facilities are removed. If LICENSEE fails to remove its equipment from the Property or the Premises within the period specified herein, LICENSOR may remove the equipment and charge the LICENSEE for the cost of such removal with no liability of Licensor to turn over such equipment and facilities to Licensee.



5. LICENSEE shall use the Premises for the purpose of constructing, maintaining and operating a "Communications Facility" consisting of up to nine (9) panel antennas, and enough ground space, approximately (9x15) one hundred thirty (130) square feet, to house base station equipment cabinets and related wires, pipes, cables, conduits and other connections, as per Exhibit "B." All work on the Premises and improvements thereto shall be at LICENSEE'S expense, and shall be subject to review and approval of LICENSOR which approval shall not be unreasonably withheld. LICENSEE will maintain the Premises in good condition. It is understood and agreed that LICENSEE'S ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of certificates, permits, and any other approvals ("Approvals") required by any federal, state, or local authorities, including but not limited to the Montgomery County Telecommunications Tower Facility Coordinating Group. In the event that any such applications should be finally rejected or any Approval is canceled, expires, lapses or is otherwise withdrawn or terminated by government authority, or if LICENSEE in its sole discretion determines, within ninety (90) days from the execution hereof, that it will be unable to use the Premises for its intended purposes, LICENSEE shall have the right to terminate this Agreement. Notice of the LICENSEE'S exercise of its right to terminate shall be given to LICENSOR in writing by certified mail, return receipt requested, and shall be effective ninety (90) days from the date LICENSOR receives such notice as evidenced by the return receipt. All fees for all periods prior to the effective date of such termination shall be paid to and retained by LICENSOR.

6. "LICENSOR" (subject to sovereign immunity laws, annual appropriation ordinances, and the Local Government Tort Claim Act) and LICENSEE shall each indemnify, defend and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of this Agreement, including the use and occupancy of the Premises by such party, its servants or agents, and deriving from such party's obligations hereunder, except to the extent such claims or damages are due to or caused by the act or omission of the other party, or its servants or agents.

8. LICENSEE shall obtain and maintain during the term of this Agreement, and until all of LICENSEE'S obligations which survive termination of this Agreement have been completed, a policy of public liability and property damage insurance as per the attached Exhibit B.

8. LICENSEE, upon expiration and termination of this Agreement, either by lapse of time or otherwise, shall peaceably surrender to LICENSOR the Property and Premises in good condition.

9. It is agreed and understood that this Agreement contains all agreements, promises, and understandings between LICENSOR and LICENSEE, and any addition,

variation, or modification to this Agreement shall be void and ineffective unless made in writing and signed by parties.

10. This Agreement and the performances thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maryland.

11. This agreement may not be sold, assigned or transferred at any time by LICENSEE without the prior written consent of LICENSOR which will not be unreasonably withheld, delayed or conditioned, except LICENSEE may sell, assign or transfer this Agreement without LICENSOR'S prior written consent to LICENSEE'S principal, affiliates or subsidiaries of its principal or an assignee of LICENSEE'S FCC license. LICENSEE must give written notice to LICENSOR of such sale, assignment, or transfer at least sixty (60) days prior to its occurrence.

12. All notices hereunder must be in writing and shall be deemed validly given if hand delivered to the other party or if sent by certified mail, return receipt requested, addressed as follows (or such other address as the party to be notified has designated to the sender by like notice):

LICENSOR:

Montgomery County  
Division of Real Estate Management  
110 North Washington Street  
Rockville, MD 20850

LICENSEE:

APC Realty and Equipment Company  
6905 Rockledge Dr, Suite 100  
Bethesda, MD 20817  
Attention: Legal Counsel

13. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the parties hereto.

14. LICENSEE agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws regulations regarding employment discrimination. The LICENSEE assures the LICENSOR that, in accordance with applicable law, it does not and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference or disability.

15. LICENSEE represents that it has not retained anyone to solicit or secure this Agreement from LICENSOR upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling or leasing agencies maintained by the LICENSEE for the purpose of securing business or an attorney rendering professional legal service consistent with applicable canons of ethics.

16. LICENSEE understands that unless authorized under Section 11B-52 or Chapter 19A of the Montgomery County Code 1994, as amended, it is unlawful for a person transacting business with LICENSOR to employ a public employee for employment contemporaneous with his or her public employment.

17. It is expressly understood that the LICENSOR shall not be construed or held to be a partner, co-venturer, agent, or associate of LICENSEE; it being expressly understood that the relationship between the parties hereto is and shall remain at all times that of LICENSOR and LICENSEE.

18. The LICENSEE shall attach, energize, and operate its antenna and related equipment at all times in such a manner that the reception and transmission signals of LICENSOR are not interfered with or degraded. If any such interference occurs, in the sole assessment of LICENSOR, based upon verifiable data or testing, and is not corrected by LICENSEE within twenty-four 24 hours after written notification, the LICENSOR shall have the right to require LICENSEE to shut down and repair LICENSEE'S equipment, to eliminate such interference. LICENSOR shall not be held responsible for any interference to LICENSEE'S equipment or operations, provided LICENSOR exercises due care and otherwise complies with this Agreement.

19. LICENSEE agrees to arrange for and to pay all of the costs of providing separate metering for all utilities which serve its operations on the Property. LICENSEE must pay the costs of any utility charges for the services provided to the LICENSEE for its operations on the Property.

20. Either party shall be considered in default of Agreement upon the occurrence of any of the following:

(a) Failure to perform any term, covenant or condition of this Agreement and the continuance thereof for 15 days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money or for thirty (30) days following receipt of written notice from the non-defaulting party specifying said failure with respect to a default which may not be cured solely by the payment of money. In either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including but not limited to, the right to terminate this Agreement.

(b) If the non-monetary default may not reasonably be cured within a 30 day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such 30 day period and proceeds with due diligence to fully cure the default.

(c) In the event that the LICENSEE shall be found in default and shall fail to cure such default after notice given as set forth hereinabove, then the LICENSEE'S right to the Premises shall automatically be revoked.

21. Either party shall have the right to terminate this Agreement upon the giving of two hundred seventy (270) days notice, effected by delivery of written notice of termination not less than two hundred seventy (270) days prior to the date upon which termination shall become effective.

IN WITNESS WHEREOF, the parties hereto have set their hand and affixed their respective seals the day and year first above written.

LICENSOR  
Montgomery County, Maryland

LICENSEE  
APC Realty and Equipment Company, LLC

By: William M. Mooney  
WILLIAM MOONEY, ASSISTANT  
CHIEF ADMINISTRATIVE OFFICER

By: William A. Tongue  
William A. Tongue  
Regional Director, Site Development -  
Baltimore/Washington

Date:

Date:

Witness:

Witness:

Approved for legal form and sufficiency:

[Signature]  
Associate County Attorney

Recommended:

By: [Signature]  
Rey Junquera, Leasing Manager  
Division of Facilities

EXHIBIT A

Property

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1. The street address of the Property is:  
26149 Ridge Road  
Damascus, MD
2. The Assessor's Parcel Number is:  
FX43 P.818

**EXHIBIT B**

**Insurance Requirements**

**INSURANCE REQUIREMENTS:**

**Commercial General Liability**

A minimum limit of liability of **ONE MILLION DOLLARS (\$1,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

Contractual Liability  
Premises and Operations  
Independent Contractors  
Products and Completed Operations

**Automobile Liability Coverage**

A minimum limit of liability of **ONE MILLION DOLLARS (\$1,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

owned automobiles  
hired automobiles  
non-owned automobiles

**Worker's Compensation/Employer's Liability**

Meeting all requirements of Maryland Law and with the following minimum limits:

**Bodily Injury by Accident - \$100,000 each accident**  
**Bodily Injury by Disease - \$500,000 policy limits**  
**Bodily Injury by Disease - \$100,000 each employee**

**Additional Insured**

Montgomery County Government must be named as an additional insured on general liability policies.

**Policy Cancellation**

Forty-five (45) days written notice of cancellation or material change of any of the policies is required.

**FIRST AMENDMENT TO LICENSE AGREEMENT**

This Amendment to License Agreement ("Amendment"), being made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, between **MONTGOMERY COUNTY, MARYLAND**, 101 Monroe Street, Rockville, Maryland 20850, a body corporate and politic and a political subdivision of the State of Maryland, (hereinafter designated as the "COUNTY") and APC Realty and Equipment Company, LLC with its principal office located at 6391 Sprint Parkway, Overland Park, Kansas 66251-2650 (hereinafter designated as the "LICENSEE"). (COUNTY and LICENSEE, together, the "PARTIES").

**WHEREAS**, the COUNTY and LICENSEE entered into a License Agreement dated November 23, 1999 for property located at 26149 Ridge Road, Damascus, Maryland (the "Agreement"); and

**WHEREAS**, the PARTIES desire to amend that Agreement to permit one (1) five (5) year extension term and to increase the annual fee during said extension term.

**NOW THEREFORE**, in consideration of the premises and intending to be legally bound hereby, the PARTIES hereto agree to the following changes and modifications to the Agreement.

1. The PARTIES hereby agree to one (1) five (5) year extension term, which shall commence on January 17, 2005 and expire on January 16, 2010.

2. The annual fee for the five(5) year extension term is listed in the following table:

	<u>ANNUAL FEE</u>	<u>MONTHLY FEE</u>
Year 1	\$25,041.36	\$2,086.78
Year 2	\$25,792.60	\$2,149.38
Year 3	\$26,566.37	\$2,213.86
Year 4	\$27,363.36	\$2,280.28
Year 5	\$28,184.26	\$2,348.68

3. The date to be inserted in the second line of this Amendment to License Agreement (Amendment) shall be the date on which the last party to sign this Amendment signs such Amendment.

4. The amendment shall reflect the change of address for the LICENSOR in paragraph 12 of the License Agreement. The new address is: Montgomery County, Department of Public

WA33XC093-D



Works and Transportation, Office of Real Estate, 101 Monroe Street 10<sup>th</sup> floor, Rockville Md., 20850 with a copy of notice to Montgomery County, Office of the County Attorney, 101 Monroe Street, 3<sup>rd</sup> floor, Rockville Md. 20850. The amendment shall reflect the change of address for the LICENSEE in paragraph 12 of the License Agreement. The new address is: Sprint Contracts & Performance, Mailstop KSOPHT0101-Z2650, 6391 Sprint Parkway, Overland Park, KS 66251-2650 with a copy of official notice to Sprint Law Department, Mailstop KSOPHT0101-Z2020, 6391 Sprint Parkway, Overland Park, KS 66251-2020.

5. Except as modified herein all other terms and conditions of the Agreement will remain in full force and effect.

**SIGNATURE PAGE TO FOLLOW**

WA33XC093-D





IN WITNESS WHEREOF, the PARTIES hereto have set their hands and affixed their respective seals the day and year above written.

WITNESS:

TENANT:

APC Realty and Equipment Company, LLC

By \_\_\_\_\_

By: Marion S. Crable

Marion S. Crable  
Title: Manager, Landlord Relations

Date: 10/1/04

WITNESS:

LANDLORD:

MONTGOMERY COUNTY  
MARYLAND

By \_\_\_\_\_

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

Joseph F. Beach, Assistant  
Chief Administrative Officer

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

APPROVED AS TO FORM AND  
LEGALITY OFFICE OF THE  
COUNTY ATTORNEY

RECOMMENDED

By: Sileen J. Brennan  
Associate County Attorney

By: Cynthia Brenneman  
Cynthia Brenneman, Director  
Office of Real Estate

Date: 8/6/2004

Date: 7/30/04