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FAIRFAX COUNTY PARK AUTHORITY
LICENSE AGREEMENT

THIS AGREEMENT ("Agreement"), dated as of 0824, 2003
Between Fairfax County Park Authority, (LICENSOR) 12055 Government Center Parkway, Fairfax, Virginia 22035, an instrumentality exercising public and essential governmental functions, and Montgomery County, Maryland, 101 Monroe Street, Rockville, Maryland 20850, a body corporate and politic and a political subdivision of the State of Maryland, (the "COUNTY"): (the LICENSOR and the COUNTY together "the PARTIES") recites and provides:

RECITALS

LICENSOR is the owner of a parcel of land located in Riverbend Park in Fairfax County, Virginia and referred to among the Tax Map records of Fairfax County 8-2 (1)1. Such parcel of land is herein referred to as the "Premises" as described in Exhibit A.

LICENSOR is willing to permit the COUNTY to use such portion of the Premises for the purposes and in accord with the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

1. Definitions.

"Facilities", as used herein, shall be antennas, equipment, ancillary and related structures, cables, accessories and improvements as more specifically described on Exhibits C and D attached hereto, and shall include any approved additions or alternations thereto, subject to LICENSOR approval as specified in Paragraph 6 below.

2. Use of Premises.

(a) LICENSOR grants to the COUNTY a non-exclusive license (the "License") to construct, install and operate the Facilities upon the Premises in the general configuration shown on Exhibit D hereto, for purposes of establishing a communications facility for operation of the COUNTY's public safety operations, subject to LICENSOR's final approval of the plans as specified in Paragraph 6 below. Subject to compliance with all laws, the COUNTY may at its own cost and expense, use the portion of the Premises shown on Exhibit D to construct, install, operate, maintain, repair, replace, protect and secure the "Facilities".

(b) LICENSOR grants to the COUNTY, subject to all conditions herein, including, but not limited to Paragraph 6 the right to install and operate overhead electric lines from the

COUNTY'S meter to the Facilities and telephone lines from the termination point of the telephone utility supplying telephone service to the Facilities as shown on Exhibit D.

(c) LICENSOR agrees to grant, subject to all condition herein, including, but not limited to Paragraph 6 such easements to public service corporations across the Premises to the Facilities as shown on Exhibit D (existing easements).

(d) All portions of the Facilities brought onto the Premises by the COUNTY shall remain the the COUNTY'S personal property and, subject to the terms of this License, may be removed by the COUNTY at any time during the term, but so long as the COUNTY is not in default, no later than ten (10) days after the License has terminated. Upon the termination of the License the Facilities shall be removed from the Premises by the COUNTY. The COUNTY shall restore the Premises to the condition prior to the execution of the agreement. The COUNTY shall contact all public service corporations and telephone utility company(s) who were granted easements as required by the COUNTY to have all equipment removed from the premises, at the COUNTY'S expense and restored to its prior condition. All such easements shall be vacated at the COUNTY'S expense subject to funding availability.

(e) Subject to the limitations set forth herein, LICENSOR grants the COUNTY a non-exclusive license for ingress and egress over (i) the portion of the Premises shown on Exhibit D and (ii) to the extent of the LICENSOR'S interest therein, any existing access roads, easements or rights of way serving the Premises for access to the Facilities for the purposes of installing, maintaining, operating, repairing, reconstructing and removing the Facilities. Subject to the foregoing, the COUNTY shall have twenty-four (24) hours a day, seven (7) day a week access to the site and the Facilities for maintenance, unscheduled repairs and other emergencies.

(f) LICENSOR reserves the right to continue all existing uses of the Premises and to make or permit any additional use of the Premises as LICENSOR deems appropriate.

(g) The COUNTY shall not: (i) violate any environmental laws in connection with the COUNTY'S use or occupancy of the Leased Premises; or (ii) use, generate, release, manufacture, refine, produce, process, store, or dispose of any Hazardous Wastes on, under, or about the Leased Premises, or transport to or from the Leased Premises any Hazardous Wastes; except for the use of sealed batteries for emergency back-up, any fire suppression system and small quantities of cleaning products ordinarily used by commercial businesses.

3. Term

(a) The initial term of the License hereby granted ("Term") shall be five (5) years, commencing on the date that a building permit is issued by Fairfax County for any construction on the Premises pursuant to this Agreement (the "Commencement Date") and ending at 11:59 p.m. five (5) years thereafter. Upon thirty (30) days' notice given by the COUNTY to LICENSOR, The COUNTY may terminate this Agreement if the COUNTY determines the Premises has become unsuitable for the COUNTY'S Radio Link because (i) the COUNTY is unable to obtain or maintain in force all necessary Governmental Approvals (as hereinafter defined), (ii) a material change in government regulations makes it impractical or uneconomic for the COUNTY to continue to operate

the Facilities, (iii) interference by or to the COUNTY'S operation cannot be resolved; (iv) the COUNTY changes its system or network design in a manner that makes it impractical or uneconomic for the COUNTY to operate the Facilities or (v) the Premises are destroyed or damaged or taken in whole or in part (by condemnation or otherwise) sufficient in the COUNTY'S reasonable judgement, adversely to affect the COUNTY'S use of the Facilities.

(b) Provided the COUNTY does not breach any of the terms, conditions, covenants, representations or warranties set forth herein ("Default") at any time during the Term, the COUNTY may renew this Agreement for three (3) additional periods of five (5) years each (a "Renewal Term") upon the same terms and conditions contained herein; provided, however, that the annual license fee provided for in Section 4 shall be adjusted at the commencement of each Renewal Term as provided in Section 4. The License hereby granted shall automatically renew for each renewal period unless, at least 60 days prior to expiration of the then current period, either PARTY provides written notification to the other PARTY of its intention not to permit the License to renew. If either PARTY provides the other PARTY with such notice, the option(s) remaining shall be rendered null and void and the License shall terminate at the end of the then current period. Each Renewal Term shall commence upon the expiration of the immediately preceding Term or applicable Renewal Term. All references in this Agreement to the Term hereof shall include, where appropriate, all Renewal Terms so affected.

(c) Promptly upon the signing of this Agreement, the COUNTY will apply to Fairfax County for all necessary zoning approvals to construct and operate the Facilities, and the COUNTY will apply for any and all other governmental licenses, permits, approvals or other relief required or deemed necessary or appropriate by the COUNTY for its use of the Premises ("Governmental Approvals"). The COUNTY will diligently prosecute all such applications to a conclusion. The COUNTY shall have the right, but not the obligation, to appeal any denial. LICENSOR specifically authorizes the COUNTY to prepare, execute and file all necessary or appropriate applications to obtain Governmental Approvals for its use under this Agreement subject to LICENSOR'S right to review such applications. In the event that all necessary Governmental Approvals have not been obtained within eighteen (18) months from the date of the signing of this Agreement or that the COUNTY is denied a necessary Governmental Approval and elects not to appeal, either PARTY may, by written notice to the other terminate this Agreement. The COUNTY shall pay all costs in connection with applying for an obtaining all zoning and other Governmental Approvals.

4. License Fee

(a) During the first year of the Term, the COUNTY shall pay to LICENSOR an annual license fee of Two Thousand and 00/100 dollars (\$2000.00). The first payment hereunder shall be due on the Commencement Date. If the Commencement Date or the termination date of this Agreement is other than the first day of a month, the license fee shall be prorated for such month. If the COUNTY fails to pay any installment of license fees within ten (10) days after written notice of default, the COUNTY shall also pay to LICENSOR a late fee equal to five percent (5%) of the late payment. If any amount remains unpaid more than thirty (30) days after its due date, The COUNTY shall pay LICENSOR interest on such unpaid amount at an annual rate of ten percent (10%) from the date such amount was due until the date such amount is paid to LICENSOR.

(b) At the end of each year of the Term or Renewal Term the annual fee for the next year period then beginning shall be equal to the product obtained by multiplying the annual license fee for the year ending by 1.03.

5. Engineering Review

Prior to the Commencement Date, the COUNTY shall have access to the Premises, during business hours after a minimum of three (3) days prior written notice to LICENSOR, for undertaking any necessary tests, studies and inspections relating to the COUNTY'S proposed use of the Premises. The COUNTY shall fully restore to its prior condition any portion of the Premises disturbed by the COUNTY.

6. Construction and Alteration of the Premises

(a) Before commencement of any construction or any subsequent alteration thereof, the COUNTY shall submit to LICENSOR for LICENSOR'S prior written approval all plans, specifications, drawings, rendering, permits, applications and descriptions which relate to the proposed Facilities or the alteration of the Premises in any way. Such approval shall not be unreasonably withheld, denied, or delayed. In addition, the COUNTY shall provide to LICENSOR (i) a certification by a professional engineer satisfactory to LICENSOR which states that the proposed Facilities or alterations will be in compliance with all applicable laws, rules and regulations, and (ii) copies of all approved permits and governmental approvals. After the COUNTY'S submission of such plans and specifications LICENSOR shall notify the COUNTY within thirty (30) days whether it deems the plans and specifications to be satisfactory then approval of the plans and specifications shall be deemed granted by LICENSOR. The COUNTY shall pay the reasonable costs and expenses of LICENSOR'S engineering review of the COUNTY'S plans and specifications. Should the LICENSOR determine that the plans and specifications for the proposed Facilities are unsatisfactory, the COUNTY shall revise the plans and specifications to remedy the defects noted by LICENSOR and re-submit the revised plans and specifications for LICENSOR'S review pursuant to this paragraph. The LICENSOR shall be limited only to a second review at which time the COUNTY'S plans must be approved.

(b) If construction of the Facilities should require the relocation of any facilities or equipment presently located at the Premises owned by the LICENSOR, such facilities or equipment may be relocated by the COUNTY only with LICENSOR'S prior written consent and at the COUNTY'S sole cost and expense.

7. Interference.

LICENSOR agrees not to permit any future use of the Facilities that will interfere with the COUNTY'S operations pursuant to this Agreement. The COUNTY agrees that its use of the Premises will not interfere with any existing user of the Premises as of the date of this Agreement. If any interference is caused by LICENSOR or the COUNTY due to improper or unlawful operation, or any subsequent change or addition of equipment or improvements by LICENSOR, the COUNTY or any other users of the Premises on the Premises, the interfering party agrees to eliminate same in a prompt and timely manner. If interference that is improperly caused by either the COUNTY or the

LICENSOR or the licensee of either PARTY cannot be eliminated within a reasonable length of time, but not to exceed thirty (30) days after written notice thereof, LICENSOR or the COUNTY, as the case may be, shall cause the use of the interference causing equipment to cease except for brief tests necessary for the elimination of the interference.

8. Condition of the Premises

On the Commencement Date, the COUNTY will accept the Premises in an "as is" condition at that time.

9. Maintenance and Repairs of Facilities

The COUNTY must be responsible for all maintenance and repair of the Facilities and any appurtenant equipment or facilities of the COUNTY during the term of this Agreement. In addition, the COUNTY shall paint or otherwise finish the support structures for its antennas with a color or finish approved by the LICENSOR, unless otherwise required by law.

10. Indemnification.

To the extent limited by law, the COUNTY hereby agrees to indemnify and hold the LICENSOR harmless against any claims which may be made against the LICENSOR for loss or damage to persons or property caused solely by the antenna or resulting from the COUNTY'S use of the Property or installation, repair or maintenance of the equipment by the COUNTY. This indemnification is subject to the liability and damage caps stated in the Local Government Tort Claims Act, Md. Cts. & Jud. Proc. Code Ann. §§5-301, et seq., as amended from time to time (the "LGTCA"), to the extent applicable This indemnification is not intended to be a waiver of governmental immunity by the COUNTY or the LICENSOR, and is not intended to create any rights or causes of action in third PARTIES. The COUNTY shall not be liable for damages or injury occasioned by the acts or omissions of LICENSOR or its agents, or failure to comply with its obligations under this License.

11. Insurance

The COUNTY shall have 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 restricts the legal defense fund to members of the Fund and does not allow for outside entities. The 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 \$15,000 for property damage for automobile liability and State of Maryland statutory limits for worker's compensation. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, as determined by the Local Government Tort Claims Act, 1986. This insurance policy must be maintained continuously by the COUNTY during the full term of this license agreement and during any extension of the license term. The COUNTY shall deliver to LICENSOR a certificate of insurance evidencing the coverage above described within fifteen (15) days after execution of this License Agreement.

12. Insurance (Agents, contractors / subcontractors)

The COUNTY (Montgomery County) agrees to require any and all agents, contractors and subcontractors involved with the constructing, installation and/or operation of the Facilities upon the Premises in the general configuration shown on Exhibit D hereto, to maintain coverage of at least Two Million Dollars (\$2,000,000) combined single limit for both bodily injury and property damage, shall name LICENSOR as additional insured, and shall provide that it may not be canceled without at least forty-five (45) days prior written notice to LICENSOR, and shall otherwise be reasonably satisfactory to LICENSOR. Such insurance may be included within the coverage of a blanket or umbrella policy and must be issued by an insurance company reasonably acceptable to LICENSOR. The COUNTY shall require that any and all agents, contractors and subcontractors, as described above related to this agreement, provide LICENSOR an original certificate evidencing such insurance or self-insurance upon the Commencement Date of the term of this agreement, and at any other time during the term of this agreement upon the request of the LICENSOR. The COUNTY will also require that any and all agents, contractors and subcontractors, maintain hazard insurance to cover damage to or destruction of the Facilities.

The COUNTY shall also agree to include a requirement of all agents, contractors and subcontractors to agree to paragraph 10 in this agreement related to the requirement of indemnification whereby these parties agree to indemnify and hold the LICENSOR harmless against any claims which may be made against LICENSOR for loss or damage to persons or property caused by the antenna or resulting from the above described parties use of the Property, construction, installation, repair or maintenance of the equipment by the agents, contractors or subcontractors.

13. Liens.

The COUNTY shall promptly pay for all work, labor, services or material supplied by or on behalf of the COUNTY at the Premises or in connection with the Facilities. If any mechanics' or materialmen's liens shall be filed affecting the Premises, the COUNTY shall cause the same to be released of record by payment, bond, court order or otherwise, within thirty (30) days after notice of filing thereof. Upon the completion of the construction of the Facilities or upon the completion of any approved alternations thereto, the COUNTY shall obtain and provide to LICENSOR lien waivers from all contractors and subcontractors which provided services or materials in connection with the construction or alteration of the Facilities.

14. Compliance with Laws.

The COUNTY shall, at its expense, throughout the term of this Agreement, obtain all building permits and other governmental or quasi-governmental licenses, permits consents and approvals required for the construction, installation, operation and use of the Facilities in compliance with all applicable laws, rules order, ordinances and requirements, including but not limited to, all laws, rules, orders, ordinances and requirements which relate to the FAA, FCC, health, safety, environment or land use. In the event of the COUNTY'S failure to comply with this Section, LICENSOR may, but is not obligated to, take such actions as may be necessary to comply with any such laws, rules, regulations, order, ordinances or requirements, and the COUNTY shall

immediately reimburse LICENSOR for all costs and expenses incurred subject to funding availability.

15. Representations and Warranties.

(a) The County represents and warrants to the LICENSOR (i) that it is a corporate body and politic and a political subdivision of the State of Maryland, (ii) that it has authority to enter into this Agreement, (iii) that the PARTY executing this Agreement has been duly authorized to do so.

(b) LICENSOR represents and warrants to the COUNTY (i) that it is an instrumentality exercising public and essential governmental functions, (ii) that it has authority to enter into this Agreement, (iii) that the person executing this Agreement has been duly authorized to do so.

(c) To the best of LICENSOR'S knowledge the making of this Agreement, and LICENSOR'S performance of this Agreement, will not violate the provision of any agreement or encumbrance of any kind under which LICENSOR is a PARTY or is bound or which restricts in any way the disposition or use of the Premises.

16. Termination.

Upon the expiration of earlier termination of the License, the COUNTY shall at the option of LICENSOR, remove the Facilities from the Premises as provided in Section 2(d) of this Agreement, and shall repair any damage to the Premises and associated public utility Areas caused by the installation, operation or removal of the Facilities. If the COUNTY remains on the Premises more than ten (10) days after the termination of this Agreement, the COUNTY shall pay to LICENSOR for such holding over a license fee per month equal to 1.05 times the monthly installment of the license fee which accrued during the immediately preceding full month. The license fee for such holding over shall remain in effect until the COUNTY removes the Facilities. If the Facilities are not removed within 120 days after expiration or earlier termination of the License, LICENSOR shall at its option complete the removal and restoration at the COUNTY'S expense. Acceptance of the license fees upon Termination shall not be a waiver by LICENSOR of any of its other remedies at law or in equity. Section 5, 10, 13 and 16 of this Agreement shall survive termination of the License.

17. Default.

If the COUNTY shall fail to pay when due any of the installments of the license fee provided for herein or any other sum accruing pursuant to the terms of this Agreement, and such failure shall continue for ten (10) days after written notice from LICENSOR, or if the COUNTY shall be in default or fail to perform in a timely manner any other obligation herein provided, other than the payment of license fee installments, and such failure shall continue for thirty (30) days after written notice from LICENSOR, or if the COUNTY abandons or vacates the Facilities for more than four (4) consecutive months prior to the termination of this License, then the COUNTY shall be considered to have caused an event of default ("Event of Default") hereunder and LICENSOR may

elect to terminate this Agreement at its sole discretion and pursue its remedies at law or in equity. Notwithstanding the foregoing, if the COUNTY fails on more than three (3) occasions in any twelve (12) months period to pay any license fee installments when due, the COUNTY shall not be entitled to the written notice and opportunity to cure otherwise provided above and shall be considered to be have caused an Event of Default.

18. Estoppel

Either PARTY shall, at any time upon thirty (30) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this lease, as so modified, is in full force and effect) and the date to which the fees and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such PARTY'S knowledge, any uncured defaults on the part of the other PARTY hereunder, or specifying such defaults if any are claimed.

19. Non-Appropriation

This License Agreement is subject to the annual appropriation of funds. This License Agreement shall terminate automatically on July 1 of any year for which Montgomery County, for whatever reason, does not appropriate funds to operate this project as stated. The COUNTY shall give LICENSOR at least thirty (30) days written notice of the lack of appropriation.

20. Non-Discrimination

The LICENSOR agrees to comply with all applicable state and federal law and regulations regarding employment discrimination.

21. Brokerage Fees and Commissions

LICENSOR and the COUNTY have not retained anyone to solicit or secure this License from Montgomery County, Maryland, and no commission or other fees are due to any person or entity as the procuring cause of entering into this License Agreement.

22. Not A Partnership

This License Agreement is intended only to create a license relationship between the PARTIES for the use of the Property. As a result of entering into this License Agreement, the Fairfax County Park Authority 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 LICENSOR and LICENSEE.

23. Notices.

All notices required hereunder or in respect hereof shall be in writing and shall be

transmitted by postage prepaid certified mail, return receipt requested, delivered by hand, or transmitted by overnight courier to the following addresses:

LICENSOR: Fairfax County Park Authority
12055 Government Center Parkway, Suite 421
Fairfax, Virginia 22035
Attn: Director, Planning & Development Division

LICENSOR'S payment to:

Address: Fairfax County Park Authority
12055 Government Center Parkway, Suite 926
Fairfax, Virginia 22035

Attn: Administration Division – Parveen Bhatia

With a copy to: (Same address)
Attn: Legal Department

COUNTY: Montgomery County
Office of Real Estate
Department of Public Works and Transportation
101 Monroe Street, 10th Floor
Rockville, Maryland 20850
Tel. 240-777-7252
Fax. 240-777-7178

With a copy that does not constitute notice to:
Montgomery County, Maryland
Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
Tel. 240-777-6700
Fax. 240-777-6705

Notices shall be deemed given upon delivery or mailing by certified mail with return receipt requested thereof to the address specified above. Either PARTY may change its address or any address for copies by giving ten (10) days prior notice of such change in the manner described above.

24. Assignment.

This Agreement may not be assigned by the COUNTY.

25. Miscellaneous.

This Agreement contains the entire agreement between the PARTIES with respect to the subject matter hereof and may not be amended except by a writing signed by the PARTIES hereto. The invalidation of any of the provisions hereof shall not affect any of the other provisions hereof, which shall remain in full force.

26. Governing Law.

This License Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. All claims arising out of this Agreement must be filed in a Trial Court of competent jurisdiction in Fairfax, Virginia or the United States District Court for the Eastern District of Virginia.

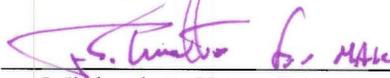
IN WITNESS WHEREOF, the PARTIES hereto have set their hand and affixed their respective seals the day and year first above written.

WITNESS

Barbara J. Mead (SEAL)

LICENSOR

Fairfax County Park Authority
an instrumentality exercising public
and essential governmental functions

By: 
Michael A. Kane, Director

Date: 10/24/03

WITNESS

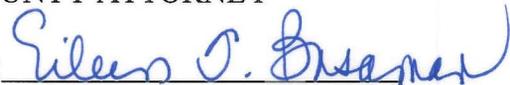
Debbie Richards (SEAL)

COUNTY:
MONTGOMERY COUNTY, MARYLAND

By: 
~~William Mooney, Assistant~~
Assistant Chief Administrative Officer
S. W. R. RILLY

Date: Sept. 25, 2003

APPROVED AS TO FORM AND
LEGALITY OFFICE OF THE
COUNTY ATTORNEY

By: 

Date: 9/24/2003

RECOMMENDED BY:

By: 
Michael Hoyt, Deputy Director
Dept. of Public Works & Transportation

Date: 9/12/03