

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, is made this 12th day of June, 2017, between the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia ("Town"), and **MONTGOMERY COUNTY, MARYLAND**, a body corporate and politic and a political subdivision of the State of Maryland ("County"), (the Town and the County together the "Parties").

WITNESSETH

WHEREAS, the Parties entered into a five-year License Agreement in 2002, (the "Agreement") and renewed the Agreement with the most recent expiration date being February 2017; and

WHEREAS, in accordance with the Agreement and subsequent renewals, the County installed and maintained the County's 800 Mhz Bi-Directional Amplifier System, (the "Facilities"), on the roof of the Town's Water Treatment Plant located at 43234 Edwards Ferry Road, Leesburg, Virginia (the "Property"). The County also installed and operated electronic equipment modules, associated with the maintenance and operation of its Facilities on the Property; and

WHEREAS, the County acknowledges the primary use of the Property and agrees the continued maintenance of its Facilities shall not adversely affect the Property; and

WHEREAS, in accordance with the terms of this Agreement the Town will allow the County continued use of the Property to maintain its Facilities.

NOW, THEREFORE, the Town and the County, for and in consideration of the sum of One Dollar (\$1.00), the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants hereinafter contained, hereby agree and the Town hereby grants unto the County for the term and upon the conditions, covenants and agreements hereinafter set forth, permission to use the Property for the purpose of continued installation, operation and maintenance of the County's Facilities.

- A. Conditions. The Agreement permits the County a non-exclusive license to use the Property in accordance with the terms contained herein. The Facilities shall be, at all times, maintained, operated and repaired by the County as provided herein in a safe manner satisfactory to the Town.
- B. Term/Termination. Unless terminated in accordance with the provisions herein, the term of the Agreement shall be five (5) years from the date hereof, (the "Term").

Should the County abandon or remove its Facilities without the intent to resume use within a six (6) month period of time, this Agreement shall terminate within the discretion of the Town. If abandoned the County shall remove its Facilities forthwith. If the County fails to

remove its Facilities, the Town may undertake such removal and submit an invoice to the County for the cost of the removal completed by the Town. Said invoice shall be due and payable by the County within ninety (90) days of the County's receipt of said invoice.

The Town may unilaterally terminate the Agreement upon one hundred twenty (120) days' notice in the event the Town determines, in the exercise of its reasonable good faith judgment, that the maintenance and/or operation of the Facilities and the continuation of the Agreement shall adversely affect the health, safety, and welfare of the Town. In such an event, the Town agrees to cooperate with the County to attempt to find other suitable space in the Town for placement of the Facilities. Should the Town unilaterally terminate the Agreement the County agrees, to relocate its Facilities at its own expense unless otherwise provided by applicable law of the Commonwealth of Virginia and/or by an ordinance of the Town.

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

Termination of this Agreement shall not relieve or release the County or the Town from any liability or obligation, which may have been incurred or assumed by the County or the Town hereunder prior to termination.

C. Renewal. Provided the County is not in default, this Agreement shall automatically renew for one five (5) year term unless either Party notifies the other of its intention not to renew in writing at least thirty (30) days prior to the end of the current term. The Agreement shall be renewed under the same terms and conditions. In the event the Agreement is not renewed, the County shall remove its Facilities within 30 days of such notice at its own cost. If the County fails to remove its Facilities within 30 days, the Town may undertake removal and submit an invoice to the County for removal completed by the Town. Said invoice shall be due and payable by the County within 90 days of the County's receipt of said invoice.

D. Maintenance and Operation. Routine maintenance shall be defined as any work which can be accomplished utilizing mechanical equipment and/or vehicles operated from a location which will not hinder any work by the Town. In order to prevent a structural impact on Town infrastructure, all equipment upgrades for replacements of antenna equipment shall be approved by a licensed engineering firm for structural stability at no cost to the Town.

The County will have the right of ingress to and egress from the Property, twenty-four (24) hours a day, seven days a week. An escort is required to access the Property, and the Property is not manned 24 hours a day, 7 days a week. Therefore, the County understands some wait time may be necessary depending on the day and time the County requires access. The County shall contact Water Supply staff for access at the following telephone numbers:

During normal plan operations: 703-737-7110

After business hours/no answer received at above-number: 571-246-4273; 571-246-4448

E. No Electrical or Magnetic Interference. The County will attach and energize any antenna

installed by the County on the Property in such a manner that the reception and transmission signals of the Town are not interfered with or degraded. The County will continue to maintain any antenna previously installed by the County on the Property in such a manner that the reception and transmission signals of the Town are not interfered with or degraded. The County must pay the cost of proper installation and maintenance or any required corrective action. If any antenna installed on the Property by the County causes any interference with or degradation of the Town's signals and the interference or degradation is not corrected by the County within seventy-two (72) hours after written notification from the Town, then the Town shall, at its discretion shut down the interfering equipment until the interference or degradation is corrected.

The Town will send written notification of any interference problems caused by the County to:

Montgomery County Government
Attention: Gerry Adcock, Manager Radio Communications
16647 Crabbs Branch Way
Rockville, Maryland 20855
240-773-7278 (tel)
301-706-5090 (mobile)

F. Utility Service. The County agrees to pay for all costs associated with the operation of its Facilities located on the roof of the Property, including all costs for telephone and electrical wiring and outlets used by the County. The electric lines or other utilities serving the County's Facilities must have a separate utility metering to be paid for by the County.

G. General Responsibilities of the County.

1. Compliance with Applicable Laws and Regulations. The County shall operate and maintain its Facilities and improvements in accordance with all applicable federal, state, county and Town laws, orders, rules and regulations existing on the date of this Agreement or enacted thereafter, affecting the installation, maintenance and use of the Facilities.
2. Indemnification. Subject to appropriation and statutory limitations the County agrees to indemnify and hold the Town, its officers, agents, and employees, harmless from and against all claims, losses, expenses, or suits for injuries, death, or damages to real and/or tangible personal property caused by the acts or omissions of the County, its officers, agents, or employees. Notwithstanding the provisions of this clause, the County shall not be liable for nor shall it indemnify the Town for property damage or personal injuries caused by the acts of any third parties over which the County has no control, or acts of the Town, its authorized officers, agents, and employees. The Town shall not be liable for damage to the Facilities caused by any improvements, except where the damage to the Facilities is caused by the negligence, gross negligence, or willful misconduct of the Town.
3. Any obligation or liability of the County arising in any way from this Agreement 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 the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. §§ 5-301, et seq. (the "LGTCA"); Md. Code Ann. Art. 25A, § 1A and Md. Code Ann., Cts. & Jud. Proc. § 5-509 (together the "County Indemnification Statutes"), all as amended from time to time. Any indemnification given by the County in this Agreement is not intended to create any rights or causes of action in any third parties or to increase the County's liability above the caps provided in the County Indemnification Statutes, as applicable.

4. Disclaimer of Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall either party be liable for consequential, incidental, punitive, exemplary, or similar damages under this Agreement.

H. 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 \$800,000 per total claims that arise from the same occurrence and \$400,000 per an individual claim and \$30,000 per person, \$60,000 per accident for bodily injury and \$15,000 for property damage for automobile liability and state statutory coverage for workers' compensation. These are the maximum limits of liability for which 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 License Agreement and during any extension of the License Term. The County shall deliver to the Town a certificate of insurance evidencing the coverage above described within fifteen (15) days after execution of this Agreement.

I. Non-Appropriation. This Agreement is subject to the annual appropriation of funds. The 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 the Town at least thirty (30) days written notice of the lack of appropriation. The Town 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, other than those amounts as listed in Sections B, C, and F, above.

J. Notices. Notices under this Agreement shall be deemed to be properly served if delivered in person or in writing by certified mail, with return receipt requested, to the following addresses or such other places as the parties reasonably designate:

To the Town:

Director of Utilities
The Town of Leesburg
1385 Russell Branch Parkway
Leesburg, Virginia 20175

With a copy to:

Town Manager
Town of Leesburg
25 W. Market Street
Leesburg, Virginia 20176

To the County:

Montgomery County
Department of General Services
Office of Real Estate
101 Monroe Street, 9th Floor
Rockville, Maryland 20850

With a copy to:

Montgomery County
Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850

In addition to the foregoing, the County will provide the name and contact person and an emergency telephone number for maintenance of the Facilities.

K. No Waiver. Nothing contained in the Agreement shall be deemed to waive the requirement of the various codes, regulations, resolutions, and statutes regarding permits, fees to be paid, or manner of construction, operation, or maintenance.

L. Assignment. No assignment of this Agreement or any rights hereunder shall be made without the prior written consent of the Town. However, the Town shall not unreasonably delay, condition, or refuse its consent to any such assignment by the County, upon written request by the County.

M. Entire License. This Agreement (and the Exhibit(s)) embodies the entire agreement between the Town and the County. It is not to be modified or terminated except as provided herein or by any written agreements signed by the authorized representatives of both parties. If any provision herein is invalid, it shall be considered deleted and shall not invalidate the remaining provisions.

N. Applicable Law. The parties agree that this License Agreement will be governed by the laws of the Commonwealth of Virginia and shall be binding upon the parties and their respective-successors and/or assigns.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first written above.

THE TOWN OF LEESBURG, VIRGINIA

APPROVED AS TO FORM:

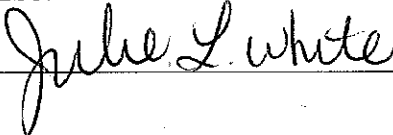
By: 
Barbara Notar, Town Attorney

By: 
Kaj Dentler, Town Manager


Date: 6/12/17

Date: 06/12/17

WITNESS:

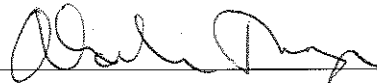
By: 

MONTGOMERY COUNTY, MARYLAND

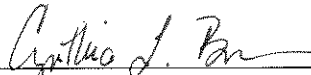
By:  (Seal)
Ramona Bell-Pearson
Assistant Chief Administrative Officer

Date: June 8, 2017

APPROVED AS TO FORM & LEGALITY
OFFICE OF THE COUNTY ATTORNEY

By: 

RECOMMENDED:

By: 
Cynthia L. Brenneman, Director
Montgomery County
Office of Real Estate

Date: 6/7/17

Date: 6/7/17