



**Date of Council Meeting: June 23, 2015**

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

**Subject:** License Agreement between the Town of Leesburg (“Town”) and Loudoun County (“County”) for telecommunications facilities in Town Right-of-Way

**Staff Contact:** Barbara Notar, Town Attorney  
Calvin Grow, Transportation Engineer

**Council Action Requested:** To approve a resolution for a License Agreement between the Town and County for telecommunications facilities in Town Right-of-Way.

**Staff Recommendation:** Staff supports the proposed License Agreement to authorize the County to use Town right-of-way for telecommunications purposes (fiber optic cable).

**Commission Recommendation:** Not applicable.

**Fiscal Impact:** Since the County is the licensee, the normal fees for “pass through” telecommunication providers to use Town Right-of-Way are waived.

**Work Plan Impact:** None.

**Executive Summary:** The County seeks to install fiber optic cable in Town Right-of-Way in order to expand its Emergency Communications Center. In order to allow the County to use Town Right-of-Way, a License Agreement must be entered into between the parties.

**Background:** The County seeks to install a fiber optic system to support the County’s Emergency Communications Center (“ECC”). The ECC supports the Town. The County will install and maintain fiber optic junction boxes at Loudoun Center Place and Sycolin Road, and the road crossing south of Miller Drive at Sycolin Road. Currently, a fiber optic junction box exists in front of the County Building located at 801 Sycolin Road. The County must use public streets within the Town in order to accomplish this, and acknowledges that the construction and operation of the Facilities shall not adversely affect the Town property’s primary use for street purposes.

A License Agreement is needed by the County to allow the fiber optic cable system to use public streets located within the Town. The term of the License Agreement shall be for five (5) years with an automatic renewal for a like period.

**Attachment:** Resolution  
Draft License Agreement between Town and County  
Exhibit A (Route)

PRESENTED June 23, 2015

RESOLUTION NO. 2015-

ADOPTED \_\_\_\_\_

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND LOUDOUN COUNTY FOR TELECOMMUNICATIONS FACILITIES IN TOWN RIGHT-OF-WAY

WHEREAS, Loudoun County (“County”) seeks to use the Town’s Right-of-Way for telecommunication purposes; and

WHEREAS, the County seeks to install, operate and maintain a fiber optic cable system (the “Facilities”) that will use public streets within the Town; and

WHEREAS, the purpose of the Facilities is to provide support to the County’s Emergency Communications Center which provides support to the Town; and

WHEREAS, the County acknowledges that the primary use of the Town’s Rights-of-Way is for street purposes, and that the construction and operation of the Facilities shall not adversely affect such property’s primary use for street purposes; and

WHEREAS, a License Agreement is necessary to allow installation, operation and maintenance of the Facilities; and

WHEREAS, the Town Attorney has negotiated a License Agreement between the Town and the County to install operate and maintain the Facilities; and

WHEREAS, the term of the License Agreement will run for ninety five (5) years with an automatic renewal for a like period; and

WHEREAS, the County has approved the License Agreement, and all fees will be borne by the County; and

WHEREAS, the terms contained in the License Agreement are reasonable and equitable, and will benefit the Town and the citizens of Leesburg.

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG, AND LOUDOUN COUNTY FOR TELECOMMUNICATIONS FACILITIES IN TOWN RIGHT-OF-WAY

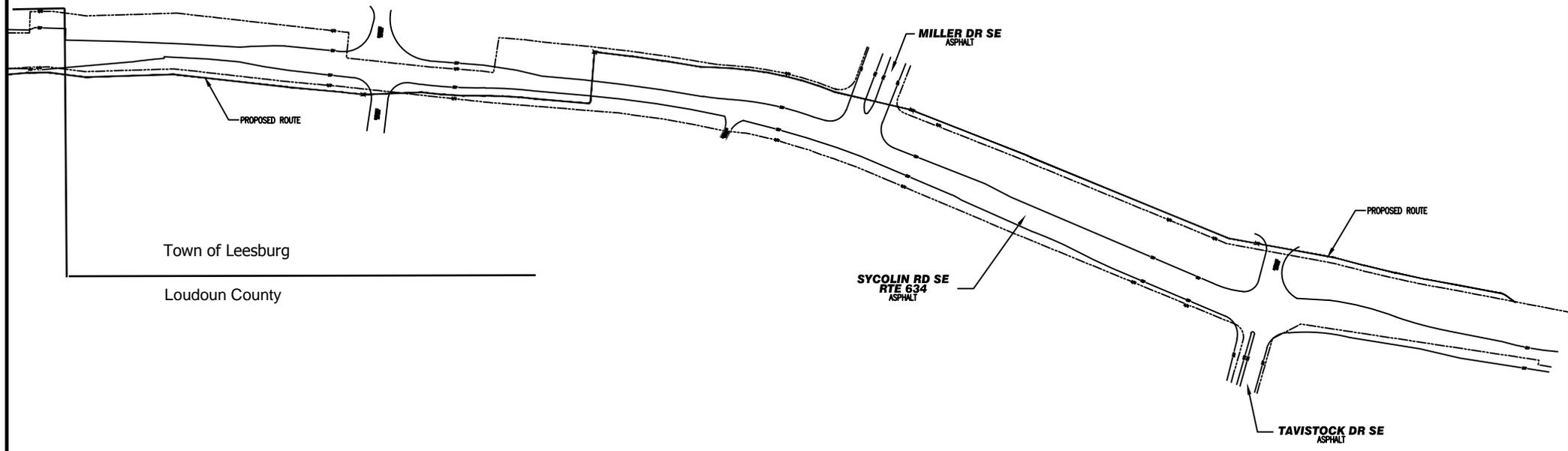
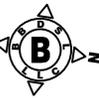
THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia that the Town Manager is authorized to execute the License Agreement with Loudoun County for telecommunications facilities pass through the Town so long as approved by the Town Attorney.

PASSED this \_\_\_\_\_ day of June, 2015.

\_\_\_\_\_  
Kristen C. Umstattd, Mayor  
Town of Leesburg

ATTEST:

\_\_\_\_\_  
Clerk of Council



Town of Leesburg  
 Loudoun County

MILLER DR SE  
 ASPHALT

SYCOLIN RD SE  
 RTE 634  
 ASPHALT

TAVISTOCK DR SE  
 ASPHALT

PROPOSED ROUTE

PROPOSED ROUTE



**SYCOLIN RD SE  
 TOWN OF LEESBURG PERMIT  
 TOWN OF LEESBURG LIMITS  
 LEESBURG, VA**



|              |              |               |                 |
|--------------|--------------|---------------|-----------------|
| FILE: CC4699 | ENGINEER: SF | DRAWN BY: BM  | DATE: 02/24/15  |
| REV:         | PN#:         | SCALE: N.T.S. | SHEET: 01 OF 01 |

**LICENSE AGREEMENT  
FOR TELECOMMUNICATIONS FACILITIES PASSING THROUGH  
THE TOWN OF LEESBURG, VIRGINIA**

**THIS LICENSE AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **COUNTY OF LOUDOUN, VIRGINIA** (the “County”), a political subdivision of the Commonwealth of Virginia, and the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation (“Town”), (the County and the Town being collectively referred to as the “Parties”).

WITNESSETH

WHEREAS, the County, has requested that the Town authorize the County to use Town Rights-of-Way and public owned property for telecommunications purposes and to install, operate and maintain a fiber optic cable system (the “Facilities”) that will use the public streets within the Town to a certain extent; and

WHEREAS, the general location and description of the Facilities to be installed within the Town’s Rights-of-Way shall be in accordance with certain drawings approved by the Town and attached hereto as Exhibit A (the “Route Map”) and,

WHEREAS, the County acknowledges that the primary use of the Town’s Rights-of-Way is for street purposes and that the construction and operation of the Facilities shall not adversely affect such property’s primary use for street purposes; and

WHEREAS, the Town is willing to allow the County to use certain Town Rights-of-Way and public owned property subject to the terms and conditions set forth herein.

NOW, THEREFORE, the Town and County, for and in consideration of the mutual promises and 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 subject Rights-of-Way for the purpose of installing, operating, and maintaining the Facilities.

A. Conditions. 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.

The rights and privileges herein granted to the County shall be subject to the rights or interests held by others, if any, in and to the subject Rights-of-Way as of the date of this Agreement. The Town makes no representations or warranties, express or implied, concerning the extent of such rights held by others and shall have no responsibility for conflicts with others as a result of this Agreement. The Town makes no warranties with respect to the subject Rights-of-Way but gives the County permission to use such rights as are herein provided.

B. Term/Renewal/Termination. Unless terminated in accordance with the provisions herein, the term of the Agreement shall be five (5) years from the date hereof. The Agreement

will automatically renew for a like period unless either party provides twelve (12) months' notice of non-renewal.

Should the County abandon or remove the Facilities without an intention to resume use thereof for a six (6) month period of time, this Agreement shall terminate forthwith at the election of the Town.

The Town may unilaterally terminate the Agreement upon 1 year 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 such License 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 public Rights-of-Way of the Town for placement of the Facilities. The County agrees, in such cases 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.

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. Right-of-Way Application and Permit. The County shall file its Right-of-Way Permit Application and plans with the Town. All fees associated with the Application and Permit are waived.

D. Junction Box. County will install and maintain, for the term of this Agreement, and during any renewals, fiber optic junction boxes at (1) Loudoun Center Place and Sycolin Road and (2) the road crossing south of Miller Drive at Sycolin Road. Moreover, there is currently a fiber optic junction box near Sycolin Road in front of the 801 Sycolin Road County building.

E. License Agreement Fee. Intentionally Deleted.

F. Construction Plans and Specifications. Construction of the Facilities shall be performed in accordance with the approved construction plans approved in connection with the Right-of-Way Permit.

G. Confining Construction Activity. During construction, County and its contractors and subcontractors shall confine all construction activity, including access and storage, within the applicable areas specified on the approved Plans.

The County hereby agrees that the roadway or vehicular traffic shall not be significantly hindered or disturbed during installation, maintenance or operation of the facilities. Prior to construction or repair, other than "Routine Maintenance" as defined below, the County shall notify the Town, obtain a Right-of-Way Application and Permit, and, if necessary, proper traffic controls approved by the Town shall be installed. Except in an emergency, the County shall notify all residents affected by proposed work prior to the commencement of such work by:

1. Mailing written notice of the County's intent to commence work in the area to each address affected by the proposed work; or

2. Hanging door placards on the doors of all affected residences and businesses at least seven (7) days prior to commencement of such work and posting additional notices in conspicuous places in the area of the proposed work as required to provide reasonable notice to affected residences and business of the proposed work.

The County shall perform the work authorized in such Permit in accordance with all requirements of the Town Code, and any subsequent ordinances or regulations currently in force or that may be adopted by the Town regarding excavation work.

H. Excavation. County shall not make or begin any excavation or other subsurface activity within the subject Rights-of-Way without first obtaining a Right-of-Way Permit and information concerning the possible location of any underground facility from each and every public utility, municipal corporation, or other person having the right to bury underground facilities.

I. Inspection of Construction. The construction of the Facilities is subject to the Town's inspection at all places and all reasonable times to ensure strict compliance with the terms of this Agreement. Such inspections shall be performed in a timely manner so as not to delay the installation of the Facilities.

J. 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 is entirely behind the back of curb and in such a manner as to not encroach into the traffic lanes or disrupt traffic flow.

Prior to commencement of any maintenance that is more extensive than routine maintenance, County shall submit a proposed maintenance plan and schedule to the Town for approval. The plan and schedule, at a minimum, shall provide a description of work to be performed, a description of equipment, vehicles, work techniques and methods to be used in connection with the maintenance or operation activity, a schedule of when maintenance or operation work will occur with an estimated as to the length of time required to perform the work, and such other information as the Town may need to order to evaluate the proposed maintenance or operation activity.

County shall confine all such extensive maintenance and operation activities, including access and storage, within the applicable areas specified in the approved maintenance and operation plans.

K. Restoration. County shall, as soon as practicable after the completion of any extensive maintenance activities, restore all areas disturbed during such activities. These areas shall be restored in kind to a condition substantially the same as that which existed prior to County performing such maintenance activities, and shall be restored to the reasonable satisfaction of the Town.

L. General Responsibilities of Licensee.

1. Compliance with Applicable Laws and Regulations. County shall construct, 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. Liability. The Town and the County enter into this Agreement with the understanding that all financial and legal liability associated with the County's activities as contemplated herein will be borne solely by the County. Neither party waives any defense of sovereign immunity.

3. 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.

4. Relocation of Facilities. At the time of the execution of this License Agreement, the Town is in the process of improving several public rights of way in the vicinity of the County's intended facilities. At any time after the execution of this License Agreement, the Town may require that any properties or facilities of the County be removed or relocated. The Town shall give written notification of this requirement in accordance with Paragraph N below. Within 365 days after receipt of notification, unless the Town extends such period for good cause shown, the County shall remove or relocate its facilities to such place and under such terms and conditions as the parties determine to be in the best interest of both entities. The County shall bear all costs and expenses associated with the removal and relocation except that the Town will issue, without charge to the County, whatever local permits are required for the relocation of the County's facilities. If the County does not complete its removal or relocation within 365 days or such other period as authorized by the Town, the Town may take such actions as necessary to effect such removal or relocation at the County's expense. Further, the County will be responsible for any additional costs and expenses incurred by the Town as a result of the County's failure to remove or relocate its facilities in a timely manner.

5. The County will:

a. Perform a right of way location verification along the proposed route of the fiber to ensure that the fiber is being located horizontally as agreed by the Town and County;

b. Provide a plan and profile of the fiber location to the Town to ensure that the fiber will be located vertically as agreed by the Town and County.

M. Insurance. County shall maintain general liability insurance in the amount of Two Million Dollars (\$2,000,000) and shall provide to the Town simultaneously with the execution hereof, a certificate of insurance for such policy, which shall name the Town as an additional insured thereon.

N. Notices. Notices under the 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 Public Works  
The Town of Leesburg  
25 W. Market St.  
Leesburg, Virginia 20176

With a copy to:

Town Manager  
Town of Leesburg  
25 W. Market St.  
Leesburg, VA 20176

To Licensee:

Director, Department of Information Technology  
Loudoun County, Virginia  
41975 Loudoun Center Place  
Leesburg, VA 20177-7300

With a copy to:

Director, Department of Transportation and Capital Infrastructure  
803 Sycolin Road  
Leesburg, VA 20177

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

O. 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, including without limitation, the Town's right-of-way permit requirements to work within the right-of-way.

P. 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.

Q. Entire License. This License Agreement (and the Exhibit) 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. The County shall not expand or extend its Facilities without approval from the Town Transportation Engineer and a written amendment to this License signed by the Town Manager and authorized agent of the County.

R. 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.

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

COUNTY

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

THE TOWN OF LEESBURG

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_