



Date of Council Meeting: April 9, 2013

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Loudoun Water Lease Agreement for Automated Metering Infrastructure Antenna on Carr Tank I instead of Carr Tank II.

Staff Contact: Amy Wyks, Director of Utilities

Recommendation: Staff recommends Town Council authorize the request by Loudoun Water for installation of an automated metering infrastructure antenna on Carr Tank I instead of previously approved Carr Tank II.

Issue: Should Town Council agree to lease agreement for antenna installation for Loudoun Water?

Fiscal Analysis: N/A

Background: Resolution 2013-008 was adopted on January 8, 2013 for Loudoun Water to install an antenna on the Town's Carr Tank II. However, after a site visit and staff discussing the lease agreement, it has been determined that Carr Tank I is a more viable option for both Loudoun Water and Town.

Loudoun Water is currently deploying a fixed base automated metering infrastructure system for their water distribution system. Based on a propagation study, Leesburg' Carr Tank I was identified as a potential antenna site for their northern water system service area. Loudoun Water has requested installation on an antenna on the Town's Carr Tank I through a telecommunication lease document. A copy of the letter and draft agreement for the lease agreement request is attached.

The Town previously deployed a fixed based automate meter reading system and we are aware of the challenges associated with location of antennas and acknowledge the importance of accurate and timely water meter readings. The Town and Loudoun Water continue to have an excellent working relationship and wish to continue coordination of inter-jurisdictional operations.

Attachments (1) Resolution 2013-008
(2) Loudoun Water Letter
(3) Draft Loudoun Water Agreement for Antenna

The Town of
**Leesburg,
Virginia**

PRESENTED January 8, 2013

RESOLUTION NO. 2013-008

ADOPTED January 8, 2013

A RESOLUTION: AUTHORIZING LOUDOUN WATER'S REQUEST FOR LEASE AGREEMENT TO INSTALL AN AUTOMATED METERING INFRASTRUCTURE ANTENNA ON CARR TANK II

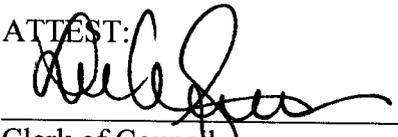
WHEREAS, Loudoun Water has requested use of Town's Carr Tank II for installation of radio infrastructure for their current automated metering infrastructure (AMI) deployment; and

WHEREAS, Town and Loudoun Water have had excellent working and collaboration relationship for many years and approval of their request will provide long term mutual benefit to both jurisdictions.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Town Manager is hereby authorized to execute a lease agreement for installation of an automated metering infrastructure antenna with Loudoun Water on a form approved by the Town Attorney.

PASSED this 8th day of January, 2013.


Kristen C. Umstatt, Mayor
Town of Leesburg

ATTEST:

Clerk of Council



Aref
Kept:
Since you are
working with
Jeanette

Aref Etemadi, PE
Town of Leesburg, Utility Administration Division
1385 East Market Street
Leesburg, VA 20176

Re: Loudoun Water Automated Metering Infrastructure Antennas

Dear Aref,

Loudoun Water would like to thank you for taking the time to speak with us concerning the possible use of Leesburg's Carr Tank #2 for radio infrastructure, associated with our upcoming Automated Metering Infrastructure (AMI) deployment.

We are in the process of finalizing procurement of a fixed base AMI system that will be used to read water meters via radio telemetry. During the initial RF propagation study conducted by the potential vendors, it was determined that Carr Tank #2 would provide adequate elevation and thus coverage throughout our northern service area. This location may provide our customers with an enhanced level of service as well as potentially opening up new opportunities for data acquisition and monitoring from sites like the Leesburg/Loudoun Water Emergency Interconnect Vault located along Riverside Parkway near Goose Creek.

We would like to have an opportunity to discuss this with you in more detail in the coming weeks in order to further advance our AMI project. In the meantime, if you could provide us with telecommunication lease documentation for review and any other information such as design requirements/constraints and a typical project review and approval timeline, it would be appreciated.

Sincerely,

Richard L. Jacobson, PE
Deputy Director, O&M



LEASE AGREEMENT

THIS LEASE AGREEMENT (“the **Lease**”), made this _____ day of _____, 2013, between the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation with its principal mailing address of 25 W. Market Street, Leesburg, Virginia 20176, hereinafter designated “**Lessor**” or “**Town**” and **LOUDOUN COUNTY SANITATION AUTHORITY** with its principal offices at 44865 Loudoun Water Way, Ashburn, Virginia, hereinafter designated “**Lessee**”. The Lessor and Lessee are at times collectively referred to hereinafter as the “**Parties**”.

WITNESSETH:

WHEREAS, Lessor is the owner of that certain real property located at 550 Ft. Evans Rd Rd. NE, Leesburg, VA, identified as PIN 148-47-2140-000, Tax Map 49////////16D among the Land Records of Loudoun County, Virginia, and being further the same property conveyed to Lessor by Deed of Dedication dated August 21, 1973, and recorded at Deed Book 581 Page 555 as recorded in the aforesaid Land Records (the “**Property**”), upon which, among other things, is a water tower owned by Lessor (hereinafter referred to “**Carr Tank I**”); and

WHEREAS, Lessee desires to locate: i) certain automated metering infrastructure equipment on space on the Carr Tank I; ii) 25 square feet of ground space on the Property for Lessee’s equipment shelter/structure for purposes relating to the automated metering infrastructure equipment; iii) right(s) of way for access to the equipment shelter/structure; and iv) space for public utilities necessary to operate the automated metering infrastructure equipment and equipment shelter/structure. The combined area of space on the Carr Tank I for the automated metering infrastructure equipment, ground space for the equipment shelter/structure, right(s)-of-way and space for utilities is collectively referred to as the “**Premises**”, the Lessee’s equipment and utility connections are referred to as the “**Equipment**” and

WHEREAS, the Town has determined that leasing the **Premises** to Lessee will not interfere with the public needs of Town’s operations at the Property and will benefit the Town and public by providing space for Lessee’s operation in a cooperative spirit as well as defraying a part of the cost of operating Town’s Carr Tank I.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and conditions set forth herein (including the foregoing recitals, which are a material part of this Lease and not mere prefatory language, and are herein fully incorporated by this reference), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Lease.**

- (a) Lessor hereby leases to Lessee (a) a portion of that certain space on the Carr Tank I, located at 550 Ft. Evans Rd., NE, Leesburg, Loudoun County, Virginia 20176 (PIN 148-47-2140-000, Tax Map No 49////////16D) and being further described in Book 581 Page 555 as recorded in the Land Records of Loudoun County, Virginia (the entirety of Lessor's property is referred to hereinafter as the "Property"); together with (b) space on the Carr Tank I necessary to maintain Lessee's vertical and horizontal separation requirements; together with (c) the exclusive right of ingress and egress, seven (7) days a week, twenty-four (24) hours a day, (with reasonable notice to the Town's designated contact) on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a right-of-way extending from the nearest public right-of-way, Ft. Evans Rd or Battlefield Parkway, to the demised premises and identified as "Ex. Ingress-egress easement" on **Exhibit 1 Part 1** and **Exhibit 1 Part 2**; together with (d) all of the following:
- (i) 25 square feet of ground space located within the fenced compound at the Property as shown on **Exhibit 1** hereto for installation of a 25 (size) foot platform. Use of this platform shall be limited to the installations and purposes detailed on **Exhibit 1 Part 2** and **Exhibit 1 Part 3** hereto and any approved revisions thereto;
 - (ii) The space to run electrical cable from the main electrical feed point to Lessee's transmitter/receiver base station(s), together with access to Lessor's electrical wiring infrastructure so that Lessee can install an electric or sub-meter direct from the utility company and the electric circuit(s) serving Lessee's equipment; Lessor may also allow the use of Lessor's meter and invoice the Lessee for such use.

2. **Term.**

- (a) This Lease shall become effective as of the date of the execution by both parties. The initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined).

The initial term shall commence on the first day of the month following the date Lessee obtains a Zoning permit from the Lessor authorizing installation of the Equipment on the Premises (the "Commencement Date"). Lessor and Lessee agree that they shall acknowledge the Commencement Date in writing (which may be by exchange of emails) (the "Commencement Acknowledgement").

- (b) This Agreement shall automatically be extended for four (4) additional five (5) year terms unless the Lessor terminates it at the end of the then current term by giving the Lessee written notice of the intent to terminate at least six (6) months prior to the end of the then current term.
- (c) The Lessee shall have the right to terminate this Lease upon thirty (30) days written notice for any reason or no reason.

3. **Rent.**

- (a) In lieu of rental payments from the Lessee to the Lessor for the use of the Premises, the parties agree that Lessee will waive any and all annual amounts due to it under the Emergency Service Water Agreement dated January 30, 2003, (hereinafter referred to as “Emergency Water Agreement”) a copy of which is attached hereto as **Exhibit 6**, so long as the amount due is lower than the “cap” described in 3(b) below.
- (b) A “cap” is established whereby in the event the annual payment due from the Lessor to the Lessee under the Emergency Water Agreement is higher than the average amount due for the preceding five (5) years, then the amount over and above the “cap” shall be paid to the Lessee by the Lessor as required under the Emergency Water Agreement.
- (c) Lessee shall connect directly to the existing electrical power supply panel as directed and provided by Lessor. Lessee will make a one-time payment of \$100 for the right to connection to the electrical power supply panel.
- (d) Lessee shall make payments annually beginning with the date of commissioning of the Equipment based upon mutually acceptable estimates for power costs for each ensuing year. Lessee shall provide cost estimates to Lessor for the first year of the lease which will serve as the basis for the first annual payment. Each year Lessor shall evaluate the impact of the Equipment power consumption and provide this information to Lessee which will serve as the basis for establishing the subsequent year’s power cost estimate and payment. Estimated overpayments or underpayments for the prior year will be mitigated through the payment established for the subsequent year.

4. **Compliance with Governing Laws and Regulations**

- (a) Lessee shall operate and maintain the Premises (exclusive of the Right of Way Area) during the Term in compliance with all present and future applicable laws, statutes and regulations imposed by any local, state, or federal authority having jurisdiction with respect thereto (including, without limitation, the rules and regulations of the Federal Communications Commission (the “FCC”) and the Federal Aviation Administration (the “FAA”) (collectively, “Regulations”). Lessor agrees to cooperate with Lessee in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises. Lessee shall attach as **Exhibit 2** to this Lease, copies of all FCC operating licenses and copies of other licenses which it has been issued pertinent to this Lease. Prior to construction of the Equipment-and any installations in the Right of Way Area, or any modifications or changes thereto (“Work”), if any, Lessee and Lessor shall comply with the following:
 - (b) Lessee shall submit detailed plans and specifications for Lessee’s contemplated Work for Lessor’s reasonable approval to the Director of Utilities, Town of Leesburg, 1385 E. Market St., Leesburg, VA 20176 (when approved, the “Approved Plans”). Lessee shall cooperate in all respects with Lessor’s reasonable requests for applicable documentation in connection with this Paragraph 4(a)(i).
 - (c) Lessee’s Work shall be completed substantially in accordance with the Approved Plans, with exception for minor, non-material deviations as are required by site conditions. Lessee’s Equipment shall not cause material interference that is measurable by applicable industry standards to radio frequencies of any incumbent telecommunications equipment located on the Property as of the Commencement Date. Lessee acknowledges that Lessor’s maintenance contractor for the Carr Tank I will charge a fee for its inspection and review of Lessee’s plans and installation, which fee, shall be paid by Lessee.

5. **Hazardous Materials**

- (a) Prior to commencement of any Work, Lessee shall review with Lessor’s Director of Utilities, or designee, the known locations, if any, of existing substances or materials that are defined as hazardous by any applicable local, state or federal law, regulation or directive (“Hazardous Material”)

on the Property, that may affect Lessee's Work. If Lessee encounters Hazardous Material (other than as identified by Lessor as required in the preceding sentence) on the Property during the course of Lessee's Work, Lessee shall immediately stop Work and contact Lessor's Director of Utilities or designee if Lessee is unable to contact Lessor within four (4) hours of encountering such Hazardous Material. Lessee shall thenceforth follow all of Lessor's reasonable instructions with respect to such Hazardous Material. Lessor shall use reasonable efforts to remediate the Hazardous Material, at its cost. Lessee shall not recommence Work until notified that it may do so by Lessor, such authorization to re-commence Work not to be unreasonably delayed, conditioned or withheld. If notice of such authorization is not given within thirty (30) days of Lessee's ceasing Work, Lessee shall, in addition to any other rights available under this Agreement, at law and/or at equity, have the right to terminate this Agreement upon written notice to Lessor or to relocate to an alternate location on the Property and/or the Water Tower, as applicable, promptly selected by Lessor but reasonably acceptable to Lessee. If, in Lessor's reasonable discretion, continuation of Lessee's Work may (i) violate applicable law regarding the management, transport, disposal or other activity with respect to Hazardous Material; (ii) pose an additional threat to the health, safety or welfare of persons on the Property and permitted by Lessee to be on the Premises; or (iii) impose additional, adverse legal liability upon Lessor, then, at Lessor's election, Lessor shall either relocate the Premises to an alternate location selected by Lessor but reasonably acceptable to Lessee, or, if such relocation is impracticable, Lessor shall have the right to require Lessee to cease all Work until such time as Lessor's concerns are addressed in a manner approved by Lessor.

- (b) Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Without having any duty of inspection or research, Lessor represents to the best of its actual knowledge (i) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation, and (ii) that Lessor will not, and will not permit any third party to use, generate, store, or dispose of

any Hazardous Material on, under, about or within the Property in violation of any law or regulation.

- (c) As indicated in Paragraph 3(c) Lessee shall connect directly to power on the Premises as directed by Lessor. If, at a later date, Lessor requires Lessee to install a separate metering system for electrical needs of the automated metering infrastructure equipment per terms defined in Paragraph 3(c), Lessee at its sole cost and expense shall obtain such power supply. Any work performed in connection with this subparagraph (b) shall comply with provisions of subparagraph (a) hereof. In connection therewith, Lessor agrees to sign, or cause to be signed, such documents or easements as may be required by any servicing utility company to provide such power supply to the Premises, including the grant to Lessee, or to the servicing utility company, at no cost to Lessee, of an easement in, over, across, or through the Property as required by such servicing utility company to provide utility services as provided herein.
- (d) In any case where the approval or consent of Lessor is required, requested, or otherwise to be given under this Lease, such approval or consent shall not be unreasonably delayed, conditioned or withheld.

6. Access to and Maintenance of Carr Tank I.

- (a) Lessor agrees that Lessee shall have free access to the Carr Tank I at all times for the purpose of installing and maintaining Lessee's equipment thereon. Lessor shall furnish Lessee with necessary means of access for the purposes of ingress and egress to the site and the Carr Tank I location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Lessee or persons under their direct supervision will be permitted to enter said premises. Access shall be conditioned in accordance with Lessor's adopted policies requiring proper identification of any person gaining access to the Property. No prior notice shall be required for access sought as provided in a maintenance schedule approved by Lessor; otherwise access shall be granted only after 24 hours' notice for non-emergency and 3 hours' notice for emergency maintenance or repair purposes and only under the supervision by Lessor's employee or agent.

- (b) Lessor acknowledges that it is obligated to keep the Carr Tank I in good repair as required by all applicable federal, state, county and local laws. Lessor shall also comply with all applicable rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of the Premises. Except as expressly provided otherwise elsewhere in this Lease, nothing herein is intended to or shall be deemed to create a contractual duty by the Lessor to maintain the Carr Tank I for the benefit of Lessee.

The Parties agree that the Lessor may need to maintain the tank during the term of the Lease, including but not limited to painting. The Lessee further agrees to pay the additional cost to Lessor of painting and maintaining such water tank with the antennas and equipment of Lessee present on such tank, and for any increased cost of painting or maintaining the tank resulting from the location of Lessee's Equipment on or near the tank.

- (c) No material may be used in the installation of Lessee's Equipment or transmission lines that will cause corrosion or rust or deterioration of the Carr Tank I structure or its appurtenances. All antennas on the Carr Tank I must be identified by a marking fastened securely to the bracket(s) therefore on the Carr Tank I and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space. Electric and antenna cable will be installed in PVC conduit. The conduit will be painted to match existing tank color using Tnemec Company, Inc. Series 701 HYDROFLON, semi-gloss. The field installation and conduit routing will be approved by a town representative.

7. **Interference.**

- (a) Lessee agrees to install equipment of the type and frequency which will not cause material interference which is measurable in accordance with existing industry standards ("Interference") to any equipment of Lessor or other lessees of the Property which existed on the Property or was approved for installation and for which Lessor had executed a lease prior to the date this Lease is executed by the Parties, provided that prior to Lessee's installation, Lessor provides Lessee with sufficient information as to such equipment approved for installation but not yet installed. In the event any after-installed Lessee's equipment causes such Interference, and after Lessor has notified Lessee in writing of such Interference, Lessee will take all commercially reasonable steps necessary to

correct and eliminate the Interference. Lessee agrees that it will, in the event that such Interference cannot otherwise be remedied within seventy-two (72) hours after notice from Lessor, at the end of the seventy-two (72) hour notice period it will power down the equipment causing such interference (except for intermittent testing) until such Interference can be remedied. In no event will Lessor be entitled to terminate this Lease or relocate the equipment as long as Lessee is making a good faith effort to remedy the Interference. Lessee shall not reactivate its Equipment until the Interference is eliminated to the extent accepted by industry standards.

- (b) If interference of existing equipment as described in Paragraph 5(a) above is suspected to be caused by Lessee's automated metering infrastructure equipment, Lessor may require that an intermodulation study be performed at Lessee's sole cost and expense and Lessee agrees to share results of said study with Lessor.
- (c) Lessee is aware of its obligation to comply with all applicable rules and regulations of the FCC and other applicable rules and/or regulations of any other federal or state agency (to the extent any state law is not preempted by federal requirements) having jurisdiction over the installation, operations and maintenance of Lessee's Equipment. Lessee agrees to be solely responsible for compliance with all applicable FCC and other governmental requirements with respect to installation, operation and maintenance of Lessee's Equipment and for repairs to Lessee's Equipment.
- (d) Lessee must comply with all Town of Leesburg zoning application and permits.

8. **Lessee's Maintenance Obligations.**

- (a) Lessee, at its sole cost and expense (except as provided herein to the contrary), shall be responsible for the maintenance of Lessee's Equipment—and shall keep any part of its Premises over which Lessee has exclusive control neat and clean, in accordance with all laws and regulations applicable to Lessee's use thereof and this Agreement. Lessee shall also remedy any damage and remove any trash from any of the Property left by Lessee or any of its contractors, employees or agents. Lessee shall not create any nuisance, unreasonably interfere with, or unreasonably disturb any other Lessee of other parts of the Property (subject to the provisions hereof relating to Interference with equipment

installations), or Lessor. Lessee shall be solely responsible for securing the safety and security of Lessee's Equipment. Prior to the execution of this Lease, Lessee has undertaken such studies and inspections so as to satisfy itself that the Carr Tank I is of such construction and condition as to permit Lessee to enter upon the Premises for the purposes of the operations authorized hereunder. The parties agree that by signature hereto, Lessor assumes no contractual duty to Lessee to maintain the Carr Tank I or Property except for remedying conditions caused by Lessor or its authorized employees or agents that materially affect Lessee's ability to occupy and use the Premises for the purposes of this Lease and then only to the extent of returning the Property to same or equivalent condition as the date of this Agreement; Lessor shall have no obligation to obtain or maintain any license, permit or other approval of any federal, state or local agency having jurisdiction solely as a result of Lessee's use of the Premises as a communications facility. Lessor shall have no obligation to maintain or insure Lessee's Equipment, and Lessee shall have no obligation to maintain or insure any equipment or property of Lessor. All maintenance work required of Lessee hereunder shall be performed by licensed contractors, previously approved in writing by Lessor, such approvals not to be unreasonably withheld, delayed or conditioned.

If Lessee, in its reasonable opinion, determines that any repairs to the Carr Tank I are necessary due to Lessor's failure to maintain the Carr Tank I as provided above, Lessee shall advise Lessor thereof and shall provide information in reasonable detail with respect to the need for such repairs. Provided that Lessor has approved such repairs, which approval will not be unreasonably withheld, Lessor shall cause such repairs to be made at Lessor's cost within thirty (30) days after approval of such repairs, or if necessary such longer time as may be reasonably required for completion of such repairs.

- (b) Lessor shall be responsible for compliance with all marking and lighting requirements of the FAA and FCC other than those necessitated because of Lessee's Equipment. Lessee shall be solely responsible for compliance with all FAA and FCC requirements, and all requirements under applicable laws, with respect to Lessee's Equipment.
- (c) Lessee, upon termination of this Lease, shall, within ninety (90) days, remove its Equipment Shelter(s), its equipment on the Carr Tank I, fixtures and all personal property and otherwise restore the Premises to its original condition, reasonable wear and tear

excepted. Lessor agrees and acknowledges that all of the equipment, fixtures and personal property of Lessee shall remain the personal property of Lessee and Lessee shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes Lessee to remain on the Premises after termination of this Lease, Lessee shall pay the Rent at the then existing monthly rate until such time as the removal of the Equipment Shelter(s), equipment, fixtures and all personal property are completed.

9. **Indemnification-**

To the extent permitted by law, the Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph.

10. **Casualty and Condemnation.**

- (a) In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Right of Way Area is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may at any time following such fire or other casualty, provided Lessor has not completed the restoration or alternative means of access required to permit Lessee to resume its operation at the Premises, terminate this Lease upon fifteen (15) days written notice to Lessor.
- (b) If any governmental, public body or other condemning authority takes, or if Lessor transfers in lieu of such taking, all or part of the Premises, then Lessee may elect to (i) terminate this Lease, effective on the date that title vests in the condemning authority, or (ii) relocate to an alternative location on the Property, reasonably acceptable to Lessor, for the Equipment Shelter(s) and Lessee's Equipment. Lessee shall provide written notice of its election within thirty (30) days after receiving actual notice of a taking.

11. **Insurance**

- (a) The parties each agree to provide the other with 30 days prior written notice of any cancellation, expiration or default of any applicable liability insurance policy required by this Lease. To the extent liability attaches, Lessor and Lessee each agree to be responsible for the acts or omissions of its officers, employees and agents arising out of their job duties; provided, however, that neither sovereign immunity nor any other applicable defense is waived by this Lease and the applicable insurance coverage. This Lease is not intended to benefit or create rights in any third party.
 - (b) Lessor and Lessee each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$2,000,000.00 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. Lessor and Lessee each agree that it will include the other Party as an additional insured.
 - (c) Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for Lessee, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Lease or relieve Lessee from any obligations under this Lease.
12. **Taxes.** Lessee hereby acknowledges that personal property taxes may be assessed against Lessee's Equipment by a taxing authority. Lessee agrees to promptly pay any and all personal property tax assessed against Lessee's Equipment, or to promptly reimburse Lessor on presentation of documentation of such taxes.
13. **Notices.** All notices required to be given hereunder shall be given in writing either by an overnight courier, or certified or registered mail at the following addresses or at such other address as may be designated in writing by either Party:

If to Lessor: John Wells, Town Manager
25 W. Market St.
Leesburg, VA 20176

With copy to:

Jeanette A. Irby, Town Attorney
25 W. Market St.
Leesburg, VA 21076

If to Lessee: Dale Hammes

Loudoun Water
P.O. box 4000
44865 Loudoun Water Way
Ashburn, VA 20146

With copy to:

Jonathan Rak
McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons Corner, VA 22102

Notice given by mail shall be deemed given three (3) calendar days after the date of mailing thereof.

14 **Default and Right to Cure.**

- (a) An event of default by Lessee ("Lessee Default") shall be defined as—failure to perform any material term, condition or covenant contained herein for a period of more than thirty (30) days immediately succeeding written notice thereof from Lessor; provided, however, it shall be a Lessee Default under this Agreement if Lessee fails, within five (5) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessee if the failure to perform such obligation interferes with Lessor's ability to conduct its business at the Property, but provided further that if the nature of Lessee's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Lease if performance is commenced within such five (5) day period and thereafter diligently pursued to completion. Lessee shall be afforded such additional time to cure any non-monetary Lessee default that cannot reasonably be cured within such five (5) day period or such thirty (30) day period provided, however, that Lessee commences to cure such default within the applicable notice period and diligently pursues such cure.
- (b) In the event of a Lessee Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessor shall be entitled to terminate this Lease upon thirty (30) days written notice to Lessee.
- (c) An event of default by Lessor ("Lessor Default") shall be defined as the failure by Lessor to perform any material term, condition or covenant contained herein for a period of more than thirty (30)

days immediately succeeding written notice thereof from Lessee; provided, however, it shall be a Lessor Default under this Lease if Lessor fails, within five (5) days after receipt of written notice of breach, to perform an obligation required to be performed by Lessor if the failure to perform such obligation interferes with Lessee's ability to conduct its business at the Property, but provided further that if the nature of Lessor's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Lease if performance is commenced within such five (5) day period and thereafter diligently pursued to completion. In the event of a Lessor Default without cure hereunder, then in addition to its remedies for default at law and in equity, Lessee shall be entitled to terminate this Lease upon thirty (30) days written notice thereof to Lessor.

15 **Assignment.**

- (a) Lessor reserves the right to assign, transfer, mortgage or otherwise encumber the Property and its interest in this Lease (collectively, "Lessor Transfer"). In the event of any such Lessor Transfer, Lessor agrees to cause the transferee to accept an assignment and assumption of this Lease and to recognize Lessee and Lessee's rights hereunder, and Lessee shall recognize such transferee provided that the prospective transferee executes and delivers to Lessee a Subordination and Non-Disturbance and Attornment instrument (SNDA) agreeing to recognize Lessee and to not disturb Lessee's tenancy. If the Lessor Transfer is to a lender to Lessor, Lessee agrees to execute and deliver to such lender an SNDA subordinating this Lease and Lessee's rights hereunder, as may be required by Lessor and such Lender provided the same is reasonably acceptable to Lessee and such lender agrees to recognize Lessee's rights under this Lease so long as there is no Lessee Default, in connection with Lessor's contemplated transaction.
- (b) Lessee, upon notice to Lessor but without any approval or consent by Lessor, may assign this Lease and its rights hereunder to its principals, affiliates, subsidiaries, to any entity which acquires all or substantially all of Lessee's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization or transaction; or to any entity which acquires or receives an interest in the majority of communications towers of Lessee in such market. No change of ownership or control of Lessee shall constitute an assignment hereunder. Lessee may assign this Lease and its rights hereunder

to any other person entity only upon consent by Lessor, which consent will not be unreasonably withheld, delayed or conditioned.

- (c) If Lessor, at any time during the Term, decides (i) to sell or transfer all or any part of the Property or Carr Tank 1 or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Carr Tank 1 or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Lease and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Lease. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Carr Tank 1 and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith assigns this Lease to said third party, Lessor shall not be released from its obligations to Lessee under this Lease, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Lease.
16. **Miscellaneous.** This Lease is made subject to all local, state and federal laws and regulations now or hereafter in force, and shall not be modified or extended, except by an instrument duly signed by Lessor and Lessee. Waiver of a breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach of such provision, or of a breach of any other provision of this Lease.
17. **Title.** Lessor covenants that Lessor is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. Lessor further covenants that, to the best of Lessor's knowledge, information and belief, there are no liens, judgments or impediments of title on the Property or affecting Lessor's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Premises by Lessee as contemplated in this Lease.
18. **Quiet Enjoyment.** The parties acknowledge that the Property is part of Lessor's municipal water supply system and, as such, is regulated and subject to regulation by, *inter alia*, the Virginia Department of Health and federal Environmental Protection Agency and that may supersede the parties' rights and obligations under this Lease. Subject to the foregoing, Lessor covenants and agrees that Lessee shall be entitled to quiet enjoyment of the Premises and Lessee's occupation thereof shall not be disturbed, provided that Lessee shall not be in default hereunder.

19. **Memorandum of Agreement.** Lessee may record a short form Memorandum or Notice of this Lease in the land records of the applicable jurisdiction where such records are filed. Any such Memorandum shall be in the form attached hereto as **Exhibit 3.**
20. **Estoppel Letter.** Either Lessor or Lessee shall, at any time upon fifteen (15) 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 Rent and other charges, if any, are paid in advance, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or Lessee's Equipment.
21. **Authority of Lessor and Lessee.** Lessor and Lessee warrant and represent each to the other: (i) each possesses the full power and authority to enter into this Lease and perform the duties and obligations required hereunder; (ii) the individual(s) signing on behalf of Lessor and Lessee are duly authorized to sign on behalf of Lessor and Lessee, respectively, and by their signatures hereon, bind and benefit Lessor and Lessee; and (iii) no consent from any other person or entity is necessary as a condition to the legal effect of this Lease.
22. **Waiver of Lien.** - Lessor waives any lien rights it may have concerning Lessee's Equipment, which is deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.
23. **Testing.** Lessee shall have the right, at any time following the full execution of this Lease to enter upon the Property for the purpose of making appropriate engineering and boundary surveys, inspections, soil test borings and other reasonably necessary tests.
24. **Submission of Agreement; Severability.** The submission of this Lease for examination does not constitute an offer for a lease of the Premises and this Lease becomes effective only upon the full execution of this Lease by both parties. If any provision herein is invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions of this Lease.
25. **Survival.** The provisions of the Lease relating to indemnification from one party to the other party shall survive any termination or expiration of this Lease. Additionally, any provisions of this Lease which require

performance subsequent to the termination or expiration of this Lease shall also survive such termination or expiration.

26. **Captions.** The captions contained in this Lease are inserted for convenience only and are not intended to be part of the Lease. They shall not affect or be utilized in the construction or interpretation of the Lease.
27. **Governing Law.** This Lease shall be governed by and construed under the laws of the Commonwealth of Virginia, without giving effect to principles of conflict of laws.
28. **Exhibits.** All exhibits referenced herein are incorporated herein by reference as though set forth at length herein. The exhibits are:

Exhibit 1	Drawing depicting Premises and Right of Way Area
Exhibit 1-A	Survey (to be attached if prepared by Lessee pursuant to Section 1 of this Agreement)
Exhibit 2	Lessee's operating license(s) and other licenses pertinent to this Agreement
Exhibit 3	Form of Memorandum of Agreement
Exhibit 4	List of Lessee's Equipment to be located on Carr Tank I
Exhibit 5	Lessor's contact information for site access

IN WITNESS WHEREOF, the undersigned have affixed their hands and seals to this Lease Agreement as of the date first written above.

LESSOR:

TOWN OF LEESBURG, a municipal corporation

Approved by:
John Wells, Town Manager

LESSEE:

**LOUDOUN COUNTY SANITATION
AUTHORITY**

Approved by:
Dale Hammes, General Manager

Approved by:
Jonathan P. Rak, General Counsel

Approved by:
Jeanette A. Irby, Town Attorney

Exhibit 1

Drawing Depicting Premises and Right of Way Area

[attached, in three parts]

Exhibit 2

Lessee's Operating Licenses and Other Pertinent Licenses

[attached]

Exhibit 3

MEMORANDUM OF LEASE AGREEMENT

This Memorandum made this ____ day of _____, 2013, between the TOWN OF LEESBURG, VIRGINIA, a municipal corporation with its principal mailing address of 25 W. Market Street, Virginia 20176, hereinafter designated "Lessor" or "Town" and LOUDOUN COUNTY SANITATION AUTHORITY with its principal offices at 44865 Loudoun Water Way, Ashburn, Virginia, hereinafter designated as "Lessee".

1. Lessor and Lessee entered into a Lease Agreement (the "Lease") on _____, 2013 leasing the Premises (as hereinafter defined) to Lessee for a term of five (5) years with the right to renew for four (4) years.

2. The Lease concerns space on Town's water tower called Carr Tank I and that certain parcel of land containing twenty five (25) square feet for a equipment shelter/structure, together with the rights-of-way described in the Lease, all described in the Lease as the "Premises"). The Premises is located on that certain property known as 550 Ft. Evans Rd. Leesburg, Loudoun County, Virginia ") (PIN 148-47-2140-000, Tax Map No 49////////16D), the "Property" as more thoroughly described on Exhibit "A" attached hereto and incorporated herein by reference.

3. The term of the Lease shall commence on the first day of the month following the date Lessee commences installation of the equipment on the Premises, and a copy of the Lease is on file in the offices of Lessor and Lessee.

4. The terms, covenants and provisions of the Lease of which this is a Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Lessor and Lessee.

[signatures appear on the following page]

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, Lessor and Lessee have caused this Memorandum to be duly executed on the dates indicated below.

LESSOR:

TOWN OF LEESBURG, a municipal corporation

By: _____

Approved by:

Its: _____

WITNESS _____

Town Attorney

Its: _____

Date: _____, 2013

LESSEE:

BY: _____

WITNESS _____

Its: _____

Date: _____, 2013

Exhibit 4

List of Lessee's Equipment on Carr Tank I

Antenna Information

Transmission Lines

(), one each for the antennas listed above

Shelter

' wide x' long

Frequencies

Transmit:

Receive:

[Note: The foregoing specification of frequencies shall not be deemed to require Lessor's prior consent or approval for Lessee to operate on such frequencies as to which Lessee may be licensed by federal authorities to operate from time to time, nor for installation or substitution of equipment on Lessor's tower for operations on such frequencies.]

Exhibit 5

Lessor's Contact Persons for Access

Name	Telephone Number
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Exhibit 6

Emergency Water Service Agreement Between the Town of Leesburg, Virginia
And
The Loudoun County Sanitation Authority
Dated January 30, 2003

46778202_1

PRESENTED April 9, 2013

RESOLUTION NO. _____

ADOPTED _____

A RESOLUTION: AUTHORIZING LOUDOUN WATER'S REQUEST FOR LEASE AGREEMENT TO INSTALL AN AUTOMATED METERING INFRASTRUCTURE ANTENNA ON CARR TANK I

WHEREAS, Resolution 2013-008 was adopted granting Loudoun Water's request to use Town's Carr Tank II for installation of radio infrastructure; and

WHEREAS, Loudoun Water and Town has determined Carr Tank 1 is adequate for installation of radio infrastructure for their current automated metering infrastructure (AMI) deployment; and

WHEREAS, Town and Loudoun Water have had excellent working and collaboration relationship for many years and approval of their request will provide long term mutual benefit to both jurisdictions.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Town Manager is hereby authorized to execute a lease agreement for installation of an automated metering infrastructure antenna with Loudoun Water on a form approved by the Town Attorney.

PASSED this _____ day of _____ 2013.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council