SALEM COUNTY IMPROVEMENT AUTHORITY

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RESOLUTION 12-607

June 25, 2012

RESOLUTION AUTHORIZING LICENSE AGREEMENT WITH COUNTY OF SALEM

WHEREAS, the Salem County Improvement Authority ("SCIA") is the owner of certain real estate located in Oldmans Township, Salem County, New Jersey, designated as Lot 6.07 in Block 29 (0.7 acres) on the Oldmans Township Tax Map (hereinafter referred to as "Property"); and

WHEREAS, the County of Salem ("County") has requested permission from the SCIA to site certain communications equipment on SCIA's Property and on SCIA's water tank ("Tank") located on the Property; and

WHEREAS, the communications equipment is solely for emergency management communications; and

WHEREAS, a License Agreement between the SCIA and the County has been prepared and is attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED by the Members of the SCIA that the attached License Agreement is approved and that the Chairman is authorized to execute the License Agreement on behalf of the SCIA.

John Ober, Chairman

I hereby certify the above to be a true copy of a resolution adopted by the SCIA at a regular meeting held on June 25, 2012.

Ronald Howard, Secretary
SALEM COUNTY IMPROVEMENT AUTHORITY LICENSE AGREEMENT
FOR EMERGENCY COMMUNICATIONS EQUIPMENT AT GATEWAY WATER TOWER

LICENSE AGREEMENT ("Agreement"), made this 25 day of June 2012, by and between the SALEM COUNTY IMPROVEMENT AUTHORITY (hereinafter referred to as “Licensor”), a political subdivision of the State of New Jersey, with its principal offices located at 199 East Broadway, Salem, New Jersey 08079, and the COUNTY OF SALEM, a political subdivision of the State of New Jersey organized pursuant to the provision of N.J.S.A. 40A:14-70, and having its principal offices at 94 Market Street, Salem, New Jersey 08079 (hereinafter referred to as the “Licensee”).

WITNESSETH:

WHEREAS, Licensor is the owner of certain real estate located in Oldmans Township, Salem County, New Jersey, designated as Lot 6.07 in Block 29 (0.7 acres) on the Oldmans Township Tax Map (hereinafter referred to as “Property”); and

WHEREAS, Licensee has requested permission from Licensor to site certain communications equipment on Licensor’s Property and on Licensor’s water tank ("Tank") located on the Property and Licensor is willing to grant such permission, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, for and in consideration of the sum of One ($1.00) Dollars per year paid by the Licensee to the Licensor; the receipt of which is hereby acknowledged, for other good and valuable consideration, and the mutual promises contained in this Agreement, agree with each other as follows:

1. Licensor hereby grants permission to Licensee to construct, install, operate and maintain upon the Property five (5) vertical stick antennas, two 4 foot parabolic dishes, cable trays that would consist of (5) 7/8 diameter lines for radio, and two half inch soft coax cables for microwave. All equipment is stud welded mounts to the tank for protection. One (1) 10 foot by 20 foot portable shed to house radio equipment (the “Facilities”) for use solely by Licensee for its emergency medical, police and fire
departments equipment for services that they provide to Salem County. No other uses of the Property are permitted.

2. The Facilities attached to the Licensor’s Tank must be painted the same color as the Tank, to the extent possible.

3. The 10 foot by 20 foot portable shed housing Licensee’s communications equipment shall be at least twenty (20) feet away from the base of the tank.

4. Any and all cables must be buried underground up to the point that they reach the foundation of the Tank. Cables must be bonded to the Tank shell in an approved manner that allows for the protection of the existing paint systems. Cables must also be bonded to the Tank shell so that there is no interference with maintenance of the Tank in the future by Licensor.

5. Licensee shall construct, install, operate and maintain the Facilities in accordance with all applicable laws and regulations and in such a manner that will not interfere with Licensor’s present or future use of the Property. Licensee shall maintain the Facilities in a neat and clean condition at all times.

6. In the event the operations of Licensee under this Agreement interfere with the water storage, distribution or other operations of Licensor, including but nor limited to Licensor’s radio communications, or other authorized operations or communications facilities on the Property, Licensee shall at its own expense and within twenty-four (24) hours after notice thereof, correct such interference. In the event any such interference does not cease within such period, the parties acknowledge that continuing interference will cause irreparable injury to Licensor and Licensor shall have the right, in addition to any other rights that it may have at law or equity to terminate this Agreement immediately.

7. Licensee agrees that this Agreement grants only a revocable license to Licensee to do and perform the various acts herein permitted, and that neither this Agreement nor the continued enjoyment by Licensee of the rights herein granted shall convey to Licensee any title or interest whatsoever in the Property.

8. Licensee shall have no right to assign, transfer or convey any of the rights, interests or privileges hereby granted to any other person or legal entity. No sublicense for any purpose shall be made or granted by Licensee without the express prior written
consent of Licensor. This Agreement is personal to Licensee and benefits hereunder shall not inure to the successors or assigns of Licensee. The benefits of this Agreement do not run with the land.

9. In the event the Licensor sells or otherwise conveys the Property and/or Tower to a third party, Licensor shall have the right to assign this agreement to that third party who shall become the new Licensor hereunder. Licensor shall not require the approval of the Licensee to assign its rights and obligations under this Agreement.

10. Licensee agrees to indemnify and save harmless Licensor from and against any and all loss, liability, claims suits, proceedings, damages, costs or other expenses, including but not limited to reasonable attorney fees, which may in any manner result from or arise out of any act or failure to act by Licensee, its agents, employees or contractors in connection with Licensee’s installation, construction, operation, use of and access to the Property.

11. Licensee further agrees to carry, at its sole expense, during the term of this Agreement, general comprehensive liability insurance and automobile liability insurance with minimum single limit coverages of $2,000,000.00 each occurrence, and workers compensation insurance if applicable. Licensee agrees to provide Licensor with certificate(s) of insurance demonstrating such coverage and designating Licensor as an additional insured on an annual basis on or before the anniversary of this Agreement. The insurance coverage provided by Licensee shall be deemed to be primary insurance and any insurance maintained by Licensor shall be considered as excess insurance on behalf of Licensor only. This Agreement will be deemed to have been breached should Licensee fail to provide said certificate(s) of insurance to Licensor on or before its due date. All policies of insurance secured by Licensee pursuant hereto shall contain an endorsement by the insurer that such policy shall not be cancelled, modified or terminated without at least thirty (30) days prior written notice to Licensor.
12. Licensee agrees that this Agreement may be revoked by Licensor at any time upon (i) 90 days notice thereof, or (ii) such lesser notice at Licensor’s convenience or as Licensor shall deem necessary in order to comply with any lawful order of a duly constituted governmental authority or to avoid violation of any statute, rule, regulation or lawful order of such an authority. Upon any such revocation, or in the event Licensee shall cease to use the Property, Licensee shall redeliver the Property in as good as condition as the same now are and shall remove within such notice period any of Licensee’s Facilities thereon located. Upon the failure of Licensee to remove such Facilities the title thereto shall vest in Licensor.

13. In the event the Licensor must perform maintenance on the Property or the Tank, the Licensor shall provide Licensee with at least 90 days advanced notice at which time Licensee shall, before the expiration of the 90 days, remove the Facilities and relocate them until such time that the Licensee receives notice from the Licensor that the maintenance is completed. In the event the Licensee fails to remove its Facilities in accordance with this provision of the Agreement, Licensor may remove the Facilities and charge Licensee any and all fees and costs incurred by Licensor with regard to the removal, transportation and storage of the Facilities.

14. Licensee’s employees and agents shall not access the Property unless an employee of Licensor is on-site for the duration of Licensee’s employee’s or agent’s site visits. Licensee’s employees and agents must vacate the Property when Licensor’s employees leave the Property. Licensee shall pay Licensor $250 for each four hour period incurred by Licensor in relation to observing and supervising Licensee’s access to the Property between the hours of 8:00 a.m. and 4:00 p.m. This site visit fee may be adjusted at the Licensor’s discretion. Full payment for each site visit (four hour period) shall be remitted to Licensor within thirty (30) days of receiving an invoice therefore from Licensor. Licensee must provide three days advance notice to obtain access to the site. Site visits at hours other than set forth above will be charged at the rate of 1 ½ times the then applicable rate for each site visit period. Notwithstanding the aforementioned access requirements, Licensee will be permitted to access the Licensee Facilities contained in its equipment building located on the Property without an employee of Licensor having to be present if Licensee’s access to its equipment building is through a
separate gate that Licensee has installed on the Property, which access gate and the location thereof have been approved by Licensor in writing, or in the event of an emergency. In such case, no access fee shall be charged to Licensee. Licensee will also be permitted to access the Licensee Facilities located on the Tank without an employee of Licensor having to be present in the event of an emergency. In such case, no access fee shall be charged to Licensee. However, Licensee must still provide at least twenty-four (24) hours notice of any unattended site visits. Licensee shall contact Licensor through its Executive Director by phoning (856) 279-2182 ext. 12 and advise of site visits and construction times. Access to the Property will be from the existing ingress and egress.

15. Prior to installation or construction of any facilities contemplated herein, Licensee shall submit its installation and/or construction plans to Licensor for approval. Approval of such plans shall not be unreasonable delayed or withheld by Licensor.

16. Prior to and following the installation of any and all equipment onto the Tank, the Licensor shall conduct an inspection of the Tower to determine the condition of the Tank and whether or not the equipment was installed in a satisfactory and workmanlike manner so as to protect the Tank and the surface coating. Licensee shall reimburse 100% of the costs and expenses associated with the inspection within 30 days of receipt of a request for payment from the Licensor. In addition, if the inspection reveals anything unsatisfactory, the Licensor shall issue a written request for repairs or corrections to Licensee which must be addressed and corrected, to the satisfaction of Licensor, within 30 days of Licensee’s receipt of the written request.

17. Licensee shall have the right, at its own expense, to improve present electric service on the Property, subject to Licensor’s consent which will not be unreasonable withheld. Licensor hereby grants Licensee the right to place, for the term of this Agreement, any electric lines and telephone lines on, or to bring such lines across the Property in order to service the Property and the Facilities, provided that the location of such lines shall not interfere with Licensor’s facilities. Any such electric or telephone lines shall be separately metered to Licensee, who shall be solely responsible for the cost of service provided through those electric and telephone lines.

18. The Property may be used by Licensee solely for the purpose of installing and operating the above-described emergency communications equipment during the period
beginning upon the date of execution of this Agreement and continuing for an initial term of five (5) years from said date of execution. Thereafter, Licensee shall have the option to renew this Agreement for two (2) successive five-year renewal terms. Licensee shall exercise said option by providing Licensor with written notice of Licensee’s intent to renew not less than ninety (90) days prior to the expiration of the initial term of renewal term. Said notice shall be given to Licensor at the address set forth in the initial paragraph of this Agreement. The sum of One ($1.00) Dollar shall accompany each renewal notice representing the consideration given by Licensee to Licensor for such renewal.

19. At the expiration of the term of this License, or upon the termination of this License as herein otherwise provided, Licensee shall quit and surrender the premises hereby demised in as good a state and condition as reasonable use thereof will permit, damage by the elements excepted. Additionally, Licensee shall remove all personal property within 30 days of expiration or termination and shall be responsible for all costs associated with the removal of all personal property. Any item not removed shall become the property of the Landlord.

20. Should the property of either Licensor or Licensee described herein, or any essential part of Licensor’s or Licensee’s property be totally destroyed by fire or other casualty, this Agreement shall immediately terminate. In the case of partial destruction of Licensor’s or Licensee’s property by fire or other casualty, this Agreement may be terminated by either party by giving written notice to the other party, specifying the date of termination, such notice to be given within thirty (30) days following such partial destruction and no less than ten (10) days prior to the termination date specified in such notice.

20. Licensee acknowledges that this Property is the site of a public water supply storage and/or distribution facility. Licensee agrees that it shall not conduct its activities in any way that interferes with Licensor’s access to or use of the Property.

21. For the right to temporarily place its Facilities on the Property, and other good and valuable consideration, the receipt of which is hereby acknowledged and intending to be legally bound, Licensee, for itself/themselves, its/their respective successors, heirs, assigns and legal representatives (herein collectively referred to as the
“Releasors” do hereby unconditionally and irrevocably release, remise and forever discharge Licensor and its parent, predecessors, subsidiaries, affiliates, directors, officers, agents, employees, representatives, servants, shareholders, successors and assigns (herein collectively referred to as the “Releasees”) of and from any and all manner of actions and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, rights, claims and demands whatsoever, known or unknown, in law or equity, which against the Releasees, or any of them, Releasors, now have, ever had or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever to the date of these presents that relate to, are based on, arise out of, or are in any way connected with the presence of Licensee’s Facilities on the Property on, before or after the date of this Agreement. Licensee provides a general release of all possible claims and causes of action of every kind and character, including those of which the Releasors are not aware and those not mentioned in this paragraph, and is to be interpreted liberally to effectuate maximum protection for Licensor.

22. Licensee shall indemnify and hold harmless Licensor against all claims, damages, losses and expenses (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) directly arising out of or resulting from the use or occupancy of the Property by Licensee or any of its/his/her/their agents, employees, or visitors/trespassers upon Licensee’s property. Licensee is not responsible for indemnifying Licensor for claims arising out of Licensor’s own negligence or misconduct with regard to said Property. If any provisions of this paragraph in respect of indemnification are prohibited or unenforceable by applicable law, then this paragraph, as applicable, shall be reformed and amended so that Licensor is provided with the fullest extent of indemnification as is permitted under applicable law.

23. Licensee shall reimburse Licensor for all taxes and other fees and charges assessed or levied by any federal, state or local governmental authority relating to the presence of Licensee’s Facilities on the Property. Failure of Licensee to pay the aforementioned taxes, fees and charges within ten (10) days after being billed therefore
by Licensor shall constitute a breach of this Agreement for which Licensor may immediately terminate said Agreement.

24. It is agreed that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey.

25. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this License Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST/WITNESS: SALEM COUNTY

By: ___________________________

Name: _______________________
Title: ________________________

ATTEST/WITNESS SALEM COUNTY IMPROVEMENT AUTHORITY

By: __________________________

Name: Deborah Turner-Fox
Title: Executive Director

John Ober, Chairman