

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is entered into as of the 29<sup>th</sup> day of June in the year of 2015 by and between the GEORGE WASHINGTON MASONIC NATIONAL MEMORIAL ASSOCIATION, a Virginia non-stock corporation ("Licensor") and the CITY OF ALEXANDRIA, a municipal corporation of the Commonwealth of Virginia (the "Licensee").

### RECITALS

Licensor owns certain property and improvements, including a "Building", located at 101 Callahan Drive, Alexandria, Virginia (collectively, "Property"). Licensor and Licensee are party to a License Agreement dated December 10, 2001 (Original Agreement) wherein Licensor grants to Licensee an exclusive license to use a portion of the Property for a Radio Facility in connection with its public safety functions.

NOW THEREFORE, the parties agree the Original Agreement dated December 10, 2001 shall terminate on July 1, 2015 and this Agreement shall commence on July 1, 2015 as follows:

1. **LICENSE OF PREMISES.** Licensor grants to Licensee an exclusive license to use portions of the Property consisting of (a) a room of approximately 300 square feet as described on attached Exhibit 1, and (b) roof space on the Building for antennas, in such locations as are acceptable to Licensor, in the exercise of its reasonable discretion (collectively, Licensed Premises"), together with unrestricted access for Licensee's uses from the nearest public right-of-way along the Property. Licensee shall have access to the Property, including without limitation, the Licensed Premises, twenty-four (24) hours per day, seven (7) days per week. Licensee shall furnish to Licensor, and update from time to time as necessary, a list of personnel and contractors designated by Licensee who shall have access to the Property and the Licensed Premises pursuant to this agreement.
2. **USE.** (a) Subject to compliance with all applicable city, state, and federal laws, rules, directives or regulations ("Laws"), Licensee may at its own cost and expense, use the Licensed Premises to construct, install, operate, maintain, repair, replace, protect and secure, its radio equipment and related equipment, cables, accessories and improvements (collectively called "Radio Facility). Licensee is entitled to install on the Building roof as part of its Radio Facility twelve (12) antennas and other accessories appropriate to the successful and secure operation of the Radio Facility (which twelve antennas shall include those installed on the Building as of the date of this Agreement). Licensor also grants to Licensee rights to install, operate, maintain, repair and replace equipment, transmission cables from the equipment to the antennas, fiber optic cables and telephone lines from the point of entry to the equipment, and erect, construct or make improvements, alterations or additions appropriate for Tenant's use, provided that any such installations, improvements or alterations are subject to Licensor's prior reasonable

consent. Any of Licensee's changes to the electrical systems, heating, ventilating, air-conditioning must be performed by licensed contractors approved by the Licensor, in the exercise of its reasonable discretion. All portions of the Radio Facility brought onto the Property by Licensee shall remain Licensee's personal property and, at Licensee's option, may be removed by Licensee at any time during the term of this Agreement, but no later than ten (10) days after the Agreement has terminated. Licensee agrees that, upon termination or expiration of this Agreement, Licensee shall repair any damage to the Licensed Premises caused by the removal of the Radio Facility.

(b) Licensor expressly agrees that all rights granted to Licensee under this Agreement are irrevocable until termination as provided in this Agreement.

3. **TERM.** Subject to Paragraph 6 below, the initial term of this agreement shall be ten (10) years. The initial term shall terminate on the day before the tenth (10<sup>th</sup>) anniversary of the Commencement Date. As used herein, "term" refers to the initial term and any renewal term effectuated as herein provided. If, at any time during the term of this Agreement, Licensee determines the Licensed Premises has become unsuitable for Licensee's Radio Facility due to: (a) governmental regulations, Licensee's inability to obtain or maintain any permit or license therefor, or undue risks to Licensee of governmental action or intervention or third party liability (all with respect to governmental entities other than the City of Alexandria); (b) engineering or other technical standards or causes, which cannot be reasonably anticipated as of the date of this Agreement, or interference by or to Licensee's operation that cannot be resolved; (c) subsequent changes in system or network design, which cannot be reasonably anticipated as of the date of this agreement; or (d) destruction of or damage to the Licensed Premises or the condemnation thereof (in whole or in part) sufficient, in Licensee's reasonable judgment, to adversely affect Licensee's use of the Radio Facility; then, in any such case, Licensee may terminate this Agreement early by notice to Licensor. Termination shall be effective ninety (90) days after it is delivered by Licensee, except that in the case of casualty or condemnation, the license fee shall be payable only to the date of the casualty or the transfer of property to the condemnor, as the case may be.
4. **LICENSE FEE.** Commencing on the Commencement Date, Licensee shall pay Licensor, by the fifth day of each calendar month, a monthly fee in advance of \$2,900, pro-rated for any partial months. The monthly fee shall increase by three percent (3%) on each anniversary of the Commencement Date.
5. **RENEWAL OPTIONS.** Licensee shall have the option of renewing this Agreement for one (1) period of five (5) years, upon the same terms and conditions which were in effect before the end of the initial term. This Agreement shall automatically renew for such renewal period unless, at least sixty (60) days prior to the termination of the initial term, Licensee notifies Licensor of its intention not to permit the Agreement to renew. If Licensee provides Licensor with such notice, the option shall be rendered null and void and this Agreement shall terminate at the end of the initial term.

6. **APPROVALS CONTINGENCY.** Licensor agrees that Licensee's ability to use the Licensed Premises is contingent upon Licensee's ability to obtain any and all governmental licenses, permits, approvals or other relief required or deemed necessary or appropriate by Licensee for its use of the Licensed Premises (called "Governmental Approvals") by that date which is six (6) months from the date hereof; provided that Licensee shall have the right, without obligation, to appeal any denial and the contingency date for obtaining Governmental Approvals shall be extended until such time as a final decision is rendered and is not the subject of any further appeal made or defended by Licensee. Licensor agrees to cooperate with Licensee and, at Licensee's expense, join in any applications for Governmental Approvals. Licensor specifically authorizes Licensee to prepare, execute and file all necessary or appropriate applications to obtain Governmental Approvals for its use under this Agreement. If this Paragraph 6 is not satisfied or expressly waived by Licensee in writing, then Licensee shall have the right, without obligation, to terminate this Agreement and render it null and void from and after the date of termination.
7. **NON-INTERFERENCE.** (a) Licensee has evaluated the possibility of interference from or to existing communication uses on the Property and Licensee's contemplated Radio Facility. Licensee has determined that no such interference should occur if these other uses and the Radio Facility are properly and lawfully installed and operated. If any interference is caused by Licensor or anyone now or in the future holding an interest from or under Licensor due to improper or unlawful operation, or any subsequent change or addition of equipment or improvements by Licensor or any such other holder on the Property, Licensor agrees to eliminate the same in a prompt and timely manner; provided, if such interference is caused not by Licensor, but by any such other holder on the Property, Licensor, at its option, may initiate legal proceedings against such holder and diligently prosecute the same in order to cause the elimination of such interference. If such interference cannot be eliminated within a reasonable length of time, but not to exceed thirty (30) days after notice thereof (or in the event Licensor initiates legal proceedings against any such other holder on the Property, within (60) days of the commencement of legal proceedings), Licensor shall cause the interference to cease except for brief tests necessary for the elimination of the interference.
- (b) Licensor acknowledges that (i) continuing interference with Licensee's operation may cause irreparable harm to Licensee, (ii) the prompt cessation of interference is material to this Agreement, and (iii) therefore Licensee shall have, as one of its rights, the power to enjoin such interference.
8. **INSURANCE.** Licensee represents and warrants to Licensor that it is self-insured with a single public liability and property damage limit of Two Million Dollars (\$2,000,000.00), and that it is additionally insured by an excess liability policy with a limit of Ten Million Dollars (\$10,000,000.00), insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use of the Licensed Premises.

9. **WARRANTIES.** Licensors represent and warrant that: (a) Licensor: (i) solely owns the Property as a legal lot in fee simple, unencumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, proffers, commitments, agreements of record or, to the best of Licensor's knowledge, not of record, which would adversely affect Licensee's use and enjoyment of the Licensed Premises under this Agreement; (ii) is duly organized, validly existing and in good standing and has all rights, power and authority to make this Agreement and bind itself hereto through the party set forth as signatory of Licensor set forth below; (iii) has not dealt with, nor is any brokerage commission due to, any broker in connection with this Agreement; and (iv) grants Licensee, unless Licensee defaults hereunder, sole, actual and quiet and peaceful use, enjoyment and possession of the Licensed Premises during the term as herein contemplated; (b) The Property and its uses and operations, the making of this Agreement, and Licensor's performance of this Agreement, to the best of Licensor's knowledge comply, and shall comply, with all Laws, and not violate the provision of any agreement or encumbrance of any kind under which Licensor is a party or is bound or which restricts in any way the disposition or use of the Property.
10. **ACCESS TO LICENSED PREMISES.** Licensor shall be permitted access to the Licensed Premises (i) for emergencies without prior notice to Licensee, so long as Licensee is notified as soon thereafter as reasonably practicable; and (ii) otherwise with reasonable prior notice to Licensee to make necessary repairs; in all cases provided that the Radio Facility remains secure and its operation is not adversely affected.
11. **MAINTENANCE AND REPAIRS; UTILITIES.** (a) Licensee shall perform all repairs necessary to keep its Radio Facility located on or about the Licensed Premises in good condition. Licensor shall maintain and repair the Property and access thereto, other than Licensee's Radio Facility, and only to the extent failure to do so adversely affects Licensee, in good condition and repair. No work shall be done in or around the Licensed Premises by Licensor without prior notification to Licensee.
- (b) Electrical service shall be provided by the Licensor at no additional expense to the Licensee.
- (c) At such time as the Licensor installs a "whole building" backup emergency generator the Licensee shall be provided backup emergency power by that generator. The Licensee shall remove the existing emergency backup generator for the Radio Facility, owned by the Licensee, within six months of the "whole building" generator being in service.
- (d) Licensee, at its sole expense, shall arrange for its own telephone service from the local telephone company and shall pay for all telephone service consumed by Licensee.
12. **LICENSEE DEFAULT.** The following shall be deemed a default by Licensee of this Agreement: (a) non-payment of the license fee, if remaining unpaid more than thirty (30) days after receipt of written notice from Licensor of such failure to pay; or (b) Licensee's

failure to perform any other agreement, representation or warranty under this Agreement within forty-five (45) days after receipt of written notice from Licensor reasonably specifying the failure. No such default, however, shall be deemed to exist if Licensee in fact shall honestly commence to rectify the same within such forty-five (45) day period and provided such efforts shall be prosecuted to completion with reasonable diligence. Delay in rectifying the same shall be excused if due to causes beyond the reasonable control of Licensee. Upon the occurrence of any such default, Licensor may terminate this Agreement by the delivery of written notice of such termination to Licensee.

13. **LICENSOR DEFAULT.** Licensor's failure to perform any agreement, representation or warranty under this Agreement within sixty (60) days after receipt of written notice from Licensee reasonably specifying the failure shall be deemed a default by Licensor of this Agreement. No such default, however, shall be deemed to exist if Licensor in fact shall honestly commence to rectify the same within such sixty (60) day period and provided such efforts shall be prosecuted to completion with reasonable diligence. Delay in rectifying the same shall be excused if due to causes beyond the reasonable control of Licensor. Upon the occurrence of any such default, Licensee may terminate this Agreement by the delivery of written notice of such termination to Licensor. Licensee shall also have the right, at its sole option, to immediately and without further notice cure such default for the account, and at the expense, of Licensor. Licensee may recover from Licensor the amount so incurred by Licensee to cure such default. Any such amount shall accrue interest at the rate of ten percent (10%) per annum beginning on the tenth (10<sup>th</sup>) day after written notice of the amount due is provided to Licensor.
14. **ASSIGNMENT/SUBLICENSE.** Licensee shall not assign this Agreement or sublicense the Radio Facility.
15. **NOTICES.** Unless otherwise provided herein, any notice or demand required or permitted to be given hereunder shall be given in writing by hand delivery, certified mail, return receipt requested, or by recognized overnight mail, in a sealed envelope, postage prepaid, to be effective when properly sent and received, refused or returned undeliverable. Notice shall be addressed to Licensor at 101 Callahan Drive, Alexandria, Virginia 22301; Attn: George D. Seghers, Executive Secretary – Treasurer, and to Licensee at 110 N. Royal Street, Suite 300, Alexandria, Virginia 22314, Attn: Director of General Services. Either party hereto may change the place for the giving of notice to it by like written notice to the other as provided herein.
16. **SEVERABILITY.** If any term or condition of this Agreement be held unenforceable, the remaining terms and conditions shall remain binding upon the parties as though said unenforceable provision were not contained herein.
17. **AMENDMENT; WAIVER.** No Agreement revision shall be valid unless made in writing and signed by an authorized agent of Licensor and Licensee. No provision may be waived except in a writing signed by the party waiving the right.

18. **RECORDATION.** This Agreement shall not be recorded by either party without the written consent of the other party.
19. **BIND AND BENEFIT.** The terms and conditions contained in this Agreement shall inure to the benefit of and be binding upon Licensor and Licensee and each of their respective heirs, executors, administrators, successors and permitted assigns.
20. **ENTIRE AGREEMENT.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreements.
21. **GOVERNING LAW.** This Agreement shall be governed by the laws of the Commonwealth of Virginia.
22. **INTERPRETATION.** Unless otherwise specified, the following rules of construction and interpretation apply: (a) captions are for convenient reference only and in no way define or limit the construction of the terms and conditions hereof; (b) use of the term "including" shall be interpreted to mean "including but not limited to"; use of the terms "termination" or "expiration" are interchangeable; (c) except if otherwise expressly stated, whenever a party's approval or consent is required under this Agreement, such consent shall not be unreasonably withheld or delayed; (d) reference to a default shall take into consideration any applicable notice, grace and cure periods; and (3) exhibits are an integral part of this Agreement.
23. **ESTOPPEL.** Either party 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 Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the license fee and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Failure to timely deliver such a statement shall be conclusive as a self-operative statement from the party from whom the requested that (i) this Agreement is in full force and effect (without modification except as may be properly represented by the requesting party), (ii) there are no uncured defaults in the requesting party's performance, and (iii) no more than one month's license fee has been paid in advance.
24. **APPROPRIATION BY CITY.** Licensee's continued use of the Licensed Premises for the full term of this Agreement is dependent upon the appropriation of funds for such use at the beginning of each fiscal year of the City of Alexandria. In the event that funds are not appropriated for the use of the Licensed Premises, Licensee shall furnish Licensor with a written notice from Licensee's Office of Management and Budget that funds were

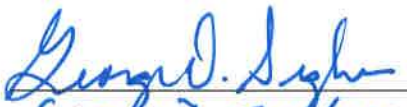
not appropriated by the City of Alexandria. This notice shall be given to Licensor not less than forty-five (45) days prior to the beginning of the fiscal year involved, or, if approval of the final budget for such fiscal year is not obtained at least fifty (50) days prior to the beginning of any applicable fiscal year, then within five (5) days after approval of the final budget for the fiscal year involved. In the event that funds are not appropriated for the use of the Licensed Premises, then this Agreement shall become null and void and shall terminate at the end of the then current fiscal year. In such event, Licensee shall terminate its use of the Licensed Premises prior to the beginning of the next City of Alexandria fiscal year.

- 25. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed, or have caused their duly authorized representatives to execute, this Agreement on the date and year first above written.

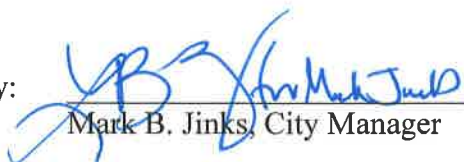
LICENSOR:

GEORGE WASHINGTON MASONIC  
NATIONAL MEMORIAL ASSOCIATION, a  
Virginia non-stock corporation

By:   
Name: George D. Stephens  
Title: Executive Director

LICENSEE:

CITY OF ALEXANDRIA, a municipal corporation  
of the Commonwealth of Virginia

By:   
Mark B. Jinks, City Manager

  
**APPROVED AS TO FORM:**  
**DEPUTY CITY ATTORNEY**

# EXHIBIT 1

## DESCRIPTION OF ROOM SPACE

Masonic Temple 9 ½ Floor. As shown on plans from “ASTRO Digital Trunked Simulcast System Upgrade” dated December 7, 2004.

