

COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present: Kristopher W. Jordan, Deborah B. Martin, James D. Ward

PUBLIC COMMENT

RESOLUTION NO. 04-1275

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 18, 2004 AS CONTAINED IN THE COUNTY'S OFFICIAL ELECTRONIC RECORDINGS OF THE PROCEEDINGS:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the resolutions and records of the proceedings from regular meeting held October 18, 2004 as contained in the county's official electronic recordings of the proceedings.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 04-1276

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1020 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR1020:

It was moved by Mr. Jordan, seconded by Mr. Ward to approve payment of warrants in batch numbers CMAPR1020, memo transfers in batch numbers MTAPR1020 and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
PO's			
Tyevco Inc.	Ashley Villa FY 2003	23011704-5365	\$ 13,400.00
Vouchers			
Presbyterian Child Welfare	Residential Treatment	22511607-5342	\$ 42,600.00
JG Contracting Company, Inc.	Milestone Payment Sept 2004	41111421-5410	\$ 65,637.00
Prudential Group Life & Disability	Aug 2004 Premium	60211902-5370	\$ 5,193.78
Prudential Group Life & Disability	Sept 2004 Premium	60211902-5370	\$ 5,184.91
Prudential Group Life & Disability	Oct 2004 Premium	60211902-5370	\$ 5,185.38
CEBCO	Nov Premiums and Claims	60211902-537037030	\$ 544,725.12

Vote on Motion Mr. Jordan Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 04-1277

IN THE MATTER OF DECLARING OCTOBER NATIONAL DOMESTIC VIOLENCE AWARENESS MONTH IN DELAWARE COUNTY:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

Whereas since the passage of the Violence Against Women Act of 1994, communities have made significant progress in reducing domestic violence such that between 1993 and 2001 the incident of nonfatal domestic violence fell 49 percent, and

Whereas States have passed over 660 State Laws pertaining to domestic violence, stalking, and sexual assault, and

Whereas, domestic violence affects women, men, and children of all racial, social, religious, ethnic, and economic groups in the United States, and

Whereas, women who have been abused are much more likely to suffer from chronic pain, diabetes, depression, unintended pregnancies, substance abuse, and sexually transmitted infections, including HIV/AIDS, and

Whereas, the cost of domestic violence, including rape, physical assault, and stalking, exceeds \$5,800,000,000 each year of which \$4,100,000,000 is spent on direct medical and mental health care services, and

Whereas, there is a need to increase the public awareness about, and understanding of, domestic violence and the needs of battered women and their children

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

I USE OF PREMISES

(a) Licensor hereby grants to Licensee a License for the construction, installation, operation, replacement, removal, maintenance and repair (collectively "Operations") of an unmanned telecommunications facility, including required Telecommunication Equipment and arrays support structures (as the same may be modified, added to and/or substituted from time to time), as permitted herein, upon a certain tower which is located on certain real property leased by Licensor more particularly described in **Exhibit "A"** attached hereto ("Property"); and to install, maintain, operate and remove Licensee's equipment cabinet or compound and related devices owned by Licensee on a portion of the Property. Equipment and elevation depicted on **Exhibit "B"** attached hereto (the space occupied by Licensee on the Property and the Tower hereinafter shall be referred to collectively as the "Premises"), in accordance with the terms herein. Each such array shall be configured as required by Licensee from time to time provided that Licensee obtains all permits and approvals required by applicable jurisdictions relative to any such desired configuration and obtains the approval of Licensor. Licensee shall have the right to park its vehicles on the Premises when Licensee is servicing its communications facility, subject to any conditions in the License. All operations by Licensee on the Premises or Site shall be lawful and in compliance with all applicable Federal Communications Commission ("FCC") requirements. Licensee shall, at its sole expense, comply with (and obtain and maintain such licenses, permits or other governmental approvals necessary to comply with) all laws, orders, ordinances, and regulations of federal, state, county, and municipal authorities applicable to its Operations or use of the Premises or Site. Licensee shall comply with any directive of any public officer or officers applicable to its Operations or its use of the Premises or Site (collectively "Laws"), which shall, with respect to Licensee's Operations, impose any violation, order or duty upon Licensor or Licensee arising solely from Licensee's use of the Premises subject, however, to Licensee's right to contest, in good faith, any such violation, order or duty. Licensee's Operations shall not interfere with the operations of Licensor, the traveling public, or any other users existing on the Commencement Date on the Premises. Licensor agrees to reasonably cooperate with Licensee, at Licensee's expense, in executing such documents or applications necessary or appropriate in order for Licensee to obtain and maintain, at Licensee's expense, such licenses, permits and other governmental approvals needed for Licensee's Operations. Licensor authorizes Licensee to make and prosecute applications for all such approvals. If Licensee is unable to obtain and maintain such licenses, permits or approvals (notwithstanding reasonable efforts to do so), Licensee shall so notify Licensor and the particular License shall immediately terminate.

(b) Licensee agrees to install, maintain, and operate its Telecommunications Equipment in accordance with the specific site standards more particularly described in each License and any other applicable statutes pertaining to the use of telecommunications and/or electronic equipment. In the event Licensee's installation, or Operation, in any way hinders, obstructs, or interferes with, the radio or electronic equipment of Licensor, or any tenant operating at the Premises as of the Execution Date of the applicable License,

Licensee shall, at its sole cost and expense, upon receipt of written notification, forthwith cease the interfering operation, except for brief tests necessary for the elimination of the interference. Licensee shall conduct its Operations in compliance with all laws, orders, ordinances, and regulations of all federal, state, county, and municipal authorities. Licensor may execute any Site License upon the condition that Licensee's equipment shall be installed in such a manner to facilitate Licensor's telecommunication needs as set forth in Exhibit A of this Agreement.

(c) If such hindrance, interference or obstruction cited in Subsection 1(b), is not eliminated or does not fully cease within thirty (30) days after written notice to Licensee by Licensor or any appropriate regulatory agency, Licensor shall have the right to order cessation of Licensee's Operations at the Site as may be necessary to continuously eliminate said interference by giving ten (10) days prior written notice. In the event of Licensee's inability or refusal to eliminate such interference following notice Licensor may at its option terminate the affected Site License and evict Licensee. Once Licensee has more than ten (10) Site Licenses in effect, if such uneliminated interferences occur at over twenty percent (20%) of Licensee's Sites occupied under this Agreement, Licensor may terminate this Agreement and evict Licensee from all its Sites on ninety (90) days' written notice.

(d) Any interference and compatibility testing required hereunder for radio interference with other equipment located at the Premises as of the Commencement Date, or Licensor's equipment installed at any time shall at the sole cost of Licensee, be made by a qualified technical person representing Licensee and a representative designated by Licensor. If the test is satisfactory to both the technical person and Licensor's representative, a certification of such test signed by both the technical person and the Licensor's representative shall be forwarded to Licensor at locations indicated in Article XVIII. Any reasonable costs incurred by Licensor to conduct compatibility testing shall be reimbursed to Licensor within ninety (90) days after receipt of billing and reasonable supporting documentation.

(e) Any interference with Licensor's electronic equipment during an emergency incident will require immediate cessation of operation, transmission or further use of Licensee's equipment during the emergency provided Licensee is given notice of such incident and is afforded the opportunity to cure such interference. Failure to do so promptly after notification of such interference will be grounds for immediate termination of the particular Site License and eviction of Licensee.

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

II. INITIAL TERM

The Initial Term of this License shall be for twenty (20) years ("Initial Term") and shall commence on the date this agreement is last signed by the parties hereto ("Commencement Date"). Licensee agrees to provide immediate written notice to Licensor of Licensee's commencement of the installation of the Equipment.

III. RENEWAL TERMS

Licensee may negotiate for an additional term extending this license if Licensor, determines such extension in its sole discretion, to be in the best interests of the State of Ohio (each a "Renewal Term"). Any additional term shall be on the same terms and conditions as set forth in this License. Under no conditions will the term of this agreement extend beyond the term of the Licensor's underlying lease, if any, and Licensee agrees to be bound by the terms of any underlying lease.

IV. ANNUAL LICENSE FEE

- (a) In lieu on any annual fee, the Licensee and Licensor agree to share resources as described below:
- a. Delaware County agrees to allow MARCS to place transmission equipment for the State of Ohio Mobile data system on the County tower site located at the Delaware County Fairgrounds, 232 Pennsylvania Avenue, Delaware, Delaware County, Ohio 43015. MARCS shall be permitted to place their communication equipment (described in exhibit D) in the equipment building owned by Delaware County. In addition, MARCS shall be permitted to use electricity, natural gas, UPS and generator power located at the facility at no charge.

If MARCS utilizes the benefit conferred in Paragraph (a) above, the in exchange for the benefit conferred thereby, Delaware County will be allowed to co-locate equipment as described in appendix C, in accordance with the specifications listed in this agreement without being required to pay the License Fee set forth in Article IV (b) for so long as MARCS utilizes the benefit conferred in Article IV (a)(a) above. Upon the removal or otherwise termination of usage of the Delaware tower by MARCS, Delaware shall pay the License Fees set forth in (b) below, and shall prorate the fee for any partial year on a daily basis.

- (b) **Annual Fee.** Licensee shall pay an annual fee to Licensor in the amount of One Thousand Four Hundred Forty Dollars and no cents (\$1,440.00) ("Fee") per antenna, which Fee shall be prorated for the period commencing on the Commencement Date through June 30, 2004. Licensee shall pay the Fee annually on July 1st; the first payment shall be due on or before July 1st, 2004. Thereafter the annual Fee and applicable increases shall be due from Licensee on or before July 1st of each succeeding year. If the Fee is not paid by Licensee when due, interest shall accrue upon all amounts due and owing hereunder at the rate of 1.5% per month. The Fee paid by Licensee shall be due without set-off notice or demand from Licensor. There shall be an annual three percent (3%) increase in each successive annual fee following the initial annual payment. Fee Schedule as follows:

(1) **Annual Fee.** If MARCS does not utilize the benefit conferred in Article IV (a)(a), or upon MARCS discontinuing the use set forth in (a)(a) above, Licensee shall pay an annual fee to Licensor in the amount of One Thousand Four Hundred Forty Dollars and no cents (\$1,440.00) (hereinafter "Fee") pre antenna, which fee shall be prorated for the period commencing on the Commencement Date, or the date upon which MARCS does not utilize the benefit conferred in IV (a)(a) above, through June 30 of the next following year. Licensee shall pay the Fee annually on July 1st of each year. Thereafter, the annual Fee and applicable increases shall be due from Licensee on or before July 1st of each succeeding year. If the Fee is not paid by Licensee when due, interest shall accrue upon all amounts due and owing hereunder at the rate of 1.5% per month. The Fee paid by Licensee shall be due without any right of set off, notice or demand from Licensor. There shall be an annual three percent (3%) increase in each successive annual fee following the initial payment. Licensee agrees that in the event the Fee shall become due at some time in the future due to MARCS not utilizing the benefit conferred in IV (a)(a) above, the Fee to be paid shall be the fee for the time period set forth in the schedule below, and not the Fee set forth above (\$1,440.00) for the initial term. Thereafter, payments shall be made in accordance with the schedule. The Fee Schedule is as follows:

Fiscal Year	Base Amount Per Antenna	3% Escalator	New Amount Per Antenna
2005	\$ 1,800.00	Pro-rated	First year
2006	\$ 1,800.00	103%	\$ 1,854.00
2007	\$ 1,854.00	103%	\$ 1,909.62
2008	\$ 1,909.62	103%	\$ 1,966.91
2009	\$ 1,966.91	103%	\$ 2,025.92
2010	\$ 2,025.92	103%	\$ 2,086.69
2011	\$ 2,086.69	103%	\$ 2,149.29
2012	\$ 2,149.29	103%	\$ 2,213.77

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

2013	\$	2,213.77	103%	\$	2,280.19
2015	\$	2,280.19	103%	\$	2,348.59
2016	\$	2,348.59	103%	\$	2,419.05
2017	\$	2,419.05	103%	\$	2,491.62
2018	\$	2,491.62	103%	\$	2,566.37
2019	\$	2,566.37	103%	\$	2,643.36
2020	\$	2,643.36	103%	\$	2,722.66
2021	\$	2,722.66	103%	\$	2,804.34
2022	\$	2,804.34	103%	\$	2,888.47
2023	\$	2,888.47	103%	\$	2,975.13
2024	\$	2,975.13	103%	\$	3,064.38
2025	\$	3,064.38	103%	\$	3,156.31

Any Fee or other payment made by Licensee shall contain a notation of the MARCS 5C2 Fund and the Licensor Site Number applicable to the License with attention to the Site Manager, and shall be made payable to the Treasurer, State of Ohio and sent to MARCS at 2323 W. Fifth Avenue, Suite 150, Columbus, OH 43204.

V. WASTE/RETURN OF PREMISES

Licensee shall not commit or suffer any waste on the Premises. Upon the expiration of this License or upon the earlier termination hereof, Licensee shall surrender possession of the Premises in substantially as good a condition as the same existed at the Commencement Date, except for: (a) damage from fire or natural elements; (b) circumstances beyond the control of Licensee; (c) reasonable use and normal wear and tear, depreciation and decay; and (d) the Licensee improvements and any alterations, fixtures, additions, structures or signs placed or erected upon the Premises by either Licensor or Licensee after the Commencement Date. Provided, however, if Licensee desires to remove its improvements and/or any of the items set forth in (d) above, then Licensee may remove the improvements and such items and shall repair all damage caused in the course of any such removal(s).

VI. CO-LOCATION - THIRD PARTY.

(a) Licensee shall not hinder the co-use of a Site by another company and Licensee may permit the use by third parties of Licensee's antenna and line, as well as, Licensee's excess capacity. Licensee shall not permit additional equipment to be added to Licensee's antenna or line without Licensor's prior written permission and following Licensor's rules and procedures. Licensee shall not allow the use of any space on any facility which, in Licensor's sole opinion, results in any interference with Licensor's operations, communication systems, microwave antennas, and/or other equipment, or would prevent Licensor from utilizing its reserved space as set forth in Exhibit A. Licensee may charge a fee for the use of tower space and/or building space by third parties, under written agreements with those third parties, within the usual parameters of industry practice. Copies of the agreements between Licensee and the third parties shall be provided to Licensor. For third-party co-locations situated entirely within the Site (each a "Sub-Use"), Licensor shall be paid by Licensee fifty percent (50%) of the gross monies paid by the third party to Licensee (but not including any portion of the amount charged the third party to compensate Licensee for the recoupment of all or any portion of its construction and installation costs, including engineering and entitlement expenses) or fifty percent (50%) of the fee paid by the then current Licensee, or fifty percent (50%) of license fee that would be paid by the third party if said third party were to establish their own facility at that location, whichever is highest. For third-party collocations, Licensor will have a separate license agreement with each third party using the Premises, the term of which will be co-terminus with Licensee's Site License. For third-party collocations requiring additional or separate land space on the Premises (each a "Direct-Use"), the License Fee shall be paid directly to Licensor by the third-party user. Any third party seeking to co-locate on Premises with an existing telecommunications licensee, whether under a Sub-Use or a Direct-Use, will be required to fulfill all of Licensor's review procedures and approvals.

(b) Licensee may not refuse to negotiate in good faith or to enter into agreements on equitable terms with any interested third party for the occupation of a facility built by Licensee, unless occupation will result in interference with Licensee's or Licensor's operations, communications systems, microwave antennas and/or other equipment.

(c) Prior to any work beginning by a 3rd party vendor, an inter-modulation study and structural analysis must be done. If the 3rd party interferes with the Delaware County system, the 3rd party will be responsible to remedy and bear the cost.

VII. WARRANTY OF TITLE AND QUIET ENJOYMENT

Licensor represents and warrants that it is the lawful owner or Lessee of the Premises and has full authority to enter into this License. Upon Licensee's payment of the annual license fee and all other charges due

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

hereunder, and otherwise complying with the terms hereof, Licensor shall ensure the Licensee may have quiet use and enjoyment of the Premises.

- 1) In utilizing, or permitting others to utilize, other portions of the communications tower which is the subject of this License and any surrounding lands owned or leased by Licensor or under its control, Licensor shall not take, or permit others to take, any action which would interfere with the use by Licensee of its radio and other communication equipment installed on this site, unless prior written approval is expressly granted by Licensee. Licensor shall immediately resolve, any interference with Licensee's use of the Premises.

Licensee shall not place any of its equipment on the Premises in a manner, which will interfere with the operation of any pre-existing equipment installed on the Premises.

VIII. ASSIGNMENT TO OTHER STATE AGENCIES

At any time during the term of this License, Licensor (MARCS) shall have the right, at its sole option, to assign its rights hereunder to another state agency or agencies under the same terms, covenants and conditions as herein specified.

IX. LICENSOR'S/LICENSEE'S COMPLIANCE WITH LAWS

A. At the time the Premises are "ready for use" by Licensee, Lessor shall ensure that the Premises are in compliance with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and local governments, departments, commissions, boards and offices. The obligations of Licensor under this Article VIII shall survive Licensee's acceptance and/or occupancy of the Premises.

B. In addition to its obligations set forth in Paragraph A of this Article VIII, Licensor shall bring and keep the Premises (where applicable) in compliance with any and all applicable standards which have been or are hereafter promulgated by the U.S. Occupational Safety and Health Administration pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. Sections 651 to 678, as amended, and the National Institute of Safety and Health and Ohio Basic Building Codes.

X. LICENSOR'S DUTIES/SERVICES

Licensor shall, at its expense, perform/provide the following duties/services in regard to the entire Premises:

- A. Prior to Licensee assuming possession of the Premises, change all locks and provide two (2) keys for each lock, if needed, or allow Licensee to have alternative independent access to the Premises; and
- B. Maintain any tower existing on the Commencement Date or constructed thereafter by Licensor to the standards established by the Federal Aviation Authority and Federal Communications Commission, and keep said tower in a safe and stable condition.

XI. INSPECTION

Licensee shall permit Licensor or its agent(s), upon twenty-four (24) hours' advance notice, to enter into any shelter or building erected on the Premises. If said shelter solely houses equipment belonging to Licensee, Licensor and its agent(s) shall not enter thereon unless accompanied by a Licensee representative.

XII. LICENSEE'S DUTIES

Licensee shall, at its expense, perform/provide the following duties:

- A. Pay all annual license fees as they become due;
- B. Comply with any applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state or local governments relating to Licensee's use and occupancy of the Premises;
- C. Pay for all telephone and electric services furnished to the Premises and used by Licensee; and
- D. Pay all fees, permits, and licenses directly related to Licensee's equipment and operation of the same.
- E. Pay all taxes assessed as a result of Licensee's use of the real estate. Licensor shall provide to Licensee any tax bills relating to the uses under this agreement for Licensee to pay.

COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004

XIII. LICENSEE'S IMPROVEMENTS AND CONSTRUCTION

(a) Prior to commencing any installation, construction, alteration or improvement at any Site, Licensee shall obtain Licensor's prior written approval of Licensee's plans for the installation or alteration work which plans shall be attached to the Site License upon execution. A response (approval, denial, and request for modification or additional information) will be made within forty-five (45) days of submittal of such plans; if a response is not forwarded within forty-five (45) days, Licensee shall be entitled to an extension of the Local Permitting Period. Licensee's plans shall include information on the length, width, weight, and cable routing, of and between equipment cabinets and/or shelters, antennas and equipment technical specifications, so as to permit Licensor to reasonably verify their placement on the Premises, potential interference and proper structural loading and Licensee shall provide Licensor with any other information as Licensor may reasonably request with respect to such plans. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement or any Site License, Licensee may replace, exchange, substitute or modify ("replacement") its equipment or antennas installed at any Site with equipment or antennas substantially similar to the equipment and antennas previously approved by Licensor, so long as such replacement equipment and antennas operate at the same frequencies, power levels, emissions, gain, bandwidth and beamwidth and (i) are no larger in size or heavier in weight, and (ii) do not enlarge the physical size of the Site area, subject to Licensor's having thirty (30) days' notice to insure there will be no interference with Licensor's operations.

(b) If construction is proposed, Licensee shall, prior to any construction or reconstruction, apply for an encroachment permit and submit three (3) complete sets of plans, specifications, and structural calculations, stamped by an Ohio NIA registered Engineer, to Licensor, and construction is not to proceed prior to approval of said plans by Licensor. A minimum of one set of plans must be standard size. Licensor shall respond (approval, denial, and request for modification or additional information) within forty-five (45) days of Licensor's receipt of Licensee's plans. If Licensor does not provide such approval or request for changes: (i) within such forty-five (45) day period, then Licensee shall be entitled to one month's free extension of the Local Permitting Period, and (ii) if after sixty (60) days Licensor has not delivered such approval or request for changes, Licensor and Licensee shall meet and confer to determine a mutually acceptable additional extension to the Local Permitting Period. Licensor shall not be entitled to receive any additional consideration in exchange for giving its approval of Licensee's plans. If the appropriate local entity declines to inspect Licensee's construction, Licensee shall provide written confirmation by a qualified individual, such as a current or former building inspector or registered engineer, that the construction conforms to plans and all appropriate building standards, prior to issuance of a Department of Administrative Services Notice of Completion by Licensor.

(c) All of Licensee's installation and alteration work shall be performed in accordance with applicable building codes and shall not adversely affect the structural integrity or maintenance of Licensor's property or improvements. Any structural work or reinforcement on an improvement, in which approval shall be submitted to Licensor prior to Licensor approving construction, shall be approved by a licensed structural engineer at Licensee's sole cost and expense. During construction, Licensee shall perform work in a workmanlike manner and quality as in such a manner as will not hamper Licensor's operations or the needs of the traveling public.

(d) Licensee shall keep the Premises and Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Licensee. If any lien is filed against the Premises or the Site as a result of the acts or omissions of Licensee, or Licensee's employees, agents, or contractors, Licensee shall discharge, bond or otherwise secure same to Licensor's reasonable satisfaction within thirty (30) days after Licensee has notice that the lien has been filed. If Licensee fails to commence steps to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of Licensor, Licensor may, at its election, upon five (5) days' prior written notice to Licensee discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. Licensee shall pay on demand any amount so paid by Licensor for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of Licensor incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith. Failure to immediately pay these amounts constitutes a breach of this License and Licensor may immediately terminate the Agreement without any right to cure under Article XIX.

(e) Except as otherwise expressly set forth in this Agreement, Licensee agrees that each Site and every part and appurtenance thereof is offered **AS IS**. Based upon information supplied by Licensor. Licensee will evaluate the possibility based on Licensee's contemplated Operations of interference from, or to, existing wireless communication or other uses on the Premises. Licensee will then determine if interference will occur assuming the other user's equipment and Licensee's equipment is properly and lawfully installed and operated. If Licensee determines that any such existing user would interfere with Licensee's Operations but that such interference can be reasonably eliminated, Licensee shall so notify Licensor and Licensor shall use reasonable efforts (with the cooperation of Licensee) to remedy the condition deemed to be responsible for such potential interference; provided, however, Licensor's failure to remedy such condition shall in no event result in any liability of Licensor hereunder or under any Site License. Any physical change to Licensor's existing equipment requested by Licensee shall be at Licensee's sole cost. At such time as Licensee determines that no interference shall occur, such determination by Licensee shall be binding on Licensee, no subsequent

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

determination with respect thereto shall excuse Licensee from liability hereunder or with respect to any Site License; provided, however, that if Licensee's Operations are adversely affected in any material way as a result of the improper or unlawful operation of any equipment located on the Premises at the time of Licensee's evaluation or as a result of modifications to equipment and/or additional equipment being installed and operated on the Premises by either Licensor or any other user of the Premises under the control of Licensor, Licensor shall use its best efforts (with the cooperation of Licensee) to promptly resolve such interference. In no event shall Licensor's inability to resolve such interference entitle Licensee to terminate any Site License unless after thirty (30) days following the commencement of such efforts at resolution, such interference has not been resolved to the reasonable satisfaction of Licensee. Nothing in this Agreement shall be deemed to waive any rights Licensee may have pursuant to applicable FCC regulations to enjoin such interference or pursue any other remedies available to Licensee at law or in equity after expiration of the thirty (30) day period referred to in the preceding sentence.

(f) Notwithstanding anything in this Article XIII to the contrary, Licensee acknowledges that Licensor may not have control over equipment located on or adjoining the Premises that would interfere with Licensee's use of the Site and shall not be liable for such lack of control. In the event of such interference, Licensor and Licensee shall use all reasonable efforts within their control to obtain the cooperation of the equipment owner to resolve such interference; provided, however, that if the parties shall not succeed in obtaining the cooperation of the equipment owner to resolve such interference within thirty (30) days following such interference, Licensee may immediately terminate this License if so affected, and neither party shall have any further liability with respect to such License. Any prepaid License Fee shall be credited or returned to Licensee on a pro rated basis.

(g) All portions of the telecommunications facilities or other property or improvements attached to or otherwise brought onto the Site by Licensee shall, at all times and for all purposes, be the personal property of Licensee and at Licensee's option, may be removed by Licensee at any time during the term, and shall be removed no later than sixty (60) days after expiration of the term or termination of the License.

(h) Upon execution of a License, Licensor shall not thereafter grant to any third party any lease, license or other permission to use (herein, collectively, a "Grant") the Premises, Site or area surrounding the Premises under Licensor's reasonable control, if the use permitted under such Grant would cause interference with Licensee's Operations. Any such Grant shall expressly prohibit the user thereunder from interfering with Licensee's Operations. Licensee shall reasonably cooperate with Licensor and/or any subsequent third party user to eliminate any interference and to allow co-location, if possible.

XIV. UTILITIES AND ACCESS

A. Licensee shall have the right at its sole cost and expense to obtain and connect to telephone and electrical service from any utility company that provides or is willing to provide such service to the Site, subject to Licensor's right to approve proposed utility routes and the manner of installation. Licensee shall timely pay all of the Licensee's utility costs. Licensee shall either obtain electric power directly from the local utility or from Licensor's power source and shall pay for installation of a sub meter. Licensee shall pay all local utility company charges directly to the provider. Licensor is under no obligation to provide power or allow Licensee to use its power source, but shall cooperate with Licensee in its efforts to bring electrical power to the Site.

B. The following provisions shall govern access to the Site and Premise by Licensee, unless otherwise modified on a particular Site License. Access for construction, routine maintenance and repair, conducting feasibility studies and other non-emergency visits shall be stated in each Site License Agreement and require a minimum of one (1) business day's prior written notice to Licensor at Licensor's address stated in the Article XVIII herein. In the event of an unscheduled repair or other emergency, Licensee shall be entitled to access to the Premises twenty-four (24) hours per day, seven (7) days a week subject to any special conditions. If a Site is allowed that could affect traffic flow, named maintenance and contractors may be restricted to non-peak flow hours. Licensee shall endeavor to provide written (but in any event shall attempt to provide oral) notice of an emergency repair prior to accessing the Site. Any such access by Licensee shall be subject to any other or superseding access requirements as may be specified in the underlying Lease.

C. Licensee shall not have access at any time to any shelter equipment, array, or utilities of Licensor without a representative of Licensor being present.

XV. IMPROVEMENT FEES/TAXES.

Licensee shall pay all real estate taxes, possessory interest taxes and other taxes and fees caused by licensee's use and/or equipment placed on the Site or other improvements by licensee on the premises.

XVI. INSURANCE/INDEMNIFICATION

(a) Licensee shall carry during the term of this Agreement, at its own cost and expense, the following insurance:

- (i) "All Risk" property insurance for Licensee's property located at the Site;

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

- (ii) Commercial general liability insurance having a minimum limit of liability of \$5,000,000 for each injury or death arising out of one occurrence and \$5,000,000 for damage to property from any one occurrence and excess/umbrella coverage of \$5,000,000; and,
- (iii) Worker's Compensation and Employer's liability insurance, in form and as required by law.

(b) Licensee shall name Licensor as an additional insured under its liability policy and require its insurance company to give at least thirty (30) days written notice of the termination, cancellation or material change of the policy to Licensor. Such certificate of insurance shall be delivered to Licensor within thirty (30) days from the execution of this

Agreement and before the expiration of any term thereof from an insurance company with a minimum policy holder and financial rating of "B+/VII," or better in the then current edition of Best's Insurance Guide.

D) Except as otherwise herein provided, the provision by Licensee of insurance required hereby shall not be construed to limit or otherwise affect Licensee's liability to Licensor.

E) Notwithstanding anything in this Agreement, each party hereby releases and waives any and all claims against the other party and the other party's employees, agents, officers, partners and directors, for consequential, incidental or special damages, or lost profits.

With respect to Licensee's obligation to provide legal representation to MARCS, Licensee recognizes that only the Attorney General can undertake the defense of MARCS or special counsel appointed by the Attorney General; consequently, Licensee's obligations hereunder may result in indemnification for the reasonable costs incurred in connection with such representation.

XVII. ASSIGNMENT

This agreement is personal to Licensee and Licensor. Except as hereinafter provided, both parties, without other parties prior written consent, which consent may be withheld in Licensor's sole and absolute discretion, assign or otherwise transfer this agreement, a Site License or its interest in any particular Premises or any part thereof.

XVIII. NOTICES

(a) All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this License shall be in writing and shall be deemed to have been properly given when hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid:

(i) With respect to Ohio Department of Administrative Services, addressed to:

Ohio Department of Administrative Services
General Services Division
Attention: Administrator, Real Estate Services
4200 Surface Road
Columbus, Ohio 43228-1395,

With an additional copy sent to:

Ohio Department of Administrative Services
Office of Information Technology
Multi-Agency Radio Communications System (MARCS)
Attn: Site Manager
2323 W. Fifth Avenue, Suite 150
Columbus, Ohio 43204.

(ii) With respect to Licensee addressed to:

Delaware County Board of Commissioners
101 N. Sandusky Street
Delaware, Ohio 43105

Licensor and MARCS each have the right, from time-to-time, to specify as its address for purposes of this License any other address in the United States of America upon giving notice thereof to the other party hereto as provided herein.

(b). As a courtesy, a copy of any such instrument may be sent to the other party via facsimile. Such faxed copies shall not be a substitute or replacement for the instrument to be delivered or sent pursuant to Section (A) above. The failure to fax a courtesy copy to the other party shall not affect the validity of any instrument issued pursuant to Section (A).

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

XIX. REPAIRS

(a) Licensee shall, at all times during the term of this License and at Licensee's sole cost and expense, keep its facilities and equipment located on or about Premises and every part thereof in good condition and repair, reasonable wear and tear excepted, including making replacements when necessary. If Licensee fails to promptly make any repairs that are necessary to remedy a dangerous condition on the Site caused by Licensee, its agents, employees or contractors, or other condition caused by Licensee, its agents, employees or contractors which is materially adverse to the quiet enjoyment by Licensor or any other user of the Site, Licensor shall give Licensee written notice of its intention to make such repairs and the date on which such repairs shall commence. Except for emergencies, Licensee shall be given at least fifteen (15) days from the day the letter is sent to commence the repairs. If Licensee does not, prior to the date set forth in such notice, commence to make such repairs, Licensor may make such repairs and shall be reimbursed by Licensee for any and all reasonable costs incurred by Licensor in performing (or contracting to have performed) such repairs, including any overhead costs reasonably allocable to the performance thereof. Licensor shall provide Licensee reasonably detailed supporting documentation of such costs concurrently with any demand for reimbursement.

(b) Licensee shall, at all times, during the term of License and at Licensee's sole cost and expense, keep Licensee's equipment at the Site and any access roads constructed by Licensee for its sole use at the Premises in good condition and repair, except for any access roads or improvements installed by Licensor or other third parties.

(b) Licensee, at its sole cost and expense, will promptly restore all Licensor property, which is destroyed or damaged by Licensee's activities on the Site if so requested by Licensor. Licensee agrees to commence performance of any remedial work within thirty (30) days of written notice by Licensor and to complete remedial work required in the reasonable opinion of Licensor to restore the site to its original condition, reasonable wear and tear excepted, within the number of days specified in the written notice. The number of days specified shall be reasonable. If remedial work is not undertaken and completed within the specified time, Licensor may, on ten (10) days' prior written notice to Licensee, undertake and complete the remedial work with its own forces and/or independent contractors, and Licensee shall pay all actual costs or charges incurred by Licensor by reason of such work. Licensor shall provide Licensee reasonably detailed supporting documentation for such costs and charges. If Licensor must make repairs to its equipment under this Article, Licensee shall pay the cost of those repairs.

XX. SURRENDER OF PREMISES; HOLDING OVER.

(a) Upon the expiration or other termination of a License, Licensee shall peacefully vacate the Premises in as good order and condition as the same were on the Commencement Date, reasonable wear and tear, and damage not caused by Licensee excepted. If Licensee fails to promptly remove all of its facilities and equipment from the Premises within sixty (60) days after expiration or earlier termination of the Term, Licensor may, after thirty (30) days' prior written notice to Licensee, remove the same (without any liability to Licensee for any damage to such equipment and/or facilities which may result from reasonable efforts at removal), and Licensee shall pay to Licensor on demand any and all reasonable costs incurred by Licensor in removing and storing such improvements and equipment prior to retrieval of same by Licensee. Licensor has no obligation to store such equipment, and Licensee shall have no claim if Licensor destroys the equipment if it is not removed by Licensee as provided herein.

(b) Should Licensee continue to hold the Premises after the termination of License, whether the termination occurs by lapse of time or otherwise, such holding over shall, unless otherwise agreed to by Licensor in writing, constitute and be construed as a tenancy at will with Licensor reserving all rights thereunder at a monthly License Fee equal to twelve and one-half percent (12.5%) of the annual License Fee last paid and subject to all of the other terms set forth herein including the annual percentage increase.

XXI. DEFAULT AND REMEDIES.

(a) The occurrence of any one or more of the following events shall constitute an "event of default" or "default" under the License: (i) if Licensee fails to pay any License Fee or other sums payable by Licensee and when the License Fee or other sums become due and payable and such failure continues for more than ten (10) days after written notice thereof from Licensor is received pursuant to Article XVIII; (ii) if Licensee upon actual receipt of any formal written order or directives relating to the Site from any governmental entity fails to comply with such order or directive within the time limits set forth in such order or directive and any applicable administrative or judicial appeal rights having been exhausted; (iii) if Licensee fails to perform or observe any other term of the License, and such failure continues for more than fifteen (15) days after written notice thereof from Licensor or in the event of a default which cannot, with due diligence be cured within a period of fifteen (15) days, if Licensee does not duly institute within such fifteen (15) day period steps to remedy the same and the same is not remedied within thirty (30) days or such longer period as mutually agreed by the parties hereto; (iv) for any specifically stated item of default cure shall be determined by the specific Article herein;

(b) The occurrence of any one or more of the following events shall constitute an "event of default" or

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

"default" of this License: (I) if any petition is filed by or against Licensee, under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof (and with respect to any petition filed against Licensee and such petition is not dismissed within ninety (90) days after the filing thereof), or Licensee shall be adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof; (ii) if Licensee becomes insolvent or makes a transfer in fraud of creditors; (iii) if a receiver, custodian, or trustee is appointed by Licensee or for any of the assets of Licensee which appointment is not vacated within ninety (90) days of the date of the appointment; (iv) if Licensee fails to perform or observe any other term of the Agreement, and such failure continues for more than fifteen (15) days after written notice thereof from Licensor or in the event of a default which cannot, with due diligence be cured within a period of fifteen (15) days, if Licensee does not duly institute within such fifteen (15) day period steps to remedy the same and the same is not remedied within thirty (30) days or such longer period as mutually agreed by the parties hereto.

(c) In any notice of an alleged default by Licensee from Licensor, Licensor shall specify the nature of the default. After applicable notice and grace periods have expired, at any time thereafter that Licensee remains in default, Licensor may terminate the License, without notice or demand. Upon the applicable termination, Licensee shall immediately surrender Site to Licensor, remove all of its facilities and equipment therefrom. If Licensee fails to promptly remove all of its facilities and equipment from the Premises, Licensor may remove the same (without any liability to Licensee for any damage to such equipment and/or facilities which may result from reasonable efforts at removal), and Licensee shall pay to Licensor on demand any and all costs incurred by Licensor in removing and storing such facilities and equipment prior to retrieval of same by Licensee.

(d) Default by Licensor and Licensee's Remedies. In the event that Licensor shall be in default of any terms or provisions of this License and shall so remain for a period of thirty (30) days after Licensee has given notice to Licensor of such default (however, if such default cannot reasonably be cured within the applicable time period, then Licensor shall not be deemed in default so long as it promptly commences to cure the same within the applicable time period and diligently pursues such curing thereafter), then: (i) Licensee may terminate this Lease by giving not less than ten (10) days' written notice to Lessor, or (ii) Licensee may cure the default (or have the default cured by others) upon prior written notice to Licensor stating that Licensee so intends to deduct the reasonable cost thereof from the Fees reserved herein. Notwithstanding Licensee's election under (i) or (ii) of this subparagraph (c), Licensee shall nonetheless be entitled to pursue any and all rights it may have at law or in equity, subject to the limitations contained in paragraph XI(c) of this license.

(e) In the event of a termination of a License, it shall be lawful for Licensor, after not less than sixty (60) days' prior written notice, to reenter into and upon the Site, and every part thereof, and to remove at Licensee's expense all of Licensee's property therefrom and to repossess and occupy the Site. In the event Licensor terminates a License pursuant to this Section, Licensor shall not be required to pay Licensee any sum or sums whatsoever related to License.

XXII. FORCE MAJEURE

If either Licensor or Licensee shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this License), or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this clause shall excuse Licensee from prompt payment of any rent, taxes, insurance or any other charges required of Licensee.

XXIII. USE OF COMMON AREAS

Licensor hereby grants to Licensee and its agents, servants, employees, contractors, and business invitees during the term of this License, a non-exclusive right to use all parking, driveway and walking areas (the "Common Areas") which are now or hereafter become a part of or appurtenant to the Premises, together with right of ingress and egress to and from the Premises at such places as are now or may thereafter be designated by Licensor, together with, and subject to, similar rights granted from time to time by Licensor to other occupants of the Premises. Licensor acknowledges that no fee will be charged to Licensee for use of the Common Areas.

XXIV. LICENSEE'S PROPERTY

Licensor shall not be liable for the death of or any injury to any person(s) or damage to any property resulting from fire, explosion, any falling items, gas, electricity, water, rain, snow or leaks from any part of the Premises from any cause whatsoever, unless the same results from the negligence of Licensor, or its agents, servants, employees, contractors, invitees and assigns or the failure of Licensor to make repairs or maintenance required hereunder.

XXV. RELOCATION OF TOWER.

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

Licensor may, at its election, relocate the Tower to an alternative location or property owned or leased by Licensor. Such location will (i) be at Licensor's sole cost, (ii) not result in an interruption of Licensee's communications services. Upon such relocation, the Premises covered herein shall be the new Tower and the new ground area on which the new Tower sits. At the request of either party, Licensor and Licensee shall enter into an amendment of this License, to clarify the rights of Licensee to the new Tower. Licensee may terminate this License during the first ninety (90) days following the relocation by written notice to Licensor in the event that the Site no longer supports the User's radio frequency network design

XXVI. FORUM DESIGNATION/WAIVER OF JURY TRIAL

Any action or proceeding against any of the parties hereto relating in any way to this License or the subject matter hereof shall be brought and enforced exclusively in a court of competent jurisdiction located in Franklin County, Ohio, and the parties hereto irrevocably consent to the exclusive jurisdiction of such courts in respect of any such action or proceeding. After consulting with their own counsel, the parties hereto each knowingly waive their right to a jury trial in any action or proceeding relating to this License.

XXVII. WAIVER

No waiver by either party of a breach of any term, condition, provision, covenant or obligation of this License shall be construed to be a waiver of any future breach of the same or other term, condition, provision, covenant or obligation hereof. No receipt of money by Licensor from Licensee or others after the giving of any notice of default, or after the termination of this License, or after the commencement of any suit, shall reinstate, continue or extend the term of this License, or affect any such notice, demand or suit. The rights and remedies hereby created are cumulative and the use of one remedy shall not be taken to exclude or waive the right to the use of another.

XXVIII. SURVIVAL

The representations, warranties, covenants, indemnities and agreements of the parties contained in this License shall survive the expiration or termination of the term of this License and shall be and continue in effect notwithstanding the fact that MARCS may waive compliance with any of the other provisions of this License.

XXIX. HAZARDOUS MATERIALS

- (a) Except as otherwise expressly permitted in this Agreement, Licensee shall not use, create, store or allow any hazardous materials on the site. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted. Back-up generators and the storage of fuel for such generators shall only be allowed if provided in License. In no case shall Licensee cause or allow the deposit or disposal of any hazardous materials on the Site. Licensor, or its agents or contractors, shall at all times have the right to go upon and inspect the Site and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing of soils or underground tanks on the Site.
- (b) Accumulation, storage, treatment, or disposal of any waste material is prohibited; excepting only temporary storage, not to exceed fourteen (14) days, or non-hazardous solid refuse produced from activities on the Premises for pick up by municipal or licensed commercial refuse service, and lawful use of sanitary sewers (if any) for domestic sewage.
- (c) Manufacturing; maintenance of equipment (excluding communications equipment and back-up power sources such as batteries and generators operated pursuant to the License) or vehicles, or use, installation or construction of vessels, tanks, (stationary or mobile), dikes, sumps, or ponds; or any activity for which a license or permit is required from any government agency for (1) transportation, storage, treatment, or disposal of any waste, (2) discharge of any pollutant including but not limited to discharge to air, water, or a sewer system is prohibited.
- (d) Any spill caused by Licensee or from Licensee's equipment resulting in a release of a hazardous material to the air, soil, surface water, or groundwater in violation of applicable law will be immediately reported to Licensor as well as to appropriate government agencies and shall be promptly and fully cleaned up and the Premises (including soils, surface water, and groundwater) restored to its condition existing immediately prior to such spill or release, all in accordance with and as may be required by applicable law. Should Licensee desire to use pesticides on the Site or Premises (herbicides, rodenticides, or insecticides) all applicable Environmental Protection Agency (EPA) standards must be met and prior approval must be received from Licensor and not all EPA approved pesticides will be permitted. Licensee will fill out form FG-880 and submit it to the area manager at least seven (7) days prior to application of pesticides. Licensor reserves the right to disapprove the use of any pesticide. Licensee shall obtain all county, state or federal permits required, including restricted pesticide use and burning permits and comply with all conditions of those permits. Licensee shall submit to the area manager a copy of all permits.
- (e) In the event Licensee breaches any of the provisions of this License the License may be terminated immediately by Licensor and be of no further force or effect. It is the intent of the parties hereto that Licensee shall be responsible for and bear the entire cost of removal and disposal of hazardous materials

**COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004**

introduced to the Site during Licensee's period of use and possession as Licensee of the Site.

- (f) Licensee shall also be responsible for any clean up and decontamination on or off the Site necessitated by the introduction of such hazardous materials on the Site. Licensee shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the Site by any party other than Licensee during any period prior to commencement of Licensee's period of use and possession of the Site as Licensee.

XXX. GOVERNING LAW

This License, and any addendum hereto, shall be governed by, construed, enforced and interpreted in accordance with the laws of the state of Ohio, without giving effect to any conflicts or choice of laws principles which otherwise might be applicable.

XXXI. ADDITIONAL REQUIREMENTS

Licensee, at Licensee's expense shall have a structural and/or inter-modulation study completed prior to any installation of equipment. Additional specific MARCS requirement are as outlined in Exhibit B.

XXXII. LICENSEE CASUALTY RESPONSIBILITIES.

Licensor will not keep improvements; which are constructed or installed by Licensee under the provisions of this Agreement insured against fire or casualty, and Licensee will make no claim of any nature against Licensor by reason of any damage to the business or property of Licensee in the event of damage or destruction by fire or other cause. Licensee is solely responsible for insuring, or self-paying, all expenses caused by the destruction or damage of its facilities regardless of cause or fault.

XXXII. RELOCATION ASSISTANCE.

Licensee acknowledges it is not entitled to any relocation assistance payments at the conclusion of this License under State or federal law (42 U.S.C.A. 4601 et seq.), and Licensee further agrees it will not file or pursue any such claim.

XXXV. HEADINGS

The headings to the various articles and exhibits to this License have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms, provisions and conditions of this License.

XXXVI. MULTIPLE COUNTERPARTS

This License may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

XXXVII. MISCELLANEOUS

- (a) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this License, such party shall not unreasonably delay, withhold or condition its approval or consent.
- (b) All riders and Exhibits annexed hereto form material parts of this License.
- (c) This License may be executed in duplicate counterparts each of which shall be deemed an original. (i) Licensee will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, or physical handicap. Licensee will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin or physical handicap.
- (d) Licensee shall not commit, suffer, or permit any waste on the licensed Site or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the Site for any illegal or immoral purposes.
- (e) Each party executing this License acknowledges that it has full power and authority to do so and that the person executing on its behalf has the authority to bind the party.
- (f) This License shall become valid and binding only upon Licensor's execution by its duly authorized representative.

XXXVIII. SEPARABILITY

COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004

If any provision of this License, or the application thereof to any situation or circumstance, shall be invalid or unenforceable, the remainder of this License or the application of such provision to situations or circumstances other than those as to which it is invalid or unenforceable, shall not be affected; and each remaining provision of this License shall be valid and enforceable to the fullest extent permitted by applicable law.

XXXIX. ENTIRE AGREEMENT

This License and attached exhibits constitute the entire agreement between the parties and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to the subject matter hereof. Any amendment or change in this License shall not be valid unless made in writing and signed by both parties.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mrs. Martin Aye

RESOLUTION NO. 04-1280

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

Jenna Shicks-Burke has accepted the Telecommunications Officer I position with the 911 Department; effective date November 1, 2004.

Matthew Fletcher has accepted the Telecommunications Officer II position with the 911 Department; effective date November 15, 2004.

Craig O'Dell's temporary employment with the Waste Water Treatment Facility has ended; effective date September 17, 2004.

Steven Ward has resigned his position as Custodian with the Maintenance Department; effective date October 22, 2004.

Richard Duffy has accepted the Building Inspector position with the Code Compliance Department; effective date November 8, 2004.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 04-1281

IN THE MATTER OF AWARDING THE MARKET RESEARCH FOR PAY SYSTEM ADJUSTMENT TO CLEMANS – NELSON AND ASSOCIATES, INC:

It was moved by Mr. Jordan, seconded by Mr. Ward to adopt the following:

WHEREAS, the Board of County Commissioners is responsible for ensuring the integrity of the County's Compensation Management System for the county offices and departments; and

WHEREAS, the Board of County Commissioners is committed to conducting the wage survey to determine the appropriate percentage of wage change, if any, in each job category every eighteen months.

WHEREAS, The Human Resources Department has reviewed all proposals and recommends the bid be awarded to Clemans – Nelson and Associates, Inc.;

NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners, Delaware County, State of Ohio, accepts the proposal from Clemans – Nelson and Associates, Inc. as specified below, which will not exceed a total cost of: \$8,050.00.

- A. Clemans – Nelson and Associates hourly rates include:
 - Consultant \$95.00 per hour
 - Senior Consultant\$120.00 per hour
 - Manager / Vice-President / President\$135.00 per hour

Further be it resolved, by the Board of Commissioners of Delaware County, State of Ohio, to execute a Management Consultant Agreement with Clemans – Nelson and Associates, Inc. to provide

COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004

on a priority basis such management labor and employment consulting services necessary for the Market Research for Pay Adjustment project at the aforementioned rates.

MANAGEMENT CONSULTANT AGREEMENT

The County of Delaware, Ohio, hereinafter called the "Client," and Clemans, Nelson & Associates, Inc., hereinafter called the "Consultant," shall hereby agree to the following terms and conditions commencing with the execution of the agreement by the parties and ending upon completion of the project.

For purposes of this Agreement, the Consultant will serve as an independent contractor to the Client. As such, the Consultant is responsible for all charges, premiums and taxes, if any, payable on any funds it may receive as a result of its activities, including, without limiting the generality of the foregoing, Social Security, income and withholding taxes; unemployment insurance taxes; unemployment compensation funds; compensation insurance; and income taxes.

The Consultant, in consideration of the covenants and promises set forth hereinafter, certifies, covenants, and agrees to perform in the following manner, to wit:

Provide to the Client on a priority basis such management, labor, and employment consulting services as outlined in the proposal attached hereto as Exhibit A.

Deliverables shall be submitted to Client no later than November 30, 2004, unless otherwise mutually agreed upon in writing by both parties.

IN CONSIDERATION of the foregoing covenants and promises, the Client agrees to pay the Consultant at the applicable rates for professional services:

Consultant	\$95.00 per hour
Senior Consultant.....	\$120.00 per hour
Manager/Vice-President/President.....	\$135.00 per hour

The total amount charged under this agreement for hourly work plus expenses (expense charges are outlined below) shall not exceed eight thousand fifty dollars (\$8,050). The only exception would be any additional work requested by the Client, which will require written addendum to this agreement prior to commencement of said additional work.

Actual clock hours shall include only those hours spent in on-site consultation and assistance at Client's offices, and only those hours of in-office research and preparation at Consultant's offices necessary to support such consultation and assistance.

Included in the not to exceed pricing above, the Client further agrees to pay the Consultant the mileage rate as established by the Director of the Internal Revenue Service for travel from the consultant's headquarters or a regional office, whichever is applicable, ordinary and necessary business expenses.

Invoices setting forth these charges shall be submitted as accrued on a monthly basis, payable upon receipt.

Vote on Motion Mr. Jordan Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 04-1282

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

It was moved by Mr. Jordan, seconded by Mr. Ward to adjourn into Executive Session at 9:50AM.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 04-1283

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Jordan, seconded by Mr. Ward to adjourn out of Executive Session at 10:45AM.

Vote on Motion Mr. Jordan Aye Mrs. Martin Aye Mr. Ward Aye

There being no further business the meeting adjourned.

COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 21, 2004

Kristopher W. Jordan

Deborah B. Martin

James D. Ward

Letha George, Clerk to the Commissioners