



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of June 11, 2011

DATE: June 1, 2011

SUBJECT: Emergency Preparedness and Response License Agreement with The American National Red Cross

C. M. RECOMMENDATIONS:

Approve the License Agreement between the County Board and The American National Red Cross, and

Authorize the Director of the Department of Human Services, or her designee, to execute the License Agreement on the County Board's behalf after the License Agreement is approved as to form by the County Attorney.

ISSUES: This is a request for approval of and authority to execute a cost-neutral License Agreement. No issues have been identified.

BACKGROUND: The American National Red Cross has agreed to allow the County to store two (2) Emergency Preparedness and Response trailers at the Red Cross's Arlington office on Arlington Boulevard. The License Agreement attached to this Report, which has been signed by The American National Red Cross, sets forth the terms and conditions of the County's legal relationship with The American National Red Cross regarding the trailers. One of the trailers is climate-controlled and requires electricity, while the other is not climate-controlled.

DISCUSSION: Arlington County works in partnership with The American National Red Cross to enhance emergency preparedness and respond to disasters in Arlington. The County's Department of Human Services has two trailers to store Emergency Preparedness and Response materials that were previously stored at 1800 N. Edison Street, a facility slated to be closed. Materials stored in the climate-controlled trailer include blood pressure cuffs and stethoscopes, N95 masks, first aid bags, and other emergency preparedness supplies that decay in heat. The Red Cross's Arlington office has ample parking and is located at 4333 Arlington Boulevard, at the intersections of Arlington Boulevard and George Mason Drive. This is an ideal physical location for emergency response materials that may require rapid deployment.

County Manager:

County Attorney:

Staff: Josephine Peters, DHS, Public Health Division

24.

FISCAL IMPACT: None. The License Agreement is cost-neutral. Pursuant to the License Agreement, the County will reimburse the Red Cross for electricity costs instead of incurring the electricity costs directly.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is dated as of the ____ day of _____, 2011, by and between The American National Red Cross, a, a nonprofit corporation, a Federally chartered instrumentality of the United States, and a body corporate and politic under the laws of the United States (36 U.S.C. §§ 300101-300111 (2007) (the "Licensor"), and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic (the "Licensee") (collectively, "the Parties").

WHEREAS, by virtue of a Deed recorded in Deed Book 903 at page 203 and a Deed recorded in Deed Book 1413 at page 353 among the land records of Arlington County, Virginia, Licensor is the owner, in fee simple, of certain parcels of real estate, with improvements thereon and appurtenances thereto, located in Arlington County, Virginia, at 4333 Arlington Boulevard, Arlington, Virginia, together known as RPC # 20028002 (the "Red Cross Parcel"); and

WHEREAS, Licensee desires to use a portion of the Red Cross Parcel to store two (2) mobile trailers, one (1) of which is climate-controlled and must be connected to an electric power supply,

NOW, THEREFORE,

WITNESSETH:

For and in consideration of the love and affection of the Licensor for the Licensee, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Licensed Premises. Licensor hereby grants to Licensee the permission to use, upon the terms hereinafter provided, that portion of the Red Cross Parcel described in "Exhibit A," attached hereto ("Licensed Premises"). Exhibit B, also attached hereto, illustrates the Licensed Premises.
2. Term. The term of this Agreement ("Term") shall begin on the date when this Agreement is last executed by the Licensee and Licensor by their duly-authorized representatives

(the "Commencement Date") and, unless terminated sooner as provided hereunder, the term shall continue for an initial period of one (1) year from the Commencement Date. The calendar date of the final day of the initial one-year period shall constitute the expiration date ("Expiration Date") unless this Agreement automatically renews as provided herein. If neither of the Parties delivers to the other party, at least thirty (30) days before the Expiration Date, written notice of the delivering party's intent to terminate this Agreement on the Expiration Date, then this Agreement shall automatically renew for another one (1) year term, without limitation as to total duration. The calendar date of the final day of each successive one-year period may be known as the Expiration Date for 30-day termination notification purposes.

3. Permitted Uses. Licensee is permitted to use, during the Term, the Licensed Premises as follows:

(a) for the outdoor storage of one (1) non-climate-controlled wheeled trailer measuring 16' x 7' x 7' and one (1) climate-controlled wheeled trailer measuring 16' x 7' x 7', which trailers are for the Licensee's emergency preparedness functions;

(b) for connection of the climate-controlled trailer to electric power, including access to electric power lines, junction boxes, outlets, switches, and all other equipment or fixtures necessary for such connection, and an unobstructed ground-level path for electric power lines to run between the trailer and such electric power equipment; and

(c) for all other uses pertaining to the placement of the two (2) trailers on the Red Cross Parcel and the connection of the climate-controlled trailer to electric power.

Subsections (a), (b) and (c) of this Section 3 are jointly hereinafter referred to as "Permitted Uses."

4. License Fee. The Licensor is a non-profit and the Licensee is a local government, and the Permitted Uses fulfill the purposes of both Parties, thus the Licensee shall have no obligation to pay any fee or rent to the Licensor in exchange for the license granted hereby by the Licensor.

5. Access to Licensed Premises; Ingress and Egress. Licensee and its employees, officers and agents shall have access to the Licensed Premises 24 hours per day and 7 days per week,

year-round, subject to Licensor's reasonable security requirements and any interruption of access caused by damage or destruction to the Licensed Premises or any supporting public infrastructure, or any acts of the government or third parties. The Licensor shall ensure that the Licensee has unobstructed access to and from Arlington Boulevard at all times, so that the Licensee may move the two trailers to and from the Red Cross Parcel at any time. The Licensor also shall ensure that the Licensee has unobstructed access to the hitches on both trailers.

6. Utilities. All electrical connections, services, and teardowns or removal will be solely the responsibility of the Licensee, and at Licensee's sole cost and expense. All utility work shall be performed by locally-licensed electricians and plumbers, who shall obtain all the necessary and appropriate permits prior to any work. All utility costs associated with Licensee's use of the Licensed Premises and/or any other portion of the Red Cross Parcel during the term of this Agreement shall be paid by Licensee through reimbursement to Licensor, as follows:

- First year of this Agreement: Licensee will pay a flat rate of \$100 per month to Licensor for electricity usage. Payments will be made to the Licensor at its address stated in paragraph 12 below on the first day of every month.
- During the first year of this Agreement the Arlington County Public Health Division's Emergency Planner will read the submeter placed on the electrical outlet that is dedicated to the climate-controlled trailer and work with the Licensor's Operations Director to document the actual electricity used and the associated cost, according to the Licensor's electricity billing cycle.
- In the second year of this Agreement and subsequent years, the Licensee will pay the Red Cross a monthly amount equal to the total electricity cost incurred by the Licensor at the submeter in the first year of this Agreement, divided by 12, plus 15% to account for climatic variations. Payments will be made by the Licensee to the Licensor at the address set forth in section 12 below, on the first day of every month.

7. Additional Approvals. No provision of this Agreement is intended to be or shall be construed to relieve the Licensee, its authorized employees, contractors, subcontractors, and agents, from their independent obligation to obtain all required permits and comply with all applicable laws, ordinances and regulations.

8. Warranty of Condition or Suitability; Notice of Loss of Power. The Licensor represents and warrants to Licensee that the Licensed Premises are fit for the Permitted Uses, and suitable for the Licensee's purposes; provided, however, that Licensee's sole and exclusive remedy for

breach of this warranty of the Licensor shall be to peacefully vacate the Licensed Premises. The Licensee is satisfied that the Licensed Premises are suitable and fit for the Permitted Uses. The Licensor shall inform Licensee immediately by telephone call to the Public Health Division Duty Officer, by calling the Arlington County Emergency Communications Center at (703) 558-2222 and requesting the Public Health Duty Officer, if Licensor becomes aware of any loss of electrical power to the Red Cross Parcel or to the Licensed Premises, provided, however, that Licensee's sole and exclusive remedy for breach of the Licensor's obligation to inform Licensee of loss of electrical power shall be to peacefully vacate the Licensed Premises. The Licensor shall, upon its execution of this Agreement, provide Licensee with the name, address, and mobile telephone number of the Licensor's designee who will serve as Licensee's emergency point of contact.

9. No Permanent Rights. Licensor and Licensee acknowledge that this Agreement is for Licensor to grant a license, as mere permission, to Licensee for Licensee's use and benefit. The Parties agree that there is no intention whatsoever to grant to Licensee, its successors in title or interest, or to any other person or entity, any permanent rights or legal interests, of any kind, in the Licensed Premises, the Red Cross Parcel, or in Licensor's personal property.

10. Default. In the case of a breach of any term or condition of this Agreement, the non-breaching party shall be entitled to pursue any and all remedies, whether legal or equitable, as the law allows.

11. Inspection of Licensed Premises. The Licensor, its employees, contractors, subcontractors, and authorized agents, shall have the non-exclusive right, at all reasonable times during the Term, to enter upon the Licensed Premises to conduct all required, necessary, or other inspections deemed prudent in Licensor's sole discretion. Any such examination or inspection shall not be express or implied acceptance or approval by Licensor of the work being performed on the Licensed Premises.

12. Notices. All notices or other communications hereunder shall be in writing and shall be either hand delivered, sent by commercial courier (such as Federal Express) or sent by United States registered or certified mail, return receipt requested, at the following addresses or such other address hereafter provided by notice to the other party:

If to Licensee: Arlington County
Department of Human Services
Public Health Division
Attn: Director of Public Health
800 S. Walter Reed Drive
Arlington, VA 22204

If to Licensor: The American National Red Cross
National Capital Region
Att'n: Operations Director
8550 Arlington Blvd.
Fairfax, VA 22031

Any party may, by notice given at least five (5) days before such change becomes effective, designate a new address to which such notices shall be sent. Notice shall be deemed effective when delivered.

13. No Partnership, Joint Venture, Lease, or Easement; Use by Licensor. The Parties hereby agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership; joint venture; landlord/tenant relationship; or an ownership, leasehold interest, easement, or other property right in any portion of the Red Cross Parcel. Licensor, its employees, authorized contractors and subcontractors, shall have the right, at all times, to enter upon and use the Red Cross Parcel in any manner not inconsistent with Licensee's Permitted Uses and right to unfettered ingress and egress to and from the Licensed Premises.

14. Role of the Licensee; Licensee Decisions; No Waiver. The execution of this Agreement on behalf of the Licensee shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, or for any other governmental approval or consent required to be obtained by Licensor. Whenever, in this Agreement, Licensee is required to join in, consent, give its approval, or otherwise act pursuant to this Agreement, it is understood by the Parties that such obligations are meant to apply to the Licensee acting in its capacity as a licensee and not in its capacity as a governing authority or local governing body. Nothing in this Agreement shall be construed to waive any of Licensee's powers, rights or obligations as a governing authority of local governing body, whether or not affecting the Licensed Premises, including, but not limited to, its police power, right to grant or deny permits, right to collect taxes

or fees, or any other power, right or obligation whatsoever.

15. No Waiver of Sovereign Immunity by Licensee. Nothing in this Agreement, nor any action taken by Licensee pursuant to this Agreement, nor any document which arises out of this Agreement, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Licensee, or of its elected and appointed officials, officers and employees.

16. No Rights in Third Parties. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as parties hereto, rights as a third-party beneficiary hereunder, or authorize any person or entity that is not a party hereto to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.

17. No Assignment or Transfer. The Licensor shall not at any time assign or transfer this Agreement, or license or sublicense all or part of the Licensed Premises, except that this Agreement may be assigned to Licensor's or Licensee's successors in title and interest. This Agreement shall be binding upon and inure to the benefit of the successors in title and successors in interest of the Licensee. All of Licensor's obligations and liabilities set forth in this section shall survive the expiration or termination of this Agreement.

18. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Agreement to the contrary, no party to this Agreement shall have any obligation to explicitly or implicitly indemnify or hold harmless the other party or any third party from any liability whatsoever.

19. Severability. If any term or provision of this Agreement shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement, other than those terms or provisions which are held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

20. Approval of Agreement by Licensee. This Agreement shall not become effective unless and until the County Board approves this Agreement, and it is signed on behalf of the Licensee.

If this Agreement is not approved by the County Board and executed by an authorized person, then no liability whatsoever shall accrue to the Licensor or Licensee, and the Licensor and Licensee shall have no obligations whatsoever to each other.

21. Survival. Expiration or termination of this Agreement for any cause shall not release either party from any liability that, at the time of termination, has already accrued to it or that may thereafter accrue with respect to acts or omission made prior to such termination, and shall not affect in any way the survival of any right or obligation of either party which is expressly or implicitly stated in this Agreement to survive termination hereof.

22. Entire Agreement / Applicable Law. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof. The Parties expressly acknowledge and represent that they have not relied on any oral or written representations, warranties, promises, statements, covenants or agreements, express or implied, direct or indirect, given or made by or on behalf of the other, except those representations, if any, expressly contained herein. This Agreement shall not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the Licensor and Licensee. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. All legal actions instituted by Licensor or Licensee concerning this Agreement shall be filed solely in the Arlington County General District or Circuit Court, and in no other court or jurisdiction.

23. Termination. This Agreement shall terminate at the conclusion of the Term, or otherwise end immediately upon written agreement of the Parties, or at any time upon written notice by one party to the other at least ninety (60) days before the date designated by the terminating party.

24. Amendment. This Agreement may be amended only by a writing agreed to and signed by both Parties with the same formality as accompanied the execution of this Agreement.

25. Incorporation of Recitals. All foregoing recitals are fully incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be executed and delivered as their respective acts, intending to be legally bound by its terms.

**LICENSEE: THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA**

BY: _____

NAME: _____

TITLE: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me by
_____, on behalf of THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, a body corporate and politic, this ____ day of
_____, 2011.

Notary Public

My Commission expires: _____

APPROVED AS TO FORM:

COUNTY ATTORNEY

LICENSOR:

THE AMERICAN NATIONAL RED CROSS

Approved for Signature:

By Garrett C. Burke
Garrett C. Burke
Senior Counsel
Office of the General Counsel

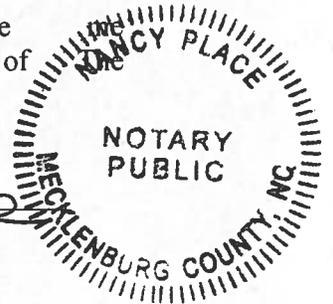
Digitally signed by Garrett C. Burke, Esq.
DN: cn=Garrett C. Burke, Esq., o=The American National Red Cross, ou=Office of the General Counsel,
email=burkega@usa.redcross.org,
c=US
Date: 2011.05.02 14:56:15 -0400

BY: Marshall Ellis
NAME: Marshall Ellis
TITLE: Sr. Transaction Manager

STATE/Commonwealth of North Carolina
CITY/COUNTY OF Mecklenburg:

The foregoing instrument was acknowledged before
by Marshall Ellis of
American National Red Cross, this 3RD day of May, 2011.

Nancy Place
Notary Public



My Commission expires: 5/4/2014

EXHIBIT A

DESCRIPTION OF LICENSED PREMISES

Two spaces with volumes of 16' by 7' by 7', as follows:

- 1) for placement of a climate-controlled trailer of the dimensions noted above, and
- 2) for placement of a non-climate-controlled trailer of the dimensions noted above, together with a submeter for electrical power and the placement of electric lines as described in greater detail in the License Agreement.

EXHIBIT B

ILLUSTRATION OF LICENSED PREMISES

[Attached as denoted portions of satellite image]



