



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of September 8, 2007**

**DATE:** August 21, 2007

**SUBJECT:** Approval of a License Agreement Between the County Board of Arlington County, Virginia (“Arlington County”), and the County Board of Supervisors of Fairfax County, Virginia (“Fairfax County”), Permitting Fairfax County to Use Arlington County’s Copyrighted Software, Entitled “Right of Way Database System,” and Associated Written Documentation.

**C. M. RECOMMENDATIONS:**

1. Approve the attached License Agreement Between the County Board of Arlington County, Virginia (“Arlington County”), and the County Board of Supervisors of Fairfax County, Virginia (“Fairfax County”), Permitting Fairfax County to Use Arlington County’s copyrighted software, entitled “Right of Way Database System,” and associated written documentation;
2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, to execute, on behalf of the County Board, the License Agreement, a copy of which is attached hereto as “Attachment 1”, and all related documents, subject to approval as to form of all documents by the County Attorney; and
3. Appropriate the license payment, in the amount of Twenty Thousand and 00/100 Dollars (\$20,000.00), from the license of the Right of Way Database System by Fairfax County (101.325900.42003) to the Department of Environmental Services Real Estate Bureau (101.42003) for the purposes of upgrading and maintaining the Right of Way Database System.

**ISSUE:** Whether Arlington County should enter into a License Agreement that permits Fairfax County to use software and written documentation owned and copyrighted by Arlington County, entitled Right of Way Database System, which software is designed and used to operate an automated database that manages right-of-way acquisition work order requests?

**SUMMARY:** This is a request to approve a License Agreement (“Agreement”) between Arlington County and Fairfax County, permitting Fairfax County to use an Arlington County copyrighted software application entitled “Right of Way Database System” (the “Software”) and associated written documentation developed by Arlington County with the assistance of an

County Manager: \_\_\_\_\_

County Attorney: \_\_\_\_\_

Staff: Uri Arkin, Real Estate Bureau Chief; Michael R. Halewski, Real Estate Specialist – Department of Environmental Services, Real Estate Bureau

outside contractor, Softek Services, Inc. (“Softek”). In its contract with Arlington County, Softek assigned its copyright in the Software to Arlington County.

Within thirty days after the effective date of the Agreement, Fairfax County is required to pay Arlington County a one-time, lump-sum license fee of Twenty Thousand and 00/100 Dollars (\$20,000.00) as consideration for the License.

**BACKGROUND:** Prior to 2003, the Engineering Division of the Arlington County Department of Public Works (“DPW”), which was responsible for right-of-way acquisitions by Arlington County, had no automated processes to: track Right-of-Way Acquisition Work Order requests (“Work Orders”); maintain information regarding each such requests; or, generate standardized letters, agreements, and Board Reports. Staff of DPW, which became part of the reorganized Department of Environmental Services (“DES”), tracked Work Orders using hand-filled forms, and generated various letters, agreements and Board Reports manually using Microsoft Word word processing software. The inefficiency of these manual processes was evidenced by the large amount of staff time spent generating agreements and Board Reports manually, a lack of efficient information process flow, errors and omissions in agreements and Board Reports, and inconsistencies between similar agreements and Board Reports of different projects.

In 2003, Arlington County accepted a proposal from Softek, in response to Informal Solicitation No. 3-03-I. This proposal, dated July 8, 2003, was for the provision, installation, set-up, and testing of a Microsoft Access database to manage the Work Orders. The accepted Software included many major entities, including projects, properties, property owners, easements, letters, agreements, and Board Reports. Using the Software, Arlington County staff are able to enter, find, view, update, and delete information in each of the major entities. In addition, the Software incorporates a mail merge component to automate and standardize the creation of letters, agreements, and Board Reports by launching Microsoft Word from the system, and mail merging the database information into Microsoft Word letters, agreements, and Board Reports templates. A reporting interface also provides the ability to view and print various tracking reports within the database.

The copyright for the resulting Software was registered by Arlington County with the Register of Copyrights for the United States of America on August 28, 2006 (Copyright Number TXu1-323-526), with an updated registration date of May 21, 2007 (Copyright Number TXul-353-425).

Currently, real property acquisitions for Arlington County are the responsibility of the Real Estate Bureau, Engineering and Capital Projects Division, Department of Environmental Services (“Real Estate Bureau”). The Real Estate Bureau has worked with Softek to update and modify the Software, as necessary. The Real Estate Bureau’s use of the Software has been a model of automated information entry, storage, and tracking, improving information process flow, increasing efficiency, reducing error and omissions in letters, agreements, and Board Reports, and increasing the consistency between the letters, agreements, and the Board Reports of different projects. The successful implementation of the Software by the Real Estate Bureau has resulted in interest in the Software from other local governments in Virginia, including Fairfax County.

Representatives from Fairfax County have had the opportunity to examine and review the Software and its capabilities. Fairfax County desires to enter into a License Agreement with Arlington County for the use of the Software, with some modifications to be made to the Software by Fairfax County and its contractors to correspond to Fairfax County's internal real property acquisition processes that differ from the processes employed by Arlington County. Fairfax County established contract number CC08-937272-41A to refer to this proposed License Agreement for its internal administrative purposes. The Director of the Fairfax County Department of Purchasing and Supply Management executed the proposed License Agreement on July 25, 2007.

**DISCUSSION:** The attached License Agreement, executed on behalf of Fairfax County, includes the following material provisions:

1. Scope: Arlington County grants Fairfax County a non-exclusive, perpetual license to use the Software on Fairfax County's system, network, or multiple independent systems;
2. Compensation: Fairfax County will pay a one-time, lump-sum payment of Twenty Thousand and 00/100 Dollars (\$20,000.00) to Arlington County;
3. Modification: Fairfax County may modify the Software to correspond to Fairfax County's unique internal real property acquisition processes; Fairfax County must prohibit its contractors from selling, transferring, or licensing the software, whether modified or otherwise;
4. Copyrights: Fairfax County acknowledges Arlington County's copyright of the Software, but Fairfax County may claim a copyright as to those modifications made to the Software by Fairfax County;
5. Termination: The proposed License Agreement will terminate if Fairfax County does not comply with all provisions of the License Agreement;
6. Infringement: Fairfax County is obligated to provide prompt written notice to Arlington County of any copyright infringement or unauthorized use of the Software of which Fairfax County becomes aware;
7. No Assignment/Transfer: Fairfax County may not assign or transfer any of its rights, duties, or obligations under the License Agreement; and
8. Appropriations: The proposed License Agreement is subject to appropriation by Fairfax County.

**FISCAL IMPACT:** The County will receive the total sum of Twenty Thousand and 00/100 Dollars (\$20,000.00) for the proposed License Agreement; said funds received by the County shall be appropriated for use by the Real Estate Bureau for future upgrades and maintenance of the Right of Way Database System.

# ATTACHMENT 1

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "License") is made as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic having its principal office at 2100 Clarendon Boulevard, Arlington, Virginia 22201-5406, (the "Licensor") and THE COUNTY BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body politic having its principal office at \_\_\_\_\_, (the "Licensee"). The Licensor and Licensee are herein after jointly referred to as "Parties".

## RECITALS

WHEREAS, Licensor owns the copyright in software used to operate an automated database that manages real property acquisition work order requests, which software is entitled RIGHT OF WAY DATABASE SYSTEM (the "Software"); and

WHEREAS, Licensee desires to use the Software and its written documentation, and the Licensor agrees to permit such use under the terms of this License.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Scope of License.** Licensor hereby grants Licensee a non-exclusive, perpetual License to use the Software on Licensee's system, network, or multiple independent Systems.
- 2. License Payment.** Within thirty (30) days after the Effective Date, as hereinafter defined, of this License, Licensee shall pay to the Licensor a one-time payment of \$20,000.00 ("License Payment") for this License. The check shall be payable to "Treasurer, Arlington County, Virginia."
- 3. Removal, Transfer, or Modification of Software.** Licensee shall have the right to modify the Software for Licensee's own use. Licensee shall neither sell, transfer, nor license the Software, whether modified or otherwise, to third parties except that the Licensee may permit the Licensee's contractors, and no others, to use the Software, whether modified or otherwise for its intended purposes. The Licensee shall require that its contractors neither sell, transfer, nor license the Software, whether modified or otherwise, to others.
- 4. Copyrights.** Licensee hereby acknowledges that the Licensor is the owner of the copyright in the Software. Licensee shall have the right to create, at its own expense, modified versions of the Software. If the Licensee modifies the Software, then the Licensee's claim to copyright in any modified software shall be limited solely to such modifications. The Licensee's modifications shall not limit the Licensor's claim to copyright in the Software.

5. **Infringement.** Licensee shall notify the Licensor promptly in writing of any infringement or unauthorized use of the Software by others of which Licensee becomes aware.
6. **Warranties.** The Software in the License will perform substantially in accordance with its accompanying documentation. As to the Software and its documentation, all warranties of merchantability or fitness or use for a particular purpose, express or implied, except for those contained in this License are disclaimed and waived by Licensor and Licensee. The Software that is licensed shall be considered "As Is" software. Accordingly, Licensor neither guarantees that the Software will meet any or all requirements of Licensee's business, or all requirements of any software with which the Software interacts. Licensor shall not be responsible for any damages, consequential or otherwise, that may be suffered by Licensee or its employees or agents in the use of the Software. Such damages shall include, but shall not be limited to lost profits, lost sales, all actions lying in tort, prima facie tort, or any other cause of action arising out of the use or performance of the Software.
7. **Maintenance.** Licensee and Licensor may execute maintenance, support, and upgrade agreements in conjunction with this License. The terms of this License shall be applicable to any license for use of any upgrades to the Software or its documentation supplied through such other agreements.
8. **Related Software.** This License may be executed concurrently along with an agreement with other software companies that addresses certain application software that is used in conjunction with the Software. Licensee acknowledges that the other software companies and Licensor are each responsible for different functions in the complete software package, and that no representations or agreements regarding the Software, other than those representations contained in this License, have been made by the Licensor.
9. **Termination.** The License shall terminate immediately if Licensee does not strictly comply with any provision of this License, including but not limited to the unauthorized sale, transfer or licensing of the Software to others.
10. **Return/Destruction of Software.** Upon termination, this License shall cease, all copies of Software and documentation shall be returned to Licensor or destroyed, at Licensor's option. Any use of the Software after termination is not authorized by Licensor and shall be considered by Licensor to be infringement of its intellectual property rights, and addition to any rights that may accrue to Licensor by such unauthorized use.
11. **Assignments, Transfers.** This License, the rights, duties, and obligations in this License, or the Software and its documentation, may not be assigned or transferred by Licensee.

- 12. Notices.** Notices to parties shall be sent by certified mail, registered mail, or hand delivery to the Licensor and Licensee at the addresses stated above addressed in care of the County Manager (for the Licensor) and the Director DPWES for the Licensee.
- 13. Consent to Jurisdiction, Venue, and Service.** Licensee consents and agrees that all legal proceedings relating to this License (except those subjects which are within the exclusive jurisdiction of the federal courts) shall be maintained in the Circuit Court of Arlington County, Virginia. Licensee consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such court and in no other court.
- 14. Severability.** If any provision of this License is held invalid or otherwise unenforceable, the enforceability of the remaining provisions hereof shall not be impaired or affected.
- 15. No Waiver.** The failure by any party to exercise any right stated in this License shall not be deemed a waiver of the right.
- 16. Injunctive Relief.** Licensee acknowledges that misuse, unauthorized sale, transfer, licensing, or disclosure of the Software will give rise to irreparable injury to Licensor, and leave Licensor inadequately compensable in damages. Accordingly, Licensor may seek and obtain injunctive relief against Licensee's breach or threatened breach, in addition to any other legal remedies, such as suit for copyright infringement, which may be available. Licensee further acknowledges and agrees that the covenants contained herein are necessary for the protection of Licensor's legitimate business interests and are reasonable in scope and content.
- 17. Appropriations.** This License is subject to appropriations by the Fairfax County Board of Supervisors.
- 18. Complete Agreement, Recitals.** This License sets forth the entire understanding of the parties as to its subject matter and may not be modified except by further written agreement. The recitals are incorporated into this License.
- 19. Amendments.** This License may be amended by execution of a written amendment to this License signed by persons authorized by the Licensor and Licensee.
- 20. Effective Date.** This License shall be effective upon execution of this License by a duly authorized person on behalf of the Licensor and receipt by the Licensor of the License Payment from the Licensee.
- 21. Governing Law.** This License shall be governed by the law of the Commonwealth of Virginia.

THE COUNTY BOARD SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: Cathy A. Muse

Title: Director of Fairfax County Dept. of Purchasing & Supply Management

State of Virginia

County/City of Fairfax

The foregoing instrument was acknowledged before me this 25 day of July, 2007, by Cathy A. Muse in his/her capacity as Purchasing Agent of The Board of Supervisors of Fairfax County, Virginia on behalf of the Board.

Cheryl E. Bland  
Notary Public

My commission expires January 31, 2011.

Approved as to form:

R. Faulkner-MacDonagh  
County Attorney Assistant County Attorney

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THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

By: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County/City of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of The County Board of Arlington County, Virginia on behalf of the Board.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

Approved as to form:

\_\_\_\_\_  
County Attorney