



## **BONDING TELECOMMUNICATION FACILITY PACKAGE**

Dear Applicant,

During the final stages of the City of Fairfax Administrative Review Process or after a Special Use Permit has been granted by City Council, a Telecommunications Agreement will require completion and submission with the bond instrument to the City's Development Bond Administrator with the appropriate surety review fees (below). Once the agreement(s) have been executed by the City, copies of the signed agreements will be sent electronically or by first class US mail for your records.

### **Account Number & Title FY 16-17 Adopted Fees 316466 Surety Review**

(Performance bond\*, letter of credit, cash escrow)

Less than \$100,000	\$290.00 each
\$100,001-300,000	\$575.00 each
More than \$300,000	\$840.00 each
Request for reduction	\$290.00 each
Request for replacement/extension/release	\$290.00 each

**\*Note: a performance bond/corporate surety, cash escrow or letter of credit will be accepted for Site Bonds. Siltation Agreements will be accepted with cash escrow or letter of credit only.**

If you should have any questions regarding the bonding process, please contact the Development Bond Administrator at 703-385-7820.

*The City of Fairfax is committed to the letter and spirit of the Americans with Disabilities Act. To request a reasonable accommodation for any type of disability, please call 703-385-7930, (TTY 711)*

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### **IMPORTANT PHONE NUMBERS**

Board of Architectural Review Liaison	703-385-7820
Site Plan Coordinator	703-385-7820
Development Bond Administrator	703-385-7820
Code Administration	703-385-7830
Planning Director	703-385-7930
Zoning Administrator	703-385-7820



**CITY OF FAIRFAX  
TELECOMMUNICATION FACILITIES EQUIPMENT  
CONSTRUCTION/REMOVAL AGREEMENT**

**THIS TELECOMMUNICATION FACILITIES AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

\_\_\_\_\_, party of the first part, and the City of Fairfax, Virginia, a Virginia municipal corporation, hereinafter called "City", party of the second part. Hereinafter, the Agent shall be defined as the City Manager or his designee.

**WHEREAS**, \_\_\_\_\_ obtained City Council approval on \_\_\_\_\_ 20\_\_\_\_, of plans for installation of telecommunications equipment at property located at: \_\_\_\_\_ (the "Property"); and

**WHEREAS**, City has adopted a policy to ensure the adequate performance by \_\_\_\_\_ of a pertinent portion of telecommunications policy guidelines, specifically Objective II, Subsection 8, regarding provision for access, removal of defunct equipment within six months of discontinuance of use, and bonding of construction and removal.

**NOW, THEREFORE**, for and in consideration of the foregoing premises and the following terms and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

The foregoing recitals are hereby incorporated into this Agreement in their entirety.

1. \_\_\_\_\_, for itself, and its heirs, personal representatives, assigns, or other successors in interest, agrees to construct and install all of the physical improvements and facilities shown on the approved plans and profiles submitted pursuant to (enter all that apply):
  - Special Use Permit No: \_\_\_\_\_ approved on \_\_\_\_\_ 20\_\_\_\_ by Fairfax City Council;
  - BAR No: \_\_\_\_\_ approved on \_\_\_\_\_ 20\_\_\_\_, by the City of Fairfax Board of Architectural Review;
  - Administrative Review No: \_\_\_\_\_ approved on \_\_\_\_\_ 20\_\_\_\_ by the City of Fairfax Zoning Office and approved revisions thereof.

2. It is expressly agreed by the parties hereto that it is the purpose and intent of this Agreement to ensure the proper performance of construction and removal of telecommunication facilities described above. This agreement is to provide for removal and restoration of the communications facility referenced above only and is in no way affiliated to any existing or future agreements between City and \_\_\_\_\_ for free or discounted rates for cellular service. Any agreements for rates of cellular service will be independent of this agreement.
3. This Agreement shall not be deemed to create or affect any liability of the City to any third party, and \_\_\_\_\_ agrees to indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any and all claims, demands, actions, suits or liabilities arising out of this Agreement, including, but not limited to, reasonable attorneys' fees and costs of litigation. \_\_\_\_\_ shall have no obligation to indemnify and hold harmless the City from and against claims, demands, actions, suits, or liabilities arising from the willful misconduct or gross negligence of the City, its elected officials, officers, employees or agents.
4. \_\_\_\_\_, at its sole cost and expense, will install, operate, and maintain its communications equipment to enhance the existing coverage so as to not interfere with any other frequencies currently established at the building. \_\_\_\_\_ intends to install antennae, transmission lines, HVAC, and ancillary equipment and to use as necessary existing building conduit or easements within the property for electrical, telephone, pipes, tubes, etc.
5. Installation, placement and use of the communication equipment and antennae shall be in accordance with the plans, drawings, and specifications prepared and provided by \_\_\_\_\_ for the City's prior review and approval. All installation, placement, use and operation of the communications equipment by \_\_\_\_\_ shall comply with all applicable rules and regulation of the FCC, and regulations of any applicable governmental agency.
6. This Agreement shall remain in place for the duration of the use by \_\_\_\_\_ of the facility as approved. \_\_\_\_\_ is responsible for notifying the City in writing of the discontinuance of the use of the facility within thirty (30) days of discontinuance. \_\_\_\_\_ is further responsible for the complete removal of all facilities and structures, including foundations, within six (6) months of the discontinuance of their use ("Removal Period"). \_\_\_\_\_ also shall regrade, reseed, and restore (as applicable) the property to its original condition prior to the construction of the facility, within six (6) months of the removal of the facility.

7. \_\_\_\_\_ shall provide within five (5) days of executing this Agreement and City shall hold in escrow the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("Bond") to ensure removal of said communications facility within the Removal Period. At the end of an initial five (5) year period, any requirement for an increase in the amount of the Bond shall be determined based on changes to the Construction Cost Index as published in the Engineering News Record ([www.enr.com](http://www.enr.com)).
8. Failure to complete all necessary construction, repairs and/or maintenance as described above shall warrant the City utilizing the Site Bond to complete the required repair and/or maintenance work, including removal of equipment and restoration of the rooftop area. It is further expressly agreed and understood that the measure of damages shall include, and be limited to, the cost of completion and/or correction as set forth above (of which not more than ten percent of the total shall consist of administrative and supervisory costs), maintenance and/or deterioration. Furthermore, the bankruptcy or receivership of \_\_\_\_\_ shall constitute a default under this Agreement.
9. In the event that \_\_\_\_\_ does remove the communications equipment and restore the property as required within the Removal Period. The City agrees to return the Bond to \_\_\_\_\_ within thirty (30) days of the equipment removal.
10. Should any permits, certificates, licenses or other authorization and/or approval for using this location be rejected, canceled, or terminated by any governmental authority, or if radio frequency test results are unsatisfactory, \_\_\_\_\_ will remove its communications equipment within seven (7) days.
11. \_\_\_\_\_ provides the following department as a community liaison to respond to concerns raised by the installation or operation of this communications facility and for all notification requirements with respect to this agreement. Concerns shall be addressed to: \_\_\_\_\_ and the City. By written notice to the City, \_\_\_\_\_ shall be entitled to substitute a different department and or person for contact and receipt of such notices.
12. \_\_\_\_\_ represents and warrants that the individual executing this Agreement for \_\_\_\_\_ has all requisite authority to so execute this Agreement and to bind \_\_\_\_\_ hereto and that all resolutions necessary for \_\_\_\_\_ to enter into the Agreement have been duly obtained.

13. If any clause or portion of this Agreement is found not to be valid and binding, the remainder shall continue in full force and effect. The parties intend that each provision of this Agreement be valid and binding upon each and all of them, and expressly agree to abide thereby.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date set forth above.

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

(Corporate Seal)

Attest: \_\_\_\_\_

Secretary

**WITNESS THE FOLLOWING SIGNATURE AND SEAL:**

STATE OF \_\_\_\_\_ County/City/Town of \_\_\_\_\_ to-wit:

I, the undersigned, A Notary Public in and for the State and County, City or Town aforesaid, do hereby certify that this day personally appeared before me in the State and County, City or Town aforesaid:

\_\_\_\_\_  
(Name) (Title)

whose name(s) is(are) signed to the foregoing and hereunto annexed agreement bearing the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, and acknowledged the same before me.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Notary Registration Number#: \_\_\_\_\_

My Commission expires: \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
(Notary Public Signature)

**CITY OF FAIRFAX**

By: \_\_\_\_\_  
City Attorney – Approved as to Form

By: \_\_\_\_\_  
City Manager

Attest: \_\_\_\_\_  
City Clerk

**WITNESS THE FOLLOWING SIGNATURE AND SEAL:**

COMMONWEALTH OF VIRGINIA  
CITY OF FAIRFAX to-wit:

The foregoing instrument was acknowledged before me this:

\_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_, as City  
Manager, on behalf of the City of Fairfax, Virginia.

My Commission expires: \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Notary Registration Number#: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public Signature)



**CITY OF FAIRFAX  
TELECOMMUNICATION EQUIPMENT  
CONSTRUCTION/REMOVAL BOND**

Bond Number: \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_ party of the first part, hereinafter called Principal, and \_\_\_\_\_ as Surety, hereinafter called Surety, are held and firmly bound unto the CITY OF FAIRFAX, as Obligee, hereinafter called Obligee, in the amount of: \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Principal has entered into a Telecommunication Facilities Equipment Construction/Removal Agreement dated \_\_\_\_\_ for the telecommunication facility located at: \_\_\_\_\_, which Telecommunication Facilities Equipment Construction/Removal Agreement is by reference made a part hereof, and

**WHEREAS**, as a condition of said Telecommunication Facilities Equipment Construction/Removal Agreement requires Principal to provide a Bond guaranteeing the removal of the communications facility within the Removal Period at said location.

**NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION** is such that, if the Principal shall guarantee the removal of the communications facility within the Removal Period in accordance with said Telecommunication Facilities Equipment Construction/Removal Agreement, then this obligation is null and void; otherwise to remain in full force and effect.

**PROVIDED, HOWEVER, That:**

1. It shall be a condition precedent to any right of recovery hereunder, that in event of any default on the part of the Principal, a written statement of the particular facts of such default shall be forwarded to the Surety, within sixty (60) days of the occurrence of such default, delivered by registered mail to Surety at its Home Office located at: \_\_\_\_\_.
2. That no action, lawsuit or proceeding shall be had or maintained against the Surety on this Bond unless the same be filed and properly served upon the Surety within one year from the effective date of the cancellation of the Bond.
3. That no right of action shall accrue under this Bond to or for the use of a person or entity other than the Obligee, and its successors and assigns.



4. This Bond shall become effective \_\_\_\_\_.
5. This Bond shall continue in full force and effect until canceled by the Surety by providing thirty (30) days written notice to the Obligee.
6. The liability of the Surety shall in no event exceed the aggregate penal sum of the Bond penalty.
7. If any conflict or inconsistency exists between the Surety's obligation or undertakings as described in the Bond and as described in the underlying document, then the terms of the Bond shall prevail.
8. **This Bond shall not bind the Surety unless the Bond is accepted by the Obligee. The acknowledgment and acceptance of such Bond is demonstrated by signing where indicated below. If this obligation is not accepted by way of signature of the obligee below, this Bond shall be deemed null and void.**

**IN WITNESS THEREOF**, the parties hereto have hereunto set their hand and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**PRINCIPAL:**

By: \_\_\_\_\_  
 Signature (Seal)  
 \_\_\_\_\_  
 Name (print) Title

**WITNESS THE FOLLOWING SIGNATURE AND SEAL:**

STATE OF \_\_\_\_\_, COUNTY/CITY/TOWN OF \_\_\_\_\_ to-wit:

I, \_\_\_\_\_, a Notary Public in and for the said State and County, City or Town do hereby certify that:

\_\_\_\_\_  
 (Name) (Title)

this day personally appeared before me in the State and County, City or Town whose name(s) is (are) signed to the foregoing writing, dated \_\_\_\_\_, 20\_\_\_\_, and being duly sworn, acknowledged the same to be his (their) own.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Notary Registration Number#: \_\_\_\_\_

My Commission expires: \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

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

**IN FURTHER WITNESS WHEREOF**, the **SURETY** herein has caused this bond to be executed on its behalf by \_\_\_\_\_, Agent by authority of the power of attorney attached hereto.

\_\_\_\_\_  
**Surety**

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

Agent

**WITNESS THE FOLLOWING SIGNATURE AND SEAL:**

STATE OF \_\_\_\_\_, COUNTY/CITY/TOWN OF \_\_\_\_\_ to-wit:

I, \_\_\_\_\_, a Notary Public in and for the said State and County, City or Town do hereby certify that:

\_\_\_\_\_  
(Name) (Title)

this day personally appeared before me in the State and County, City or Town whose name(s) is (are) signed to the foregoing writing, dated \_\_\_\_\_, 20\_\_\_\_, and being duly sworn, acknowledged the same to be his (their) own.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Notary Registration Number#: \_\_\_\_\_

My Commission expires: \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

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

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The above terms and conditions of this bond have been reviewed and accepted by the City of Fairfax, VA.

Acknowledged and Accepted by: \_\_\_\_\_, Obligee

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

\_\_\_\_\_  
(Title)

Dated: \_\_\_\_\_

Return To Address Below:

**SAMPLE LETTER OF CREDIT**  
**(Must be on letterhead of the issuing institution)**

IRREVOCABLE LETTER OF CREDIT NUMBER: \_\_\_\_\_

City of Fairfax  
City Hall  
10455 Armstrong Street  
Fairfax, VA 22030

Date of Issuance: \_\_\_\_\_

Applicant: \_\_\_\_\_

Beneficiary: City of Fairfax

Project Name & Location: \_\_\_\_\_

Ladies and Gentlemen:

We hereby open our Irrevocable and Unconditional Letter of Credit No. \_\_\_\_\_, effective date \_\_\_\_\_, for the account of \_\_\_\_\_ (developer's name) and in favor of the City of Fairfax, Virginia, for the sum of U.S. Dollars not to exceed in the aggregate \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) available by your sight drafts drawn on (bank name): \_\_\_\_\_ accompanied by written certification of the Director of Public Works or the City Manager of the City of Fairfax that the Applicant has:

1. Failed to complete installation of the public improvements in accordance with plan number known as \_\_\_\_\_ **or**
2. Failed to meet its obligations in accordance with a TELECOMMUNICATION FACILITIES Agreement, dated \_\_\_\_\_ between the Applicant and the City of Fairfax **or**
3. Is not diligently and satisfactorily completing the public improvements set forth on the plan in a manner that such improvements will be complete by the completion date of the Telecommunication Facilities Agreement.

We hereby further agree that:

1. All drafts hereunder must bear the clause "Drawn under the (bank name): \_\_\_\_\_ Letter of Credit Number \_\_\_\_\_ dated \_\_\_\_\_."  
**(NOTE: Letter of Credit shall be drawn under a bank located in the state of Virginia or a confirming letter must be submitted in conjunction with a Letter of Credit on an institution outside of the state of Virginia).**

2. The Bank hereby engages with drawers, endorsers and bona fide holders that all drafts drawn in compliance with the terms of the Letter of Credit shall be duly honored upon presentation and delivery of such documents.
3. Drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored at the location of the issuing bank if presented at our office on or before \_\_\_\_\_ (NOTE: this date must be at least six months after the Site Agreement project completion date) and this Letter of Credit shall remain in full force and effect until such Expiration Date.
4. Notwithstanding any other language to the contrary contained elsewhere in this Letter of Credit, it is a condition of this Letter of Credit that it shall automatically renew itself from year to year after the Expiration Date thereof unless and until the Bank shall give ninety (90) days prior written notice to the City Manager or Director of Public Works of the City of Fairfax, Virginia, by certified mail, returned receipt requested, of its intent to terminate same at the expiration of said ninety (90) day period. During said ninety (90) days notice period, this Irrevocable Letter of Credit shall remain in full force and effect.
5. Upon receipt by the Beneficiary of such notice of non-renewal, the Beneficiary may draw upon this Letter of Credit by means of sight drafts accompanied by such written certification of the Director of Public Works or the City Manager as set forth in the opening paragraph of this Letter of Credit.
6. This Letter of Credit may be terminated by the Beneficiary giving a written release to the Applicant and to the Bank stating that the Applicant has furnished the Beneficiary with an acceptable substitute form of surety in an amount required by the Beneficiary.
7. This Letter of Credit is not assignable by the Bank, Beneficiary or Applicant.
8. Funds available under this Letter of Credit shall be paid to the Beneficiary in such amounts and at such times as set forth by the Director of Public Works or City Manager of the City of Fairfax, Virginia in the written certification as set forth in the opening paragraph of this Letter of Credit, provided that the total amount drawn shall not exceed the face amount of this Letter of Credit. Checks will be made payable to the City of Fairfax and directed to the attention of the Director of Public Works or City Manager.
9. The Bank shall have no right, duty, obligation or responsibility to evaluate the performance or nonperformance of any underlying obligations, contractual or otherwise, between the Applicant and the Beneficiary or between the Applicant and any third party.
10. The Bank hereby agrees that no change, extension of time, alteration or addition to the work to be performed or the plans or specifications relating to the same or the Applicant's obligations under the Site Agreement, shall in any way effect the Bank's obligation to honor drafts under this Letter of Credit.
11. Approval of this Letter of Credit by the Beneficiary shall be deemed acceptance thereof without further notice to either the Bank or the Applicant.
12. Notwithstanding any other language to the contrary contained elsewhere in this Letter of Credit, if the Bank becomes critically undercapitalized, as defined in the Code of Federal Regulations, or insolvent, as defined in any applicable federal or state statute or regulation, the Beneficiary shall be immediately entitled to draw on this Letter of Credit. In such event, the Beneficiary may draw on this Letter of Credit by means of sight drafts accompanied by certification of the Director of Public Works or the City Manager that the Bank has become critically undercapitalized, as defined in the Code of Federal Regulations, or insolvent, as defined in any applicable federal or state statute or regulation.

13. This Letter of Credit shall be construed in accordance with the "Uniform Customs and Practices for Commercial Documentary Credits, International Chamber of Commerce" in effect on the date of issuance of this Letter of Credit and the provisions of the Uniform Commercial Code – Letters of Credit – Title 8.5 of the Code of Virginia, 1950 as amended.

Very truly yours,

\_\_\_\_\_  
(Name of Bank)

By: \_\_\_\_\_  
(Name)

Its: \_\_\_\_\_  
(Title)

WITNESS THE FOLLOWING SIGNATURE AND SEAL:

STATE OF \_\_\_\_\_: COUNTY/CITY/TOWN OF: \_\_\_\_\_, To wit,

I, \_\_\_\_\_, A Notary Public in and for the said State and  
(Notary Name)

County, City or Town do hereby certify that this day personally appeared before me in my said State and County, City or Town:

\_\_\_\_\_  
(Name) (Title)

Whose name is/are signed to the foregoing in writing, dated \_\_\_\_\_, 2\_\_\_\_\_  
and being duly sworn acknowledged the same to be his or her (their) own.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

My Commission expires: \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Notary Registration Number#: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public Signature)

Note: A written declaration of authority is required which attests that the signatory has the authority to sign Letter of Credit (LOC) for said Bank. Authority may not be required when the LOC is signed by the President of the issuing Bank.