

County of Dinwiddie Board of Supervisors

BOARD OF SUPERVISORS

DANIEL D. LEE
BRENDA EBON-BONNER
HARRISON A. MOODY
DR. MARK E. MOORE
WILLIAM D. CHAVIS



COUNTY ADMINISTRATOR

W. KEVIN MASSENGILL

December 1, 2020
Special Meeting - 4:00 PM

1. ROLL CALL

2. INVOCATION

3. PLEDGE OF ALLEGIANCE

4. AMENDMENTS TO AGENDA

5. REPORTS:

A. **FY 2020 Financial Audit Report**

Leslie Roberts & Danielle Nikolaisen, Brown Edwards & Co

B. **Annual Investment Report To The Board - Pamplin & Abrahams Funds**

Gray Garland, Thompson Segal & Walmsley

6. ACTION ITEMS:

A. **Darvills Tower Lease For Public Safety Radio Project**

Denice Crowder, Communications Director

Documents:

[201201 Darvills Tower lease BOS letter.pdf](#)

[201201 Darvills Tower Lease with Subcarrier - Final.pdf](#)

B. **DSS CARES Allocation To The Department Of Social Services**

Natachia Randles, Director Of Social Services

Documents:

[CARES DSS1123.pdf](#)

7. CLOSED SESSION

- A. **§2.2-3711 (A) (3)** Discussion Or Consideration Of The Acquisition Of Real Property For A Public Purpose, Or Of The Disposition Of Publicly Held Real Property, Where Discussion In An Open Meeting Would Adversely Affect The Bargaining Position Or Negotiating Strategy Of The Public

8. BOARD MEMBER COMMENTS

9. ADJOURNMENT

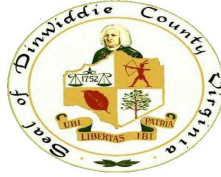
[This meeting is being held in conformity with and in compliance with the Pandemic Disaster Continuity of Operations Ordinance approved by the Dinwiddie County Board of Supervisors on September 15, 2020.](#)

through a combination of in-person and electronic means. All five members of the Board of Supervisors are expected to participate in person.

Notice of the public hearings can be found at www.dinwiddieva.us/984/public-notice.

Citizen Participation Instructions:

- Citizens are highly encouraged to submit their citizen comments or public hearing comments prior to the meeting. Comments will be accepted in writing or via telephone up until close of business Monday, October 19, 2020. Such comments should be submitted to Dinwiddie Board of Supervisors, PO Drawer 70, Dinwiddie, Virginia 23841, administration@dinwiddieva.us, or 804-469-4500, option 1, extension 2103.
- All submitted comments will be read during the meeting and will be part of the public record.
- Webex will be the platform used for participants to access the meeting remotely. In order to accommodate everyone, participants will be able to attend via telephone or computer.
- To access this meeting remotely, please call in using the following information: 1-844-621-3956 - Access Code/Meeting Number 132 082 2301
- Citizens who wish to attend the meeting in person should adhere to the social distancing guidelines and Executive Order 63 requiring face coverings while inside buildings set forth by the Governor and public health officials.
- Citizens are asked to remain at home and participate electronically if they (1) are experiencing symptoms of illness, (2) have had contact with a known or suspected COVID-19 case in the last 14 days, or (3) have a fever of 100.4 degrees or higher.



COUNTY OF DINWIDDIE
Division of Fire and EMS

DENNIS HALE
Division Chief

NICK SHEFFIELD
Fire Marshal

DAWN TITMUS
EMS Manager

13910 Courthouse Road
P.O. Drawer 70
Dinwiddie, Virginia 23841

Phone 804-469-5388
Fax 804-469-7663
www.dinwiddieva.us

DENICE CROWDER
Communications Director

CANDICE TOWNSEND
Program Support Specialist

To: Dinwiddie County Board of Supervisors
From: Denice Crowder, Communications Manager
Date: December 1, 2020
Subject: Darvills Tower Lease for Public Safety Radio Project

Background

On March 17, 2020, the County selected Motorola Solutions to provide the New Public Safety Radio System. The system design calls for the use of seven towers. Each tower site consists of 1 antenna, equipment building, generator and environmental control units provided by the County. The County currently owns two of the towers and as part of this project plans to construct a third County-owned tower. The County will also utilize four existing towers and enter into long-term lease agreements.

In May 2020, site visits were conducted at each of the four existing tower sites and lease exhibits were developed. The County has negotiated with two of the four tower sites thus far. The Cherry Hill Tower Lease was approved at the November Board Meeting.

In October 2020, the County conducted negotiations with Subcarrier Communications, Inc for the tower located at 16184 Old Cryors Road, McKenney VA. The negotiated lease for the "Darvills" tower site includes a lease amount of \$2,650.00 per month. The lease price may be increased annually by no more than 2.5%. The initial term of the lease will be five (5) years, with the option to renew for four (4) additional terms of five (5) years each. Due to the age and structural issues with this tower, Subcarrier Communications is tearing down this tower and rebuilding a new one. This lease will commence after construction of the new tower. The tower is expected to be constructed in January 2021.

Requested Action

We are requesting approval of the following resolutions.

Resolution

BE IT RESOLVED, that the Dinwiddie County Board of Supervisors does hereby authorize and direct the County Administrator, to enter into a lease with Subcarrier Communications, Inc. to lease a portion of the property and antenna space located 16184 Old Cryors Rd McKenney VA for the County's Public Safety Radio Communication System. The Board further authorizes the County Administrator to make changes, substantive or otherwise, as approved by the County Attorney.

"To Excel in the Delivery of Emergency and Non-Emergency Services"

Tower Site Lease Agreement

between

Subcarrier Communications, Inc.
("Lessor")

and

County of Dinwiddie, Virginia
("Lessee")

for property located at:

**16184 Old Cryors Road
McKenney, Virginia**

TOWER SITE LEASE AGREEMENT

This **Agreement**, hereinafter designated as "Agreement," dated as of the latter of the signature dates below noted on the signatory page, hereinafter designated as "Effective Date," between **Subcarrier Communications, Inc.**, a New Jersey corporation, with its principal offices located at 139 White Oak Lane, Old Bridge, New Jersey, 08857 (hereinafter designated as "**Lessor**"), and **County of Dinwiddie, Virginia**, a local government entity, with its administrative offices located at 14010 Boydton Plank Road, Dinwiddie, Virginia 23841 (hereinafter designated as "**Lessee**"). The Lessor and Lessee are at times collectively designated as, hereinafter, the "Parties," or individually as the "Party."

WITNESSETH

In consideration of the foregoing, as well as the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that the recitals set forth above are incorporated herein, as if set forth in their entirety and further agree as set forth below accordingly:

LEASE AGREEMENT

1. **PREMISES.** Lessor hereby leases to Lessee a portion of that certain parcel of Property, hereinafter defined, as well as antenna space on the tower, hereinafter designated as "Lessor's Tower," with the entirety of Lessee's equipment and antenna space hereinafter designated as "Facility," all as more particularly shown on Exhibit A and Exhibit A-1, attached hereto and made a part hereof; and further described as a 20' x 30' parcel, containing six hundred (600) square feet, with all of same being a portion of the property at **16184 Old Cryors Road, McKenney, Virginia**. Said address is further described on Dinwiddie County Treasurer's Office, Real Estate Tax Statement, as Map Number and Description 52 35B RT 40. The entirety of Lessor's property is hereinafter designated as "Property." The portion of the Property leased to the Lessee, including any rights-of-way, is hereinafter designated as "Premises."
 - a. Lessor and Lessee further agree and acknowledge that the Facility noted on Exhibit A-1, attached herein and incorporated by this reference, wholly and entirely represents its final installed configuration, pursuant to this Agreement.
 - b. The Lessee shall have the non-exclusive right for access, and ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot, or motor vehicle, to the Premises. It is further agreed, however, that only

authorized engineers, employees, and/or properly authorized contractors of Lessee, or persons under their direct supervision, will be permitted to enter such Premises. Notwithstanding the foregoing, Lessor grants to Lessee, the right of access to the Premises (and other necessary areas of the Property), for its permitted uses subject to the terms and conditions noted in the prime lease, license or other similar agreement with a third party (where applicable), for a particular location or site, which prime lease, license, or other similar agreement with a third party, shall be in full force and effect, with same being attached to this Agreement as Exhibit C, when applicable. Lessor also grants to Lessee the easement and right to install and maintain wires, cables, conduits and pipes within, over, under or along the Property as detailed in Exhibit A. Additionally, the Lessor grants to Lessee any specific right of way for access, from the nearest public right-of way, Old Cryors Road, to the Premises, as described Exhibit A. In the event any public utility is unable to use the aforementioned rights-of-way or easement, the Lessor hereby agrees to grant an additional right-of-way, either to the Lessee or to the public utility, at no cost to the Lessee.

2. **TERM.** This Agreement shall be effective as of the date of execution by both parties, provided however, the initial term shall be for five (5) years and shall commence on the Commencement Date; which Commencement Date is hereinafter designated as upon completion of construction of Lessor's Tower.
 - a. This Agreement shall automatically be extended for four (4) additional five (5) year terms, unless the Lessee terminates it at the end of the then current term by giving Lessor written notice of the intent to terminate, at least six (6) months prior to the end of the then current term. The initial term, and any extension term, are hereinafter designated as "Term."
3. **FEES, TAXES, UTILITIES.** Beginning on the Commencement Date, the rental payments will be due at an annual rental amount of Thirty One Thousand Eight Hundred Dollars (**\$31,800.00**), to be paid in equal monthly installments of Two Thousand Six Hundred Fifty Dollars (**\$2,650.00**), on the first (1st) day of the month, in advance, to Lessor, or to such other person, firm or place as the Lessor may, from time to time, designate in writing, at least thirty (30) days in advance of any rental payment date. On the first (1st) annual anniversary of the Commencement Date of this Agreement, and on the anniversary date of each year of the Term thereafter, the annual rental amount shall be increased, by two and half percent (**2.5%**) of the prior year's annual rent.

- a. If permitted by the local utility company servicing the Premises, Lessee shall furnish and install an electric meter at the Premises for the measurement of electrical power used by Lessee. In the event a separate meter cannot be installed, Lessee shall pay for its own power consumption used, within thirty (30) days after receipt of an invoice from Lessor, indicating and documenting such usage.
 - b. Lessee shall pay, as additional rent, any documented increase in personal property taxes, real property taxes, and/or any other taxes or fees levied against the Property, which are directly and specifically attributable to Lessee's use and Facility installed on the Premises; only for so long as this Agreement has not expired of its own terms, or is not terminated by either Party. If Lessor receives a bill, or notice of any personal property or real property tax assessment against the Lessor, which may affect Lessee, and is directly attributable to Lessee's Facility at the Property, Lessor shall provide notice of such assessment to Lessee, within thirty (30) days of receipt of same, so that Lessee can remit payment, consent to, or challenge, such assessment. Lessee shall remit payment to Lessor, pursuant to such assessment, within thirty (30) days receipt of said notice from Lessor. Lessee shall have the right, at its sole option, and at its sole cost and expense, to appeal, challenge, or seek modification of any tax assessment or billing for which Lessee is wholly, or partly, responsible for payment. Lessor shall reasonably cooperate with Lessee in filing, prosecuting and perfecting any appeal or challenge to taxes, as set forth in the preceding sentence, including, but not limited to, executing any consent, appeal or other similar document.
 - c. If any rental payment, or any other fee, is not paid by the fifteenth (15th) day of the month for which such payment is due, a late charge of five percent (5%) of the amount of such payment shall be paid by Lessee to Lessor, and shall be immediately due and payable, together with any such past due rent payments, or for any other fee. Said late charge shall be increased to ten percent (10%) of any rent payment, or any other fee, not paid on or before the thirtieth (30th) day of the month for which such rent, or any other fee, is due. Failure to collect or request any late charge during the term hereof shall not be deemed a waiver of Lessor's right to collect such late charges at any time thereafter.
4. **GOVERNMENTAL APPROVALS.** Lessee will maintain its Facility at the Premises in a good condition, reasonable wear and tear excepted. Lessor will maintain the Property, excluding the Premises, in good condition, reasonable wear and tear excepted. It is understood and agreed, by Lessor and Lessee, that Lessee's right to use the

Premises, is contingent upon Lessee's ability to obtain, after the full execution date of this Agreement, all of the certificates, permits and other approvals, hereinafter designated as "Governmental Approvals," that may be required by any federal, state and/or local authorities, as well as a satisfactory, structural analysis of Lessor's Tower, which will permit Lessee's use of the Premises as set forth above. Lessor will cooperate with Lessee in its efforts to obtain such Governmental Approvals and shall take no action which would adversely affect the status of the Property, with respect to the proposed use thereof by Lessee.

- a. In the event that any of such applications for said Governmental Approvals should be finally rejected, or any Governmental Approval issued to Lessee is canceled, or is otherwise withdrawn or terminated by a governmental authority, Lessee shall have the right to terminate this Agreement. Notice of Lessee's exercise of its right to terminate shall be given to Lessor, in writing, by certified mail, return receipt requested and shall be effective upon the mailing of such notice by Lessee. All rentals paid to said termination date shall be retained by Lessor. Upon such termination, this Agreement shall become null and void and the Parties shall have no further obligations, including the payment of money, to each other.
 - b. Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice; which leasehold title policy will be at Lessee's sole cost and expense.
 - c. Lessee may also perform and obtain, at Lessee's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Lessee's use of the Premises will be compatible with Lessee's engineering specifications, system, design, operations or Government Approvals.
5. **RIGHT TO USE FACILITIES.** Lessee shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto; along with all necessary appurtenances. Lessee shall be solely responsible for the installation, maintenance, and regulatory monitoring of their Facility at the Premises. All improvements, specific to Lessee's use and Facility at the Premises, shall be at Lessee's expense, and the installation of all improvements shall be at the discretion of the Lessee; subject to said improvements at the Premises, including any and all subsequent modifications to existing equipment at the Premises, receiving in advance, express written consent and approval of Lessor.
- Once Lessee's Facility is fully constructed, notwithstanding anything**

contained herein, Lessee is not permitted to modify, add to, alter and/or upgrade its equipment at the Premises without securing the prior, express written consent of the Lessor in advance; which consent shall not be unreasonably withheld. Should said modification result in either additional or larger equipment, to that previously described on Exhibit A, attached to this Agreement, or any of its subsequent amendments with their requisite exhibits, Lessor and Lessee will negotiate in good faith, the placement of said equipment and any possible, associated rental increase. Any unauthorized modification to Lessee's Facility at the Premises, shall entitle Lessor to recover back rent from the date of Lessee's unauthorized modification, and, to otherwise entitle Lessor to exercise any available remedy at law or in equity with respect to such unauthorized installation.

- a. Lessee shall be entitled to effectuate the installation of its Facility at the Premises, as detailed in its entirety, in Exhibit A herein incorporated. Notwithstanding the foregoing, prior to Lessee commencing any construction of their Facility at the Premises, Lessee will provide the following documentation to the Lessor, (i) a copy of the passing structural analysis, which analysis cannot exceed a total tower loading of more than ninety-five percent (95%), (ii) a building permit, if applicable, (iii) Lessee's construction start date, (iv) a fully executed copy of this Agreement, (v) the name and phone number of the field technician responsible for the ongoing maintenance of Lessee's Facility and (vi) a certificate of insurance, pursuant to Paragraph No. 11, of this Agreement, clearly noting the address of the Property. Upon Lessor's review and acceptance, in its sole discretion, of the aforementioned documentation, Lessor will issue the requisite notice to proceed, hereinafter designated as "NTP." In order to close out such NTP, upon completion of Lessee's installation of their Facility at the Premises, Lessor requires Lessee to provide complete photos of the Facility and the Premises, and to further remove any and all trash and/or refuse from Lessor's Property, caused by Lessee's installation of its Facility, within thirty (30) days of completion of such installation.
- b. Prior to the construction of Lessee's Facility at the Premises, by Lessor, Lessor will provide an itemized quote (hereinafter designated as "Construction Quote"), to Lessee, which Construction Quote will provide the construction details of the proposed construction of Lessee's Facility, and is further subject to the review and approval by Lessee; which approval shall not be unreasonably withheld, conditioned or delayed. Upon approval of the Construction Quote by Lessee, the fee associated with same shall be due and payable within sixty (60) days of full execution of this Agreement.

6. **TOWER COMPLIANCE.** Lessor covenants that it will keep the Tower in good repair as required by all applicable federal, state, county and local laws. The Lessor shall also comply with all rules and regulations enforced by the Federal Communications Commission, hereinafter designated as "FCC," with regard to the lighting, marking and painting of towers.
- a. No materials may be used in Lessee's installation of its Facility (either the antennas or transmission lines), that will cause corrosion, or rust, or deterioration of the Tower structure or its appurtenances.
 - b. All antenna(s) on the Tower must be identified by a marking, fastened securely to its bracket on the Tower, and all transmission lines are to be tagged at the conduit opening, where it enters any user's equipment space.
7. **COMPLIANCE WITH RULES/NO INTERFERENCE.** The installation of Lessee's Facility, in connection with the undertakings contemplated by this Agreement, shall be designed, constructed, installed, maintained and operated in compliance with all applicable rules and regulations of the FCC and all other applicable governmental construction and electrical codes and good engineering practices. Any damage to the Property and/or Premises, caused by Lessee, and/or its authorized agents and/or contractors, shall be promptly repaired, to Lessor's satisfaction, at Lessee's sole cost and expense. Lessor shall have the absolute right to approve any general contractor(s), or other authorized agent(s), who Lessee retains, or hires, to install and maintain Lessee's Facility at the Premises; which approval shall not be unreasonably withheld. No person, or entity, shall perform work at the Premises, or Property, without such prior express, written approval.
- a. Lessee agrees that Lessee's antenna facilities shall not cause interference to the existing use, or enjoyment of the Property or Tower, by Lessor and other lessees and licensees located on the Tower or Property, prior in time to Lessee's use, including, but not limited to, interference with radio communication facilities, so located and existing, as of the Commencement Date of this Agreement. Lessor shall not use, nor shall Lessor permit its lessees, licensees, employees, invitees, or agents to use any portion of the Property, in any way that interferes with the operations of Lessee, that comply with the terms of this Agreement. The non-interfering party shall not be required to provide a cure period to the interfering party, but shall provide the interfering party, with telephonic notice of such interference, and the interfering party shall use its best efforts to eliminate the interference immediately, but in no extent later than seventy-two (72) hours from the

receipt of such notice. If such interference has not ceased within seventy-two (72) hours, it shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference, at such interfering party's sole expense. Interference shall be deemed to have ceased, if Lessee powers its antenna facilities down, except for intermittent testing. Thereafter, the parties acknowledge that there will not be an adequate remedy at law, for non-compliance with the provisions of this paragraph and, therefore, either party shall have the right to specifically enforce the provisions of this paragraph in a court of competent jurisdiction, seek injunctive relief, or terminate this Agreement.

- b. Lessor acknowledges that the Lessor's Tower will meet all current Federal Aviation Administration, hereinafter designated as "FAA," lighting requirements and is in compliance with all applicable federal, state and local regulations. Lessor acknowledges that Lessor and/or any other lessees at the Property, who currently have, or in the future, take possession of the Property, will be permitted to install only such radio equipment that is of the type and frequency which will not cause harmful interference to the existing equipment of the Lessee.
8. **LIMITATION OF LIABILITY.** Neither Party shall be liable to the other, or any of their respective agents, representatives, employees, for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory or contract, tort (including negligence), strict liability or otherwise.
 9. **INSURANCE.** During the term of this Agreement, Lessee shall, at Lessee's expense, maintain, and keep in full force and effect, comprehensive general liability and property liability insurance with liability limits of not less than Two Million Dollars (**\$2,000,000**) for injury to or death of one (1) or more persons in any one occurrence and One Million Dollars (**\$1,000,000**), for damages or destruction to property in any one occurrence. Such policy shall include Lessor as an additional insured and clearly list the name and address of the Lessor's Property and Lessee shall provide a certificate of insurance, noting the aforementioned limits, the Lessor as an additional insured and the Property address, within thirty (30) days of the Commencement Date of the Agreement; and thereafter yearly, on the annual anniversary of said Commencement Date. During the term of this Agreement, Lessor shall maintain, and keep in full force and effect, "all risks" property insurance in an amount equal to the full replacement cost of any and all buildings or other improvements located on the Property, as well as comprehensive general liability and

property liability insurance with liability limits of not less than One Million Dollars (**\$1,000,000**) for injury to or death of one (1) or more persons in any one occurrence and Five Hundred Thousand Dollars (**\$500,000**), for damages or destruction to property in any one occurrence. This policy shall also include Lessee as an additional insured. All of the aforementioned policies of insurance must specifically provide therein that the said policies cannot be canceled or terminated without thirty (30) days prior written notification by the insurer unto Lessor.

- a. The Parties hereby waive and release any and all rights of action for negligence against the other, that may hereafter arise on account of damage to the Premises or the Property resulting from any fire or other casualty that is insurable under "Causes of Loss - Special Form," property damage insurance or for the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, even if any such fire or other casualty shall have been caused by the fault or negligence of the other Party. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

10. **REMOVAL OF INSTALLATION**. Lessee, upon termination of the Agreement, shall, within ninety (90) days, and at its sole cost and expense, remove its Facility, equipment, fixtures and all personal property, and otherwise, restore the Premises to its original condition, reasonable wear and tear excepted. Lessor agrees and acknowledges that all of the equipment, fixtures and personal property of the Lessee, shall remain the personal property of the Lessee and the Lessee shall have the right to remove same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes Lessee to remain at the Premises, after termination, or expiration, of this Agreement, Lessee shall continue to pay rent at the then existing monthly rate, plus one hundred twenty-five percent (**125%**), of the then existing monthly rent, until such time as the removal of its equipment, fixtures and personal property are fully completed.

- a. If Lessee fails to remove its Facility, equipment, fixtures and all personal property within said ninety (90) days, after expiration, or earlier termination, of this Agreement, Lessor may remove and dispose of Lessee's Facility, equipment, fixtures and all personal property and Lessee shall reimburse Lessor for the reasonable costs of such removal and restoration of the Premises and the Tower. Moreover, Lessor may deem Lessee's Facility,

equipment, fixtures and all personal property abandoned, in which event, such Facility, equipment, fixtures and all personal property shall thereafter become Lessor's property.

11. **RIGHTS UPON SALE.** Should the Lessor, at any time during any Term of this Agreement, decide to sell all or any part of the Property, to a purchaser other than Lessee, such sale shall be under and subject to this Agreement, and Lessee's rights hereunder, and any sale by the Lessor of the portion of this Property underlying the right-of-way herein granted, shall be under and subject to the right of the Lessee, in and to such right-of-way.

12. **QUIET ENJOYMENT.** Lessor covenants that Lessee, upon timely payment of the rent and performing the covenants contained herein, shall peaceably and quietly have, hold, and enjoy the Premises without hindrance on the part of Lessor; and Lessor shall warrant and defend Lessee in such peaceful and quiet use and possession against the claims of all persons or entities claiming by, through, or under Lessor.

13. **REPRESENTATION.** Lessor and Lessee each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the Party set forth as signatory for the Party below.
 - a. Lessor represents, warrants and agrees that: (i) Lessor solely owns the Property as a legal lot in fee simple, or has the full right, title and interest to lease or license the Premises to the Lessee, and solely owns the structure; (ii) as long as Lessee is not in default, then Lessor grants to Lessee sole, actual, quiet and peaceful use, enjoyment and possession of the Premises, without hindrance or ejection by any persons lawfully claiming under Lessor; (iii) Lessor's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Lessor.

14. **INTEGRATION.** It is agreed and understood that this Agreement contains all agreements, promises and understandings between the Lessor and Lessee, and that no verbal or oral agreements, promises or understandings shall be binding upon either the Lessor or Lessee in any dispute, controversy or proceeding at law, and any addition, variation, or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties.

15. **GOVERNING LAW.** This Agreement, and the performance thereof, shall be governed, interpreted, construed and regulated by the laws of the State of Virginia.
16. **ASSIGNMENT.** This Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of the Lessor, to the Lessee's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all, or substantially all, of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the express written consent of the Lessor, which such consent will not be unreasonably withheld, delayed or conditioned.
17. **NOTICES.** All notices hereunder must be in writing and shall be deemed validly given, if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service, and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

Lessor: **Subcarrier Communications, Inc.**
139 White Oak Lane
Old Bridge, New Jersey 08857
Attention: Leasing Department

Lessee: **County of Dinwiddie, Virginia**
14010 Boydton Plank Road
PO Drawer 70
Dinwiddie, Virginia 23841

- a. Notice shall be effective upon mailing or delivering the same to a commercial courier, as above permitted.

18. **DEFAULT AND REMEDIES.** The occurrence of one or more of the following events constitutes an "Event of Default by Lessee": (i) if Lessee fails to pay any rent, fee or sum payable by Lessee, within five (5) business days of Lessee's receipt of Lessor's written request for payment; (ii) breach of any representation, warranty, or covenant set forth in this Agreement, (with the exception of non-payment of rent, fee, or sum due by Lessee), which is not cured within thirty (30) days of Lessee's receipt of written notice (such thirty [30] day cure period being subject to extension if the default cannot reasonably be cured within such thirty [30] day period provided that, in such event, Lessee shall commence any cure within the thirty [30] day period and thereafter

continuously and diligently pursue and complete such cure); (iii) if any petition is filed by or against Lessee 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 Lessee, such petition is not dismissed within sixty (60) days after the filing thereof, or if Lessee is adjudged bankrupt, or insolvent, in a proceeding filed under any section, or chapter, under the present, or any future, bankruptcy code, or under any similar law or statute of the United States, or any statute thereof; (iv) if a receiver or custodian or trustee is appointed for Lessee, or for any assets of the Lessee, and such appointment is not vacated within sixty (60) days of such appointment; (v) if the equipment of Lessee is found to be interfering with the communications equipment of any other users at the Property, pursuant to Paragraph 8, and the interference is not timely corrected as provided for in this Agreement; (vi) if Lessee transfers, assigns, or subleases this Agreement, expands its use of its Facility, or otherwise breaches Paragraph 18 of this Agreement, and any such act is not cured within the applicable time period required under this Agreement, following Lessor's written notice, under this Agreement.

- a. If there is an occurrence, with the passage of time or the giving of notice, or both, that constitutes an Event of Default by Lessee, with respect to the provision of this Agreement, the Lessor shall give Lessee written notice of such default. In the event Lessee has failed to cure an event of default, as set forth in this paragraph, in addition to any other rights or remedies specifically provided to the Lessor herein, the Lessor shall have the right to terminate this Agreement, and further provided that such right of termination, shall be in addition to any other rights and remedies hereunder, at law, or in equity, including, without limitation, an action to recover lost rent (consisting of any past due rent; any rent due for the balance of any of this Agreement's Term; recover any reasonable out-of-pocket expenses, including reasonable attorney's fees incurred to recover possession of Lessee's Premises; and to recover any and all sums of money and damage owing by Lessee to Lessor).
- b. If any controversy arising under, or out of, or relating to, this Agreement, or any breach thereof, and if the controversy cannot be settled through mutual and satisfactory negotiations, by and between the Lessor and Lessee, then the Parties agree first, to try in good faith, to settle the dispute by mediation administered by the American Arbitration Association, hereinafter designated as "AAA," under its Commercial Mediation Procedures. Should mediation efforts, by and between the Parties prove unsuccessful, then, in that event, the Parties shall resolve the matter through binding arbitration. The Parties agree and acknowledge that each Party will be responsible for the payment of one-half ($\frac{1}{2}$) of the fees, incurred during the binding arbitration process. If

said breach or controversy is determined and settled by such mediation, administered by AAA, any award rendered thereunder, shall be final and binding upon all Parties, and judgment may be entered thereon, in any court having jurisdiction over same.

19. **SUCCESSORS AND/OR ASSIGNS.** The terms, conditions, covenants, agreements, obligations, liabilities, duties, right and powers entered into, made, assumed or undertaken by both the Lessor and Lessee hereto, as part of this Agreement, shall be binding upon and inure to the benefit of the heir(s), executor(s), administrator(s), successor(s) and assigns of the Parties hereto.

20. **SUBORDINATION AND NON-DISTURBANCE.** At Lessor's option, this Agreement, shall be subordinate to any mortgage or other security interest by Lessor, which from time to time, may encumber all, or part of the Property, or right-of-way; provided, however, every such mortgage or other security interest shall recognize the validity of this Agreement, in the event of a foreclosure of Lessor's interest and also Lessee's right to remain in occupancy of, and have access to, the Premises, as long as Lessee is not in default of this Agreement. Lessee shall execute whatever instruments may reasonably be required to evidence this subordination clause.

21. **ENVIRONMENTAL.**

- a. Lessee will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability, or standards of conduct, with regard to any environmental or industrial hygiene conditions or concerns, as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the activities of the Lessor.

22. **CONDEMNATION.** In the event Lessor receives notification of any condemnation proceedings affecting the Property, Lessor will provide timely written notice, of such proceeding, to Lessee, within thirty (30) days. If a condemning authority takes all of Lessor's Property, or a portion sufficient, in Lessee's sole determination, to render its Premises unsuitable for Lessee, this Agreement will terminate, as of the date, the title vests in the condemning authority. Any such termination shall cause this Agreement to expire with the same force and effect, as though the date set forth in such termination, were the date originally set as the expiration date of the Agreement, and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Agreement.

- a. Lessor and Lessee will each be entitled to pursue their own separate awards, from the condemning authority, in the condemnation proceeds which, for Lessee, may include, but may not be limited to, where applicable, the value of its Facility, moving expenses, prepaid rent, business dislocation expenses, damages and losses, et al., so long as the same does not reduce, or diminish, the value of any condemnation award to Lessor, or property owner.
23. **SUBMISSION OF AGREEMENT.** The submission of this Agreement, for examination does not constitute an offer to lease the Premises and this Agreement, shall become effective only upon the full execution of same by the Parties. If any provision herein is invalid, it shall be considered deleted and shall not invalidate the remaining provisions. Each of the Parties hereto warrants to the other, that the Party executing this Agreement, on behalf of each such Party, has the full right, power and authority to enter into and execute the same on such Party's behalf, and that no additional consent from any other person, or entity, is necessary as a condition precedent to the legal effect of this Agreement, executed pursuant to it.
24. **AMENDMENT/WAIVER.** This Agreement cannot be amended, modified or revised, unless done in writing, and signed by both Lessor and Lessee. No provision may be waived, except in a writing, signed by both Parties. The failure by a Party to enforce any provision of this Agreement or to require performance by the other Party will not be construed to be a waiver, or in any way affect the right of either Party to enforce such provision thereafter.
25. **NONEXCLUSIVITY.** This Agreement is deemed to be nonexclusive. Lessor reserves the right to use the Property and existing facilities, absent the Lessee's Premises, for its own purposes and, Lessor reserves the right to grant leases to others to use all portions of its Property and facilities, not herein granted to Lessee; subject to the provisions of Paragraph 8. In the event Lessor grants leases to other users of the property, such leases shall not interfere with the Lessee's use of the Premises and quality of communications.
26. **NONDISCLOSURE/NON-CIRCUMVENTION.** The contents of this Agreement may not be released to any other party without the express written consent of both Lessor and Lessee.
27. **APPLICABLE LAWS.** Lessee shall use the Premises as may be required, or as permitted by applicable laws, rules and regulations. Lessor agrees to keep the Property in conformance with all applicable laws, rules and regulations and agrees to

reasonably cooperate with Lessee regarding any compliance required by the Lessee, with respect to its use of the Premises.

28. **SURVIVAL**. The provisions of this Agreement relating to indemnification from one Party, to the other Party, shall survive termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.
29. **ENTIRE AGREEMENT**. This Agreement and the Exhibit(s) attached hereto, all being a part hereof, constitute the entire agreement of the Parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Except as otherwise stated in this Agreement, each Party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.
30. **MECHANICS LIEN**. All work to be performed by Lessee at the Property, shall be at Lessee's sole cost and expense, and Lessee shall pay all invoices relative to labor and material, in a timely manner, to prevent the imposition of any lien, hereinafter designated as "Lien," at Lessor's Property or Lessee's Premises, located at Lessor's Property. Lessee shall not subject its interest in the Property to any mechanic or other type of Lien whatsoever. Should any such Lien be filed against the Property, due to Lessee's act or omission, Lessee shall promptly discharge any bond, or otherwise secure such Lien but, in no event, more than thirty (30) days after written notice from Lessor, instructing Lessee to discharge such Lien. Lessee shall indemnify, and hold Lessor harmless, from any and all liabilities and costs, resulting from Lessee's failure to timely discharge any Lien. Should Lessee fail to discharge any Lien within thirty (30) days of Lessor's notice, Lessor may elect to discharge a Lien and back charge Lessee the cost of discharging such Lien.
31. **NO BROKER**. Lessor and Lessee represent and warrant to each other that no broker was involved in connection with the negotiation of this Agreement, and Lessor and Lessee agreed to indemnify and hold the other harmless from, and against, any broker acting on behalf of the indemnifying Party, in connection with this transaction.
32. **PRIME LEASE**. Lessor and Lessee acknowledge that Lessee's use of its Premises, at the Property, may be derived from a prime lease. If this is the case, a copy of the prime lease shall be attached as Exhibit D, to this Agreement, and the following provisions shall be applicable:

- a. In the event that any prior approval of the underlying ground lessor is required under, or in respect of, the prime lease, this Agreement shall be specifically subject to the obtaining of such approval.
 - b. All of the terms, conditions and covenants contained in this Agreement shall be specifically subject to, and subordinate to, the terms and conditions of the prime lease.
 - c. In the event any of the provisions of the prime lease supersede, or contradict, the terms of this Agreement, such terms of this Agreement, shall be deemed deleted, or superseded, to the extent of the contradiction, that is applicable to the Property.
 - d. Lessee agrees to be bound by, and agrees to perform, all the acts and responsibilities required of the Lessee, or tenant, pursuant to the prime lease to the extent applicable, including any access, limitations, and use of the Property.
33. **CAPTIONS**. The captions contained in this Agreement are inserted for convenience only and are not intended to be a part of this Agreement. Said captions shall not affect or be utilized in the construction or interpretation of this Agreement.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused their properly authorized representatives to execute this Agreement on the dates set forth below.

Lessor:

Subcarrier Communications, Inc.

By: _____

Lisa R. Olesky

Title: Director – Real Estate/Leasing

Date: _____

Lessee:

County of Dinwiddie, Virginia

By: _____

W. Kevin Massengill

Title: County Administrator

Date: _____

Subcarrier Site ID No. 126 / Site Name: Darvills
Site Address: 16184 Old Cryors Road, McKenney, Virginia
Lessee Name: County of Dinwiddie, Virginia

LRO/ME 08.2020

Exhibit A

Lease Exhibit of Lessee's Premises

Please Provide

**Prepared by:
TBD**

Dated: TBD

Exhibit A-1

Final Configuration List of Lessee's Facility at the Premises [Pursuant to this Agreement]

<u>Total Number of Antennas:</u> [Include RRHs, TMAs, Diplexers, Microwave, GPS, etc.]	<p><u>165' AGL Centerline</u> (a) One (1) Microwave Dish</p> <p><u>180' AGL Centerline</u> (b) One (1) Microwave Dish</p> <p><u>280' AGL Centerline</u> (c) Two (2) Antennas</p>
<u>Antenna Manufacturer and Model Number:</u>	<p><u>165' AGL Centerline</u> (a) One (1) RFS PAD8-W59A</p> <p><u>180' AGL Centerline</u> (b) One (1) RFS PAD8-W59A</p> <p><u>280' AGL Centerline</u> (c-1) One (1) RFI CC807-11-T1 (w/ 6' standoff) (c-2) One (1) dbSpectra DS7C08PPVU-D (w/ 6' side arm mount)</p>
<u>Antenna(s) Dimensions & Weight:</u> [L x W x D + Weight]	<p><u>165' AGL Centerline</u> (a) 96" x 96" x 30.7" / 285 lbs.</p> <p><u>180' AGL Centerline</u> (b) 96" x 96" x 30.7" / 285 lbs.</p> <p><u>280' AGL Centerline</u> (c-1) 209" x 3" x 3" / 49 lbs. (c-2) 55" x 3" x 8" / 16 lbs.</p>
<u>Ancillary Equipment:</u>	<u>Two (20) 6' Ice Shield Assembly, Curved Design</u>
<u>Number & Diameter of Antenna Cables:</u>	<p>One (1) 1¼" Commscope AVA6-50 One (1) 7/8" Commscope AVA5-50 One (1) ½" Commscope LDF4-50A Two (2) Commscope EW63 One (1) Tower-top Amplifier</p>
<u>Azimuth(s):</u>	<u>Omni 42.23° 50° 124.43°</u>
<u>Dimensions of Lessee's Ground Space:</u>	<u>20' x 30'</u>



Dinwiddie County Administration

14010 Boydton Plank Road

Dinwiddie, Virginia 23841

Phone: 804-469-4500

MEMORANDUM

TO: Board of Supervisors, Kevin Massengill, County Administrator, Anne Howerton, Deputy County Administrator

FROM: Natachia W. Randles, Director

DATE: December 1, 2020

SUBJECT: FY 2021 Budget Amendment –Transfer of CARES Funds to Social Services

BACKGROUND

On 10/06/20 the Board of Supervisors approved Dinwiddie County Social Services request for \$130,000 of the County's CARES funding to aid in their continued COVID19 response to County citizens directly affected by the pandemic. On 11/17/20 the Board of Supervisors approved additional funding to Social Services in the amount of \$100,000 to continue their efforts of assisting the citizens affected by the pandemic. To date, we have used \$205,694.53 for the grant program to assist citizens with past due rent, utility bills, food, personal/baby items, and \$30,000 of the request went towards purchase a 4-wheel drive vehicle large enough to transport foster care siblings and supplies.

As of today, Dinwiddie Social Services has exhausted those funds and is requesting additional funds in the amount of \$200,000 to continue to assist those citizens impacted by the pandemic. Through the CARES Funds we have successfully assisted over 114 families in need and have received an additional 49 applications from citizens awaiting a decision.

RECOMMENDATION

We recommend approval of the following resolution.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, that the Dinwiddie County Board of Supervisors hereby approves a transfer of CARES funds in the amount of \$200,000 from Fund 228 to Fund 140 to cover the COVID19 related expenditures listed above.