

I N T E R

O F F I C E

MEMO

## Office of the Mayor

**To:** City Council Members  
**From:** John R. Pick  
**Subject:** Sailor Agreement  
**Date:** February 8, 2005

Attached is a copy of a resolution which would authorize the Mayor to sign an agreement permitting the Sailor Project to install, operate, own and maintain data transmission equipment on the city's radio tower. The Sailor Project is a high speed data transmission network, which is available to governmental entities. The operators of the Sailor Project have asked the City for the use of our radio tower located on Marine Road for the installation of data transmission equipment as a part of an overall upgrade to their system. As stated in the agreement, use of the Tower for the Sailor Network:

- supports future data initiatives,
- reduces duplication of systems and services,
- reduces inventory and service costs,
- replaces leased telephone lines with wireless transmission equipment thereby reducing costs
- provides multiple access points for library, municipal, city and state entities to exchange data and access state networks, such as networkMaryland and Sailor
- provides path diversity for data entering and leaving the counties involved

In return for the use of our tower for this purpose, the City will be able to use the Sailor network at no cost. The agreement also provides that the Sailor Project will be responsible for maintaining the equipment placed on the tower.

If you have any questions, please let me know.

cc: Mayor Tilghman  
Paul Wilber  
Ray Micciche  
Brenda Colegrove

RESOLUTION NO. 1195

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT PERMITTING THE SAILOR PROJECT TO INSTALL, OPERATE, OWN AND MAINTAIN DATA TRANSMISSION EQUIPMENT ON THE CITY'S RADIO TOWER

WHEREAS, the City owns a certain Tower with equipment building known as the Marine Road Tower; and

WHEREAS, Sailor desires to construct a 100 megabit per second (mbps) wireless network ("the Network") across counties of Maryland's Eastern Shore; and

WHEREAS, the Parties desire an agreement whereby the Parties will:

(a) utilize existing facilities owned by the City, such as a tower and equipment building and a tower, (hereinafter collectively referred as "the Towers") and

(b) provide space for Sailor on the Towers so that Sailor may install, operate, own and/or maintain a data transmission system, and

(c) provide space for Sailor at other City owned sites so that Sailor may install, operate, own and/or maintain a data transmission system; and

WHEREAS, Owning Entity may market and license to third-party users (Licensee) the right to install, maintain and/or operate telecommunications systems, including but not limited to PCS, cellular, ESMR or other means of wireless transmission, together with related equipment and structures, on the Towers; and

WHEREAS, all Parties desire to set forth the terms and conditions of their agreement for the use and operation of the Towers.

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council authorizes the Mayor to sign the attached agreement permitting the Sailor Project to install, operate, own and maintain data transmission equipment on the city's radio tower

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on \_\_\_\_ day of \_\_\_\_\_, 2005 and is to become effective immediately upon adoption.

ATTEST:

\_\_\_\_\_  
Brenda J. Colegrove  
CITY CLERK

\_\_\_\_\_  
Michael P. Dunn  
PRESIDENT, City Council

\_\_\_\_\_  
Barrie P. Tilghman  
MAYOR, City of Salisbury

**CITY OF SALISBURY AND SAILOR**  
**NETWORK RESOURCES**  
**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") made this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between the City of Salisbury (hereinafter called "City" or "Owning Entity") and the Mayor and SPD Council of Baltimore, a Municipal Corporation of the State of Maryland, acting by and through the Enoch Pratt Free Library, Sailor Project (hereinafter called "SPD" or "Sailor").

WHEREAS, the City owns a certain Tower with equipment building known as the Marine Road Tower; and

WHEREAS, Sailor desires to construct a 100 megabit per second (mbps) wireless network ("the Network") across counties of Maryland's Eastern Shore; and

WHEREAS, the Parties desire an agreement whereby the Parties will:

- (a) utilize existing facilities owned by the City, such as a tower and equipment building and a tower, (hereinafter collectively referred as "the Towers") and
- (b) provide space for Sailor on the Towers so that Sailor may install, operate, own and/or maintain a data transmission system, and
- (c) provide space for Sailor at other City owned sites so that Sailor may install, operate, own and/or maintain a data transmission system; and

WHEREAS, Owning Entity may market and license to third-party users (Licensee) the right to install, maintain and/or operate telecommunications systems, including but not limited to PCS, cellular, ESMR or other means of wireless transmission, together with related equipment and structures, on the Towers; and

WHEREAS, all Parties desire to set forth the terms and conditions of their agreement for the use and operation of the Towers.

NOW THEREFORE, THIS MEMORANDUM OF UNDERSTANDING WITNESSETH that, in consideration of the mutual promises set forth herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Scope of Project:**

Sailor has been working to expand and upgrade the current Sailor Network in and around City and the Eastern Shore. Sailor, Wicomico County Free Library, Salisbury Government and Wicomico County Public Schools each have existing data networks located in this area. The existing data network infrastructure of their independent networks is inadequate to support their individual data requirements.

Sailor is in the process of constructing a 100 mbps, full-duplex, data wireless system to address existing data network needs and will include facilities that may be used to provide bandwidth to library, municipal, and state entities for intra-LATA and inter-LATA access to the Sailor Network, the Internet and networkMaryland. A thorough search of the area has not found a reasonable alternative solution.

It would be in the best interests of the Parties to allow Sailor to place radio equipment and co-locate equipment on the Towers. Sharing the Sailor data network supports current and future City and Sailor data requirements, and serves the public interest by minimizing costs, reducing the number of data transmission equipment installations required, and minimizing the visual impact on the existing and future communities. Use of the Towers for the Sailor Network

- supports future data initiatives,
- reduces duplication of systems and services,
- reduces inventory and service costs,
- replaces leased telephone lines with wireless transmission equipment thereby reducing costs
- provides multiple access points for Library, Municipal, City and State entities to exchange data and access state networks, such as networkMaryland and Sailor
- provides path diversity for data entering and leaving the counties involved.

#### 1.1. Marine Road Tower

This site connects a Snow Hill tower to a Marine Road tower and supports a connection from Worcester County.

City will provide space on the Tower for three (3) radios, associated mountings and cabling, and space in the Tower Utility Building and utilities for the equipment listed below, subject to final approval by City. If space is not available in the existing shelter(s) Sailor shall supply and install a shelter such as a MESA Sport Cabinet and utilities, for the following equipment:

- Three (3) radios, 2U height each
- One (1) Cisco 3550 L3 Switch, 1U
- One (1) UPS, 2U
- One remote power unit, 1U

Sailor will provide and install all equipment. Sailor will provide maintenance on all radio equipment. Sailor will install a telephone line for the remote power unit.

#### 1.2. Other Contributions

1.2.1. Sailor agrees to provide bandwidth and transport on the Sailor wireless network for use by SPD governmental entities. Sailor will provide a

routing switch at the Towers. Each using party shall be responsible for providing equipment to connect to the switch using 10/100 Base-T Ethernet.

1.2.2. Sailor will configure VLANs, when necessary, to separate data within the network.

1.2.3. Sailor will manage bandwidth allocation.

1.2.4. Parties mutually agree that the data network demarcation at the Towers between the Sailor network and the City shall be the Ethernet port(s) on the Sailor supplied routing switch.

## **Section 2. Supervision and Authority Over the Project**

2.1. Any assignment, leasing, licensing or sale of any rights under this MOU shall be made in writing, and signed by the assigning entity and the new party that is part of the action, subject to the new party assuming all the rights and obligations of the Party hereunder.

2.2. The City and Sailor shall designate representatives for the project ("Project Representative") who will have full authority to act on behalf of the Parties of this MOU. Whenever the approval of the City or Sailor is required under this MOU, approval must be in writing to be effective.

2.3. Written notifications shall be provided to each participating agency's designee representing the Parties of this MOU. The notification list may be amended from time to time and may include future participating agencies.

2.4. Notification list and designated representatives:

Lt. John Moore  
Salisbury Police Department  
699 W. Salisbury Parkway  
Salisbury, MD 21801  
(410) 548 - 3158

Manager, Network Operations  
Sailor Operations Center  
400 Cathedral St.  
Baltimore, MD 21201  
(410) 396 - 8391

## **Section 3. Construction And Use Of The Towers**

3.1. The radios and equipment installed on the Towers shall be constructed, installed and maintained in accordance with all applicable statutes, ordinances, regulations and industry standards.

- 3.2. The Owning Entity for the Towers shall keep the Towers in good repair and working order.**
- 3.3. Each Party or Licensee shall be responsible for its respective equipment and antenna installations, maintenance, modifications and antenna removals according to industry engineering standards. City shall determine if a Party or Licensee shall be required to correct discrepancies related to use of the Towers.**
- 3.4. Sailor shall be permitted by the City to increase the capacity and to modify the configuration of the Sailor wireless equipment on the Towers at Sailor's sole expense, within the acceptable technical and mechanical limitations of the Towers, without any degradation of the integrity of the Sailor Network or the transmission capabilities of the other Parties. Sailor shall be permitted by the City to place additional Sailor communications equipment, or replace existing Sailor communications equipment at the Towers, within the acceptable technical and mechanical limitations of the Towers, provided Sailor has submitted a written request to do so and has received a written approval from the City. Sailor may elect to provide in the future, at its sole expense, its own equipment building, utilities, and other appurtenant improvements if space dictates the need, provided Sailor has submitted a written request to do so and has received a written approval from the City. Sailor's modifications shall conform to this MOU and to industry engineering standards, and shall not interfere with City communications.**
- 3.5. Each Party agrees that the other Party and any Licensee through the City shall be permitted to use, in common with others, the access roads leading to the Towers as required by the Owning Entity's permit, license, written instructions, or other instrument for the ingress and egress to and from the Towers.**
- 3.6. No Party or Licensee of any Party shall interfere in any manner with the business, use, or operation of any other Party.**

**Section 4. Assignment, Leasing, Licensing and Sale:**

- 4.1. Any assignment, leasing, licensing or sale of any rights under this MOU shall be made in writing, and signed by the assigning entity and the new party that is part of the action, subject to the new party assuming all the rights and obligations of the Party hereunder.**
- 4.2. In the event the Owning Entity of the Tower decides it is not in its best interest to continue its operations of the Towers, and the Owning Entity assigns or leases its operating interests in the Towers to another Party, Owning Entity's obligations under this MOU shall transfer to that other**

Party.

- 4.3. The Owing Entity of the Tower may enter into a written license for any excess space on the Towers with a Licensee that is not a Party hereto, for the Owing Entity's sole benefit. The Licensee shall agree in writing to abide by all provisions of this MOU, including but not limited to Section 5: Interference, below.
- 4.4. In the event the Owing Entity should sell the Tower Site and/or the Tower to another entity, the Owing Entity's obligations under this MOU shall transfer to the purchasing entity.
- 4.5. Sailor may not assign its rights under this MOU to a for-profit entity.

**Section 5. Interference**

- 5.1. The Parties acknowledge and agree that future use of the Towers by any Party who is not the Owing Entity of the Towers shall be in accordance with the terms of this MOU. Before use, by a Party or proposed new party, that entity shall be required to perform a radio frequency (RF) Intermodulation and/or Interference Studies and to submit the results of the Study to the Owing Entity before installation of its equipment on the Towers. If any Party has reasonable grounds to believe that the newly installed or proposed equipment will cause interference with that of an existing Party on the Tower, then the application must be rejected by the Owing Entity. Owing Entity will determine the existence of reasonable grounds to reject the application.
- 5.2. In the event either Party experiences interference by the other Party at the Tower, that Party experiencing the interference shall notify the Owing Entity of such interference. The Owing Entity shall require all operations of the interfering Party to cease with the exception of monitored transmissions for the purpose of executing repairs immediately if said interference is compromising public safety. If said interference is not compromising public safety, then the interfering Party must eliminate the interference, or reduce it to a level acceptable to the Parties within a period of fifteen (15) days, after which the Owing Entity shall require the interfering Party to immediately and permanently cease all interfering operations from the Tower.
- 5.3. The Parties acknowledge and agree that the Owing Entity has the right to market and license excess space on the Towers to a Licensee; provided the Licensee using the facility does not cause interference with the operation of the existing Parties' current or future needs. Each proposed Licensee shall be required to perform a RF Intermodulation and/or Interference Studies

before installation and to submit the results of the Study to the Owning Entity before installation. If any Party has reasonable grounds to believe that the newly installed or proposed equipment will cause interference with that of an existing Party on the Tower and conveys such belief to the Owning Entity, then the application must be rejected by the Owning Entity. Owing Entity will determine the existence of reasonable grounds to reject an application.

5.4. The Parties acknowledge and agree that the Owning Entity has the right to approve requests for use of excess space on the Towers to Third Parties, provided the Third Parties using the facility do not cause interference with the operation of the existing Parties' current or future needs. Each proposed Third Party shall be required to perform a RF Intermodulation and/or Interference Studies before installation and to submit the results of the Study to the Owning Entity before installation. If any Party has reasonable grounds to believe that the newly installed or proposed equipment will cause interference with that of an existing Party on the Tower and conveys such belief to the Owning Entity, then the requests must be rejected by the Owning Entity. Owing Entity will determine the existence of reasonable grounds to reject an application.

5.5. In the event any Party experiences interference by a Licensee at the Tower, that Party shall notify the Owning Entity of such interference. The Owning Entity shall require all operations of said Licensee to cease immediately if said interference is compromising public safety, with the exception of monitored transmissions for the purpose of executing immediate repairs. If said interference is not compromising public safety, then the interfering Licensee must eliminate the interference, or reduce it to a level acceptable to the Parties within a period of fifteen (15) days. If the Licensee fails to do so, the Owning Entity shall immediately require the interfering Licensee to immediately and permanently cease all interfering operations from the Tower. If any Party experiences future interference by a Licensee as result of a Party changing its existing equipment or future equipment, the interfering Licensee must eliminate the interference as stated above. Owing Entity will determine the existence of reasonable grounds to reject an application.

## Section 6. Indemnification and Insurance

6.1. Except for the gross negligence and willful misconduct of a Party, no Party shall be responsible or liable to any other Party for any loss or damage arising from any claim attributable to any acts or omissions of another Party occupying the Tower Sites, nor for vandalism or for any structural or power failures or destruction or damage to the Tower Sites. Notwithstanding anything to the contrary in this MOU, the Parties each hereby waive the right to recover consequential damages (including lost

profits), punitive, exemplary and similar damages from the other Parties to this MOU. (Each Party shall be responsible for actual damage caused by negligent installation of equipment.) ???

**6.2. Any agreement between the Owing Entity and a Licensee shall include the following provision:**

Except for claims due to a Party's gross negligence or willful misconduct, any Licensee shall defend (at the Party's option), indemnify and hold harmless the Parties, their respective members, officers, agents, and employees, against and from any and all liability or claim of liability for bodily injury (including death) or property damage (including reasonable attorneys' fees) related to, involving or arising in whole or in part from any act or failure to act or out of the use, occupancy, conduct, or operation, construction, maintenance or management upon the Tower Site by the Licensee, its principals, contractors, employees, successors or assigns, agents, or invitees, including (a) any work or thing whatsoever performed or not performed on the Tower Site by or on behalf of the Licensee, (b) any breach or default by the Licensee in performing any of its obligations under the provisions of this MOU or applicable law, or (c) any negligent, intentionally tortious or other act or omission by or on behalf of the Licensee. The Licensee agrees that the indemnification as described in this Section shall include any liability or claim of liability arising during the Licensee's use of the Tower Site even if the injury does not become apparent or does not manifest itself until after expiration of the MOU, provided such claim is asserted in compliance with the requirements of the appropriate statute of limitations. In no event shall either any Party or Licensee be liable to the other for any punitive, consequential, incidental or special damages or lost profits incurred or alleged to have been incurred by anyone.

**6.3. Nothing in this Memorandum of Understanding shall constitute a waiver of any immunity to which either of the Parties is entitled.**

**Section 7. Operation and Maintenance**

**7.1. The Owing Entity shall be solely responsible for all operation, maintenance, repairs and replacements with respect to the Towers, access roads, site utilities and other improvements constructed on the Tower Sites in accordance with this MOU. Each Party shall be solely responsible for all maintenance, repairs and replacements with respect to its radio and networking equipment, fiber, antenna, wave guide, coaxial cable, etc., equipment shelter and appurtenances, and the fueling and routine maintenance of the emergency generator in accordance with this MOU.**

**7.2. The Owning Entity will be solely responsible for maintaining the Towers, tower marking and lighting, grounding system and other appurtenances in good order and repair and in material compliance with all applicable legal requirements including without limitation, Part 17 of the rules and regulations of the Federal Communication Commission (FCC) and applicable Federal Aviation Administration (FAA) regulations and permits.**

**7.3. Each Party hereto shall comply with any law, statute, code, ordinance, order, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization, or other directional requirement (including, without limitation, any of the foregoing that relates to environmental standards or controls) of any governmental authority ("Legal Requirements") applicable to each Party's obligations hereunder, including, without limitation, laws governing the transmission or operation of radio communications systems and related equipment, environmental laws and regulations, OSHA, FAA, and FCC. All installations by each Party and any licensee shall meet the applicable Motorola R56 standards. Each Party shall cooperate with the other Parties to obtain any permits or other approvals that may be necessary to comply with the preceding sentence. Notwithstanding the foregoing, the non-requesting Party shall not be required to expend any funds or undertake any liability or obligation in connection with such cooperation, which it is not legally obligated to undertake.**

#### **Section 8. Relocation**

**8.1. Presently, there are no foreseeable issues that would require the dismantling of the existing Tower described in each segment of Section 1. If, however, dismantling of the existing Tower is required in the future, each Party that is interested in relocating their data communications equipment to an alternate location shall, at such time, meet and plan for the future relocation of their data communications equipment and shall contribute toward designs, plans, construction and costs as acceptable to each Party.**

**8.2. In the event that the Tower and the Tower Site must be relocated, all Parties hereby agree on behalf of themselves, their respective assignees, successors, or licensees to relocate their equipment and facilities within the existing Tower Site and on the Tower within the time frame required by the Owning Entity.**

#### **Section 9. Fees and Term**

**9.1. Each Party shall be solely responsible for fees, utility costs and expenses to the extent assessed upon or used by that Party or its equipment, as specified in various sections of this MOU.**

9.2. Upon execution of this MOU by all Parties, the term for this MOU shall commence upon the date and year first above written and shall terminate (20) years thereafter. Notwithstanding the foregoing, however, this MOU may be renewed for additional terms as may be agreed to in writing by the Parties upon termination of this MOU.

**Section 10. City Access/Costs**

10.1. Unless a City cost/fee is specified in this memorandum of understanding, City shall have full access to the Sailor network at no cost.

**Section 11. Non-profit Entities**

11.1. Any party participating in the Sailor network shall be a non-profit entity.

IN WITNESS WHEREOF, each Party hereto has executed and sealed this MOU or caused it to be executed and sealed on its behalf by its duly authorized representatives, the day and year first above written.

ATTEST/WITNESS

CITY OF SALISBURY

BY \_\_\_\_\_

BY \_\_\_\_\_ (SEAL)

Name

Title

Date: \_\_\_\_\_

Approved as to form and legal sufficiency

this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Title of authorized legal representative of  
Locality

**ATTEST/WITNESS**

**MAYOR AND  
CITY COUNCIL OF BALTIMORE**

**BY** \_\_\_\_\_  
**Custodian of the City Seal**

\_\_\_\_\_  
**Martin J. O'Malley** **(SEAL)**  
**Mayor**

**Date:** \_\_\_\_\_

**Approved as to form and legal sufficiency**

**this** \_\_\_\_\_ **day of** \_\_\_\_\_, **2005.**

\_\_\_\_\_  
**NAME,**  
**Assistant City Solicitor**

**ENOCH PRATT FREE LIBRARY  
OF BALTIMORE**

\_\_\_\_\_  
**Carla D. Hayden**  
**Executive Director**

**Date:** \_\_\_\_\_

**Approved by the BOARD OF ESTIMATES  
OF BALTIMORE CITY**

**By** \_\_\_\_\_  
**Clerk** **Date**