

ORDINANCE NO. 2024-22
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY ORDINANCE
AUTHORIZING AND DIRECTING THE MAYOR AND PRESIDENT OF COUNCIL
TO ENTER INTO A SECOND AMENDMENT TO THE SITE LICENSE
AGREEMENT BETWEEN THE OFFICE OF FIRST RESPONDER
COMMUNICATIONS MULTI-AGENCY COMMUNICATIONS SYSTEM (MARCS)
AND MAYFIELD VILLAGE, OHIO**

WHEREAS, on or about July 5, 2011, Mayfield Village, Ohio, as the owner of the cell tower and building at the Village's Fire Station, as the Licensor, entered into a Site License Agreement with the Office of First Responder Communications Multi-Agency Communications System (MARCS), as the Licensee, to allow MARCS to access the cell tower and building for the installation and location of certain communications and other equipment; and

WHEREAS, in 2014, pursuant to Ordinance 2014-22, the Site License Agreement was amended to address the shared maintenance of certain equipment to be used jointly by the Licensor and Licensee and to update the equipment list to include certain air handling equipment that had been installed. The First Amendment also acknowledged the renewal of the term of the Site License Agreement for an additional two (2) years; and

WHEREAS, it has again now become necessary to amend the Site License Agreement and enter into a Second Amendment to the Site License Agreement to update the equipment list to include the addition of a generator and transfer switch if/when needed and to address the shares cost and annual maintenance of this updated equipment and to acknowledge the renewal of the Site License Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of Mayfield Village, Cuyahoga County, State of Ohio, that:

SECTION 1. The Mayor and President of Council are hereby authorized and directed to enter into a Second Amendment to the Site License Agreement between the Office of First Responder Communications Multi-Agency Radio Communications System (MARCS) and Mayfield Village, Ohio, a copy of which is attached hereto and incorporated herein as Exhibit "A".

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council and that deliberations of this Council and of its committees, resulting in such formal action, took place in meeting open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of health, safety and welfare of the residents of Mayfield Village, for the reason that local and regional first responder communications can continue uninterrupted. It shall, therefore, take effect immediately upon passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor, or otherwise, at the earliest time allowed by law.

STEPHEN SCHUTT
Council President

First Reading: _____, 2024

Second Reading: _____, 2024

Third Reading: _____, 2024

PASSED: _____, 2024

BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:

DIANE A. CALTA, ESQ.
Director of Law

ATTEST: _____
MARY E. BETSA, MMC
Clerk of Council

SECOND
Amendment to
Site License Agreement
Between
Office of First Responder Communications
Multi-Agency Radio Communications System
And
Mayfield Village, Ohio

This Second Amendment to the Site License Agreement ("Second Amendment") is made and entered into this ____ day of _____ 2024, by and between the state of Ohio, acting by and through the Department of Administrative Services, Office of First Responder Communications, Multi-Agency Radio Communications System Program Office ("MARCS") having an office located at 4200 Surface Road, Columbus, Ohio 43228 ("Licensee") and Mayfield Village ("Licensor") an Ohio Governmental entity, having its principal place of business located at 6622 Wilson Mills Road, Mayfield Village, Ohio 44143.

WHEREAS, Licensee and Licensor entered into a Site License Agreement on or about July 5, 2011; and

WHEREAS, the Licensor, as the owner of a tower and building, provided a site license to Licensee to access the tower and building for the installation and location of certain equipment described in the Site License Agreement, identified on Exhibit "B", to be located on a portion of Licensor's property; and

WHEREAS, thereafter in 2014, it became necessary to address the shared maintenance of certain Equipment being jointly used by Licensee and Licensor and to update the Equipment list to include certain air handling equipment that had been installed, upgrading the former air handling equipment; and

WHEREAS, to address the above matters, the Licensee and Licensor entered into a First Amendment to the Site License Agreement on or about October 20, 2014; and

WHEREAS, the First Amendment was also necessary to acknowledge that the Site License Agreement has been automatically renewed for an additional two (2) year term through June 30, 2015; and

WHEREAS, it has once again become necessary to amend the Site License Agreement to update the Equipment List to include the addition of a Generator and transfer switch if/when needed, and to address the shared cost and annual maintenance of the updated equipment; and

WHEREAS, Licensee and Licensor desire to amend the Site License Agreement as more fully set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. The Site License Agreement is hereby amended by adding Exhibit “B-2” , a copy of which is attached hereto and incorporated herein by reference. Exhibit “B-2” identifies the generator and the transfer switch.

2. That Article XI, LICENSEE’S DUTIES, shall be amended to include the following paragraph:

H. Contract with vendor to perform annual maintenance on the generator, identified in Exhibit “B-2”.

Licensee agrees to pay fifty percent (50%) of the replacement cost, and fifty percent (50%) of the annual maintenance of the generator and transfer switch, with the Licensor agreeing to pay the remaining fifty percent (50%) of the replacement cost, and fifty percent (50%) of the annual maintenance expense. MARCS shall cause the vendor performing the annual maintenance to invoice the Licensee and the Licensor in accordance with this provision. At such time as the generator is required to be repaired or replaced in its entirety, MARCS shall contract for the repair or replacement and Licensee and Licensor agree to split the costs of such repair or replacement with each paying fifty percent (50%) of the expense. MARCS shall cause the vendor performing the repair or replacement to invoice Licensee and Licensor in accordance with this provision.

3. The Second Amendment acknowledges that the Site License Agreement as amended has been renewed and at present has been automatically renewed for an additional two (2) year term which began on July 1, 2023, and shall run through June 30, 2025.

4. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same original.

5. Except for the foregoing, all the terms and conditions of the License Agreement and First Amendment to the Site License Agreement shall remain in full force and effect as stated therein.

IN WITNESS WHEREOF, this Second Amendment has been executed by the parties hereto as of the date herein first written above. Each of the parties represent to the other that such party has the necessary authority to enter into this Second Amendment.

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LICENSOR:

Mayfield Village, Ohio
6622 Wilson Mills Road
Mayfield Village, Ohio 44143

Brenda T. Bodnar, Mayor

Date

Stephen Schutt, President of Council

Date

AS TO LEGAL FORM:

Diane A. Calta, Director of Law

Date

FISCAL OFFICER'S CERTIFICATE

As the fiscal officer of the Mayfield Village, Ohio, I certify that as of the date of execution of the within Agreement with Mayfield Village, Ohio, the amount required to satisfy payment under the Agreement has been fully appropriated, or authorized or directed for such purpose and is in the Treasury, or is in the process of collection and is free from any obligation or certification now outstanding.

Angie S. Rich, Director of Finance
Mayfield Village, Ohio

ACKNOWLEDGEMENT

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

On this __ day of ____ 2024, before me personally appeared BRENDA T. BODNAR known to me to be the Mayor of Mayfield Village who acknowledged that she executed the foregoing Second Amendment to Site License Agreement for and on behalf of Mayfield Village, that the same is her own and the Village's voluntary act and deed and that she is duly authorized to enter into said Second Amendment to Site License Agreement for and on behalf of the Village.

Notary Public

ACKNOWLEDGEMENT

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

On this __ day of _____ 2024, before me personally appeared STEPHEN SCHUTT known to me to be the President of Council of Mayfield Village who acknowledged that he executed the foregoing Second Amendment to Site License Agreement for and on behalf of Mayfield Village, that the same is his own and the Village's voluntary act and deed and that he is duly authorized to enter into said Second Amendment to Site License Agreement for and on behalf of the Village.

Notary Public

LICENSEE:

State of Ohio
Department of Administrative Service
Office of First Responder Communications
Multi-Agency Radio Communications System Program Office
4200 Surface Road
Columbus, Ohio 43228

Director

Date

ACKNOWLEDGEMENT

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

On this ____ day of _____ 2024, before me personally appeared _____ known to me to be the _____ who acknowledged that she/he executed the foregoing Second Amendment to Site License Agreement for and on behalf of the Department of Administrative Services, acting on behalf of the state of Ohio, that the same is her/his own and the Department of Administrative Services voluntary act and deed and that she/he is duly authorized to enter into said Second Amendment to Site License Agreement for and on behalf of the Department of Administrative Services.

Notary Public

EXHIBIT "B-2"

Equipment List

Generator and Transfer Switch

**United States Environmental Protection Agency Warranty Statement
(Stationary Emergency Spark-Ignited Generators)**

Warranty Rights, Obligations and Coverage

The United States Environmental Protection Agency (EPA) and Generac Power Systems, Inc. (Generac) are pleased to explain the Emission Control System Warranty on your new stationary emergency engine. If during the warranty period, any emission control system or component on your engine is found defective in materials or workmanship, Generac will repair your engine at no cost to you for diagnosis, replacement parts and labor provided it be done by a Generac Authorized Warranty Service Facility. Your emission control system may include parts such as the fuel metering, ignition, and exhaust systems and other related emission related components listed below. Generac will warrant the emissions control systems on your 2009 and later model year engines provided there has been no abuse, neglect, unapproved modification, or improper maintenance of your engine. For engines less than 130 HP the warranty period is two years from the date of sale to the ultimate purchaser. For engines greater than or equal to 130 HP the warranty period is three years or 2500 hours of operation, whichever comes first, from the date of the engine being placed into service. For high-cost warranted components, the Emission Control System warranty is valid for 5 years or 3500 hours of operation, whichever comes first.

Purchaser's/Owner's Warranty Responsibilities

As the engine purchaser/owner you are responsible for the following: 1) The engine must be installed and configured in accordance to Generac's installation specifications. 2) The completion of all maintenance requirements listed in your Owner's Manual. 3) Any engine setting adjustment must be done in accordance and consistent with the instructions in the Owner's Manual. 4) Any emission control system or component must be maintained and operated appropriately in order to ensure proper operation of the engine and control system to minimize emissions at all times.

Generac may deny any/or all Emission Control System Warranty coverage or responsibility of the engine, or an emission control system or component on your engine thereof, if it has failed due to abuse, neglect, unapproved modification or improper maintenance, or the use of counterfeit and/or "gray market" parts not made, supplied or approved by Generac. Warranty service can be arranged by contacting either your selling dealer or a Generac Authorized Warranty Service dealer, 1-800-333-1322 for the dealer nearest you. The purchaser/owner shall be responsible for any expenses or other charges incurred for service calls and/or transportation of the product to/from the inspection or repair facilities. The purchaser/owner shall be responsible for any and/or all damages or losses incurred while the engine is being transported/shipped for inspection or warranty repairs. Contact Generac Power Systems Inc. for additional Emission Control System Warranty related information, Generac Power Systems, Inc., PO. Box 8, Waukesha, WI 53187, or call 1-800-333-1322 or www.generac.com.

Important Note

This warranty statement explains your rights and obligations under the Emission Control System Warranty, which is provided to you by Generac pursuant to federal law. Note that this warranty shall not apply to any incidental, consequential, or indirect damages caused by defects in materials or workmanship or any delay in repair or replacement of the defective part(s). This warranty is in place of all other warranties, expressed or implied. Specifically, Generac makes no other warranties as to the merchantability or fitness for a particular purpose. Any implied warranties which are allowed by law, shall be limited in duration to the terms of the express warranty provided herein. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

Emission Related Parts Include the Following (if so equipped)

- | | |
|--|---|
| 1) Fuel Metering System | 3) Ignition System Including A) Spark Plug, B) Ignition Module, C) Ignition Coil, D) Spark Plug Wires |
| 1.1) Gasoline Carburetor Assembly and Internal Components
A) Fuel Filter, B) Carburetor, C) Fuel Pump | 4) Exhaust System
A) Catalyst Assembly*, B) Exhaust Manifold, C) Muffler, D) Exhaust Pipe, E) Muffler Gasket |
| 1.2) Carburetion Assembly and Its Components
A) Fuel Controller, B) Carburetor and Its Gaskets, C) Mixer and Its Gaskets, D) Primary Gas Regulator, E) Liquid Vaporizer | 5) Crankcase Breather Assembly Including
A) Breather Connection Tube, B) PCV Valve |
| 1.3) Fuel Regulator | 6) Oxygen Sensor |
| 2) Air Induction System Including A) Intake Pipe/Manifold, B) Air Cleaner | 7) Diagnostic Emission-Control System |

*High-Cost Warranted Component

EXHIBIT "B-2"

Equipment List (continued)

Generator and Transfer Switch

**United States Environmental Protection Agency Compliance Requirements
(Stationary Emergency Spark-Ignited Generators)**

Purchaser's/Owner's Record Keeping Responsibilities

The United States Environmental Protection Agency (EPA) and Generac Power Systems, Inc. (Generac) are pleased to explain your record keeping requirements for compliance with Subpart JJJJ- Standards of Performance for Stationary Spark Ignition Internal Combustion Engines as listed in the Electronic Code of Federal Regulations Title 40 Part 60. As the engine purchaser/owner who operates and maintains their certified emergency stationary engine and emission control system according to applicable emission related guidelines as specified in this Owner's Manual, you are required to meet the following notification and record keeping requirements to demonstrate compliance: 1) Maintain documentation that the engine is certified to meet emission standards. 2) Record keeping of maintenance conducted. 3) Record keeping of the provision allowing natural gas engines to operate using propane for a maximum of 100 hours per year as an alternate fuel solely during emergency operations provided the engine is not certified to operate on propane. 4) Meet all compliance notifications submitted to the purchaser/owner and maintain all supporting documentation. 5) Record keeping of hours of operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation. For emergency engines greater than or equal to 130 HP, record keeping of hours of operation begins January 1, 2011. For emergency engines less than 130 HP, record keeping of hours of operation begins January 1, 2009; engines are equipped with non-resettable hour meters to facilitate record keeping.

Specific Air Quality Management or Air Pollution Control Districts may have different and additional record keeping/reporting requirements. Your permit to construct and/or operate the engine may be contingent upon compliance with those requirements. Check with your local Air Quality Management or Air Pollution Control District for specific requirements.

Emergency stationary internal combustion engines (ICE) may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State or local government, Generac, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 100 hours per year. There is no time limit on the use of emergency stationary ICE in emergency situations. The purchaser/owner may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency ICE beyond 100 hours per year. Emergency stationary ICE may operate up to 50 hours per year in non emergency situations, but those 50 hours are counted towards the 100 hours per year provided for maintenance and testing.

The 50 hours per year for non-emergency situations cannot be used for peak shaving or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity. For purchaser/owner of emergency engines, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as permitted in this section is prohibited.

If you operate and maintain your certified emergency stationary SI internal combustion engine and emissions control systems in accordance to the specifications and guidelines in this Owner's Manual, EPA will not require engine performance testing. If not, your engine will be considered non-certified and you must demonstrate compliance according to Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines as listed in the Electronic Code of Federal Regulations Title 40 Part 60.

Emission-Related Installation Instructions

Your certified emergency stationary engine has pre-set emission control systems or components that require no adjustment. Inspection and replacement of an emissions related component is required to be done so in accordance with the requirements cited in the United States Environmental Protection Agency Warranty Statement or can be arranged by contacting either your selling dealer or a Generac Authorized Warranty Service dealer, 1-800-333-1322 for the dealer nearest you. Failing to follow these instructions when installing a certified engine in a piece of non-road equipment violates federal law 40 CFR 1068.105 (b), subject to fines or penalties as described in the Clean Air Act.