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RETROACTIVE LICENSE AGREEMENT

THIS RETROACTIVE LICENSE AGREEMENT ("License") is made this 18th day of August, 2020 by and between CITY OF MADERA, 205 w. 4th Street, Madera, CA 93637 ("LICENSOR") and the COUNTY OF FRESNO, a political subdivision of the State of California, with its principal office at 333 W. Pontiac Way, Clovis, CA 93612 ("LICENSEE"). LICENSOR and LICENSEE are at times collectively referred to herein as "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, LICENSOR owns certain improvements, including a communications "Tower" and an adjacent "Building" located at 325 South D Street, Madera, CA 93638, commonly referred to as the Madera Radio Dispatch site, (the "Premises"), as described on Exhibit "A", attached hereto and incorporated herein by reference;

WHEREAS, LICENSOR wishes to grant a non-exclusive license to LICENSEE for the purpose of permitting LICENSEE to install, operate and maintain certain equipment on the Premises, and LICENSEE wishes to obtain such a license from LICENSOR.

WHEREAS, LICENSEE presently has certain approved equipment installed on the Premises ("Approved Equipment"), and the Parties now desire to recharacterize their relationship with respect to LICENSEE's use of the Premises as that of Licensor/Licensee, to be subject to the terms of this License, and to supersede and replace any previous arrangement between the parties.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter contained, such parties, and each of them, do agree as follows:

- 1. GRANT OF LICENSE/USE - LICENSOR grants to LICENSEE a non-exclusive license to install, operate, and maintain LICENSEE's Approved Equipment on the Premises, in designated locations, as specified by LICENSOR and agreed to by LICENSEE.

LICENSOR agrees that any Approved Equipment installed by LICENSEE in or on the Premises by LICENSEE shall continue to be the property of LICENSEE, and may be removed

1 at any time by LICENSEE. LICENSEE shall pay for and repair any damage to the Premises
2 caused by such removal, less reasonable wear and tear.

3 2. TERM AND TERMINATION

4 A. Initial Term/Renewal Terms – The initial term of this License shall be
5 five (5) years, beginning July 1, 2020 (“Commencement Date”) through June 30, 2025 (“Initial
6 Term”). At the expiration of the Initial Term, this License shall be renewable for two (2) five (5)
7 year periods, the first period beginning on July 1, 2025 and ending on June 30, 2030, and the
8 second period beginning on July 1, 2030 and ending on June 30, 2035 (each a “Renewal
9 Term”). Such renewals shall take place automatically, unless LICENSEE provides LICENSOR
10 with written notice to terminate this License at least one hundred eighty (180) days prior to the
11 expiration of the then-current License term. In case of any termination of this License by
12 LICENSEE, the County Administrative Officer and the Director of Internal Services/Chief
13 Information Officer, or one of their designees, is authorized to provide such written notice to
14 terminate this License. In no event shall the term of this License extend beyond June 30,
15 2035.

16 B. Non-Funding Termination – This License is contingent on the
17 approval of funds to be used by LICENSEE for the purposes described in this License by
18 LICENSEE’s appropriating governmental agency. Notwithstanding anything herein to the
19 contrary, should funds not be appropriated to LICENSEE for the purpose of enabling
20 LICENSEE to continue to meet its obligations under this License, then this License may
21 thereafter be terminated by LICENSEE without penalty, by LICENSEE’s Director of Internal
22 Services/Chief Information Officer, or his designee, by giving thirty (30) days prior written
23 notice to LICENSOR.

24 3. LICENSE FEE – LICENSEE shall pay to LICENSOR without offset, demand, or
25 prior notice, a license fee for its use of the Premises (the “License Fee”) on or before the 1st of
26 each month, according to the schedule set forth on Exhibit “B”, which is attached and
27 incorporated by this reference. Exhibit “B” may be modified from time to time by the written
28 approval of both parties. As to the LICENSEE, its Director of Internal Services/Chief Information

1 Officer, or designee, shall have the authority to deliver such written notice. In no event shall the
 2 total license fees payable under this License exceed \$50,000 over the entire potential fifteen
 3 (15) year term of this License.

4 LICENSEE shall remit payment to 204 W. 4th Street, Madera, CA 93637, or at the
 5 request of the LICENSOR, through direct deposit via Automated Clearing House (ACH), to an
 6 account specified by LICENSOR.

7 4. UTILITIES - LICENSOR shall pay all utility costs.

8 5. ONGOING ACCESS TO THE PREMISES - Throughout the term, including any
 9 Renewal Term or Holdover Period of this License, LICENSEE shall have the non-exclusive
 10 right of access to the Premises twenty-four (24) hours a day, seven (7) days per week. In
 11 exercising its right of access to the Premises, LICENSEE agrees to cooperate with any
 12 reasonable security procedures utilized by LICENSOR, and further agrees not to unreasonably
 13 disturb or interfere with the business or other activities of LICENSOR or any other licensees,
 14 tenants or occupants of the Premises.

15 6. MAINTENANCE OF LICENSED PREMISES - LICENSEE shall have no
 16 responsibility for maintenance of the Premises, but shall not commit, suffer or permit any
 17 waste or nuisance on said Premises.

18 7. MODIFICATION - Any matters of this License may be modified from time to
 19 time by the written consent of all the parties without, in any way, affecting the remainder.

20 8. ENFORCEMENT OF LICENSE AGREEMENT - If either party defaults in any of
 21 the covenants or agreements contained in this License, and the parties have made good faith
 22 efforts to resolve, the non-defaulting party may, at its option, with 30 day written notice to other
 23 party, suspend or terminate this License in whole or in part.

24 9. COMPLIANCE WITH LAWS / AUTHORITY TO OPERATE

25 LICENSOR shall be responsible for compliance with any marking and lighting
 26 requirements of the Federal Communications Commission ("FCC") and the Federal Aviation
 27 Administration ("FAA"), as applicable to the Tower and Building.

28 LICENSOR AND LICENSEE shall operate their equipment at the Premises in a

1 manner that will not cause harmful interference with the use or enjoyment of the Tower or the
2 Building by LICENSOR and any other tenants or licensees who are operating in compliance
3 with all applicable laws, in and/or on the Tower and Building as of the date of this License.

4 All operations of LICENSEE, LICENSOR, and other tenants and licensees shall be
5 lawful and in compliance with all laws, statutes, and regulations for which their authority to
6 operate radio equipment or operate a radio tower is dependent, including but not limited to
7 those of the FCC and the FAA.

8 10. GOVERNING LAW - Venue for any action arising out of or relating to this
9 License shall only be in Fresno County, California. The rights and obligations of the parties,
10 and all interpretation and performance of this License shall be governed in all respects by the
11 laws of the State of California.

12 11. NON-ASSIGNMENT – Neither party shall assign or transfer its rights or
13 obligations under this License, or sub-license said Premises or any portion thereof, without the
14 prior written consent of the other party.

15 12. NOTICES - Any and all notices between either LICENSOR and LICENSEE
16 under the terms of this License or by law shall be in writing and shall be deemed to be duly
17 given if served when personally delivered or deposited into the United States mail, with
18 postage prepaid, registered and addressed to the respective addresses stated as follows:

19 **LICENSEE:**

LICENSOR:

20 County of Fresno (LA-036)
21 Director of Internal Services/
22 Chief Information Officer
333 W. Pontiac Way
Clovis, CA 93612

City of Madera
Information Services Manager
205 West 4th Street
Madera, CA 93637

23 13. HOLD HARMLESS: LICENSOR agrees to indemnify, save, hold harmless, and at
24 LICENSEE'S request, defend the LICENSEE, its officers, agents, and employees from any and
25 all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to
26 LICENSEE in connection with the performance, or failure to perform, by LICENSOR, its officers,
27 agents, or employees under this License, and from any and all costs and expenses, damages,
28 liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may

1 be injured or damaged by the performance, or failure to perform, of LICENSOR, its officers,
2 agents, or employees under this License.

3 To the extent of the services provided in this License, LICENSEE agrees to indemnify,
4 save, hold harmless, and at LICENSOR'S request, defend the LICENSOR, its officers, agents,
5 and employees from any and all costs and expenses, damages, liabilities, claims, and losses
6 occurring or resulting to LICENSOR in connection with the performance, or failure to perform, by
7 LICENSEE, its officers, agents, or employees under this License, and from any and all costs and
8 expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or
9 corporation who may be injured or damaged by the performance, or failure to perform, of
10 LICENSEE, its officers, agents, or employees under this License.

11 14. INSURANCE

12 A. LICENSOR shall maintain during the term of this License the following policies
13 of insurance, which coverages may be provided in whole or in part through one or more
14 programs of self-insurance:

- 15 1) Commercial General Liability insurance with limits of not less than Two
16 Million Dollars (\$2,000,000) per occurrence and an annual aggregate
17 limit of not less than Four Million Dollars (\$4,000,000). This policy shall
18 be issued on an occurrence basis annually renewing, following form,
19 and be primary to all other collectible insurance; and
- 20 2) Fire insurance and extended coverage. LICENSOR shall add
21 LICENSEE as an additional loss payee.
- 22 3) Worker's Compensation - A policy of Worker's Compensation
23 insurance as may be required by the California Labor Code.

24 Within thirty (30) days of the execution of this License, LICENSOR shall provide
25 LICENSEE with certificates of insurance with proper endorsements naming LICENSEE as the
26 additional insured. The policy is to be written by an admitted insurer licensed to do business in
27 California and with an A.M. Best rating of A FSC VII or better. Excess or Umbrella coverage
28 may be insured by non-admitted insurers but still be A.M. Best FSC VII or better.

1 B. LICENSEE shall maintain during the term of this License the following policies
2 of insurance, which coverages may be provided in whole or in part through one or more
3 programs of self-insurance:

- 4 1) Commercial General liability insurance with limits of not less than Two
5 Million Dollars (\$2,000,000) per occurrence and an annual aggregate
6 of not less than Four Million Dollars (\$4,000,000). This policy shall be
7 issued on an occurrence basis.
- 8 2) All-Risk property insurance covering the personal property of
9 LICENSEE in the amount of the full replacement cost thereof.
- 10 3) Workers' Compensation in amounts required by the California labor
11 code.

12 Upon execution of this License, LICENSEE shall provide LICENSOR with certificates
13 of insurance with proper endorsements naming LICENSOR as the additional insured with
14 respect to each policy, other than the workers' compensation insurance policy, and provide a
15 waiver of subrogation against the LICENSOR in connection with any claim or damage covered
16 by such policies. Each policy is to be written by an admitted insurer licensed to do business in
17 California and with an A.M. Best rating of A FSC VII or better. Excess or Umbrella coverage
18 may be insured by non-admitted insurers but still be A.M. Best FSC VII or better.

19 15. COUNTERPARTS - This License may be executed in one or more counterparts
20 (which may be facsimile or .pdf e-mail counterparts followed by originals), each of which will
21 be deemed an original and all, taken together, will constitute one and the same instrument.

22 16. ENTIRETY - This License constitutes the entire agreement concerning
23 LICENSOR'S grant of a license to LICENSEE. The parties hereby each bind themselves, their
24 respective successors and assigns with respect to all terms and conditions of this License.

25 17. DISCLOSURE OF SELF-DEALING TRANSACTIONS - This provision is only
26 applicable if LICENSOR is operating as a corporation (a for-profit or non-profit corporation) or
27 if during the term of this License, LICENSOR changes its status to operate as a corporation.

28 Members of LICENSOR's Board of Directors shall disclose any self-dealing

1 transactions that they are a party to while LICENSOR is providing goods or performing
2 services under this License. A self-dealing transaction shall mean a transaction to which
3 LICENSOR is a party and in which one or more of its directors has a material financial interest.
4 Members of the Board of Directors shall disclose any self-dealing transactions that they are a
5 party to by completing and signing a Self-Dealing Transaction Disclosure Form Exhibit "C",
6 attached hereto and by this reference incorporated herein, and submitting it to the County of
7 Fresno prior to commencing with the self-dealing transaction or immediately thereafter.

8 18. INDEPENDENT CONTRACTOR - In performance of the work, duties and
9 obligations assumed by LICENSOR under this License, it is mutually understood and agreed
10 that LICENSOR, including any and all of the LICENSOR's officers, agents, and employees will
11 at all times be acting and performing as an independent contractor, and shall act in an
12 independent capacity and not as an officer, agent, servant, employee, joint venturer, partner,
13 or associate of the LICENSEE. Furthermore, LICENSEE shall have no right to control or
14 supervise or direct the manner or method by which LICENSOR shall perform its work and
15 function. However, LICENSEE shall retain the right to administer this License so as to verify
16 that LICENSOR is performing its obligations in accordance with the terms and conditions
17 thereof.

18 LICENSOR and LICENSEE shall comply with all applicable provisions of law and the
19 rules and regulations, if any, of governmental authorities having jurisdiction over matters the
20 subject thereof.

21 Because of its status as an independent contractor, LICENSOR shall have absolutely
22 no right to employment rights and benefits available to LICENSEE's employees. LICENSOR
23 shall be solely liable and responsible for providing to, or on behalf of, its employees all legally
24 required employee benefits. In addition, LICENSOR shall be solely responsible and save
25 LICENSEE harmless from all matters relating to payment of LICENSOR's employees,
26 including compliance with Social Security withholding and all other regulations governing such
27 matters. It is acknowledged that during the term of this License, LICENSOR may be providing
28 services to others unrelated to the LICENSEE or to this License.

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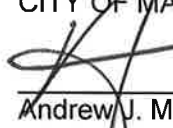
19. AUDITS AND INSPECTIONS – If this License exceeds ten thousand dollars (\$10,000.00), LICENSOR shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

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IN WITNESS WHEREOF, the Parties hereto have executed this License as of the day
and year first hereinabove written.

LICENSOR:
CITY OF MADERA

LICENSEE:
COUNTY OF FRESNO



Andrew J. Medellin, Mayor



Ernest Buddy Mendes, Chairman of the Board of
Supervisors of the County of Fresno

205 W. 4th Street
Madera, CA 93637

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California



By: 

Deputy

FOR ACCOUNTING USE ONLY:

ORG: 8905
Account: 7340
Fund: 1020
Subclass: 10000

EXHIBIT "A"

Premises

City of Madera – Madera Radio Dispatch site



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EXHIBIT "B"

License Fee Schedule

Date	\$ per "U" (1.75" of rack space)	# of "U" occupied by County	Rent Per Month
July 1, 2020	\$ 40.00	4.00	\$ 160.00
July 1, 2021	\$ 41.20	4.00	\$ 164.80
July 1, 2022	\$ 42.44	4.00	\$ 169.76
July 1, 2023	\$ 43.71	4.00	\$ 174.84
July 1, 2024	\$ 45.02	4.00	\$ 180.08
July 1, 2025	\$ 46.37	4.00	\$ 185.48
July 1, 2026	\$ 47.76	4.00	\$ 191.04
July 1, 2027	\$ 49.19	4.00	\$ 196.76
July 1, 2028	\$ 50.67	4.00	\$ 202.68
July 1, 2029	\$ 52.19	4.00	\$ 208.76
July 1, 2030	\$ 53.76	4.00	\$ 215.04
July 1, 2031	\$ 55.37	4.00	\$ 221.48
July 1, 2032	\$ 57.03	4.00	\$ 228.12
July 1, 2033	\$ 58.74	4.00	\$ 234.96
July 1, 2034	\$ 60.50	4.00	\$ 242.00

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EXHIBIT "C"

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

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(1) Company Board Member Information:

Name:		Date:	
Job Title:			

(2) Company/Agency Name and Address:

(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):

(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):

(5) Authorized Signature

Signature:		Date:	
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