

COMMUNICATIONS FACILITIES

LICENSE AGREEMENT

for

City of San Leandro

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COMMUNICATIONS FACILITIES
LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“License” or “Agreement”), made and entered into this 18th day of June 2018, (“Effective Date”) by and between the County of Alameda, a political subdivision of the State of California, hereinafter referred to as "County" and the City of San Leandro, a California charter city, hereinafter referred to as "Licensee". County and Licensee are sometimes referred to individually as “party” and collectively as “parties”.

WITNESSETH:

WHEREAS, County owns property at 2892 Fairmont Drive, San Leandro (the “Property”); and
WHEREAS, on the Property there are a number of structures, including a structure that is currently being used for communications equipment, more particularly described in Exhibit “A-1”, attached hereto and incorporated herein by reference (the “Site”); and

WHEREAS, Licensee is a public agency; and

WHEREAS, Licensee desires to locate and maintain communication equipment (including racks and antennas) more particularly described in Exhibit “B”, attached hereto and incorporated herein by reference (“Equipment”) in a portion of the Site more particularly described in Exhibit “A-2”, attached hereto and incorporated herein by reference (the “Licensed Area”); and

WHEREAS, Licensee’s proposed use of the Licensed Area is in the public interest in that it supports Licensee’s deployment of a public Wi-Fi system for residents and visitors to the City of San Leandro, and Licensee’s work will not substantially conflict or interfere with the use of the Property by the County; and

WHEREAS, County is agreeable to Licensee having non exclusive use of the Licensed Area upon the terms and conditions contained in this License.

NOW, therefore, it is mutually agreed as follows:

1. DESCRIPTION OF PROPERTY

The Site, described in Exhibit "A-1" and the Licensed Area, described in Exhibit “A-2”, of the Property are the subject of this License. Exhibit "A-1" and Exhibit “A-2” are attached hereto and incorporated herein by reference.

2. LICENSE

This License grants to Licensee the use of the Licensed Area for installation and maintenance the Equipment to provide for wireless services to be used by Licensee.

- a. Non Exclusive Use: The License is for the non exclusive use of the Licensed Area and access to the Site through the Property.
- b. Condition: This License is conditioned on Licensee being in full compliance with all terms and conditions of this License. County's non enforcement of any provision at any time, or for any length of time, does not prohibit County from terminating this License for non compliance with any term or condition in the future.

3. TERM OF AGREEMENT

- a. Initial Term: This Agreement shall be for a term of ten (10) years, commencing upon the first day of the month following the date the County Board of Supervisors has approved this Agreement ("Initial Term").

Renewal: Upon the expiration of the Initial Term, this License shall renew for up to two (2) additional five (5) year term(s), with each five (5) year term being an "Extension Term." Each Extension Term shall be upon the same terms and conditions as the Initial Term except that the License fees shall be increased as set forth herein. The Initial Term and first Extension Term shall automatically be renewed upon expiration into the subsequent Extension Term unless either party notifies the other party in writing of its intention not to renew this License at least ninety (90) days prior to the expiration of the Initial Term or first Extension Term as applicable. The monthly fee for each five (5) year renewal period shall be at the amount of the last full month of the last year of the Initial Term or first Extension Term as applicable, plus an additional 4% of that amount, increased every year during the 5 year renewal period by an additional 4% of the preceding month's amount, as contained in Section 4 below.

4. PAYMENT OF LICENSE FEE

- a. Fee: For the rights granted under this License, Licensee shall pay to County, as base fees, the following annual amount for base year and each option year of this Agreement. These amounts reflect the cost to the County of making the Site and Licensed Area available and are set to reflect the public benefit of a Wi-Fi service to the public. The base year rate shall begin at \$6,668.00 and will escalate annually at a rate of 4%.

	Initial Term	1st Extension Term	2nd Extension Term
Year 1	\$6,668.00	\$9,870.00	\$12,009.00
Year 2	\$6,935.00	\$10,265.00	\$12,489.00
Year 3	\$7,212.00	\$10,676.00	\$12,989.00
Year 4	\$7,501.00	\$11,103.00	\$12,508.00
Year 5	\$7,801.00	\$11,547.00	\$14,049.00
Year 6	\$8,113.00		
Year 7	\$8,437.00		
Year 8	\$8,775.00		
Year 9	\$9,126.00		
Year 10	\$9,491.00		

- b. Payment Terms: The payment required under this section shall be made in monthly installments (annual License fee divided by 12) due and payable by Licensee in arrears on or before the 5th day of the following month.
- c. Payment Address: All payments shall be made and transmitted to County at the following address:

County of Alameda
c/o General Services Agency
Real Property Management
ATTN: Leased Property Manager
1401 Lakeside Drive, 6th Floor
Oakland, CA 94612-4305

5. LIMITATIONS

- a. Permits: Licensee shall acquire all necessary permits for the use of the Licensed Area and use and installation of all Equipment, new and current. Licensee shall operate all

Equipment on the Site in accordance with the Federal Communications Commission (“FCC”) requirements.

- b. Alterations: Licensee shall not alter the Site in any way without prior written approval from County. Licensee shall supply County with structural drawings that indicate any alterations to the Licensed Area or Site before making such alterations. Written approval by County must be received before proceeding with any structural changes. If requested, Licensee shall promptly remove any alterations made by Licensee and clean the Site.
- c. Interference with County Use: In no event shall the exercise of this License interfere in any way with the use and operation of the County's facilities and equipment located on the Site. Licensee shall take corrective action immediately upon actual or constructive notice that Licensee is interfering in any way with any County facility or equipment.
- d. Access: County is not obligated to construct or maintain access to the Licensed Area and does not guarantee access over private property to the Licensed Area.
- e. Condition of Site: The Licensed Area is licensed on an "as-is" basis. County has no obligation for maintenance or repair of the Property, however, County will make a good faith effort, resources permitting, to ensure that the Property will not fall below its condition existing as of the Effective Date. County makes no representations as to the Site, including the Licensed Area. The County shall make a good faith effort to, when performing any maintenance of the Property, do so in a manner that will not interfere with Licensee’s use of the Site.
- f. Authorized Personnel: In order to maintain the security for the Site, only those service technicians authorized by Licensee and by the County's Information Technology Department (“ITD”) shall be granted access to the Licensed Area. In the event of an emergency, service technicians previously authorized by Licensee and by the County ITD may access the Licensed Area without advance approval, provided that Licensee notifies the County immediately upon knowledge of the emergency and need to access the Site and follow up with confirmation of such access within twenty-four (24) hours following access.
- g. Asbestos: Licensee shall notify County in writing within five (5) business days prior to start of testing, when testing for asbestos or doing construction requires asbestos abatement.
- h. Damage: Licensee shall be solely responsible for any damage to the Site due to Licensee’s Equipment and use. Licensee shall, in a timely manner, correct any problem and effect repairs.

6. POWER

- a. Utility Access: County shall provide access to utility service for electricity to the Licensed Area.
- b. Reimbursement: Licensee shall reimburse County for all fees, charges and costs, for Licensee's use of utility services, including power used for the installation, operation, use, maintenance, repair or removal of Equipment or other Licensee activities.
- c. No Back-Up Power: County is under no obligation to provide or arrange for any emergency or backup power, for Licensee and its Equipment. However, Licensee may connect Licensee's circuit to the current County generator located at the Site. Licensee shall use best business practices related to the connection and use of the generator. The County is under no obligation to maintain, repair or replace the generator, and makes no representation as to the condition or operability of the generator now or in the future. Licensee specifically waives any and all claims, losses, damages, liabilities and expenses arising out of or resulting from or in any way connected with the generator.
- d. No County Responsibility: County is not responsible for any costs or damages related to power, including those that may occur as the result of a power surge or a power outage, whether or not it was within the control of the County.

7. EQUIPMENT INSTALLATION AND OPERATION

- a. Compliance: All of the Equipment to be installed and maintained on the Licensed Area shall be installed at Licensee's sole cost and expense, in good and workmanlike manner by a licensed contractor, as applicable, and in accordance with appropriate electrical, mechanical and structural plans and specifications.
- b. Frequency: Licensee shall not operate the Equipment at any frequency which has not been approved by both County ITD and County's Real Property Management ("GSA-RPM"), which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, County acknowledges that Licensee intends to operate within the Licensed Area on the Department of Commerce National Telecommunications Information Agency approved frequency range.
- c. Cable: Licensee shall mark cabling every twenty (20) feet with identifying markings and identify the antenna with similar markings. Prior to any installation, Licensee shall submit plans and specifications to the County for design review and for approval of any proposed cable runs and antenna locations.

- d. Power Usage: Any increase or anticipated increase, in the usage of power related to changes in structure or the Equipment shall be specifically provided to County in writing.
- e. Written Approval: No structures or equipment may be installed in the Licensed Area, or elsewhere on the Property, including electrical and metering equipment without the prior written approval of GSA-RPM.
 - i. Such approval does not replace the need or requirement for any permits, including conditional use permits, and such approval is not a determination or representation on the whether the Equipment meets any legal, technical or other requirements.
 - ii. Licensee shall not commence construction until the County has approved Licensee's specifications and plans ("Plans") for the Equipment at the Licensed Area and Site.
 - iii. Following receipt of the County's written approval of the Plans, Licensee will provide the County with five (5) business days advance written notice before commencing any construction or installation.
- f. Replacements or Upgrades: Without change to footprint or frequencies, Licensee may replace or upgrade the Equipment with advance notice to the County. Licensee must adhere to all terms of this License including notification to County and equipment limitations for such replacements or upgrades. Any increase or anticipated increase in the usage of power or change in frequencies related to changes in structure or equipment shall be specifically provided to County in writing.
- g. Equipment Description: Licensee's equipment installation shall be limited to those specific devices and locations listed in Exhibit "B" attached hereto and incorporated herein by reference.
- h. Additional Equipment: In the event Licensee desires to install additional equipment or antennas, changes shall first be approved in writing by County prior to such additional installation. Should Licensee install additional equipment that exceed the dimensions of the Equipment, or desires to increase the Licensed Area or the footprint beyond that set forth in Exhibit "B" or for placement of additional equipment, Licensee shall first obtain County's written consent, and such increase to the Licensed Area may be subject to an increase in the License fee.
- i. Indemnification: Licensee specifically agrees to fully indemnify County for any and all costs and damages that may be incurred by County related to the Equipment, including

installation, maintenance, and removal, excepting the County's own sole negligence or willful misconduct.

8. MAINTENANCE AND REPAIR

- a. Licensee Responsibility: Licensee shall keep the Site and Equipment in a neat, clean and orderly condition at all times during the term of this License. Licensee, at Licensee's sole cost and expense, shall be responsible for all repairs and maintenance to the Licensed Area, or anywhere on the Property, resulting from the installation and operation of the Equipment and any modifications or alterations to the Licensed Area made to accommodate the Equipment. Licensee shall also promptly repair any damage to the Property, including the Site, caused by Licensee, its agents or contractors.
- b. County Performance: In the event that County performs maintenance or repairs to the Licensed Area or the Site which this License requires Licensee to perform but which Licensee fails to perform, and Licensee has received written notice from County clearly identifying such required maintenance or repairs and Licensee has had a reasonable period and opportunity to cure, Licensee shall reimburse the County within fifteen (15) business days after receipt of an invoice from County for the cost of such maintenance or repairs plus an amount equal to Twenty Percent (20%) of such costs in order to reimburse County for administration and overhead.

9. ALTERATIONS

Licensee shall not make or permit any other person to make alterations to the Licensed Area outside of the scope of this License without the prior written consent of the County.

10. MARKING AND LIGHTING REQUIREMENTS

- a. FAA and FCC Requirements: Licensee shall be responsible for compliance with all marking and lighting requirements for the Equipment, including any upgrades or additional markings or lighting that may be needed due to the Equipment and use of the Site as required by the Federal Aviation Administration ("FAA") and the FCC.
 - i. Marking and lighting compliance shall include Licensee being responsible for compliance with all marking and lighting requirements for the Equipment.
 - ii. Licensee shall inform County in writing of the FAA and the FCC requirements for the Site.

- iii. Marking and lighting plans must be submitted to the County for approval, and Licensee shall not complete marking or lighting without written authorization from the County.
 - iv. County's approval of the proposed marking or lighting is for County's purposes only and shall not in any way be considered indicative of compliance with FAA or FCC requirements or any other local, state or federal requirement, rule or regulation.
 - v. All marking and lighting shall be completed by Licensee at its sole cost and expense.
- b. No Signage: Licensee shall not post any sign or place any markings on the Property, including on the Licensed Area, without the written permission of County.
- c. Noncompliance: If Licensee is cited because the Equipment, lighting or signage is not in compliance in any federal, state or local law, ordinance or regulation and, should Licensee fail to cure the conditions of noncompliance within 10 business days, County may either terminate this License or proceed to cure the conditions of noncompliance at Licensee's expense.

11. INTERFERENCE WITH COUNTY'S OPERATIONS

Licensee shall ensure that use of the Equipment does not interfere with the County's public safety transmissions, sheriff and fire communications or County's internal or external communications. Licensee shall operate the Equipment in such a manner that all communications sent or received by the Equipment shall be in accordance with FCC rules and regulations and pursuant to Licensee's FCC issued and regulated frequency licenses. If the County determines, at its sole discretion, that any of Licensee's activities under this License detrimentally affect or interfere with County's operations, County may direct Licensee to alter its activities or take such other action as the County deems necessary, in order to eliminate said interference. Except in cases of emergency, Licensee shall have a reasonable amount of time within which to comply with the County's directive, but the determination of a reasonable amount of time in this regard shall be in the County's sole discretion. Any costs incurred by Licensee in eliminating said interference shall be Licensee's sole responsibility.

Notwithstanding the provisions above, violation of the provisions of this Section 11 shall be grounds for the immediate termination of this License by County.

12. ACCESS BY LICENSEE

- a. Construction and Installation: Licensee and its agents and contractors shall have access to the Licensed Area for the purpose of constructing and installing the Equipment. However, due to the nature of the Property, Licensee must contact County prior to accessing the Licensed Area. All provisions of this License shall be in force during such construction period including the fee provisions as stated in this License.
- b. Maintenance and Repair: During the term of this License, and after installation and construction of the Equipment, Licensee shall have access to the Licensed Area for the sole purposes of maintenance and repair of the Equipment and only with prior written, advance notice to County's Leased Property Manager.
- c. Written Authorization: During any construction period and in the event Licensee finds it necessary to access the Licensed Area for repairs and alterations to the Equipment, Licensee shall inform the County's Leased Property Manager, in writing, as to the exact nature of the repairs and/or alterations and the proposed date and time of the required access, and shall obtain written authorization from County's Leased Property Manager prior to performing any work to supply the name, telephone number and other contact information of all persons and entities entering the Licensed Area for these purposes. This is mandated as there is an active security alarm at the Site. At the discretion of the County, Licensee may provide this information by email only.
- d. Advance Notice: Licensee shall contact the County's Leased Property Manager at least 48 hours notice prior to the time it desires to access the Licensed Area.
- e. Emergency: In the event emergency access is needed, and the County Leased Property Manager is not available, Licensee should contact the County's Information Technology Department at 510 667-7790. Licensee shall notify the County's Leased Property Manager within 24 hours of the time the contact number was called, the time the access was made to the Site and the nature of the emergency.
- f. Notification To ITD Electronic Division: Licensee, and any of its vendors, agents, subcontractor or others acting on their behalf, authority or direction must also notify the County's Electronics Division (24 hours a day, 7 days a week) before accessing the Licensed Area by calling the lead number (510) 667-7788. This number rolls over to the Sheriff's Dispatch after hours and, if the Licensee does not notify Dispatch of Licensee's visit to the Site, an alarm alerts the County and/or Dispatch and the Dispatchers may send a sheriff's deputy to the Site to investigate.

13. ACCESS BY COUNTY

County reserves the right for County and County's agents to enter the Licensed Area at any time, and for any reason, including but not limited to: (i) to inspect the Licensed Area, (ii) to show the Licensed Area to prospective licensees, lessees, lenders or purchasers, (iii) to alter, maintain or repair the Licensed Area or any other portion of the Licensed Area, (iv) to alter, maintain, repair, replace or relocate conduit, wire or equipment serving other portions of the Licensed Area, (v) to perform any obligation of Licensee after Licensee's failure to perform same, provided notice of such failure and opportunity to cure in accordance with the terms and conditions contained in this License have first been provided to Licensee or (vi) upon default by Licensee under this License. County shall have the right to enter the Licensed Area without advance notice.

14. DESTRUCTION OR CONDEMNATION

If the Licensed Area is materially damaged, destroyed or condemned by no fault of the Licensee, Licensee may elect to immediately terminate this License as of the date of the material damage, destruction or condemnation by giving notice to County no more than forty-five (45) days following the date of such material damage, destruction or condemnation.

If the Licensed Area is materially damaged, destroyed or condemned, by no fault of the County, County may elect to terminate this License as of the date of the material damage, destruction or condemnation by giving thirty days (30) written notice to Licensee after the date of such material damage, destruction or condemnation.

15. LICENSE NOT EXCLUSIVE

County hereby reserves the right to grant, renew or extend similar licenses to others.

Notwithstanding the foregoing, County shall have other licensees of the Licensed Area agree to not cause interference with the Equipment to Licensee's wireless signal transmission or reception from and to the Licensed Area. If another licensee shall interfere with the enjoyment by Licensee of the rights granted under this License, the Licensee shall have the right to take appropriate action against such interfering party or to terminate this License upon thirty (30) days written notice to County. The County shall not be liable for any expense or damage which Licensee may suffer as a result of such interference and premature termination of this License.

Licensee agrees not to cause interference with the equipment of others that may have a license to use the Site and the Licensed Area. Licensee shall take reasonable precautions to prevent

interference with the wireless signal transmissions and receptions from and to the Site and Licensed Area by others.

16. TRANSFERS BY COUNTY

County shall have the right to transfer and assign, in whole or in part, all of its rights and obligations hereunder and in the Licensed Area referred to herein. In such event and upon such transfer County shall be released from any further obligations hereunder, and the successor in interest of County shall be required to perform such obligations.

17. ASSIGNMENT

Licensee will not have the right to assign, sell or transfer its interest under this Agreement without the approval or consent of County, to any party controlling, controlled by or under common control of Licensee or to any entity which acquires all or substantially all of the Licensee's assets in the market defined by the FCC in which the Licensed Area is located by reason of a merger, acquisition, or other business reorganization. However, such assignment, sale or transfer shall not be valid unless written notice is given to County. Except as provided above, Licensee may not rent or assign any rights under this License to any other person or entity or permit the use of any portion of the Licensed Area by others without the prior written consent of County.

18. ACKNOWLEDGEMENT OF TITLE

It is understood and agreed that Licensee, by the acceptance of this License and by the use or occupancy of said Licensed Area, has not acquired and will not acquire hereafter any rights or interest in or to said Site, and that Licensee may use subject Site only as herein provided, nor does Licensee have, nor will it obtain, any right or claim to the continued use of said Site and Licensed Area beyond that specifically given in this License.

19. RELOCATION ASSISTANCE

For any reason, if the County requires relocation of the Equipment or facilities at the Site, Licensee shall relocate the Equipment and facilities at no cost to County. This License is of a temporary nature and no relocation payment or advisory assistance will be sought by Licensee or provided in any form by County as a consequence of this License.

20. INDEMNIFICATION

To the fullest extent permitted by law Licensee agrees to defend, indemnify and hold harmless the County of Alameda, its officers, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages liabilities and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from or in any way connected with Licensee's actions pursuant to this License or any breach of any representation hereunder, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereof (collectively "Liabilities") except where such Liabilities are caused by the sole negligence or willful misconduct of any indemnitee identified above. The County may participate in the defense of any such claim without relieving Licensee of any obligation hereunder.

Licensee assumes liability for claims and/or liability of personal and property damages arising out of the acts, omissions, or negligence of Licensee or its employees acting within the scope of their employment: (1) in the operation and maintenance of the Equipment; and (2) of the failure of the Licensee or its employees acting in the scope of their employment to observe and abide by any of the terms or conditions of this Agreement.

21. TERMINATION OF LICENSE

- a. Default by Licensee: In the event of the following defaults by Licensee, County shall have the right to immediately terminate this License and all rights of Licensee hereunder by giving written notice of no less than ten (10) days to Licensee of such election by County.
 - i. Any failure by Licensee to pay, within fifteen (15) days following written notice of nonpayment by County, License fees or make any other payment required under this License.
 - ii. Any failure by Licensee to observe and perform any other provision of this License to be observed and performed by Licensee, where such failure continues for thirty (30) days after written notice by County. No such failure, however, will be deemed to exist if Licensee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence.
- b. County Right to Terminate: Notwithstanding anything to the contrary contained in this License, if the County at any time during this License is unable, after use of reasonable

efforts, to fully accommodate Licensee's continuing use of the Licensed Area on the Site due to the County's desire to redevelop, change use, modify, remodel, demolish or alter the Site, the County shall have the right to terminate this License upon not less than ninety (90) days prior written notice to Licensee

- c. Licensee Right to Terminate: Licensee may terminate this License without or without cause and without penalty upon not less than one-hundred and eighty (180) days' written notice to County.
- d. Removal of Equipment: Licensee shall remove all Equipment, materials and debris from the Licensed Area and the Property at or prior to the termination date of this License, whether it is terminated by expiration of the Initial Term or any Extension Term or any provision in this License. Licensee shall leave the Licensed Area and Site in a good, clean condition. Any of Licensee's Equipment, materials or debris remaining on the Property after the termination date without written permission of the County may be disposed of by the County without further notice. The County shall have no obligation to store Licensee's Equipment, materials or debris after the date of termination, but if the County elects to do so and Licensee seeks their recovery, Licensee shall be obligated to pay the County's reasonable cost of storage and removal as a condition of their recovery.

22. INSURANCE

Licensee shall, at its sole cost and expense, procure and maintain during the entire term of this License commercial general liability insurance in accordance with the requirements identified in Exhibit "C", attached hereto and incorporated herein by reference. Proof of insurance shall be submitted to the County prior to execution of this License and Licensee shall provide annual certificates to County's Leased Property Manager. County acknowledges that Licensee is self-insured and Licensee shall provide County with an acknowledgement of its self-insurance status that contains the limits through self-insurance, commercial insurance, or a combination of both.

23. HAZARDOUS MATERIALS

"Hazardous Materials" are those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42, U.S.C. Section 9601, et seq. ("CERCLA") and the California Hazardous Waste Control Act, Health and Safety Code Section 25100, et seq., or those which meet the toxic, reactivity, corrosively or flammability criteria of the above regulations, as well as any other substance which poses a hazard to human health or to the environment.

Except as otherwise permitted or addressed in this License, Licensee shall not use, create, store or allow any such substances on the Licensed Area in violation of any Environmental Law as that term is hereinafter defined. In no case shall Licensee cause or allow the deposit or disposal of any substance on the Licensed Area.

24. ENVIRONMENTAL LAW

“Environmental Law” means any and all federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, rulings, directives or notices of violation, that create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal or management of any Hazardous Material, or otherwise regulating or providing for the protection of the environment.

25. ENVIRONMENTAL HEALTH

- a. Licensee shall, at Licensee’s sole cost, take all measures necessary to ensure that the Equipment strictly complies with all obligations to which Licensee is bound in connection with such Equipment, including, without limitation, regulations of the FCC, the Environmental Protection Agency (“EPA”), and the Occupational Safety and Health Administration (“OSHA”), applicable to the emission of radiation from active transmission equipment or similar facilities. Licensee shall, at Licensee’s sole cost, be responsible for all postings, signage and warnings to which Licensee is bound in the connection with the Equipment, including, without limitation, regulations of the FCC, EPA and OSHA, applicable to the emission of radiation from active transmission equipment or similar facilities. Licensee shall obtain approval from County prior to posting such signage and warnings on the Property.
- b. As of the Effective Date of the License: (1) Licensee hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Site in violation of any Environmental Law (as defined above), and (2) County hereby represents and warrants, with no duty or obligation to investigate that (i) it has no knowledge of the presence of any Hazardous Material located in, on under, upon or affecting the Site in violation of any Environmental Law;

(ii) no notice has been received by or on behalf of County from, and County has no knowledge that notice has been given to any predecessor owner or operator of the Site by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Site; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Site in violation of any Environmental Law.

26. TAXES

Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied directly attributable to the installation and operation of the Equipment. Any such taxes shall be the sole responsibility of Licensee.

27. NOTICE

Any demand or notice which either party shall be required, or may desire, to make upon or give to the other shall be in writing and shall be delivered personally upon the other or be sent by prepaid First Class US Mail address, or by a nationally recognized overnight courier, to the respective parties as follows:

COUNTY: County of Alameda
General Services Agency
Real Property Management
ATTN: Real Property Manager
1401 Lakeside Drive, 6th Floor
Oakland, California 94612-4305

LICENSEE: Michael Hamer

City of San Leandro
Information Technology Division
835 East 14th Street, Room 202
San Leandro, CA 94577
mhamer@sanleandro.org
(510) 577-3337

28. TITLE TO LICENSEE'S EQUIPMENT

Title to the Equipment placed on the Site by Licensee shall be held by Licensee. All of the Equipment shall remain the property of Licensee and are not fixtures. Licensee has the right to

remove all of the Equipment at its sole expense on or before the expiration or termination of this License.

29. GENERAL PROVISIONS

- a. Choice of Law: This Agreement shall be governed by the laws of the State of California.
- b. Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- c. Entire Agreement: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Licensee relating to the subject matter of this Agreement. This Agreement supersedes all previous understandings, offers, negotiations and agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
- d. Headings: Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
- e. Advertising or Publicity: Licensee shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
- f. Survival: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding indemnification, shall survive termination or expiration.
- g. Severability: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

IN WITNESS WHEREOF, the parties hereto have executed this License the day and year first above written and COUNTY has hereunto caused its corporate name to be signed by its President of the Board of Supervisors who hereunto duly authorize the day and year first above written.

By: _____
Name Needed
Title Needed
City of San Leandro

By: _____
Wilma Chan
President, Board of Supervisors
County of Alameda

Approved as to Form:
DONNA R. ZIEGLER
COUNTY COUNSEL

By: _____
Andrew Massey
Deputy County Counsel

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on _____ and that a copy has been delivered to the President as provided by Government Code Section 25103.

Date: _____

By: _____
Clerk of the Board
County of Alameda, State of California

EXHIBIT A-2
LICENSED AREA

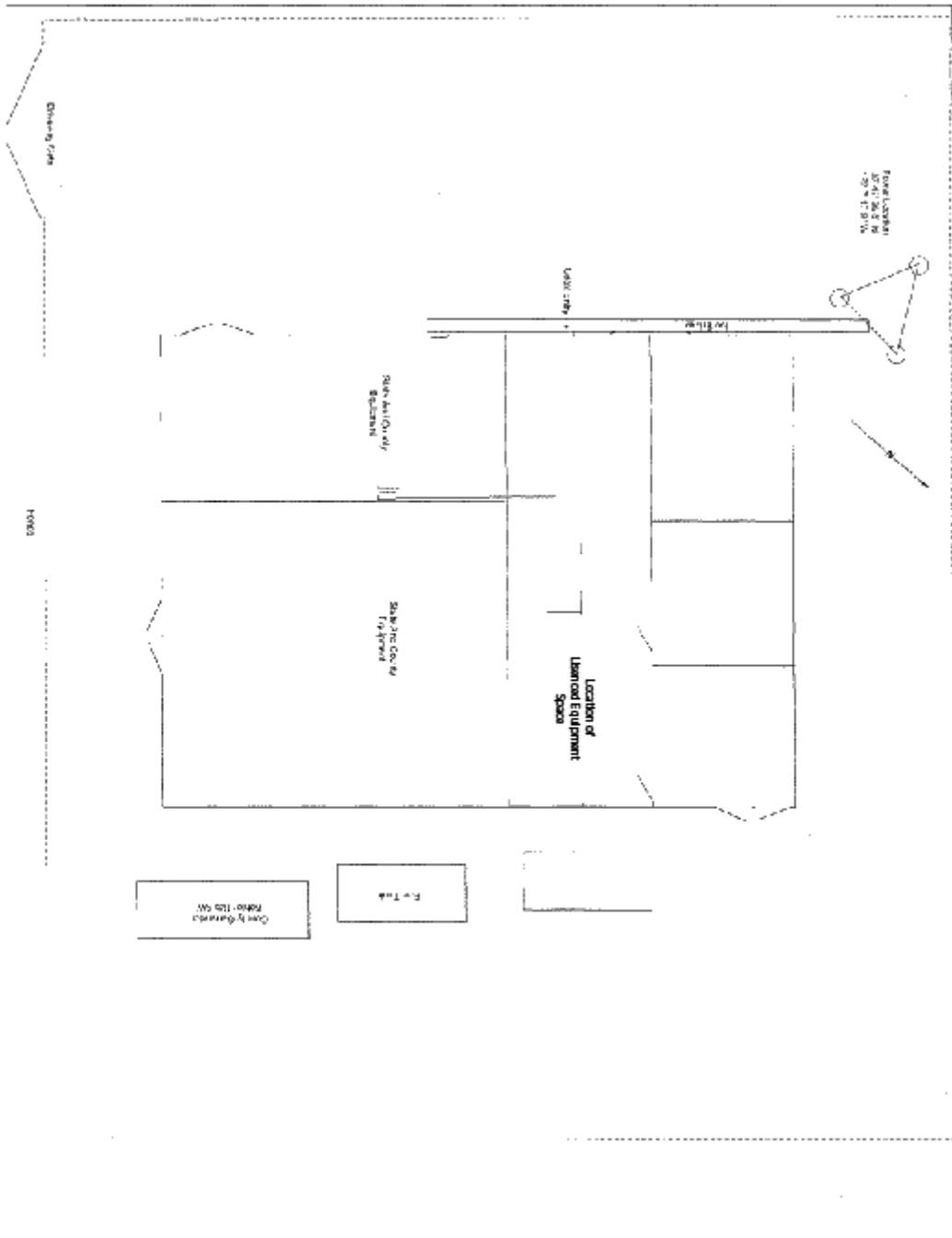


EXHIBIT B
(EQUIPMENT)

Vault:

1. Quantity 2 total - Mimosa A-5 Base Station @ 25 watts each = 50 Watts
2. Quantity 1 total - Mimosa Point to Point Radio with 3' Parabolic Dish = 20 Watts
3. Ubiquiti Toughswitch = 12 Watts
4. APC Rackmount UPS = 5 Watts

Total: 87 Watts, all other listed equipment is inert.

Tower:

Antennae types/Dimensions:

1. Quantity 1 Parabolic dish and 2 flat-sector antennae.
 - a. The 2 Mimosa Base stations will each have connectorized Sector Antennae with the following dimensions: 14.6" x 14.6" x 1.6"
 - b. The Mimosa B5 Point to Point radio is also connectorized and will have a proposed 3' dish with the following dimensions: 3' diameter x 1.5'.

No back-up generator guarantee. City will supply, install and use its 2U UPS to clean power and supply power during outages of less than 2 hours.

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
D	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> – Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. – Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". 7. CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision. 	