

TOWER LICENSE AGREEMENT BETWEEN
THE FRESNO COUNTY SUPERINTENDENT OF SCHOOLS
AND THE CITY OF REEDLEY

THIS LICENSE AGREEMENT (hereinafter "AGREEMENT") is made and entered into this 1st day of July, 2018 (the "EFFECTIVE DATE") by and between the FRESNO COUNTY SUPERINTENDENT OF SCHOOLS (hereinafter "LICENSOR"), and the CITY OF REEDLEY, a political subdivision of the State of California, 843 "G" Street, Reedley, California, 93654 (hereinafter "LICENSEE"). LICENSOR and LICENSEE are sometimes referred to herein individually as a "PARTY" or collectively as the "PARTIES."

RECITALS:

WHEREAS, LICENSEE desires to install and operate communication equipment and mount antennae on a suitable tower for the purpose of improving and maintaining vital health and safety communications systems; and

WHEREAS, LICENSOR owns a suitable tower located at the location owned by Kings Canyon Unified School District at 740 W. North Avenue, Reedley, California 93654 ("TOWER"); and

WHEREAS, LICENSOR is willing to allow LICENSEE access to install and operate communication equipment on said tower pursuant to the terms of this AGREEMENT;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and these Recitals, which are incorporated herein by this reference, LICENSOR and LICENSEE hereby agree as follows:

1. ACCESS TO TOWER PREMISES – LICENSOR hereby grants LICENSEE a right to continue to use the equipment space and antenna tower space, as listed in Exhibit “A” attached hereto and incorporated herein by this reference, and to potentially install and operate other communication equipment and to potentially mount and maintain other antennas on the TOWER at the location owned by Kings Canyon Unified School District, at 740 W. North Avenue, Reedley, California 93654, in the County of Fresno (hereinafter referred to as “Premises”).

2. TERM – The term of this AGREEMENT shall be three (3) years commencing on the EFFECTIVE DATE, through June 30, 2021 (“TERM”). At the end of the TERM, the LICENSOR and LICENSEE automatically continue this AGREEMENT on a year-to-year basis, but such year-to-year AGREEMENT may be terminated at any time, with or without cause, by either PARTY upon providing the other PARTY with sixty (60) days written notice of intent to terminate. Such written notice shall be sent by certified mail to the other PARTY at the address provided in Paragraph 23 of this AGREEMENT. The PARTIES acknowledge that they have previously entered into prior license agreements concerning the TOWER and further acknowledge that one of the functions of this AGREEMENT is to relate back to those previous license agreements, so as to retroactively bridge any temporal gaps which might have inadvertently been created by the lapse of same such prior license agreements.

3. FEE – LICENSEE agrees to pay a license fee to LICENSOR for the TOWER rights delineated in Paragraph 1, *supra*, beginning July 1, 2018 at the rate of \$100.00 per month through June 30, 2019 and from July 1, 2019 through the term of this AGREEMENT at the rate of \$250 per month.

4. USE – LESSEE shall use the TOWER to install and operate radio communication equipment and antennas (hereinafter “EQUIPMENT”). LICENSEE shall comply with all applicable laws, ordinances and regulations in connection with its use of the

TOWER. LICENSOR covenants that the TOWER is suitable for the intended use. LICENSEE acknowledges that other parties and agencies own equipment attached to TOWER.

5. LICENSEE'S COMMUNICATION EQUIPMENT – LICENSEE currently operates and maintains at its sole cost certain communication equipment at the TOWER, as listed on the Schedule of Communications Equipment attached hereto within Exhibit "A", and incorporated herein by this reference ("EQUIPMENT"). LICENSEE desires and LICENSOR hereby permits LICENSEE to continue to use and maintain such equipment at LICENSEE's own cost, including any and all related or required environmental documentation, permits and licenses, in a manner consistent with all applicable legal and regulatory requirements, and this AGREEMENT.

In the event LICENSEE desires to install additional communications equipment (above and beyond that which already exists on the TOWER) to the TOWER, LICENSEE shall obtain the written consent of LICENSOR to install such additional equipment according to the following procedure:

- A) LICENSEE shall deliver for review to LICENSOR a description of the additional Equipment LICENSEE proposes to install, operate, and maintain within the TOWER ("Additional LICENSEE Equipment").
- B) LICENSOR shall have ten (10) business days from the date on which LICENSOR receives LICENSEE's description to review and respond to LICENSEE's proposal, unless LICENSOR reasonably requires a longer period to review and respond to LICENSEE's proposal, in which case LICENSOR shall notify LICENSEE and state what reasonable period LICENSOR requires to review and respond to LICENSEE's proposal ("LICENSOR Response Period").

- C) LICENSOR shall notify LICENSEE in writing and within the LICENSOR Response Period whether LICENSOR approves the Additional LICENSEE Equipment, which approval shall not be unreasonably withheld. LICENSOR may withhold approval for such Additional LICENSEE Equipment if it is determined that the capacity remaining on TOWER is needed for the installation and operation of communication equipment for education-related purposes or the TOWER is not able to structurally support the Additional LICENSEE Equipment. Upon mutual agreement by the PARTIES, which shall be set forth in an amendment to this Agreement, LICENSOR may approve the installation and operation of the Additional LICENSEE Equipment upon LICENSEE paying all costs, including engineering and construction costs, for any work required on the TOWER to allow LICENSEE to install and operate the Additional LICENSEE Equipment on the TOWER.
- D) After approval of and completion of the installation of the Additional LICENSEE Equipment, LICENSEE shall prepare and submit to LICENSOR for its approval, which approval shall not be unreasonably withheld, and signature a Revised Schedule of Communications Equipment, which shall contain an updated description of all LICENSEE equipment and Additional LICENSEE Equipment that has been installed by LICENSEE on the TOWER. On the last date on which the Revised Schedule of Communications Equipment is fully executed by the PARTIES, the Revised Schedule of Communications Equipment shall constitute and become a part of this AGREEMENT effective on such date without any notice or further action by the PARTIES and, except as may be specifically identified herein, the LICENSEE Equipment and the Additional LICENSEE Equipment listed

in the Revised Schedule of Communications Equipment shall be referred to and constitute the LICENSEE Equipment for purposes of this AGREEMENT and any amendment thereto.

6. OWNERSHIP OF PROPERTY – Nothing contained in the AGREEMENT shall be interpreted to grant to LICENSEE any rights of ownership in the TOWER. In the event ownership of the TOWER should transfer from LICENSOR to a third party during the term of this AGREEMENT, LICENSEE agrees that all rights and obligations of the LICENSOR under this AGREEMENT shall likewise transfer to that third party, and that third party's successors and/or assigns, pursuant to Paragraph 22, *infra*.. LICENSEE shall retain ownership of its EQUIPMENT (including associated lines, hardware, software, and related equipment or fixtures). LICENSEE assumes responsibility for the licensing, operation and/or maintenance of its EQUIPMENT.

7. MAINTENANCE OF ANTENNA TOWER SITE FACILITIES – LICENSOR shall be responsible for the structural condition of the TOWER site facilities and the facility to house LICENSEE's Equipment, and for all exterior and interior maintenance, including but not limited to the roof, painting, electrical panels, and antenna towers. LICENSOR shall provide the TOWER with locks and/or other security entry devices that will permit only LICENSOR and LICENSEE and other duly authorized personnel to access the PREMISES. LICENSEE shall reimburse the LICENSOR for the cost of repair and maintenance of the air conditioning, heating and other items required to permit full use of the facility by LESSEE. LICENSOR will invoice LICENSEE for its prorated share of these costs as they occur. Notwithstanding the foregoing, and unless otherwise expressly provided in this LEASE, LICENSOR shall be responsible for and reasonably repair any damage it causes to the TOWER and/or related structures, communication systems or property of LICENSEE, and LICENSEE shall be responsible for and reasonably repair any damage it causes to the TOWER and/or related structures, communication systems, or

property of LICENSOR or other parties and agencies owning equipment attached to the TOWER. LICENSOR shall permit LICENSEE access to the TOWER and/or related structures to make minor repairs to antennas, electrical lines or related equipment. LICENSEE shall use a qualified contractor to install antennas or to perform major work to communication antennas located on the TOWER and/or related structures. LICENSEE shall provide prior notice to LICENSOR of any work to be done on the antenna tower by a qualified contractor and LICENSOR shall approve the contractor prior to the work being done and within ten (10) days except when emergency or immediate repair is required.

8. ELECTRICAL POWER INTERRUPTION – LICENSOR will not be responsible to LICENSEE for any monetary loss and/or damage to antennas, transmitters or equipment installed by LICENSEE that may result from the loss of electrical power to the TOWER, which is not the fault of the LICENSOR.

9. ELIMINATION OF INTERFERENCE – In the event LICENSEE's EQUIPMENT or operation in any way hinders, obstructs, or interferes with the communication systems or electronic equipment of the LICENSOR or any other licensee occupying space at the TOWER, upon installation or modification of said equipment, LICENSEE, at its sole cost and expense, upon receipt of written notification, and within thirty (30) days thereof (or immediately in the event of an emergency or where public safety requires), shall forthwith cease the interfering installation or operation. If such hindrance, interference or obstruction does not fully cease within said period the LICENSOR may invoke Paragraph 13, subsection C of this lease.

10. GOVERNMENTAL COMPLIANCE AND SITE INSPECTION – LICENSEE shall use the TOWER solely for the purpose of installing, operating and maintaining communication equipment. LICENSOR and LICENSEE shall each comply with all applicable laws, ordinances and regulations in connection with said use of the TOWER. LICENSEE covenants that it has inspected the TOWER prior to entering this

AGREEMENT, and accepts the TOWER and its related structures as suitable for the intended uses hereunder. The communication operations by LICENSEE in connection with this AGREEMENT shall meet with all applicable rules and regulations of the Federal Communications Commission (FCC), Federal Aviation Agency (FAA) and all applicable codes and regulations of the City, County and State.

11. BREACH OF OBLIGATION TO MAINTAIN – In the event LICENSOR breaches its obligation to maintain the TOWER as herein provided, LICENSEE shall give written notice to LICENSOR, within fifteen (15) days of the discovery of the breach. LICENSOR shall then have fifteen (15) days from the date of notice to cure its breach. If the period for cure expires and if, in LICENSEE'S sole determination, LICENSOR has failed to cure, the LICENSEE may, at its election:

- A. Take reasonable action to cure the default at the sole expense of LICENSEE; or
- B. Terminate the AGREEMENT, as hereinafter provided in Paragraph 13.

In no event shall any payment by the LICENSEE constitute a waiver of any breach of this AGREEMENT or any default which may then exist on the part of the LICENSOR. Neither shall such payment impair or prejudice any remedy available to the LICENSEE with respect to the breach or default.

12. DESTRUCTION OR DAMAGE FROM CASUALTY – If the TOWER and/or related structures are damaged or destroyed as a result of fire, earthquake, act of God, vandalism or any other identifiable event of a sudden, unexpected, or unusual nature (hereinafter referred to as "CASUALTY"), then LICENSOR shall either promptly and diligently repair the damage at its own cost, or terminate the AGREEMENT as hereinafter provided in Paragraph 14.

- (A) Election to Repair: If LICENSOR elects to repair the CASUALTY damage to the TOWER and/or related structures, then it shall within thirty (30) days after the date of CASUALTY provide written notice (hereinafter "NOTICE OF REPAIR")

to LICENSEE indicating the anticipated time required to repair. LESSOR shall bear the cost of all repairs to the TOWER and/or related structures, including the cost to repair the TOWER and/or related structures and any alterations or fixtures installed or attached thereto by the LICENSOR. Such repairs shall restore the TOWER and/or related structures to substantially the same condition as that existing at the commencement of this AGREEMENT; such repairs shall also be made in compliance with all applicable state and local building codes. LICENSOR shall not be liable to LICENSEE for compensation for any loss of business, or any inconvenience or annoyance arising from repair of the TOWER and/or related structures as a result of CASUALTY. LICENSEE shall be responsible at its sole cost and expense for the replacement or repair of its personal property damaged or destroyed by such CASUALTY.

(B) LICENSOR'S Election to Terminate Due to CASUALTY: LICENSOR may only elect to terminate the AGREEMENT due to CASUALTY if: the TOWER has been destroyed or substantially destroyed by said CASUALTY; or the estimated time to repair the TOWER exceeds sixty (60) days from the date of the CASUALTY. LICENSOR shall provide LICENSEE with written notice of its election to terminate within thirty (30) days after the date of CASUALTY.

(C) Utility, Repair and Maintenance Reimbursement Reduction Due to CASUALTY: In the event of CASUALTY, LICENSEE'S obligation to reimburse LICENSOR for Pacific Gas & Electric billings as well as repair and maintenance costs for air conditioning and heating for their facility shall be reduced beginning on the date of the CASUALTY. Such reduction shall be proportional to the damage caused to the TOWER and/or related structures by the CASUALTY as determined by LESSOR and LESSEE jointly. If LESSOR elects to repair the TOWER and/or

related structures pursuant to the terms of this AGREEMENT, then the reduction shall continue until the date of substantial completion of repair.

(D) LICENSEE'S Election to Terminate Due to CASUALTY: If LICENSEE does not receive a NOTICE OF REPAIR from LICENSOR within thirty (30) days after a CASUALTY, or if the anticipated period of repair contained in the NOTICE OF REPAIR exceeds sixty (60) days, then LICENSEE may elect to terminate this AGREEMENT as hereinafter provided in Paragraph 13. In such case, LICENSEE shall have the right to demand that LICENSOR refund any monies which were paid to LICENSOR pursuant to the AGREEMENT but which were not earned by LICENSOR by consequence of the CASUALTY. Upon receipt of such demand, LICENSOR shall promptly refund all such monies.

13. TERMINATION – This AGREEMENT may be terminated if any of the following occur:
- A. If pursuant to the terms provided herein, either LICENSOR or LICENSEE has an election to terminate under this AGREEMENT and LICENSOR or LICENSEE so elects;
 - B. If LICENSEE determines LICENSOR has breached any obligation stated in the AGREEMENT;
 - C. If LICENSOR determines LICENSEE has breached any obligation stated in the AGREEMENT.
 - D. As provided for in Paragraph 18 of this AGREEMENT.

In the event either LICENSOR or LICENSEE chooses to terminate the AGREEMENT as provided herein, then written notice of such termination shall be provided to the other PARTY specifying the reason for termination and a date of termination not less than sixty (60) days from the date of said notice.

Notwithstanding anything stated to the contrary in this AGREEMENT, LICENSEE'S liability to LICENSOR under this AGREEMENT for any breach or default by LICENSEE shall be limited to rents payable for the then-current fiscal year that the breach or default under this AGREEMENT occurred.

14. HOLD HARMLESS – LICENSOR agrees to indemnify, save, hold harmless, and at LICENSEE'S request, defend the LICENSEE, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to LICENSEE in connection with the performance, or failure to perform, by LICENSOR, its officers, agents, or employees under this AGREEMENT, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform of LICENSOR, its officers, agents, or employees under this AGREEMENT.

LICENSEE agrees to indemnify, save, hold harmless, and at LICENSOR'S request, defend the LICENSOR, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to LICENSOR in connection with the performance, or failure to perform, by LICENSEE, its officers, agents, or employees under this AGREEMENT, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform of LICENSEE, its officers, agents, or employees under this AGREEMENT. The PARTIES acknowledge that as between LICENSOR and LICENSEE, each is responsible for the negligence of its own employees and invitees.

15. ATTORNEY'S FEES – In the event a dispute arises involving the enforcement or interpretation of this agreement, the prevailing PARTY to any litigation shall be entitled

to an award of reasonable attorney's fees and costs of suit, including an award of expert witness fees.

16. INSURANCE – LICENSOR shall, at its sole expense, maintain in full force and effect during the term of this AGREEMENT the following policies of insurance:

- A. Commercial General Liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate limit of not less than Two Million Dollars (\$2,000,000). This policy shall be issued on an occurrence basis; and
- B. Fire insurance and extended coverage.

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

- A. Commercial General Liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate limit of not less than Two Million Dollars (\$2,000,000). This policy shall be issued on an occurrence basis.
- B. All-Risk property insurance covering the personal property of LICENSEE.
LICENSEE shall add LICENSOR as an additional loss-payee thereon.

17. NON-FUNDING TERMINATION – This AGREEMENT is contingent on the approval of funds by the appropriating governmental agency. Notwithstanding the termination provisions of Paragraph 14, should funds not be allocated, this AGREEMENT may be terminated by the LICENSEE by giving at least thirty (30) days prior written notice to LICENSOR. The LICENSEE will have no fiscal obligation beyond the thirty (30) day notice.

18. SURRENDER OF POSSESSION – Upon the expiration or termination of this AGREEMENT, LICENSEE will surrender TOWER to LICENSOR in such condition as

existing at the commencement of this AGREEMENT, less reasonable wear and tear, less the effects of any CASUALTY as herein defined, and less the effects of any breach of LICENSOR'S covenant to maintain.

19. MODIFICATION – Any matters of this AGREEMENT may be modified from time to time by the written consent of the LICENSOR and LICENSEE, without in any way affecting the remainder.

20. NON-ASSIGNMENT – Neither LICENSOR nor LICENSEE shall assign, transfer or sub-contract this AGREEMENT or their rights or duties under this AGREEMENT, without the prior written consent of the other PARTY.

21. GOVERNING LAW – Venue for any action arising out of or relating to this AGREEMENT shall only be in Fresno County, California. The rights and obligations of each PARTY and all interpretation and performance of this AGREEMENT shall be governed in all respects by the laws of the State of California.

22. NOTICES – All notices, demands, requests, exercises, and other communications under this AGREEMENT by either PARTY shall be in writing and:

- A. Sent by electronic mail (“email”); or
- B. Sent by United States Certified Mail, return receipt requested, in which case notice shall be deemed delivered (3) business days after deposit, postage prepaid in the United States mail; or
- C. Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, as follows:

LESSEE:
City of Reedley, Police Department
Attn: Chief of Police

843 “G” Street
Reedley, CA 93654

LESSOR:
Fresno County Superintendent of Schools
Attn: Senior Director, Facilities &
Operations
1111 Van Ness
Fresno, CA 93721

or to such person or at such other place as either PARTY may from time to time designate by written notice to the other PARTY.

Notice given in the foregoing manner shall be deemed sufficiently given for all purposes hereunder on the date such notice was (i) personally delivered, deposited and postmarked with the United States Postal Service, (ii) sent by a nationally recognized overnight courier service, or (iii) sent by telephonic facsimile or electronic mail transmission, provided however, such transmission shall be completed before 5:00 PM on the day of transmission and such PARTY shall otherwise comply with this Paragraph 22 concerning the giving of notice in such manner, provided further that, in any event notices of changes of address or termination of this AGREEMENT shall not be effective until actual receipt.

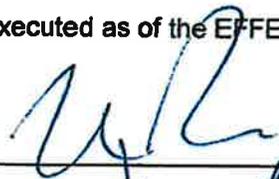
Notices given hereunder shall not be amendments or modifications to this AGREEMENT.

24. QUALIFIED CONTRACTORS – In performance of this AGREEMENT it is mutually understood and agreed that the PARTIES including any and all of their officers, agents, and employees will at all times be acting and performing as a qualified contractor, and shall act in a qualified capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the other.

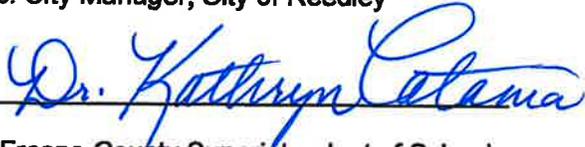
25. ENTIRE LEASE – This AGREEMENT constitutes the entire AGREEMENT between the LICENSOR and LICENSEE with respect to the subject matter hereof and supersedes all prior agreements, negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly referenced in this AGREEMENT.

This AGREEMENT shall be binding on and inure to the benefit of LICENSOR'S heirs, successor and assigns.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed as of the EFFECTIVE DATE herein written.

By 
Print Name: Niwe K. Beba
Title: City Manager, City of Reedley

Date: 4/01/2019

By 
Fresno County Superintendent of Schools
Or Authorized Designee Dr. Kathryn Catania, Deputy Superintendent

Date: 5/6/19

Acknowledged By
By 
Print Name: John Campbell
Kings Canyon Unified School District

Date: 4/30/19

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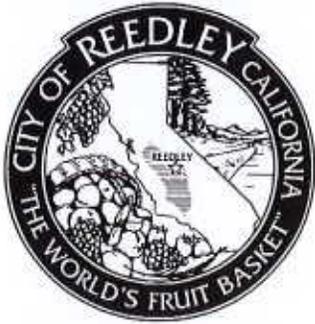
Exhibit A

Equipment on Tower:

- 250' One (1) DB8208 VHF Antenna (Police)
- 100' Two (2) DB8208 VHF Antenna (Police)
- 100' One (1) Laird FG1503 Antenna (Shared by Police and Fire)

Equipment in the Equipment Shelter:

- Police Primary Repeater
- Police Tac Repeater
- Fire Repeater
- PW/FD Tac Repeater
- Receiver Multicoupler
- Transmit Combiner
- Battery Backup Charger
- Emergency Back Up Batteries



REEDLEY CITY COUNCIL

- Consent
- Regular Item
- Workshop
- Closed Session
- Public Hearing

ITEM NO: 3

DATE: March 26, 2019

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE A TOWER LICENSE AGREEMENT WITH THE FRESNO COUNTY SUPERINTENDENT OF SCHOOLS FOR CONTINUED USE BY THE REEDLEY POLICE AND FIRE DEPARTMENTS FOR SAFETY COMMUNICATION EQUIPMENT

SUBMITTED: Paul A. Melikian, Assistant City Manager *PM*

APPROVED: Nicole R. Zieba, City Manager *NZ*

RECOMMENDATION

Staff recommends that the City Council approve and authorize the City Manager to execute a Tower License Agreement with the Fresno County Superintendent of Schools ('FCOE') for continued use by the Reedley Police and Fire Departments for safety communication equipment at 740 W. North Avenue in Reedley.

EXECUTIVE SUMMARY

The last Tower Lease Agreement with the FCOE was approved by the Reedley City Council in October 2010 for a three year term expiring June 30, 2013. Although not provided for in the lease, the use and payments continued beyond the expiration date, effectively reverting the arrangement to a month to month lease. The FCOE would like to execute a new Agreement with an effective date of July 1, 2018. The proposed Agreement has a three year term, however includes updated language that will allow the parties to continue on a year to year basis without any additional action unless one of the parties wishes to terminate the Agreement.

FISCAL IMPACT

The City is currently paying a \$100.00 per month fee for the use of the tower. It is unclear how this came to pass, as the last Tower 'Lease' Agreement had \$250.00 per month as the agreed upon rate, adjusting annually by 2.50%. The proposed agreement allows the City to continue paying \$100.00 per month through June 30, 2019, and reverts back to the \$250.00 per month rate effective July 1, 2019 for the remainder of the term. The new Agreement does not have any increase to payments in future years. Fees paid to the FCOE are used for the upkeep and maintenance of the tower site.

ATTACHMENT

Tower License Agreement with Fresno County Superintendent of Schools