LICENSE AGREEMENT FOR
INSTALLATION OF COMMUNICATION EQUIPMENT
(Doolan Tower)

THIS LICENSE AGREEMENT is made as of this ____ day of _____, 2009, by and between the City of Livermore ("Livermore"), a municipal corporation, having its principal place of business at 1052 South Livermore Avenue, Livermore, CA 94550, the City of Pleasanton ("Pleasanton"), a municipal corporation, having its principal place of business at 123 Main Street, Pleasanton, CA 94566, and the East Bay Regional Communications System Authority ("Authority"), a joint powers authority having its principal place of business at the Office of Homeland Security and Emergency Services 4985 Broder Boulevard Dublin, California 94568.

Recitals

The Authority was established on September 11, 2007, pursuant to the Joint Exercise of Powers Act, California Government Code Section 6500 et seq. for the purpose of acquiring, planning, designing, financing, constructing, operating and maintaining a P-25 compliant communications system (the "System") serving Alameda and Contra Costa and individual political jurisdictions therein.

The Authority's Joint Exercise of Powers Agreement established the Authority as a public entity separate and distinct from each of its members.

Funding for the System will be provided from multiple sources, including but not limited to Federal Homeland Security grants administered through the Bay Area SUASI and the State Homeland Security Grant Program, Federal earmarks, in-kind contributions, and local assessments.

The System will consist of a series of repeater sites connected by microwave to a master site controller, including existing sites owned by Authority members, green sites that will be developed by the Authority and other sites in public (non member agencies) and/or private ownership.

The Parties desire, through this Agreement, to identify and address the issues of use of certain facilities and tower space, and certain radio, microwave, and related equipment needed to operate the System.

Livermore and Pleasanton are municipal corporations in Alameda County and are member agencies of the Authority. Livermore is the owner of that particular piece of real property located at 3801 Doolan Road in the City of Livermore, County of Alameda, State of California, 94551 and more particularly described in the legal description attached as Attachment "A" ("Property"). Livermore and Pleasanton jointly own a communications antenna tower ("Tower") constructed on the Property. Livermore manages the maintenance and operation of the Tower.

Agreement

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Recitals

The aforementioned recitals are true and correct.

2. Licensed Areas. Subject to the terms and conditions herein, Livermore and Pleasanton hereby grant to the Authority a non-exclusive revocable License ("License") to enter upon and use the licensed areas described below for the uses set forth in Section 7 and for the purpose of installing and maintaining the equipment and antenna for the System as those items are described in Section 3. The "Licensed Areas" contemplated by this Agreement consist of the Premises and Antenna Site identified as follows:

A. Premises: Livermore licenses the Authority to use a 29'-4" X 30'-8" _____ portion of the Property adjacent to the Tower and identified in Attachment "B" ("Premises") for the installation of communications equipment identified section 3(A) related to operation of the System.

B. Antenna Site: Livermore and Pleasanton license the Authority to use space on a portion of the Tower, the location of which is identified Attachment "C" ("Antenna Site") for the attachment of the antenna identified in section 3(B) related to the operation of the System.

3. Equipment and Antenna.

The Authority is responsible for conducting its own engineering and analysis of the equipment and antenna necessary to operate the System from the Licensed Areas, including a review of the Tower to ensure that the equipment and antenna are engineered and designed to meet the Tower's specifications without compromising the integrity of the Tower or its use by Livermore, Pleasanton, or other occupant on the Tower or Property prior to the Authority.

A. Equipment. The Authority intends to install the equipment identified in Attachment "D" ("Equipment") on the Premises for the operation of the System.

B. Antenna. The Authority intends to install a BCR-80013_____ antenna identified in Attachment "E" ("Antenna") at the Antenna Site for the operation of the System.

C. Change in Equipment or Antenna. The Authority shall not replace, modify, install new or otherwise change the Equipment or Antenna identified in Attachments "D" and

"E" until the Authority first complies with the study and reporting requirements set forth in Section 7(F) and obtains the prior written consent of both Livermore and Pleasanton.

4. Access. The Authority may cross the common areas of the Property to access the Premises and across the Tower to access the Antenna Site for the limited purpose of installing, maintaining, servicing, replacing, and operating the Equipment and Antenna for the System.

The right of access is limited to the Authority its employees, agents and designated representatives, and is expressly conditioned upon the Authority's compliance with all terms and conditions of this License Agreement, including those set forth in Section 7(B).

The right of access does not grant the Authority any right across, over or through any areas on the Property or Tower which are occupied.

5. Utility Charge. The Authority shall, at its own expense, pay for all utilities related to its use of Licensed Areas and its Equipment and Antenna, including any costs and expenses related to any utility meters, connection charges, deposits or fees chargeable by any utility company for the Authority.

6. Term. This License shall commence upon the Effective Date and shall continue in effect until terminated by any Party hereto. This License may be terminated or revoked at any time by any Party, upon three-hundred and thirty (330) days prior written notice to the other parties.

7. Use. The Authority shall comply with all of Livermore and Pleasanton's requirements and procedures applicable to the licensed areas. The Authority shall only use the Licensed areas to install, maintain, service, replace, and operate the equipment and System as provided herein, except as may be otherwise approved in writing by Livermore and Pleasanton.

A Use of Licensed Areas. The Authority shall only use the Licensed Areas for the purpose of installing, maintaining, servicing, replacing, and operating the Antenna and Equipment identified in this License Agreement for the operation of the System. The Antenna and any appurtenant items may not be permanently attached to the Tower or affixed in any manner which compromises the integrity of the Tower.

B. Clearance for Access. Access to the Licensed Areas shall be obtained by request to the City of Livermore Water Resources Division at (925) 960-8100 with a 24-hour advance notice, except for an emergency, in which case access shall be obtained in the manner provided for below in this section. Anyone requesting access must first receive clearance from the Livermore Police Department. In order to be cleared, that person's Name, Driver's License number and date of birth must be provided to the Water Resources Division 96 hours before any initial site visit. Upon clearance by the Livermore Police Department to enter the Premises, the Water Resources Division will

arrange to meet the Authority and/or its approved contractor(s) at the Premises after such person has picked up his or her entry badge at the Water Resources Division. Water Resources Division staff will then open the gate to allow access and then lock the gate after entry. The Authority shall inform the Water Resources Division by phone or prior arrangement when its work is complete and a Water Resources Division representative shall promptly unlock the gate to allow the Authority and/or its approved contractor(s) to exit the Premises. Access to the Premises shall be available during regular business hours (7:00 am to 4:30 pm) Monday through Friday. In case of an emergency, the 24-hour notice requirement shall be waived and access shall be provided as soon as possible by the City of Livermore Water Resources Division or Police Department. The parties to this agreement acknowledge that the Licensor may make such changes to the access procedure set forth above that it finds necessary to implement the security protocols to protect the City of Livermore's municipal water system in order to comply with Federal and State security rules. The Authority agrees to comply with such changes upon the receipt of written notice given as provided in section 7(C)(4) below.

C. Rules and Regulations of Use. The Authority agrees to comply with Livermore and Pleasanton's rules and regulations for use of the Licensed Areas:

1) The Authority shall comply with all statutes, laws, rules and regulations concerning the Authority's use the Licensed Areas, and operation of the System, including, without limitation, the laws of the United States of America, the State of California, and/or the ordinances, regulations and requirements of the County of Alameda, the City of Livermore or other lawful authorities.

2) The Authority shall not leave or store any trash, garbage, or refuse of any kind in, on, or about the Property or Licensed Areas and shall cause any refuse, trash, paper or other waste deposited on the Property or Licensed Areas by any of its employees, agents, or designated representatives to be picked up and disposed of in the appropriate manner so as to keep the Property and Licensed Areas in a neat and clean condition.

3) The Authority shall not use, commit or allow or permit to be used or committed any offensive or improper use, or any nuisance on the Licensed Areas which may unreasonably or unlawfully disturb or damage the Property, Tower, or Licensed Areas.

4) In its discretion, Livermore may make such changes to the provisions set forth in Sections 7(A) through 7(C) as it deems necessary to implement the security protocols of Livermore's Municipal Water System. Livermore shall give the Authority reasonable written notice of any such changes and the Authority agrees to comply with such provisions.

D. Hazardous Materials. In addition to the rules restrictions set forth in the License,

Agreement the Authority shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of, or in the Premises by the Authority, its agents, employees, contractors or invitees, without first having obtained Livermore's prior, written consent. Likewise, Livermore represents that no other licensees, tenants, or leasees shall be permitted to permanently store, use or dispose of any Harzardous Materials on the Property without Livermore's written approval and consent. If Hazardous Materials are stored, generated, used or disposed of on or in the Premises by the Authority, its agents, employees, contractors or invitees except as permitted above, or if the Premises become contaminated in any manner for which the Authority is responsible, the Authority shall indemnify and hold Livermore harmless from any and all claims, damages, fines, judgments, penalties, costs (including reasonable attorney's fees), liabilities or losses (including without limitation, a decrease in value of the Premises, Property, and adjacent real property or damages due to adverse impact on marketing of the Premises), and any and all sums paid for settlement of claims, attorney's fees, consultant and experts' fees arising during or after the initial term or any extension and arising as a result of such Hazardous Discharge or Contamination by the Authority or its employees, agents, or designated representatives. For purposes of this License Agreement, the following terms shall have the meanings set forth below:

1) "Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances", "hazardous materials", "hazardous wastes" or "toxic substances in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, *et seq*., ("CERCLA"); the Hazardous Materials Transportation Act, 49 USC Sections 1802, *et seq*.; the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 *et seq*.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§2601 *et seq*.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§1251 *et seq*.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§7901 *et seq*.; the California Hazardous Substance Account Act, California Health & Safety Code ("CH&SC") §125300 *et seq*., the Hazardous Waste Control Law, CM&SC §§25100 *et seq*.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, CM&SC §§25249.5 *et seq*.; and CM&SC §§ 25249.8, 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste or pollutant now or hereafter regulated under any other applicable federal, state or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

2) "Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release or discharge ("Release") into or upon (a) the air, (b) soils or any improvements located thereon, (c) surface or ground water, (d) the sewer, septic system or waste treatment, storage or disposal system servicing the Premises, of any Hazardous Material, or (e) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

3) “Environmental Laws” shall mean all applicable federal, state and local laws, ordinances, regulations, orders, procedures, policies and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under or from the Premises or any portion thereof, and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

E. Protections Against Interference. The Authority’s use of the Licensed Areas, including its Equipment and Antenna, shall not interfere with the operation of any existing or future Livermore or Pleasanton equipment, antenna, structures, facilities on the Property and/or Tower. Likewise, the Authority’s use of the Licensed Areas, including its Equipment and Antenna, shall not interfere with the operation of any existing antennas on the Tower or Property prior to the Authority.

If interference from the Authority’s Equipment and/or Antenna is reasonably suspected in violation of this section, then Livermore and Pleasanton may direct the Authority at its own cost and expense to contract with a mutually agreed upon technical consultant to provide an independent determination regarding interference issues. If the technical consultant finds after thorough conclusive diagnostics that the Authority’s equipment is interfering with the Livermore or Pleasanton’s equipment or antennas, or the equipment and/antennas of other occupants on the Tower or Property prior to the Authority, the Authority at its own cost and expense shall implement a solution in coordination with Livermore.

F. Consent to Change of Equipment or Antenna. In order to obtain consent from Livermore and Pleasanton to replace, modify, install new or otherwise change the Equipment or Antenna identified in Attachments “D” and “E,” the Authority at its own cost and expense shall prepare a report explaining the effect of the change and provide a study by a technical consultant demonstrating to Livermore’s satisfaction that the change in the Equipment or Antenna will not interfere with the use of or communications transmissions from the Tower by Livermore, Pleasanton, or any occupant thereon.

8. Maintenance and Repair.

A. Maintenance. The Authority shall at its own cost and expense maintain the Licensed Areas, Equipment, and Antenna, and every part thereof, in good and sanitary order, condition, and repair. The Authority may repair, but shall not modify, alter, replace, upgrade, or otherwise change any Equipment Antenna without Livermore’s prior written consent as provided in Section 3(C).

B. Mechanic’s Lien. The Authority shall pay, or cause to be paid, all costs and expenses for work done by it, or caused to be done by it, on the Licensed Areas of a character which will or may result in any lien on the Property, and the Authority will keep the Property free and clear of any mechanic’s lien and/or other lien on account of work done for the Authority or at its request. The Authority shall protect, indemnify, and hold

Livermore harmless against and from any and all claims, demands, actions, suits, liabilities, loss, damage, costs, expenses and judgments arising out of or related to claims and claims of lien of laborers, materialmen, or others for work performed for, or materials or supplies furnished to, the Authority or at its request.

9. No Transfer or Assignment. The Authority shall neither transfer nor assign this License nor grant any interest, privilege, or license in connection with this License, except that with Livermore and Pleasanton's written approval, the Authority may assign its rights and delegate its duties and obligations under this License to a successor public entity.

10. Indemnity

The Authority agrees to defend, indemnify, and hold Livermore and Pleasanton and their respective elected officials, officers, directors, employees, agents, and designated volunteers harmless from and against any and all loss, liability, damage, including reasonable attorney's fees and/or court costs, arising out of or related to, and to the extent proximately caused by, the acts or omissions of the Authority, its employees, contractors, agents, representatives or volunteers as a result of the Authority's use of the Licensed Areas including the installation and operation of the Equipment on the Premises, the installation and operation of the Antenna at the Antenna Site, and the activity and/or operation the System, except for the gross negligence and willful misconduct of Livermore, Pleasanton, and their respective elected officials, officers, directors, employees, agents, and designated volunteers.

11. Insurance. The Authority, at its sole cost and expense, shall self-insure, procure, and maintain for the duration of this License Agreement, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS ($1,000,000) combined single and aggregate limits for bodily injury and property damage, personal injury, completed operations and products liability for claims which may arise from or in connection with the Authority's use of the Licensed Areas including the installation and operation of the Equipment on the Premises, the installation and operation of the Antenna at the Antenna Site, and the activity and operation of the System. The Authority shall insure its personal property located on or in the Licensed Areas including the Equipment and Antenna. The Authority shall increase said insurance as reasonably required by Livermore's Risk Manager during the term of this Agreement.

12. Surrender of Licensed Areas. Upon the expiration or termination of this License Agreement, the Authority shall surrender the Premises to Livermore, and the Antenna Site to Livermore and Pleasanton, and all improvements and alterations thereto, in good condition except for ordinary wear and tear occurring after the last necessary maintenance made by the Authority. Such improvements and alterations shall not include the Equipment or Antenna which shall be removed by the Authority prior to the surrender of the Licensed Areas.

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The Authority shall perform all restoration made necessary by the improvements or alterations or by the removal the Equipment and Antenna within the time periods stated in this Section.

Livermore may elect to retain or dispose of in any manner any alterations, improvements, Equipment or Antenna that the Authority does not remove from the Licensed Areas on expiration or termination of the License Agreement by giving at least thirty (30) days' notice to the Authority. Title to any such improvements, alterations, Equipment, or Antenna that Livermore elects to retain or dispose of on expiration of the thirty (30) day period shall vest in Livermore. The Authority waives all claims against Livermore for any damage to the Authority resulting from Livermore's retention or disposition of any such improvements, alterations, Equipment, or Antenna. The Authority shall be liable to Livermore for Livermore's costs for storing, removing, and disposing of any the Authority's improvements, alterations, Equipment, or Antenna.

17. Delivery of Title to Equipment and Antenna. In recognition of the costs and expenses incurred by Livermore to prepare the Property and Premises for the Authority prior to the execution of this Agreement, the Authority hereby acknowledges and agrees that in the event the Authority fails to complete the System, then title and possession to the Equipment and Antenna shall be delivered to Livermore.

18. Notices. Wherever in this License Agreement it shall be required or permitted that notice or demand be given or served by either party to this License to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows:

Livermore: Linda Barton, City Manager
City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550

Pleasanton: Nelson Fiahlo, City Manager
City of Pleasanton
123 Main Street
Pleasanton, California 94566

Authority: William J. McCammon, Executive Director
East Bay Regional Communications System Authority
Alameda County Office of Homeland Security and Emergency Services
4985 Broder Boulevard
Dublin, California 94568

Any party may change such address or contact person by written notice by registered mail to the other.

19. Modification. This License Agreement may only be modified or amended by written agreement signed by both parties hereto, except that the number of extensions and the length of the initial term and extensions shall not be modified.

20. Entire Agreement. This instrument, including any attachments hereto, constitutes the entire agreement of the parties relating to the subject matter of this License Agreement and correctly sets forth the rights, duties and obligations of each party to the other.

21. Partial Invalidity. If any provision or portion of this License Agreement shall be deemed invalid, it is agreed that such invalidity shall affect only such provision or portion thereof, and the remainder of this contract shall remain in force and effect.

22. Review of License. Each party to this License Agreement declares that prior to the execution of this License, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this License Agreement. Each party agrees that they have completely read and understands the License Agreement, know the contents thereof, and have signed the License of their own free will and free of any duress. No single party has drafted this License Agreement and it shall not be interpreted against any party as the drafting party

23. Performance Excused. A party shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any other cause outside of the party's control.

24. Waiver. A term or condition of this License Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. The Authority shall not be excused from complying with any of the terms and conditions of this License Agreement by any failure of the Livermore upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

25. Attachments. All attachments referred to in and attached to this License Agreement are incorporated by reference as though set forth in full.

IN WITNESS WHEREOF, the parties to this License have executed this License as of the dates set forth below.

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Date:

East Bay Regional Communications System Authority
("Authority")

By: _____

Approved as to Form:

By: _____

Date:

City of Livermore

By: _____
Linda Barton
City Manager

Approved as to Form:

By: _____
Jason R. Alcala
Assistant City Attorney

Date:

City of Pleasanton

By: _____
Nelzon Fiahlo
City Manager

Approved as to Form:

By: _____
Michael Roush
City Attorney

Attachments:
A. Property

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B. Premises – Licensed Area
C. Antenna Site – Licensed Area
D. Equipment
E. Antenna

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Attachment A

PROPERTY

[Note: State general address for location, and include legal description]

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Attachment B

PREMISES – LICENSED AREA

[Note: Show location of 3'x5' area and height restrictions]

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Attachment C

ANTENNA SITE – LICENSED AREA

[Note: Show location and manner of attachment to Tower]

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Attachment D

EQUIPMENT

Note: Describe the equipment: size, location, name, etc.]

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Attachment E

ANTENNA

[Note: Describe the antenna: make, model, number of panels, etc.]

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