



Contract Number

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative	Terry W. Thompson, Director, Real Estate Services Department
Telephone Number	(909) 387-5252
Contractor	San Bernardino Valley Municipal Water District
Contractor Representative	Mike Esquer
Telephone Number	(909) 387-9253
Contract Term	Upon Full Execution for a period of five years
Original Contract Amount	\$165,780.00
Amendment Amount	
Total Contract Amount	\$165,780.00
Cost Center	5800062434
GRC/PROJ/JOB No.	79003929
Internal Order No.	

Briefly describe the general nature of the contract: This license agreement is for a period of five (5) years with two (2) five-year term extensions. Premises consist of radio vault space and antenna tower space located at the San Bernardino County Fire Protection District (District) owned communication site at Little Mountain in San Bernardino, CA for the placement, maintenance and operation of a telemetry communication facility comprised of the following equipment: one (1) NEMA 4X stainless steel radio equipment cabinet mounted on the north exterior wall of the District's equipment shelter, two (2) Laird Omnidirectional antennas Model #FG9023 mounted on the District's north antenna tower maintaining 10' minimum vertical separation and mounted on opposite sides of the tower on existing cross arms, one (1) Free Wave Plus Model #FGR2-PE-U radio and one (1) W Spread Spectrum, Radio Model #FGR-115RC. District will receive monthly revenue of \$2,558.00 for the first year of the initial term with 3.5% annual escalations thereafter.

Note: The information on this transmittal page is for internal County use only and has no legal effect.

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

► SEE SIGNATURE PAGE

Agnes I. Cheng, Deputy County Counsel

►

►

Jim Miller, Real Property Manager, RESD

Date _____

Date _____

Date _____

**SAN BERNARDINO COUNTY
FIRE PROTECTION DISTRICT**

LICENSE AGREEMENT

LICENSEE: San Bernardino Valley Municipal Water District
380 E. Vanderbilt Way
San Bernardino, CA 92408

DISTRICT: San Bernardino County Fire Protection District
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

PREMISES: Radio vault space and antenna tower space on the District-owned Little Mountain Communication Site in San Bernardino, CA.

TERM OF LICENSE: Five (5) years with two (2) five-year options to extend the term of the License Agreement

COMMENCEMENT DATE OF LICENSE: Upon full execution of this License for an initial term of five (5) years

CONTRACT NO.

REV. 3/1/2011

TYPED:

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LICENSE AGREEMENT

This License Agreement (the "License") is made and entered into by and between the San Bernardino County Fire Protection District, a body politic and corporate, hereinafter designated as "DISTRICT" and San Bernardino Valley Municipal Water District, hereinafter called "LICENSEE". The DISTRICT and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WITNESSETH

WHEREAS, the LICENSEE desires to install, operate, repair, and maintain a telemetry communication facility on a portion of the DISTRICT-owned vault space and District-owned Little Mountain Communication Site located in San Bernardino, CA, as shown in Exhibit "A" ("Site"); and,

WHEREAS, DISTRICT and LICENSEE now desire to enter into a license agreement for the use of a certain portion of the DISTRICT-owned radio vault space and antenna tower space at the Site, as more specifically described in this License; and,

NOW, THEREFORE, in consideration of mutual covenants and conditions, the Parties hereto agree to the following:

In consideration of the covenants and agreements hereinafter contained being fully kept and performed, and in consideration of the benefits to be derived by each Party, DISTRICT does hereby grant to LICENSEE a non-exclusive license for the use of that certain portion of real property, comprising approximately 40 square feet of radio vault space and antenna tower space at Little Mountain Communication Site, San Bernardino, CA, as said portion is more particularly described in Exhibit "A-1" (the "Premises") and Exhibit "B" (LICENSEE's Authorized Equipment), attached hereto and made a part hereof.

COVENANTS AND AGREEMENTS:

1. **USE:** The DISTRICT grants a non-exclusive license for the use of the Premises to LICENSEE for the purpose of installing, operating, repairing and maintaining a telemetry communication facility comprised of one (1) NEMA 4X stainless steel radio equipment cabinet mounted on the north exterior wall of the District's equipment shelter, two (2) Laird Omnidirectional antennas Model #FG9023 mounted on the District's north antenna tower maintaining 10' minimum vertical separation and mounted on opposite sides of the tower on existing cross arms, one (1) Free Wave Plus Model #FGR2-PE-U radio and one (1) W Spread Spectrum, Radio Model #FGR-115RC (collectively, the "LICENSEE's Authorized Equipment") which equipment is more particularly described on Exhibit "B" attached hereto and made a part hereof.

This License and the rights herein granted to LICENSEE shall be subject to the paramount legal duties and obligations of DISTRICT including, but not limited to, the right to cross over and/or occupy the Premises with any and all equipment necessary in the preservation of the surrounding DISTRICT-owned property without liability for any damages to LICENSEE's Authorized Equipment. DISTRICT shall give reasonable advance notice either verbally or in writing of its intent to enter and cross the Premises.

2. **TERM:** The initial term of the License shall be five (5) years, commencing upon full execution of this License as evidenced by the date the last of parties to this License executes it (the "Commencement Date") and ending on the day immediately preceding the fifth (5th) anniversary of the Commencement Date (the "Initial Term"). The Initial Term, together with any Extended Terms are referred to collectively as the "Term".

3. **OPTION TO EXTEND TERM:** DISTRICT gives LICENSEE the option to extend the term of the License on the same provisions and conditions, except for the license fee for two (2) five-year periods ("Extended Terms") following expiration of the Initial Term or any Extended Term, provided that at the time of exercise of the applicable option, LICENSEE is not in default with respect to any of the terms, covenants or conditions to be observed or performed by LICENSEE hereunder, by LICENSEE giving written notice of exercise of the option to DISTRICT at least one (1) year, but not more than eighteen (18) months, prior to the

expiration of the preceding Term. Said options shall be deemed to be independent and consecutive, with LICENSEE's right to exercise the second of said options terminating upon LICENSEE's failure to exercise the first option. The license fee for the duration of each Extended Term shall be in accordance with **Paragraph 5, FEE ADJUSTMENTS.**"

4. **FEES:**

A. LICENSEE shall pay to DISTRICT a license fee ("License Fee") of Two Thousand Five Hundred Fifty-Eight and 00/100 Dollars (\$2,558.00) per month payable in advance on the first day of each month, commencing on the Commencement Date and continuing on the first day each month for the duration of the Initial Term. The License Fee shall be adjusted annually in accordance with Paragraph 5 of the License.

B. In addition to the monthly license fee payable pursuant to Paragraph 4.A., LICENSEE shall pay to DISTRICT a one-time cost to re-configure the electric utility connection for the Premises, which connection shall be moved from its present location on the northwest corner of the equipment shelter to the northeast corner of the equipment shelter as required by the utility provider Southern California Edison Company. The estimated reconfiguration cost is \$1,200.00, provided that LICENSEE shall pay DISTRICT for the actual costs incurred by DISTRICT for said reconfiguration, which costs shall be paid by LICENSEE within 45 days receipt of after DISTRICT's invoice.

C. If any License Fee or other amounts in this License are not paid by LICENSEE when due and payable, LICENSEE shall pay to DISTRICT an additional amount of Fifty and 00/100 Dollars (\$50.00) for each overdue License Fee or other amounts as an administrative processing charge. The Parties agree that this administrative charge represents a fair and reasonable estimate of the costs that DISTRICT will incur by reason of late payment by LICENSEE. Acceptance of any administrative charge shall not constitute a waiver of LICENSEE's default with respect to the overdue License Fee or amounts or prevent DISTRICT from exercising any of the other rights and remedies available to DISTRICT. License Fee and other amounts not paid when due shall bear simple interest from the date due at the rate of one and one-half percent (1½%) per month until paid in full.

5. **LICENSE FEE ADJUSTMENTS:** The License Fee initially established at Two Thousand Five Hundred Fifty-Eight and 00/100 Dollars (\$2,558.00) per month shall be increased on each anniversary of the Commencement Date ("Adjustment Date(s)") during the Initial Term and any Extended Term in the amount of three and one half percent (3.5%) over the License Fee payable for the month immediately preceding the Adjustment Date.

6. **CONDITION OF PREMISES:** The Premises are provided to LICENSEE in its AS-IS condition without any representations or warranties whatsoever, including but not limited to its condition or suitability for LICENSEE's Authorized Equipment or LICENSEE's intended use and LICENSEE expressly acknowledges that DISTRICT shall not be in any way liable for and LICENSEE assumes all risk of injury, damage, or loss in its use of the Premises, including without limitation, any risk of injury, damage, or loss regardless of cause to LICENSEE, LICENSEE's Equipment, or LICENSEE's personal property located on the Premises. Upon the commencement of LICENSEE's use of the Premises, the same shall conclusively be deemed that LICENSEE finds the Premises fit and proper for the purposes for which LICENSEE shall use the Premises.

7. **ASSIGNMENT:** This License shall not be assigned without the express written approval of the DISTRICT, which approval shall not be unreasonably withheld. Any assignment without the written approval of the DISTRICT shall be null and void. Any change in control or ownership of the LICENSEE shall be deemed an assignment for purposes of this paragraph for which DISTRICT consent is required.

8. **DISTRICT'S ACCESS TO PREMISES:**

A. DISTRICT, or a duly authorized representative of the DISTRICT, reserves the right to enter upon the Premises at any reasonable time for the purpose of inspecting the Premises for conformance to license

provisions and for carrying out any routine and emergency maintenance or construction repair work on the Premises that DISTRICT may deem expedient nor shall said DISTRICT be liable for damages to LICENSEE's Authorized Equipment as a result thereof.

B. DISTRICT's activities at the Site shall take precedence at all times, and when any work or activity must be performed to carry out the functions and purposes of the DISTRICT, LICENSEE must allow same to be done without interference. DISTRICT shall give LICENSEE reasonable notice of impending activities whenever possible.

9. **MAINTENANCE/REPAIRS:**

A. The DISTRICT's maintenance road will be available for normal and routine maintenance of the LICENSEE's Authorized Equipment by LICENSEE. Maintenance and inspection of LICENSEE's Authorized Equipment will be the sole responsibility of the LICENSEE and regular inspections are required as necessary to ensure that LICENSEE's Authorized Equipment are maintained in a good and safe condition. LICENSEE agrees to install, maintain, and operate LICENSEE's Authorized Equipment in accordance with the highest standard prevailing in the communications industry. Any damage to DISTRICT's property or property of others resulting from said maintenance activities shall be the sole responsibility of LICENSEE. If LICENSEE's Authorized Equipment becomes a hazard to DISTRICT's or other users operations at the Site, the LICENSEE will be required to eliminate the hazard.

B. LICENSEE shall have twenty (20) days from the creation of the need to maintain and repair to perform its obligation to maintain and repair under this paragraph 9, except that LICENSEE shall begin to perform its obligations immediately, if the nature of the problem presents a threat to life, health, or safety of persons or destruction of property. If LICENSEE does not perform its obligations within the time limitations in this paragraph 9, DISTRICT can, upon written notice to the LICENSEE, perform the obligations and has the right to be reimbursed for the sum it actually expends (including charges for DISTRICT's equipment and personnel) in the performance of LICENSEE's obligations.

10. **HAZARDOUS MATERIALS:**

A. Definition. For purposes of this License, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq, all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

B. LICENSEE shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Premises of any hazardous substance, or the transportation to or from the Premises of any hazardous substance.

C. LICENSEE shall be solely responsible, at its cost, for any violation of applicable Hazardous Substances laws. LICENSEE shall further indemnify, protect, defend and hold DISTRICT and their officers, agents, employees, and volunteers and the Premises and the Site, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including DISTRICT's attorneys' and consultants' fees) arising out of or involving any Hazardous Substances brought onto the Premises or the Site by or for LICENSEE or by anyone under LICENSEE's control. LICENSEE's obligations under this paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by LICENSEE, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this License. No termination, cancellation or release agreement entered into by DISTRICT and LICENSEE shall release LICENSEE from its obligations under this License with respect to Hazardous Substances, unless specifically so agreed by DISTRICT in writing at the time of such agreement.

D. LICENSEE shall comply with all applicable laws, statutes, regulations, and orders concerning Hazardous Substances, as defined in subparagraph 11A, relating to LICENSEE's Authorized Equipment on the Premises.

E. LICENSEE shall maintain and inspect LICENSEE's Authorized Equipment located on the Premises and immediately inform DISTRICT of any release of Hazardous Substances. Upon reasonable notice to LICENSEE, DISTRICT may inspect LICENSEE's Authorized Equipment on the Premises to determine if any release of Hazardous Substances has occurred, or may occur, from or related to LICENSEE's Authorized Equipment. In removing or modifying LICENSEE's Authorized Equipment as provided in this License, LICENSEE shall also remove all residue of Hazardous Substances related thereto.

11. **UTILITIES:** DISTRICT shall furnish to the Premises any existing electric, gas, water, trash, and or any other utilities and LICENSEE shall pay for pay all service charges and related taxes for said electric, gas, water, trash, and any other utilities.

12. **IMPROVEMENTS:** LICENSEE shall not make any improvements or alterations to the Premises or LICENSEE's Authorized Equipment after its initial installation as detailed in Paragraph 1., USE and listed on Exhibit "B" without DISTRICT's prior written consent. All improvements to the Premises that are directly related to installing, operating and maintaining the LICENSEE's Authorized Equipment shall remain the property of LICENSEE. Upon termination of this License, the LICENSEE shall have the right to remove improvements directly related to operating and maintaining the LICENSEE's Authorized Equipment, which removal shall be completed on or before the expiration of the then current term. The Premises shall be returned to DISTRICT in as good a condition and repair as it was initially received by LICENSEE, reasonable wear and tear excepted, and LICENSEE shall repair any damage to the Premises, at the Site, or on adjacent District-owned property caused by LICENSEE's removal of LICENSEE's Authorized Equipment or LICENSEE's use of the Premises. Upon such termination, if the LICENSEE does not elect to exercise such right, DISTRICT shall either require LICENSEE, at LICENSEE's expense, to remove LICENSEE's Authorized Equipment, or elect to retake possession of the Premises together with LICENSEE's Authorized Equipment which shall thereupon become the property of the DISTRICT without compensation to LICENSEE.

13. **DEFAULT AND RIGHT TO TERMINATE:**

A. If there should be any default in payment by LICENSEE of the fee provided herein or if LICENSEE fails to continuously operate the LICENSEE's Authorized Equipment throughout the Term of the License, including any extensions thereof or abandons LICENSEE's Authorized Equipment DISTRICT may give

LICENSEE written notice of such default. This License will not be terminated if within ten (10) days after receipt of such written notice the LICENSEE shall cure the default or breach.

B. If LICENSEE should fail to perform, keep or observe any of the terms, conditions or covenants as set forth in this License, other than payment of fees as provided hereinabove, DISTRICT may give LICENSEE written notice to correct such condition or cure such default.

(1) This License will not be terminated if within thirty (30) days after receipt of such written notice, the LICENSEE shall cure the condition or default.

(2) If such condition or default should continue for thirty (30) days after receipt of written notice of default, DISTRICT may at its option elect to terminate this License. Such election to terminate shall not be construed as a waiver of any claim the DISTRICT may have against LICENSEE, consistent with such termination.

(3) If, however, LICENSEE shall have commenced the elimination of such default within thirty (30) days after receipt of such notice and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction.

C. If, however, in the sole discretion of DISTRICT, the problem represents a hazard or emergency, LICENSEE shall perform its obligations immediately. If LICENSEE fails to perform its obligations immediately, DISTRICT may perform the obligations and have the right to be reimbursed for the sum it actually expends (including charges for DISTRICT's equipment and personnel) in the performance of LICENSEE's obligations.

D. Upon any termination of this License, LICENSEE covenants and agrees to surrender the Premises peaceably to the DISTRICT immediately upon any such termination. If LICENSEE continues to use the Premises after any termination of this License without DISTRICT consent, DISTRICT shall have the right to pursue all available rights and remedies available at law or in equity. In the event of the failure of LICENSEE to remove LICENSEE's Authorized Equipment from the Premises immediately upon any termination of this License, in addition to the remedies available to DISTRICT pursuant to Paragraph 12, DISTRICT may remove LICENSEE's Authorized Equipment and place the same in storage at the expense of LICENSEE and without liability to DISTRICT for loss thereof. LICENSEE agrees to pay DISTRICT within thirty (30) days of DISTRICT's demand all expenses incurred in such removal, including court costs and attorney's fees and storage charges and/or DISTRICT may without notice sell all or any part of said LICENSEE's Authorized Equipment at public or private sale for such prices as DISTRICT may obtain, and apply the proceeds of such sale to any expense incidental to the removal and sale of said LICENSEE's Authorized Equipment, with the surplus, if any, being refunded to LICENSEE.

E. The receipt by the DISTRICT of any fees or of any other sum of money paid by LICENSEE after any default, the termination of this license for any reason, or after the giving by DISTRICT of any notice to effect such termination, shall not waive the default, reinstate, continue or extend the term of this License, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by DISTRICT to the LICENSEE prior to the receipt of any such sum of money or other consideration, unless so agreed to be in writing and signed by DISTRICT. Any act of the DISTRICT or its agents or employees during the term of this license shall not be deemed to be an acceptance or a surrender of said Premises, excepting an agreement in writing signed by the DISTRICT agreeing to accept such surrender.

14. **HOLDING OVER:** If the LICENSEE continues using the Premises after the expiration of the Term or after any termination of this License prior to the expiration of the term, and if said use is with the consent of the DISTRICT, then LICENSEE shall be deemed to be holding the Premises on a month-to-month basis subject to all the provisions of this License, except, during such holdover, the License Fee shall increase to an amount equal to one hundred fifty percent (150%) over the License Fee immediately in effect prior to the initiation of holdover, which shall be pro-rated and payable monthly during any month-to-month holdover.

15. **LICENSES AND CERTIFICATIONS:** LICENSEE agrees that it will acquire and maintain those certifications, licenses, approvals and permits required by any Federal, State or local jurisdiction or authority for carrying out the purpose of this license and LICENSEE shall comply with all laws and regulations and industry standard safety measures for the access and use of the LICENSEE's Authorized Equipment on the Premises. LICENSEE will observe standard safety practices when climbing towers and when installing LICENSEE's Authorized Equipment on the Premises as designed by the DISTRICT. Failure to comply with this provision will constitute a default and right to terminate by DISTRICT under Paragraph 13, DEFAULT AND RIGHT TO TERMINATE, of this license.

16. **INDEMNIFICATION:** The LICENSEE agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless the DISTRICT and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this License from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the DISTRICT on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The LICENSEE's indemnification obligation applies to the DISTRICT's "active" as well as "passive" negligence but does not apply to the DISTRICT's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

17. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. DISTRICT is a self-insured public entity for purposes of professional liability, general liability and workers' compensation.

B. The LICENSEE agrees to provide insurance set forth in accordance with the requirements herein. If the LICENSEE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the LICENSEE agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the License hereunder. Without in anyway affecting the indemnity herein provided and in addition thereto, the LICENSEE shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

(1) **Workers' Compensation/Employers Liability** – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with Two Hundred Fifty Thousand Dollars (\$250,000.00) limits covering all persons including volunteers providing services on behalf of the LICENSEE and all risks to such persons under this License.

If LICENSEE has no employees, it may certify or warrant to the DISTRICT that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the DISTRICT's Director of Risk Management.

If, LICENSEE is a non-profit corporation, organized under California or Federal law, volunteers for LICENSEE are required to be covered by Workers' Compensation insurance.

(2) **Commercial/General Liability Insurance** – The LICENSEE shall carry General Liability Insurance covering all operations performed by or on behalf of the LICENSEE providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000.00), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.

- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000.00 general aggregate limit.

(3) Commercial Property Insurance providing all risk coverage for the premises, building, fixtures, equipment and all property constituting a part of the Premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage, per occurrence.

(5) Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

C. If LICENSEE performs any construction of the Premises on behalf of the DISTRICT, LICENSEE shall also procure and maintain coverages as follows:

(1) For construction contracts for projects over One Million Dollars (\$1,000,000.00) and less than Three Million Dollars (\$3,000,000.00) require limits of not less than Three Million Dollars (\$3,000,000.00) in General Liability and Auto Liability coverage.

(2) For construction contracts for projects over Three Million Dollars (\$3,000,000.00) and less than Five Million Dollars (\$5,000,000.00) require limits of not less than Five Million Dollars (\$5,000,000.00) in General Liability and Auto Liability coverage.

(3) For construction contracts for projects over Five Million Dollars (\$5,000,000.00) and less than Ten Million Dollars (\$10,000,000.00) require limits of not less than Ten Million Dollars (\$10,000,000.00) in General Liability and Auto Liability coverage.

(4) Subcontractor Insurance Requirements. The LICENSEE agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this License to provide insurance covering the contracted operation with the requirements of this Paragraph 17 (including, but not limited to, waiver of subrogation rights) and naming the DISTRICT as an additional insured. The LICENSEE agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(5) Course of Construction/Installation (Builder's Risk) Property insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

D. Additional Insured – All policies, except for the Workers' Compensation, shall contain endorsements naming the DISTRICT and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this License hereunder. The additional insured endorsements shall not limit the scope of coverage for the DISTRICT to vicarious liability but shall allow coverage for the DISTRICT to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

E. Waiver of Subrogation Rights – The LICENSEE shall require the carriers of required coverages to waive all rights of subrogation against the DISTRICT, their officers, employees, agents, volunteers,

contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the LICENSEE and LICENSEE's employees or agents from waiving the right of subrogation prior to a loss or claim. The LICENSEE hereby waives all rights of subrogation against the DISTRICT.

F. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the DISTRICT.

G. Severability of Interests – The LICENSEE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the LICENSEE and the DISTRICT or between the DISTRICT and any other insured or additional insured under the policy.

H. Proof of Coverage – The LICENSEE shall furnish Certificates of Insurance to the DISTRICT's Real Estate Services Department (RESA) administering the License evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESA, and LICENSEE shall maintain such insurance from the time LICENSEE commences use under the License hereunder until the end of the period of the License. Within fifteen (15) days of the commencement of this contract, the LICENSEE shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

I. Acceptability of Insurance Carrier – Unless otherwise approved by the DISTRICT Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

J. Insurance Review – Insurance requirements are subject to periodic review by the DISTRICT. The DISTRICT's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the DISTRICT's Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DISTRICT. In addition, the DISTRICT's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the DISTRICT, inflation, or any other item reasonably related to the DISTRICT's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this License. LICENSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RESA or DISTRICT to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESA or the DISTRICT.

K. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of Ten Thousand Dollars (\$10,000.00) shall be declared to and approved by DISTRICT's Risk Management Department.

L. Failure to Procure Insurance. All insurance required must be maintained in force at all times by LICENSEE. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the DISTRICT to give notice to immediately suspend all LICENSEE's business activities on the Premises. Failure to reinstate said insurance within the ten (10) days of notice to do so shall be cause for termination and for forfeiture of this License, and/or DISTRICT, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by DISTRICT shall be repaid by LICENSEE to DISTRICT upon demand but only for the pro rata period of non-compliance.

M. DISTRICT shall have no liability for any premiums charged for such coverage(s). The inclusion of DISTRICT as additional named insured is not intended to and shall not make a partner or joint venturer with LICENSEE in LICENSEE's operations.

The LICENSEE agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of this License to provide insurance covering such use with the basic requirements and naming the DISTRICT as additional insured. LICENSEE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

18. **TAXES, ASSESSMENTS AND LICENSES:** LICENSEE shall pay before delinquency any and all taxes, if any, assessments, fees, or charges, including possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures, if any, installed or belonging to LICENSEE and located within the Premises. LICENSEE shall also pay all license or permit fees necessary or required by law for the conduct of its operation and/or in accordance with Section 107 of the California Revenue and Taxation Code. LICENSEE recognizes and understands that this License may create a possessory interest subject to property taxation and that the LICENSEE may be subject to the payment of property taxes levied on such interest, unless the Parties otherwise agree in writing prior to the start of construction or installation.

19. **BUILDING AND SAFETY REQUIREMENTS:** All LICENSEE's activities under this license must conform to all applicable rules, regulations, laws, ordinances, codes, statutes or orders of any governmental authority, Federal, State or local lawfully exercising authority over LICENSEE's operations. In the event that the LICENSEE's use of the Premises conflicts in any way with other uses at the property of which the Premises is a part (DISTRICT's determination of such conflicting uses shall be conclusive), or in the event the LICENSEE's use of the Premises is in violation of any of said rules, regulations, ordinances, statutes or orders, the LICENSEE shall remove or modify the LICENSEE's Authorized Equipment to conform with the applicable regulations within thirty (30) days of receipt of written notice to do so from the DISTRICT.

20. **GENERAL COVENANTS AND AGREEMENTS:**

A. At any time during the life of this License, the DISTRICT may revise, modify, or add provisions to the License as may be required to meet the DISTRICT's obligations and purposes so long as any revisions, modifications, etc., do not unreasonably interfere with LICENSEE's use of the Premises.

B. LICENSEE agrees not to use said Premises, or any part thereof, for any purpose which causes injury to any neighboring property, nor for any purpose in violation of valid applicable laws or ordinances.

C. No political signs shall be permitted at the Site.

D. Uses granted to LICENSEE under this License are valid only to the extent of the DISTRICT's existing rights and may be subject to other existing easements and encumbrances. Rights granted to the LICENSEE are not exclusive.

E. If the LICENSEE should refuse or neglect to comply with the provisions of the License, or the orders of the DISTRICT, the DISTRICT may have such provisions or orders carried out by others at the expense of the LICENSEE. All the terms, covenants and conditions set forth herein are to be strictly complied with by the LICENSEE. Any failure to comply therewith shall be grounds for immediate cancellation of the license.

F. This license is valid only to the extent of DISTRICT jurisdiction. Permits required by other interested agencies shall be the responsibility of the LICENSEE. NOTHING CONTAINED IN THIS LICENSE SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE DISTRICT.

21. **TERMINATION:** LICENSEE or DISTRICT may terminate this License at any time and for any reason by giving the other Party written notice of any termination pursuant to this paragraph at least one years' notice prior

to the date of termination. LICENSEE shall perform all necessary removals on or before the expiration of the License.

22. **INCORPORATION OF PRIOR AGREEMENT:** This License contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this License, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

23. **WAIVERS:** No waiver by either Party of any provisions of this License shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either Party of the same or any other provisions.

24. **AMENDMENTS:** No provision of this License may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successor in interest, expressing by its terms an intention to modify this License.

25. **SUCCESSORS:** This License shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto.

26. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.

27. **CONSENT:** Except as otherwise expressly specified, whenever consent or approval of either Party is required that Party shall not unreasonably withhold such consent or approval.

28. **EXHIBITS:** All exhibits referred to are attached to this License and incorporated by reference.

29. **LAW:** This license shall be construed and interpreted in accordance with the laws of the State of California.

30. **CAPTIONS AND COVER PAGE:** The paragraph captions and the cover page of this License shall have no effect on its interpretations.

31. **SEVERANCE:** If any provision of this License is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this License, and all such other provisions shall remain in full force and effect provided, however, that the purpose of the License is not frustrated. It is the intention of the Parties hereto that if any provision of this License is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

32. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by United States, postage prepaid, first-class mail, certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party shall be addressed to the other party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed delivered and effective upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by postage pre-paid, United States first-class mail, certified or registered, return receipt requested.

DISTRICT's address: San Bernardino County Fire Protection District
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

LICENSEE's address: San Bernardino Valley Municipal Water District
380 E. Vanderbilt Way
San Bernardino, CA 92408

33. **SURVIVAL:** The obligations of the Parties which, by their nature, continue beyond the term of this License, will survive the termination of this License.

34. **VENUE:** The Parties acknowledge and agree that this License was entered into and intended to be performed in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any party to this License will be the Superior Court of California, County of San Bernardino. Each Party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this License, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino. This License shall be construed and interpreted in accordance with the laws of the State of California.

35. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under Paragraph 16, INDEMNIFICATION and those arising from DISTRICT's collection efforts (whether prior to or as a result of a court action) due to non-payment of the fee or any other amounts overdue under this License.

36. **FORMER DISTRICT OFFICIALS:** LICENSEE agrees to provide or has already provided information on former DISTRICT administrative officials (as defined below) who are employed by or represent LICENSEE. The information provided includes a list of former DISTRICT administrative officials who terminated DISTRICT employment within the last five (5) years and who are now officers, principals, partners, associates or members of the business. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of your business. For purposes of this provision, "DISTRICT administrative official" is defined as a member of the Board of Supervisors or such officer's staff, DISTRICT Administrative Officer or member of such officer's staff, DISTRICT department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "C", List of Former DISTRICT Officials.)

37. **MATERIAL MISREPRESENTATION:** If during the course of the administration of this License, the DISTRICT determines that the LICENSEE has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the DISTRICT, this License may be immediately terminated. If this License is terminated according to this provision, the DISTRICT is entitled to pursue any available legal remedies.

38. **INTERPRETATIONS:** As this License was jointly prepared by both Parties, the language in all parts of this License shall be construed, in all cases, according to its fair meaning, and not for or against either Party hereto.

39. **DISCLOSURE:** All information received by the DISTRICT from any source concerning this License, including the License itself, may be treated by the DISTRICT as public information subject to disclosure under the provisions of the California Public Records Act, Government Code section 6250 et seq. (the "Public Records Act"). LICENSEE understands that although all materials received by the DISTRICT in connection with this License are intended for the exclusive use of the DISTRICT, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a LICENSEE has reasonably requested DISTRICT to hold in confidence is made to the DISTRICT, the DISTRICT shall notify the LICENSEE of the request and shall thereafter disclose the requested information unless the LICENSEE, within five (5) days of receiving notice of the disclosure request, requests nondisclosure,

provides DISTRICT a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the DISTRICT harmless in any/all actions brought to require disclosure. LICENSEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event DISTRICT fails to notify LICENSEE of any such disclosure request and/or releases any information concerning the contract received from the LICENSEE or any other source.

40. **BROKER'S COMMISSIONS:** LICENSEE is solely responsible for the payment of any commissions to any broker who has negotiated or otherwise provided services in connection with this License.

41. **AUTHORIZED SIGNATORS:** Both Parties to this License represent that the signators executing this document are fully authorized to enter into this License.

42. **FORCE MAJEURE:** DISTRICT shall not be held liable for any delay or failure in performance of any part of this License from any acts of God, acts of civil or military authority, government regulations, strikes, labor disputes, embargoes, epidemics, war, terrorist acts, riots, insurrections, fire, explosions, earthquakes, nuclear accidents, floods, power blackouts, brownouts, or surges, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure product or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.

END OF LICENSE.

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SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT



Curt Hagman, Chairman, Board of Directors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Laura H. Welch, Secretary

By _____
Deputy

Approved as to Legal Form:

MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By _____
Agnes I. Cheng, Deputy County Counsel

Dated: _____

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

By _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

EXHIBIT "A"
SITE PLAN
PAGE 1



Site Access Road From Little Mountain Drive

EXHIBIT "A-1"
PREMISES DEPICTION
PAGE 1

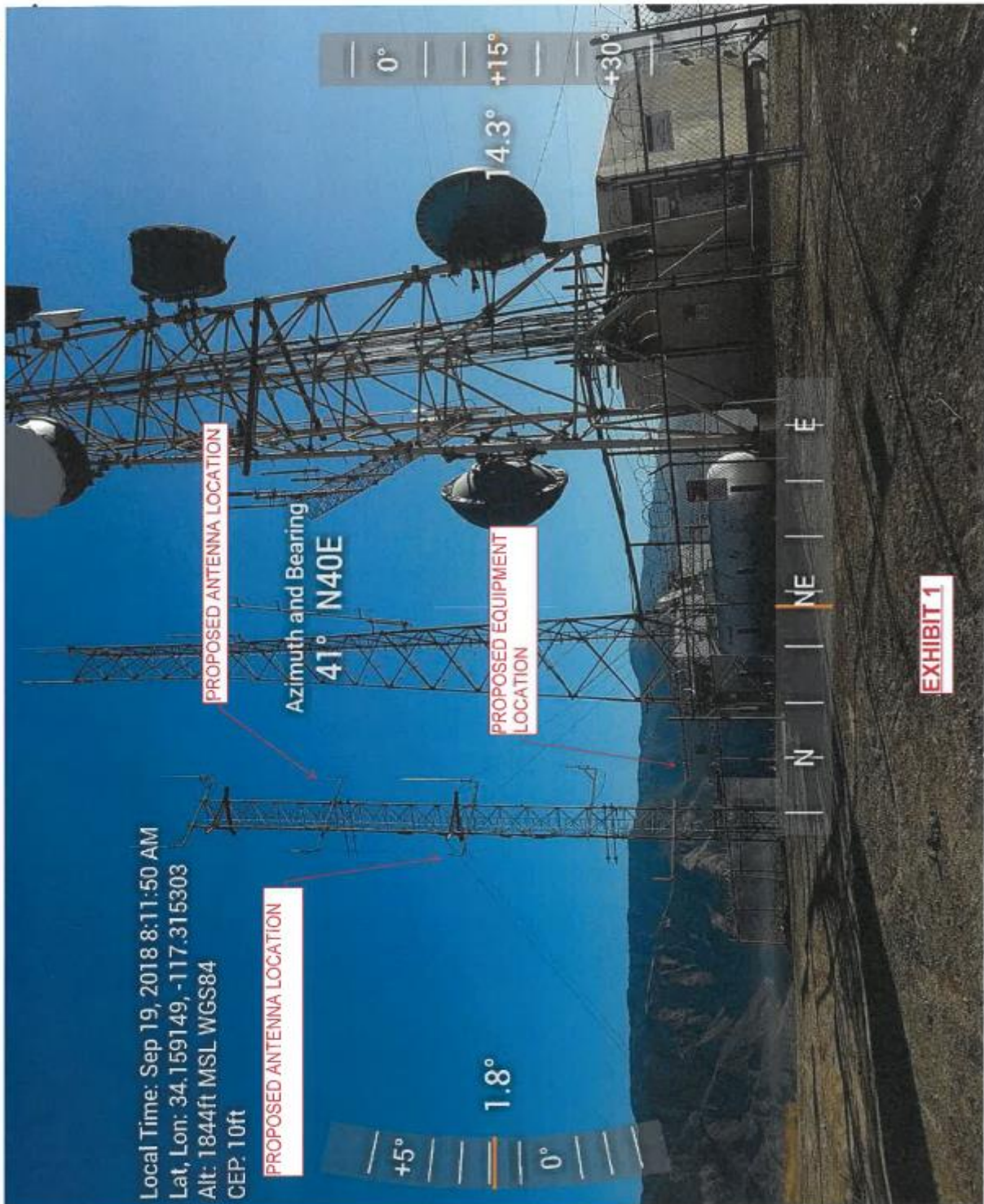


EXHIBIT "A-1"
PREMISES DEPICTION
PAGE 2



EXHIBIT "A-1"
PREMISES DEPICTION
PAGE 3

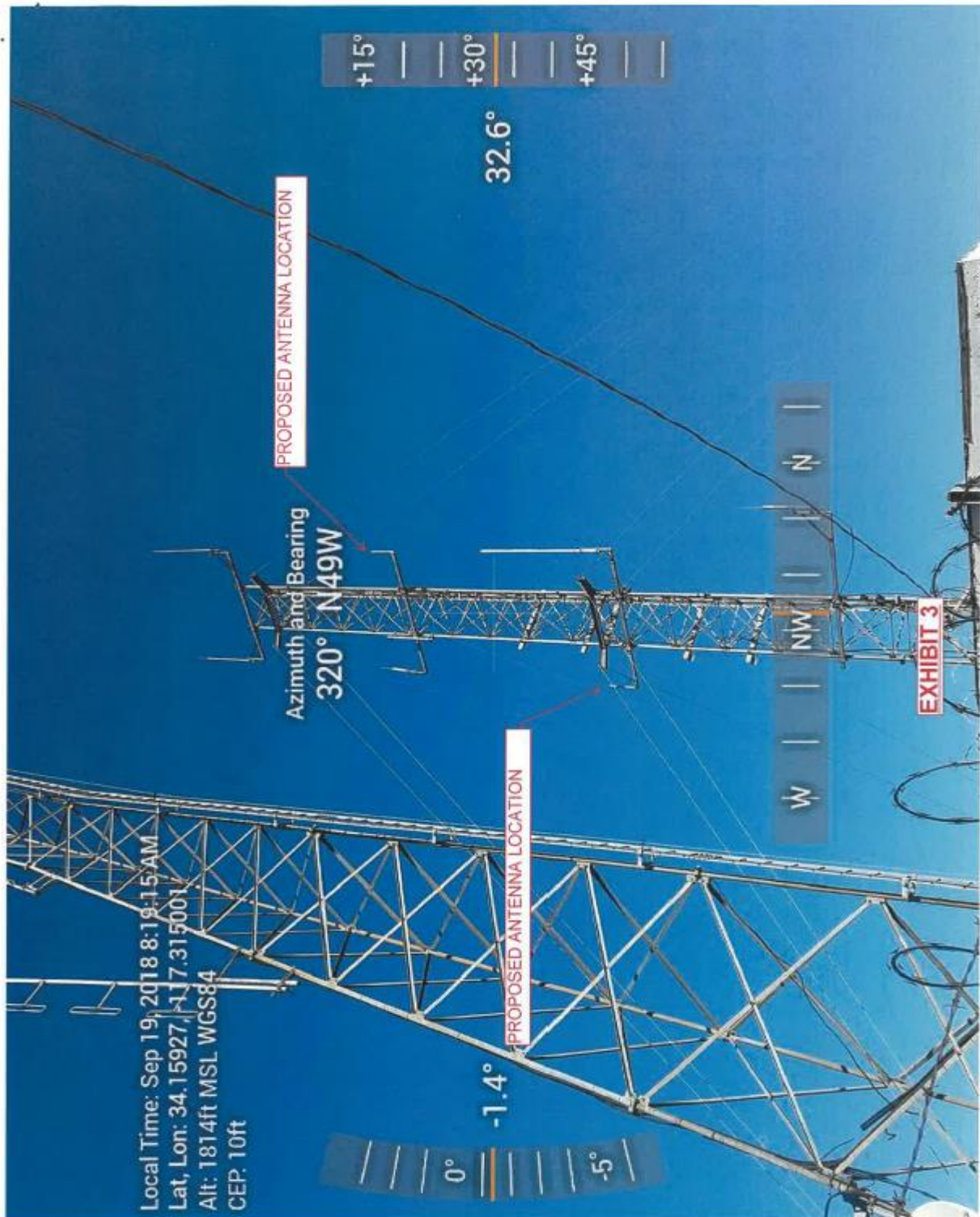


EXHIBIT "B"
LICENSEE'S AUTHORIZED EQUIPMENT

1. One NEMA 4X Stainless Steel Radio equipment cabinet (mounted on the north exterior wall of the existing District-owned equipment shelter)
2. Two Laird Omnidirectional antennas Model #FG9023 (mounted on District's north antenna tower maintaining 10" minimum vertical separation mounted on opposite sides of the tower on existing cross arms)
3. One Free Wave Plus radio Model #FGR2-PE-U
4. One W Spread Spectrum radio Model #FGR115RC

EXHIBIT "C"
LIST OF FORMER DISTRICT OFFICIALS

INSTRUCTIONS: List the full name of the former DISTRICT Administrative Official, the title/description of the Official's last position with the DISTRICT, the date the Official terminated DISTRICT employment, the Official's current employment and/or representative capacity with the LICENSEE, the date the Official entered LICENSEE's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

Certified by:

LICENSEE

By: _____

Its: _____