

ORIGINAL

Contract Number
22-167

SAP Number

County Service Area 70 TV-2

Department Contract Representative	<u>Terry W. Thompson, Director</u>
Telephone Number	<u>(909) 387-5000</u>
Contractor	<u>Pacific Lightwave, Inc.</u>
Contractor Representative	<u>Simon Bojkovsky-President</u>
Telephone Number	<u>(760) 250-9063</u>
Contract Term	<u>Five years from 3/15/2022 to 3/14/2027</u>
Original Contract Amount	<u>\$62,492.00</u>
Amendment Amount	<u>\$0.00</u>
Total Contract Amount	<u>\$62,492.00</u>
Cost Center	<u>3300001774</u>
GRC/PROJ/JOB No.	<u>52004202</u>
Internal Order No.	<u> </u>

Briefly describe the general nature of the contract:

This license agreement is for a period of five years, with two five-year options to extend the term, for the period of March 15, 2022 through March 14, 2027, for the Licensee's non-exclusive use of a portion of District-owned land, comprising approximately 200 square feet, for a ground-mounted antenna array and underground conduit, and a portion of the District-owned equipment shelter, comprising one rack space, for licensee's transmission equipment for Licensee's installation, operation, and maintenance of its wireless internet system located at the District's television broadcast facility in Morongo Valley, DISTRICT will receive revenue of \$11,560 for the initial year subject to 3.5% annual increases plus a one-time \$500 contract administration charge.

Approved as to Legal Form ▶ Please see signature page Agnes Cheng, Deputy County Counsel Date _____	Reviewed for Contract Compliance ▶ _____ Date _____	Reviewed/Approved by Department ▶ Please see signature page Lyle Ballard, Real Property Manager, RESD Date _____
--	---	---

LICENSE AGREEMENT

WHEREAS, Pacific Lightwave, Inc., as licensee, ("LICENSEE") and County Service Area 70 TV-2 , as licensor, ("DISTRICT") desire to enter into this License Agreement ("License") for Licensee's use of a certain portion of the DISTRICT's transmission site at Morongo Valley ("Site"), for the installation, operation and maintenance of LICENSEE's wireless internet facility; and

WHEREAS, DISTRICT is willing to permit said use of portions of the Site, comprising approximately 200 square feet of District-owned land for a ground-mounted antenna array and underground conduit and one rack space within the DISTRICT-owned equipment shelter, as more particularly described on Exhibit "A" attached hereto, subject to certain conditions as more specifically set forth in this License; and

WHEREAS, portions of the rack space at the DISTRICT-owned equipment shelter and portions of the District-owned land at the DISTRICT-owned Site shall be used by LICENSEE are currently excess to the DISTRICT's needs,

WHEREAS, LICENSEE is interested in relocating its ground-mounted antenna array to the DISTRICT-owned antenna tower at the Site in the event DISTRICT, in its sole and absolute discretion and without any obligation or guarantee to do so, performs maintenance and/or modifications to said tower.

NOW, THEREFORE, in consideration of the execution of this License, the parties mutually agree to the following terms and conditions:

I. DEFINITIONS

- 1.1 "License" means this License Agreement and any relevant Documents, including any Exhibits and/or Attachments, all of which are made a part of this License.
- 1.2 "Site" refers individually or collectively to the real property and all the structures thereon, including (i) DISTRICT-owned equipment shelter with rack space. Each rack space is defined as space for one (1) EIA Standard 19" wide by 2" deep by 7' tall rack or one-half (1/2) EIA Standard 19" wide by 2' deep by 3 ½' tall rack along with the use of cable runs; (ii) DISTRICT-owned antenna tower for the placement of the antenna(s) as may be singularly or collectively approved by DISTRICT; and (iii) District-owned land at the Site.
- 1.3 "Licensee's Authorized Equipment" (when applicable) refers individually or collectively to the LICENSEE's equipment, cabling and antenna(s) as may be approved by the DISTRICT at the Licensed Area (as defined in Section II below) at the Site for the installation, operation and maintenance of LICENSEE's wireless internet facility ("LICENSEE's Facility"). As of the commencement date of this License, LICENSEE's Authorized Equipment for LICENSEE's Facility shall mean the equipment, cabling, and antenna(s) set forth in Exhibit "C" of this License.

II. LICENSE TO USE

- 2.1 DISTRICT hereby gives permission, revocable and terminable as hereinafter provided, to LICENSEE to enter the Site for the purpose of installing, operating and maintaining LICENSEE's Authorized Equipment for the LICENSEE's Facility on a portion of the DISTRICT-owned equipment shelter, comprising one rack space for LICENSEE's transmission equipment, and a portion of the District-owned land at the Site, comprising approximately 200 square feet of land for a ground-mounted antenna array and an underground conduit (the shelter space and land area are collectively referred to as the ("Licensed Area"), as the Licensed Area depicted on Exhibit "B" attached hereto and made a part hereof. LICENSEE shall not install any antenna

equipment or wave guide cabling or coax antenna cables at the Licensed Area or the Site without the prior written approval of the DISTRICT and only upon prior review and approval of LICENSEE's plans, and specifications. LICENSEE shall not be permitted to use the Site or the Licensed Area for any other purpose, except by prior written permission of the DISTRICT. NOTHING CONTAINED IN THIS LICENSE SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE DISTRICT.

2.2 In the event DISTRICT, in its sole and absolute discretion and without obligation or guarantee to do so, opts to perform maintenance and/or modifications to the existing DISTRICT-owned antenna tower at the Site during the term of the License that DISTRICT determines are necessary for its own purposes, and LICENSEE, based on its own assessment and without any representation by DISTRICT regarding the suitability of any such maintenance and/or modifications for LICENSEE's use, desires to relocate its ground-mounted antenna array set forth in Exhibit "C" to said antenna tower, the parties shall, in good faith (but without obligation), negotiate a mutually agreeable amendment to this License to revise the Licensed Area, adjust the annual charges pursuant to Paragraph 7.1.4, require LICENSEE to remove the ground-mounted antenna array and underground conduit, and modify any other relevant terms.

III. LICENSEE AUTHORIZED EQUIPMENT

3.1 Acknowledgement of Responsibility

LICENSEE acknowledges that the Site is essential to DISTRICT's fulfilling its mission of providing low power public television to the Morongo Valley area and the surrounding desert region. LICENSEE warrants that it will not disturb or tamper with any DISTRICT equipment, nor any equipment of other users, if any, to include, but not limited to, electronic, electrical, LPG, buildings, towers, grounding systems, antennas, feed lines, etc., at the Site. Exercising all reasonable diligence, LICENSEE warrants that it will take reasonable steps to ensure it will not hamper in any manner, the ability of the DISTRICT to fulfill its mission at/through the Site.

LICENSEE shall be liable for all claims, demands, actions, and causes of action founded upon the negligence or otherwise wrongful conduct on the part of any employee or agent of LICENSEE attributable to LICENSEE's installation/maintenance or operation of LICENSEE's Authorized Equipment at the Site. Further, LICENSEE shall release, remise, and forever discharge DISTRICT of and from any and all claims, demands, actions, and causes of action not based upon the intentional acts or negligence of DISTRICT that LICENSEE may acquire by reason of LICENSEE's installation/maintenance or operation of LICENSEE's Authorized Equipment or LICENSEE's Facility on the Site.

3.2 Requirements, Limitations, and Installation Conditions – This License is subject to the limitations, requirements, and installation conditions as set forth below:

3.2.1 Installation: LICENSEE will observe standard safety practices when installing LICENSEE's Authorized Equipment on the Licensed Area as designed by the DISTRICT. LICENSEE agrees to install, maintain, and operate LICENSEE's Authorized Equipment in accordance with the highest standard prevailing in the communications industry. Installation practices and materials are subject to approval of the DISTRICT's engineering staff.

3.2.2 Access: LICENSEE shall have reasonable access the Licensed Area at the Site. LICENSEE must request access to the Licensed Area at least one (1) working day (defined as the DISTRICT working days and excludes DISTRICT holidays), prior to the desired access date, except that in the case of an emergency that is life-threatening or will result in imminent and substantial damage or destruction of the Licensee's Authorized Equipment, LICENSEE shall provide prior notice as soon as reasonably possible [but not later than 24 hours after LICENSEE's emergency entry, provided that LICENSEE shall be

responsible for all damage to the Licensed Area and DISTRICT's improvements thereon cause by any LICENSEE entry.

- 3.2.3 **Equipment Changes:** Changes and modifications to LICENSEE's Authorized Equipment that may alter performance of the Site or interfere with communications at the Site are to be approved in writing prior to any installation of LICENSEE's equipment by the DISTRICT's engineering staff and submitted to the DISTRICT's Real Estate Services Department (RESD). Upon approval, which approval shall not be unreasonably withheld, any changes or modifications to LICENSEE's Authorized Equipment in Exhibit "C" of this License, said exhibit shall be amended to reflect a change in LICENSEE's Authorized Equipment, in which case, DISTRICT will provide to LICENSEE a revised Exhibit "C", incorporating such change(s) which shall be promptly signed by LICENSEE and returned to DISTRICT. The Director of RESD shall have authority on behalf of the DISTRICT to authorize LICENSEE's equipment exchanges of "like for like" whereby equipment of like size, weight, and operation are proposed for exchange LICENSEE's Authorized Equipment as more particularly described in Exhibit "C" that do not change the Annual Charges due.
- 3.2.4 **Power:** DISTRICT will install electrical power as needed above each rack to be used by LICENSEE under this License. The cost, if any, for labor and materials to perform the installation work will be the responsibility of the LICENSEE, payable by LICENSEE to DISTRICT upon invoice. The cost of electrical power once installed is included in the annual charges payable by LICENSEE pursuant to Section VII.
- 3.3 **Additional Controlling Documents** – Site may be subject to leases, master leases, licenses, rights-of-way, grants, use permits, or other controlling agreements (collectively, "Documents") secured by the DISTRICT from other governmental or private entities. LICENSEE agrees to be bound by the conditions and covenants of these Documents, if any, and is responsible for any related costs that may be incurred directly or indirectly due to LICENSEE's use of its Licensed Area at the Site. Notwithstanding the foregoing, if, at any time during the term of this License, LICENSEE discovers any Documents that materially and adversely affects LICENSEE's use of the Licensed Area for LICENSEE's Authorized Equipment, notwithstanding the notice period in Paragraph 6.1 of this License, LICENSEE shall have the right to terminate this License by giving not less than thirty (30) days' prior written notice to DISTRICT, provided that any such termination date shall be effective at the end of a calendar month; in which case LICENSEE shall pay all fees due through the termination date and neither party shall incur any further liability to the other by reason of such termination.
- 3.4 **Maintenance** – The costs of any installation, maintenance, operation, replacement, or removal of the LICENSEE's Authorized Equipment and the LICENSEE's Facility shall be at the sole expense of LICENSEE.
- 3.5 **Interference** – LICENSEE's Authorized Equipment shall be located so as not to interfere, physically or electronically, with any of the DISTRICT's operations and any other equipment installed previous to LICENSEE's installation by other DISTRICT users.

In the event the DISTRICT determines or is notified that the operation of the LICENSEE's Authorized Equipment caused or is causing interference to transmission and/or reception of any other communications systems in use in the vicinity of the Site, DISTRICT's IT shall notify LICENSEE to correct the problem.

If such interference is not eliminated within a twenty-four (24) hour period, DISTRICT shall have the right to terminate this License, remove all or any portion of LICENSEE's Authorized Equipment from service, and take whatever immediate steps are necessary to eliminate said interference, including powering off LICENSEE's Authorized Equipment without further notification.

IV. ACCEPTANCE AND CONDITION OF LICENSED AREA AND SITE

The Licensed Area and access thereto through the Site is 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 of the Licensed Area or access thereto through the Site 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 Licensed Area and access thereto through the Site or inability to access Licensed Area through the Site, including without limitation, any risk of injury, damage, or loss regardless of cause to LICENSEE, LICENSEE's Authorized Equipment, or LICENSEE's personal property located on the Licensed Area. Upon the commencement of LICENSEE's use of the Licensed Area, the same shall conclusively be deemed that LICENSEE finds the Licensed Area fit and proper for the purposes for which LICENSEE shall use the Licensed Area.

V. ACCESS TO LICENSED AREA AND CONDITION OF LICENSED AREA

- 5.1 DISTRICT, or a duly authorized representative of the DISTRICT, reserves the right to enter upon the Licensed Area at any reasonable time for the purpose of inspecting the Licensed Area for conformance to the License's provisions and for carrying out any routine and emergency maintenance or construction repair work at the Licensed Area on the Site that DISTRICT may deem expedient nor shall said DISTRICT be liable for damages to LICENSEE's Authorized Equipment as a result thereof unless caused by the gross negligence or willful misconduct of the DISTRICT or its authorized staff. The DISTRICT shall give LICENSEE notice of any such access except in the case of emergency, in which case, no notice shall be required.
- 5.2 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.

VI. EFFECTIVE DATE AND TERMINATION

- 6.1 This License shall be for a term of five (5) years ("Initial Term"), commencing on March 15, 2022 ("Commencement Date") and shall terminate on March 14, 2027, unless the DISTRICT or the LICENSEE, at the sole discretion of either, terminates the License by giving at least one hundred twenty (120) days prior written notice to the other, provided that any such termination date shall be effective at the end of a calendar month. Neither party shall incur any further liability to the other by reason of such termination. Notwithstanding the foregoing, in the event the License is terminated by LICENSEE pursuant to this Section VI but LICENSEE, despite its diligent efforts, requires additional time to remove LICENSEE's Authorized Equipment after the effective termination date, upon written request to the DISTRICT to be received by DISTRICT prior to the effective termination date, DISTRICT may, at its sole discretion, opt by express written consent to continue the License for a term not to exceed one month after the original effective termination date. During any such one-month period LICENSEE shall pay to DISTRICT the then current monthly fee (which shall be calculated by dividing the then current annual charge as set forth in Section VII by 12).

6.2 OPTION TO EXTEND TERM OF LICENSE

DISTRICT gives LICENSEE the option to extend the term of the License on the same provisions and conditions, except for the Annual Charge as set forth in Section VII, for two (2) five (5) year periods (each an "Extended Term") following expiration of the Initial 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 beyond any applicable notice and cure period, and provided LICENSEE gives 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 Initial Term or the then existing Extended 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 Annual Service Rates for the first (1st) year of each Extended Term shall be re-established in accordance with the market rate for comparable properties in the Morongo Valley/Yucca Valley Region, San Bernardino County unless as adjusted in accordance with Paragraph 7.1.3 below (with the Annual Charge for the remainder of the Extended Term to be subject to the annual percentage increase in Paragraph 7.2).

VII. RATES AND PAYMENT TERMS

- 7.1.1 LICENSEE shall pay to DISTRICT annual charges in advance in accordance with the terms of this License.
- 7.1.2 Payment rates and conditions are set forth on Exhibit "A", "County Service Area 70-TV2 Rack Space Service Rates and Payment Terms," attached hereto and LICENSEE shall pay such rates in accordance with said exhibit and this License. Payment shall be due upon receipt of invoice and payable within sixty (60) days of invoice date.
- 7.1.3 DISTRICT and LICENSEE acknowledge and agree that the annual charges as set forth in Exhibit "A" attached hereto are reflective of a discounted rate of fifty percent (50%) of off DISTRICT's standard market-based rack space annual charges (DISTRICT Discounted Rack Rate), which is discounted in consideration of LICENSEE's separate agreement with the Morongo Valley Unified School District (MVUSD) pursuant to which LICENSEE will provide wireless internet service from the Licensed Facility at the Licensed Area for the duration of this License to MVUSD at a discounted rate of fifty percent (50%) off LICENSEE's standard wireless internet service annual charges (MVUSD Discounted Internet Service Rate). In the event that LICENSEE receives from MVUSD annual fees for wireless internet service for any annual payment year under this License, including any extensions thereof, that exceeds the MVUSD Discounted Internet Service Rate the DISTRICT Discounted Rack Rate for the rack space shall be terminated, effective retroactive as of the date LICENSEE initially receives such excess payments ("DISTRICT Discounted Rack Rate Termination Date"). From and after the DISTRICT Discounted Rate Termination Date through the remainder of the term of the License, the annual fee for the rack space shall be adjusted to the market-based rack space charge for comparable communication sites in effect for the applicable annual payment year, as reasonably determined by DISTRICT. DISTRICT will provide to LICENSEE a revised Exhibit "A", incorporating such change(s) which shall be promptly signed by LICENSEE and returned to DISTRICT and LICENSEE shall remit to DISTRICT upon demand any difference between the total revised market-based fees for the rack space and the total DISTRICT Discounted Rack Rate paid by LICENSEE for the period between the DISTRICT Discounted Rack Rate Termination Date and the date the next installment of annual payment pursuant to Exhibit "A" is due from LICENSEE. LICENSEE shall on an annual basis but by no later than four months prior to each anniversary of the Commencement Date, provide documentation reasonably acceptable to DISTRICT, that the separate agreement between LICENSEE and MVUSD is then valid and binding and in full effect and that the fees for wireless internet service received by LICENSEE from MVUSD do not exceed the MVUSD Discounted Internet Service Rate for any annual payment period under this License. In the event that the documentation provided by LICENSEE, at the sole determination of the DISTRICT, does not validate the separate agreement between LICENSEE and MVUSD nor verify that fees in excess of the MVUSD Discounted Internet Service Rate were not received by LICENSEE, the DISTRICT Discounted Rack Rate shall terminate and the annual charges in Exhibit "A" shall be adjusted to the then current market rate effective from and after the affected annual payment year. The parties further acknowledge and agree that MVUSD is not, nor shall it be deemed a third-party beneficiary with any rights under this License.
- 7.1.4 If, pursuant to Paragraph 2.2 of this License, DISTRICT opts to perform maintenance and/or modifications to the existing DISTRICT-owned antenna tower at the Site during the term of the

License and LICENSEE opts to relocate its ground-mounted antenna array set forth in Exhibit "C" (without change or addition of equipment) to said DISTRICT-owned antenna tower, and provided that the MVUSD Discounted Internet Service Rate remains in effect, any mutually agreed amendment shall revise the DISTRICT Discounted Rack Rate, which is set forth in Exhibit "A" as a fifty percent (50%) off DISTRICT's standard market-based rack space annual charges, to twenty-five percent (25%) off the DISTRICT's standard market-based rack space annual charges. For purposes of illustration only, if the relocation occurs during the annual payment year 3/15/22 – 3/14/23, the DISTRICT Discounted Rack Rate in Exhibit "A" would be revised from \$11,560.00 to \$17,340.00.

- 7.2 The rates set forth in Exhibit "A" shall be adjusted on each anniversary of the Commencement Date of this License during the initial term of this License and any Extended Term by the "Annual Escalator". The Annual Escalator is defined as three and one-half percent (3.5%) per license year.

VIII. AGREEMENT AUTHORIZATION

LICENSEE warrants and represents that the individual signing this License is a properly authorized representative of the LICENSEE and has the full power and authority to enter into this License on the LICENSEE's behalf.

IX. ASSIGNMENT

This License shall not be assigned nor shall LICENSEE sub-license or share use of the Licensed Area with any third parties. Any attempted assignment, sub-license, or shared use shall be null and void. Any change in control or ownership of the LICENSEE shall be deemed an assignment for the purposes of this paragraph.

X. DEFAULT

If the LICENSEE does not make timely payment of amounts due under this License or breaches any term or condition of this License, DISTRICT may declare immediately due and payable the entire unpaid amount, plus all other amounts due hereunder, less any unearned charges. DISTRICT may also exercise all rights and remedies of a secure party under the Uniform Commercial Code (or other similar law) of the State of California and pursue any other remedies existing in law or in equity.

XI. INDEMNIFICATION AND INSURANCE

11.1 Indemnification

The LICENSEE agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless the DISTRICT, San Bernardino County ("COUNTY") and their authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the DISTRICT or COUNTY 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 and COUNTY's "active" as well as "passive" negligence but does not apply to the DISTRICT's or COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

11.2 Insurance

Without in any way affecting the indemnity herein provided and in addition thereto, the LICENSEE shall secure and maintain throughout the License the following types of insurance with limits as shown:

11.2.1 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 \$250,000 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.

11.2.2. 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), 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 general aggregate limit.

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

11.2.4 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) for bodily injury and property damage, per occurrence. If LICENSEE is transporting one or more non-employee passengers under this License, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the LICENSEE owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

11.2.5 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.

11.2.6 Additional Named Insured – All policies, except for the Workers' Compensation policies shall contain endorsements naming the DISTRICT, COUNTY and their officers, employees, agents, and volunteers as additional named insureds with respect to liabilities arising out of the License. The additional insured endorsements shall not limit the scope of coverage for the DISTRICT or COUNTY to vicarious liability but shall allow coverage for the DISTRICT or COUNTY 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.

- 11.2.7 Waiver of Subrogation Rights – LICENSEE shall require the carriers of the above-required coverages to waive all rights of subrogation against the DISTRICT, COUNTY, and 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 and COUNTY.
- 11.2.8 Policies Primary and Non-Contributory – All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the DISTRICT.
- 11.2.9 Proof of Coverage – The LICENSEE shall furnish Certificates of Insurance to the San Bernardino Real Estate Services Department (RESD) administering the License evidencing the insurance coverage, including endorsements, as required, at the time this License is mutually executed, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESD, 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 Date of this License, 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.
- 11.2.10 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.
- 11.2.11 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".
- 11.2.12 Insurance Review – The DISTRICT's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DISTRICT. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager 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 such reduction or waiver for the entire term of the License and 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 RESD 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 RESD or the DISTRICT.

- 11.2.13 Deductibles and Self-Insurance Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
- 11.2.14 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 Licensed Area. Failure to reinstate said insurance within the (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.
- 11.2.15 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.
- 11.2.16 The LICENSEE agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of the Licensed Area to provide insurance covering such use with the same insurance policies and requirements for LICENSEE as set forth in this License 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.

XII. GENERAL TERMS AND CONDITIONS

- 12.1 General Covenants and Agreements – At any time during the term 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 with respect to the Site so long as any revisions, modifications, or additions do not unreasonably interfere with LICENSEE's use of the Licensed Area or increase LICENSEE's obligations hereunder, including the amount of the annual fee. DISTRICT shall give LICENSEE written notice at least thirty (30) days before any such revisions, modifications, or additional provisions become effective, except in the case of emergency as determined by DISTRICT and confirmed in an amendment executed by the parties.

LICENSEE agrees not to use said Licensed Area, 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. No political signs shall be permitted at the Site.

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.

If the LICENSEE should refuse or neglect to comply with the provisions of the License (after notice and the expiration of applicable cure periods), 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.

- 12.2 Permits - LICENSEE is responsible for obtaining and paying any costs of all permits, licenses or approvals by any regulatory bodies having jurisdiction over the uses authorized herein, as appropriate.
- 12.3 Waiver - No waiver of a breach of any provision of this License shall constitute a waiver of any other breach, or of such provision. Failure of DISTRICT to enforce at any time, or from time to

time, any provision of this License shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

- 12.4 Validity/Severance - The invalidity in whole or in part of any provision of this License shall not void or affect the validity of any other provision. 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.
- 12.5 Captions and Paragraph Headings - Captions and paragraph headings used herein are for convenience only and are not a part of this License and shall not be used in construing it.
- 12.6 Exhibits - All Exhibits attached hereto, if any, are an integral part of this License and are incorporated herein by reference.
- 12.7 Entire Agreement - This License shall constitute the entire agreement between the parties and supersedes all prior negotiations, discussions, and preliminary understanding. This License may be amended as DISTRICT and the LICENSEE mutually agree in writing. Any such amendment must be signed/approved by authorized representatives of the DISTRICT and LICENSEE.
- 12.8 Governing Law and Venue - This License shall be governed by the laws of the State of California. Any action or proceeding concerning the interpretation or enforcement of this License agreement, or which arises out of or is in any way connected with this agreement, shall be instituted and tried in the appropriate state court, located in the venue of the County of San Bernardino, California.
- 12.9 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 9.1, 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.
- 12.10 Compliance - This License shall be subject to immediate termination under the following circumstances:
- (a) LICENSEE fails or neglects to comply with any term or condition of this License; or
 - (b) LICENSEE fails or neglects to comply with any reasonable requirement of DISTRICT after thirty (30) days written notice and demand; or
 - (c) LICENSEE fails or neglects to comply with any Documents to which the DISTRICT is subject.
- In the event of such termination, DISTRICT may immediately disconnect all LICENSEE's Authorized Equipment. LICENSEE shall, if appropriate, immediately remove any and all of LICENSEE's Authorized Equipment from the Licensed Area and surrender all rights and privileges under this License. If LICENSEE fails to promptly restore the Licensed Area to its former condition, the DISTRICT may restore the Licensed Area at LICENSEE's sole expense.
- 12.11 Changes and Right to Prioritize - DISTRICT reserves the right to make ground, rack and antenna space changes at the Site, and to prioritize or restrict usage as necessary to optimize overall service effectiveness of the Site to the DISTRICT and its users without liability to LICENSEE and LICENSEE shall have no claims of liability, damages, or otherwise against the DISTRICT.
- 12.12 Notifications - All notices or demands required, or permitted to be given or made hereunder, shall be in writing and shall be deemed duly given upon the date actual delivery to the recipient or the

recipient's refusal to accept delivery, if delivery is by hand; OR if delivery is by first class United States mail, postage pre-paid, certified, or registered, return receipt requested, OR reputable overnight courier.

Each such notice is to be sent to the respective party at the address indicated below or to any other address or person that the respective party may designate by written notice delivered pursuant hereto:

Licensee: Pacific Lightwave, Inc.
P.O. Box 10748
Palm Desert, CA 92255

District: County Service Area 70 TV-2
c/o Real Estate Services Department
385 N. Arrowhead Avenue
San Bernardino, CA. 92415-0180

With a copy to: Department of Public Works-Special Districts Division
222 W. Hospitality Lane
San Bernardino, CA 92415-0450
Attn: Deputy Director

- 12.13 Survival - The obligations of the parties which, by their nature, continue beyond the term of this license, will survive the termination of this License.
- 12.14 Former District and County Officials - LICENSEE agrees to provide or has already provided information on former DISTRICT and COUNTY administrative officials (as defined below) who are employed by or represent LICENSEE. The information provided includes a list of former DISTRICT and COUNTY administrative officials who terminated DISTRICT or COUNTY employment within the last five years and who are now officers, principals, partners, associates, or members of LICENSEE. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of LICENSEE. For purposes of this provision, "DISTRICT administrative official" and "COUNTY administrative official" are defined as a member of the Board of Supervisors or such officer's staff, DISTRICT or COUNTY Administrative Officer or member of such officer's staff, DISTRICT or COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "D", List of Former District and County Officials.)
- 12.15 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.
- 12.16 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.
- 12.17 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 contract 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.

- 12.18 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.
- 12.19 Electronic Signature - This License may be signed in counterparts, each of which shall constitute an original, and such counterparts shall together constitute one and the same agreement. The Parties shall be entitled to sign and transmit an electronic signature of this agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other Party an original signed agreement upon request.

XIII. AUTHORIZATION

The District's engineering division or its authorized designee, is authorized to discharge all technical functions ascribed to DISTRICT in this License, except those specifically reserved by law to the Board of Supervisors. The DISTRICT's Real Estate Services is authorized to administer all other provisions of this License, except those specifically reserved by law to the Board of Supervisors.

XIV. FORCE MAJEURE

DISTRICT shall not be held liable for any delay or failure in performance of any part of this License from any cause beyond its control and without its fault or negligence, such as 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.

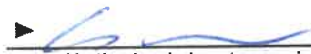
THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS THEREOF, the parties have hereto executed this License on the date set forth below their respective signatures.

DISTRICT: COUNTY SERVICE AREA 70
TV-2

LICENSEE: PACIFIC LIGHTWAVE, INC.

▶ 
Curt Hagman, Chairman, Board of Supervisors

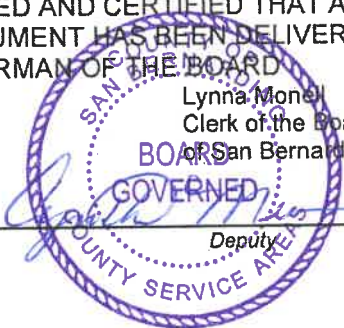
By ▶ 
(Authorized signature - sign in blue ink)

Dated: MAR 16 2022

Name: Simon Bojkovsky

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

Title: President




Lynna Monell
Clerk of the Board of Supervisors
of San Bernardino County

Dated: 3-9-2022

By 
Deputy

Address 41905 Boardwalk, Suite P & Q

Palm Desert, CA 92255

Approved as to Legal Form
▶ 
Agnes Cheng, Deputy County Counsel
Date 3/8/2022

Approved
▶ _____
Date _____

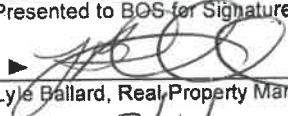
Presented to BOS for Signature
▶ 
Lyle Ballard, Real Property Manager
Date 3/10/22

EXHIBIT "A"

**COUNTY SERVICE AREA 70 TV-2-RACK SPACE
SERVICE RATES AND PAYMENT TERMS**

SERVICES TO BE PROVIDED

The following Rack Space service(s) selected by check mark shall be rendered to Licensee under this License:

- Rack Space Service Fee @ \$11,560.00 per rack for the first year of the term.

- Contract Development* @ \$500 **

** One-time Contract Administration charge, payable upon receipt of first invoice

PAYMENT SCHEDULE

Licensee shall be invoiced as specified by check mark:

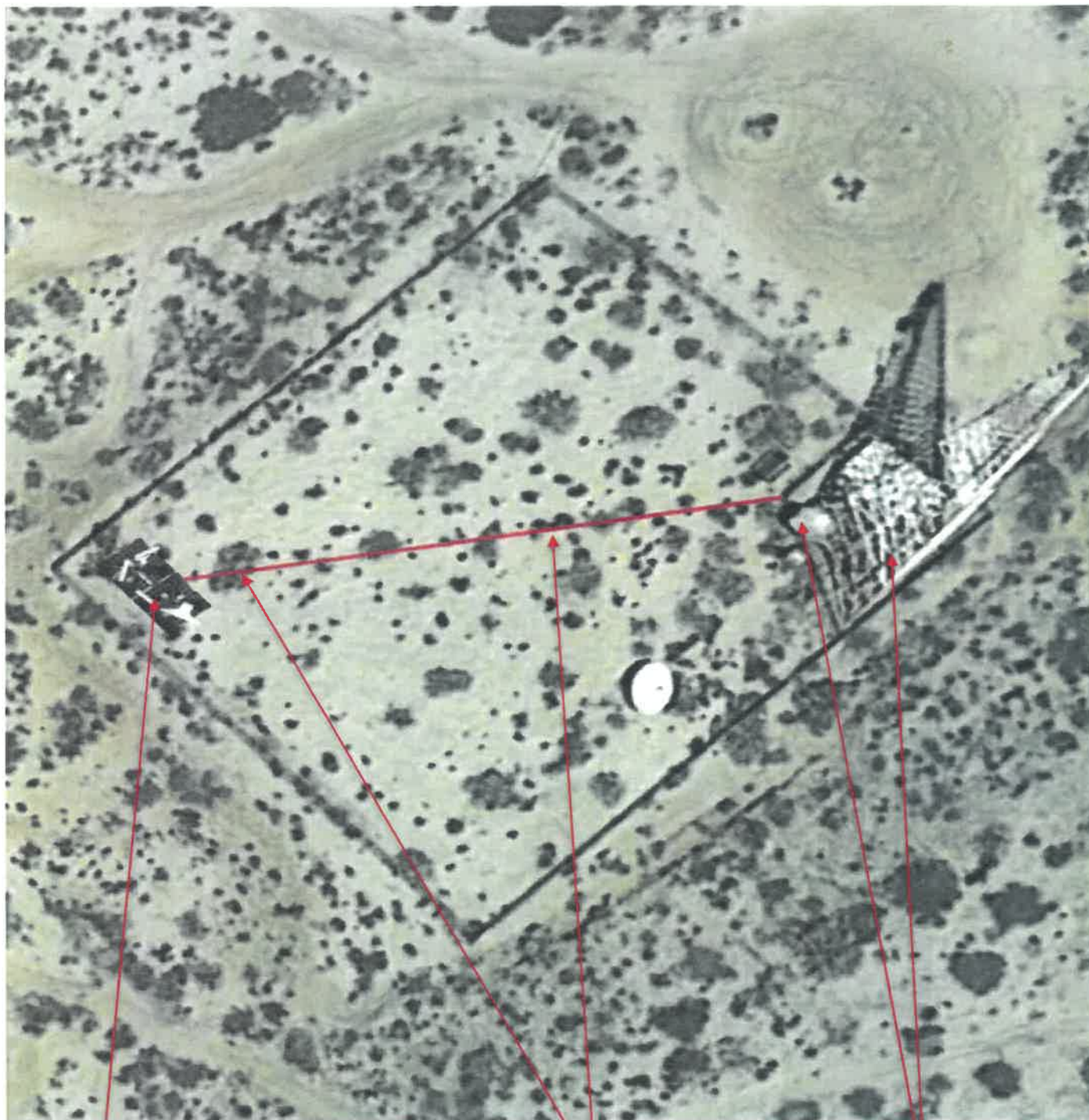
- Monthly Invoicing:** On the last day of each month of services rendered.
- Semi-Annual Invoicing:** On each March 1 (for period March 15 through September 14) and on each September 1 (for period September 15 through March 14 of the successive year). Both invoices equal to one half of the annual fee listed below. Notwithstanding the foregoing, the first semi-annual payment due for the period 3/15/2022 – 9/14/2022 and the one-time contract administration charge shall be invoiced by DISTRICT after mutual execution of this License, payable within 60 days of the invoice date.

Payments are due upon receipt of invoice and payable within sixty (60) days of invoice date.

CHARGES FOR SERVICES

Equipment Type	No of Units	Monthly Rack Space Charges	Annual Charge (rounded and payable semi-annually)
One-Time Contract Administration Charge**	1		\$500.00
Rack Space: 1 Rack			
Annual Payment Year 3/15/22 – 3/14/23	1	\$963.33	\$11,560.00
Annual Payment Year 3/15/23 – 3/14/24	1	\$997.08	\$11,965.00
Annual Payment Year 3/15/24 – 3/14/25	1	\$1,032.00	\$12,384.00
Annual Payment Year 3/15/25 – 3/14/26	1	\$1,068.08	\$12,817.00
Annual Payment Year 3/15/26 – 3/14/27	1	\$1,105.50	\$13,266.00
Total Cost for 1 Rack for five-year period	1		\$62,492

EXHIBIT "B"
LICENSED AREA



**Ground mounted antenna array
Approximately 20' x 10'**

**Underground Fiber optic line in
conduit within 20' x 10' area**

**One rack
space within District-
owned Equipment
Shelter**

EXHIBIT "C"
LICENSEE's AUTHORIZED EQUIPMENT
PAGE 1

EXTERIOR MOUNTED EQUIPMENT (Ground Mount)

- One (1) 4' diameter Siae Microwave Dish (MW) mounted on a Rohn Non-Penetrating mount
- One (1) 2' diameter Siae or Ubiquity MW dish mounted on a Rohn Non-Penetrating mount
- Two (2) Cambium 450m 3 GHz Panel Antenna (27.2" x 24" x 7") mounted on a Rohn Non-Penetrating Mount
- One (1) Cambium 450m 5 GHz Panel Antenna (20." X 25.7" x4.4") mounted on a Rohn Non-Penetrating Mount
- Two (2) Alpha Wireless 2.5 GHz Panel Antennas (67" x 11.3" x 5.2") w/Nokia RRH (13" x 11.8" x 4.7") mounted on a Rohn Non-Penetrating Mount

INTERIOR MOUNTED EQUIPMENT IN THE DISTRICT EQUIPMENT SHELTER

- One (1) Eltek vs alpha 2RU power system
- One (1) Trimm 1RU Power Distribution System
- One (1) Watchdog 1RU Monitoring System
- One (1) MikroTik 1RU Router
- One (1) Nokia 3RU Bas Band Unit
- One (1) Netonix 1RU Switch
- One (1) Levington 1RU Copper Patch Panel
- One (1) Corning 1RU Fiber Patch Panel
- One (1) Exeltech 2RU 48VDC to 100 VAC converter
- One (1) Triplite 1RU PDU
- Eight (8) 6 Volt Batteries

EXHIBIT "D"
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