

JUN 21 2017

Carmel Unified School District

MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF MONTEREY
AND CARMEL UNIFIED SCHOOL DISTRICT REGARDING COMMUNICATIONS
VAULT SPACE AND SERVICES

This Memorandum of Understanding (MOU) is made between the County of Monterey, acting by and through its Department of Information Technology ("County"), and Carmel Unified School District ("Lessee"), to provide communications vault space and supporting services to Lessee at the communications facilities operated by County described below.

RECITALS:

WHEREAS, County has under its control electronic radio broadcasting facilities located in the County of Monterey, known as the Mount Toro ("the facilities"); and

WHEREAS, County operates a communications vault at the facilities and wishes to make shelving space in that communications vault, as well as other services that facilitate radio communications within the County, available to Lessee; and

WHEREAS, Lessee intends to move, or has already moved, its telecommunications equipment into the communications vault at the facilities and wishes to receive, or already has received, communications services from County;

WHEREAS, the parties wish to enter into this MOU in order to clarify their respective roles and responsibilities regarding County's provision of shelving space at the facilities and communications services to Lessee;

THEREFORE, the parties agree as follows:

1. Facilities Description. As used in this MOU, "facilities" refers to a communications vault and associated radio towers operated by County, located in Monterey County and known as Mount Toro.

2. Area/Services. County agrees to provide to Lessee an exclusive area, measured in rack mount units (RMUs), of communications vault space at the facilities, as specifically described in Exhibit A. County further agrees to provide Lessee with additional services such as associated antenna position(s) on the facilities tower, electrical power supply, and access to the facilities, as specifically described in Exhibit A.

3. Use. Lessee shall use the facilities solely for the purpose of operating and maintaining the telecommunications equipment specifically described in Exhibit A ("electronic equipment"), for installing and operating improvements, and for operating and maintaining such other radio transmitting and receiving equipment as County may from time to time consent to, in writing. Lessee shall operate its electronic equipment in accordance with the technical specifications set forth in Exhibit A.

4. Term.

(a) The term of this MOU is five (5) years and shall commence on July 1, 2017, and shall terminate on June 30, 2022, unless sooner terminated as provided herein.

(b) This MOU may be canceled by either party at any time upon providing sixty (60) days advance written notice to the other party. Upon providing termination notice to County, or upon receiving termination notice from County, Lessee shall remove its electronic equipment and improvements from the facilities by expiration of the sixty (60) day notice period.

(c) Nothing in this paragraph restricts County's right to remove Lessee's electronic equipment and/or improvements earlier than sixty (60) days, in its sole discretion, as set forth in this MOU.

(d) Termination of this MOU does not terminate Lessee's duty to defend, indemnify and hold County harmless, Lessee's obligation to maintain sufficient insurance, nor Lessee's obligation to repair and replace any damage to County's facilities and telecommunications equipment, as provided in this MOU.

5. Charges.

(a) Lessee shall pay charges to County based upon established County rates for each fiscal year, defined as beginning on July 1st and ending on June 30th. Rates will be established by County based upon an equitable allocation of known and projected customer occupation and usage.

(b) To determine cost allocation for each fiscal year, County will confirm with Lessee its intention to utilize communications vault space and receive communications services pursuant to this MOU, or to discontinue this MOU, before December 1st preceding the upcoming fiscal year. County will establish rates for the upcoming fiscal year in January preceding the upcoming fiscal year.

(c) By February 1st preceding the upcoming fiscal year, County will provide Lessee with documentation of rate calculations, using the methodology described herein, for the upcoming fiscal year, as well as Lessee's specific charges for the upcoming fiscal year. The rate charged to Lessee will reflect Lessee's pro rata share of prior and projected customer occupation and usage of the facilities and its receipt of communications services.

(d) Beginning fiscal year July 1, 2017 through June 30, 2018, the charges owed by Lessee shall be in the annual amount of one thousand, nine hundred, sixty-one dollars and sixty-three cents (\$1,961.63) due upon signing of this agreement.

(e) Lessee shall be invoiced for additional incidental site related fees as such fees are incurred. Fees shall include but are not limited to: purchased radio shop parts, telecom equipment, ITD telecom labor, and ITD radio labor. Payment of invoices is due within 30 (thirty) days of receipt by Lessee.

(f) Payment of charges shall be made, without deduction or delay, to:

Department of Information Technology
Attn: Finance
1590 Moffett Street
Salinas, California 93905

(g) Once received by County, the charges described in this paragraph are nonrefundable. In the event of termination of this MOU by either party, no reimbursement or refund of charges paid will be made by the County.

6. Default and Right of Removal.

(a) In the event of Lessee's breach of any covenant of this MOU, County shall provide Lessee with written notice thereof.

(b) If defaults are not cured within thirty (30) days after written notice from County to Lessee, County may, in its sole discretion, remove Lessee's electronic equipment and/or its improvements from the facilities. In addition to this right of removal upon notice, County may remove Lessee's electronic equipment and/or its improvements from the facilities without notice, if in County's sole discretion, immediate removal is necessary to protect the facilities from damage, to preserve the health and safety of its employees, agents and/or the general public, or to otherwise preserve the functionality of the facilities.

7. Holdover and Renewal. Any holding over after the expiration of the term of this MOU, with the consent of County, expressed or implied, shall continue to be subject to all the terms and conditions of the expired MOU.

8. Standards.

(a) Lessee agrees to install, maintain, and operate its electronic equipment and improvements in accordance with established technical standards and laws governing the use of electronic radio or telecommunications equipment.

(b) Lessee shall install and maintain its electronic equipment and improvements in a neat and workmanlike manner and shall conform in all respects to fire, safety, and construction standards deemed applicable to such installation by County, to County's satisfaction.

(c) Lessee shall, at its sole cost and expense, comply with the requirements of all County, municipal, state, and federal statutes, laws, ordinances, and regulations now in effect, or which may become effective, pertaining to the facilities and Lessee's use of the facilities, to Lessee's installation and operation of improvements, and to Lessee's receipt of communications services from County.

(d) Lessee shall display the appropriate license from the appropriate federal regulation agency on its electronic equipment and improvements.

9. Elimination of Electronic Interference.

(a) Lessee shall ensure that its installation and operation of its electronic equipment and improvements does not in any way hinder, obstruct, or interfere with County's radio or electronic equipment or its communications capability, or the radio or electronic equipment or communications capability of any other user of the facilities.

(b) In the event that County determines, in its sole discretion, that Lessee's installation or operation of its electronic equipment or improvements in any way hinders, obstructs, or interferes with County's radio or electronic equipment, or the radio or electronic equipment of other users of the facilities, Lessee shall, upon receipt of either oral or written notification from County, immediately correct or cease the interfering installation or operation.

(c) In the event of Lessee's inability or refusal to eliminate such interference, County may, in its sole discretion, take action to stop the operation, transmission or use of Lessee's electronic equipment or improvements in order to continuously eliminate such interference.

(d) Any interference and compatibility testing required to cease radio interference with County's radio or electronic equipment, or the radio or electronic equipment of other users at the facilities; any removal of or changes to Lessee's installed electronic equipment to eliminate such interference; and any installation of new equipment by Lessee to eliminate such interference shall be made by a qualified technical person, representing and retained by Lessee.

(e) During an emergency incident, if Lessee's electronic equipment or improvements interfere with County's or other facility user's radio or electronic equipment or communications, County may in its sole discretion require immediate removal of or cessation of operation, transmission, or use of Lessee's electronic equipment or improvements without advance notice. If Lessee fails to do so, County may, in its sole discretion, take action to stop the operation, transmission or use of Lessee's electronic equipment or improvements in order to eliminate said interference.

(f) All costs associated with elimination of interference with County's radio or electronic equipment, or the radio or electronic equipment of other users at the facilities, shall be borne solely by Lessee.

(g) County is not responsible for, and shall not be held liable or accountable for, any radio interference emanating from sources external to the facilities.

10. Replacement/substitution of electronic equipment.

(a) If Lessee's electronic equipment or improvements are destroyed by acts of nature, or if Lessee otherwise seeks to replace or substitute such equipment or improvements, Lessee may replace them with electronic equipment or improvements of the same general type so long as they (1) meet or exceed the technical specifications of its original equipment and improvements, (2) occupy no additional physical space, and (3) consume no additional electrical power.

(b) Lessee shall notify County in advance of its intent to install such replacement or substitute equipment or improvements, shall obtain County's consent, and shall notify County of the date that the replacement or substitution is completed.

11. Sublet Clause and Changes in Use.

(a) Lessee shall not transfer or assign this MOU, and shall not sublet, license, or permit the facilities to any other entity or individual.

(b) Lessee shall not cause or permit any change to its electronic equipment installed in the facilities, including power outputs and changes in the use of the frequencies described in Exhibit A, except upon making a written request to County for each transaction, and obtaining County's prior written consent.

(c) Should Lessee require a change in equipment, power outputs, or changes in frequencies after the beginning of the date of this MOU, then all costs associated with County's engineering reviews required to accommodate Lessee's changes will be invoiced by County, and will be due and payable by Lessee upon invoicing.

12. Access to the Facilities.

(a) Only Lessee and its properly qualified and authorized agents, employees, contractors, and servants shall have the right of access to the facilities.

(b) If Lessee's electronic equipment or improvements are operated or maintained by anyone other than Lessee's regular employees, the admission of such persons to the facilities shall be permitted only upon the express prior consent of County.

13. Rights Reserved by County.

(a) County reserves the right to use the facilities in any manner, including but not limited to, the right to construct, place, maintain, use, operate, repair, replace, alter, and move pipelines, conduits, culverts, ducts, fences, poles, electrical energy, power and communication lines, roads, bridges, subways, sidewalks; the right to use the facilities for grazing purposes; the right to grant easements over, across, upon and under the facilities; and the continuous right of ingress and egress to and from and the facilities. County will exercise these rights in such manner as to

avoid creating unreasonable interference with Lessee's exercise of the rights granted by this MOU.

(b) Rights granted to Lessee pursuant to this MOU are subject to all valid and existing contracts, leases, licenses, easements, encumbrances, and claims of title, which may affect the facilities. This MOU is subject to all existing easements and rights of way. County further reserves the right to grant public utility easements as may be necessary and Lessee hereby consents to the granting of any such easement.

(c) No priority or other rights shall attach to Lessee's use of any particular space in the facilities. County shall have the right at any time, upon giving notice thereof, to re-assign or re-allocate the amount or location of space for Lessee's electronic equipment and improvements. In the event that a space re-allocation is made, Lessee shall, within sixty (60) days of receipt of notice from County, remove or relocate its electronic equipment and improvements in conformity with County's reassignment or reallocation.

14. Notices. All notices or other communications required or permitted hereunder, shall be in writing and shall be personally delivered to:

For County: Department of Information Technology
Attn: Radio Manager
1590 Moffett Street
Salinas, California 93905

For Lessee: Carmel Unified School District
Attn: Dan Paul
P.O. Box 222700
Carmel, CA 93922

Advisement of a change of the above information shall be given by written notice.

15. Prohibited Uses. Lessee shall not commit, suffer, or permit any waste upon the facilities, nor act to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the facilities for any illegal purposes.

16. Improvements and Modifications.

(a) Lessee shall, at its sole expense, have the right from time to time during the term of this MOU to improve the facilities in a manner consistent with the purposes of this MOU, including but not limited to, the installation, operation, maintenance, or removal of electronic equipment, provided that any such improvement or equipment shall be constructed, installed or removed in such a manner as not to impair County's or other users' transmissions from the facilities.

(b) Lessee shall submit plans for the construction or enlargement of any improvement to County in advance of such construction or enlargement, and its plans shall be subject to written approval by County. County will not unreasonably withhold such approval.

(c) Lessee shall seek County approval of any changes, alterations, or substitutions of its electronic equipment, which approval will not be unreasonably withheld. Upon receiving County approvals for plans and installations, Lessee shall notify County thirty (30) days before the installation.

(d) Lessee shall, at its sole expense, have the right from time to time during the term of this MOU to connect wires and equipment to lines adjoining the facilities. As otherwise provided in this MOU, all such connection work done by Lessee on the facilities shall be done in conformity with applicable technical standards, laws, and regulations; shall in no way impair County's or other users' transmissions from the facilities; and may only occur upon County's prior written consent.

(e) In improving the facilities as permitted by this paragraph, Lessee shall keep the facilities free from any and all liens and charges on account of labor or materials used in or contribution to any work thereon.

17. Disposition of Lessee's Improvements.

(a) All improvements constructed on and all other improvements placed on the facilities or its appurtenances by Lessee, and all wires, equipment and other property placed in, upon, or under the facilities or its appurtenances by Lessee, shall remain its property and shall be removed by Lessee, at its sole expense, within sixty (60) days after expiration of the term of this MOU, or other termination as provided by this MOU.

(b) Should Lessee fail to remove its improvements as provided, County may do so and all costs and expense of such removal shall be paid by Lessee on demand.

(c) Notwithstanding these provisions, upon termination of this MOU, Lessee may, with the written consent of County, abandon in place any and all electronic equipment and improvements, whereupon title to such electronic equipment and improvements shall vest in County.

18. Condition of Improvements.

(a) Lessee accepts the facilities as being in good order, condition, and repair; accepts the facilities in "as is" condition; and agrees that on the last day of the term of this MOU, or sooner termination of this MOU, Lessee will surrender the facilities to County in the same condition as when received, excepting only reasonable use and wear and damage by acts of nature.

(b) During the term of this MOU, Lessee shall not call on County to make any repairs or improvements to the facilities and Lessee shall keep the same in good order and condition at its own expense.

19. Taxes. Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by any public entity upon any interest created by this MOU. Lessee further agrees to pay all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment and property placed by Lessee in and about the facilities.

20. Access Road. County makes no guarantee or representation regarding the condition of the unpaved road to the facilities and Lessee understands and acknowledges that this road may, from time to time, become impassable due to weather, natural disaster, or wear-and-tear. Regarding the use of said access road, Lessee agrees to the following conditions and terms:

(a) Lessee shall utilize the access road through its authorized agents, employees, contractors, or servants only to the degree it is necessary to access the facilities.

(b) Lessee shall use the access road at its sole risk and avoid traveling upon it to the greatest extent practicable at times when weather conditions are such that excessive damage to the road surface may result from such use. Lessee shall, its expense, promptly repair any abnormal or excessive road damage caused by its use, including such road surface protective features as water drains, berms, or culverts.

(c) Lessee shall place no locks on gates on access roads or on fencing surrounding the facilities such that they impede access and passage to the facilities by others.

21. Force Majeure.

(a) If either Lessee or County shall be delayed or prevented from the performance of any act required under this MOU by reason of fire, lightning, windstorm, flood, earthquake, explosion, collapse, aircraft or other vehicle damage, or other casualty or Act of God, performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

(b) In the event of such occurrence or occurrences, County may elect, in its sole discretion, to terminate this MOU or to reconstruct or to repair the facilities, and upon completion of such reconstruction or repair, to afford Lessee vault space and services that are substantially the same as previously provided. In effecting reconstruction or repair of the facilities, County may require Lessee to remove, dismantle, or rearrange its electronic equipment, at Lessee's cost, or may, in its sole discretion, take action to remove, dismantle, or rearrange Lessee's electronic equipment. In effectuating reconstruction or repair of the facilities, County may interrupt or cease Lessee's radio communications of the facilities.

(c) County shall supply Lessee emergency standby power service as specifically described in Exhibit A.

(d) Nothing in this paragraph shall excuse Lessee from prompt payment of any charge required of it by this MOU.

22. Vacating the Facilities. Lessee shall, on the last day of the term of this MOU, or sooner termination, peaceably and quietly leave, surrender, and yield up the facilities to County in good order, condition, and repair, excepting only reasonable use and wear and damage by acts of nature.

23. Losses/Insurance/Damages.

(a) County will not be responsible for losses or damage to Lessee's property, equipment or materials; for losses or damage to Lessee's business operations or communications capacity; or for personal injury or other damage to Lessee's employees, agents or contractors, occurring for any reason whatsoever. Such risk of loss will be borne solely by Lessee. All such losses shall be reported to County immediately upon discovery.

(b) Accordingly, Lessee shall make no claim of any nature against County alleging damage to Lessee's business operations, to its electronic equipment or improvements, or to any other property right whatsoever. Lessee shall make no claim alleging personal injury to its agents, employees, or contractors by cause whatsoever. Lessee shall make no claim of any nature against County alleging County interference with its communications due to County's operation of the facilities, due to use of the facilities by any other user or tenant, or due to County's oversight of use of the facilities by any other user or tenant.

(c) These limitations on County responsibility for or liability to Lessee except only damage arising from, or out of the sole negligence or willful misconduct of County's agents or employees in the course of their employment.

(d) County will not insure Lessee's electronic equipment or improvements against fire, casualty, business interruption, or any other type of risk or damage whatsoever. Procurement of such insurance, if any, is Lessee's sole responsibility and at Lessee's sole expense.

(e) Lessee will compensate, reimburse and make County whole for any damage it or its electronic equipment cause to the facilities, for any interference Lessee or Lessee's equipment causes to County's radio communications, and for interference with the radio communications of other users of the facilities. This obligation includes Lessee's duty to repair and to replace County's existing radio communications equipment and improvements at the facilities if they are damaged or destroyed by any of Lessee's activities arising out of this MOU.

24. Hazardous Waste.

(a) Lessee agrees that it will comply with all laws, federal, state, or local, applicable during the term of this MOU pertaining to the use, storage, transportation, and disposal of any hazardous substance, as that term is defined in such applicable law. In the event that County

should incur any liability, cost or expense, including attorney's fees and costs, as a result of Lessee's illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, Lessee shall indemnify, defend, and hold harmless County and its agents, employees and contractors against such liability.

(b) If Lessee is subject to the issuance of a government order directing it to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by Lessee, Lessee shall be responsible for all costs and expenses of complying with such order.

(c) In the event Lessee incurs liability in connection with hazardous substance contamination at the facilities which occurred before the date that it maintained any electronic equipment or improvement at the facilities, County shall hold harmless, indemnify, and defend Lessee from such pre-existing liabilities.

25. Indemnification of County. Lessee agrees to defend, indemnify and save County and its officers, agents, and employees harmless from any loss, damage, or liability which may arise from the exercise by Lessee of any of the rights granted by this MOU, and from all claims, demands and causes of action that may be brought against County, its successors, employees, agents, or assigns, caused by, arising out of, or in any way connected with the exercise by Lessee of any of the rights granted by this MOU, except those arising out of the sole negligence or willful misconduct of the County's agents or employees in the course of their employment. Lessee shall reimburse County for all costs, attorneys' fees, expenses, and liabilities incurred with respect to any litigation in which it is obligated to defend, indemnify and hold County harmless under this MOU. This duty to indemnify survives the termination of this MOU and continues until the expiration of statute of limitations applicable to any claim that is or might be brought against County.

26. Insurance. Without limiting Lessee's duty to indemnify County, Lessee shall furnish to County, by filing with County's contract administrator and County's Contracts/Purchasing Division, certificates of insurance demonstrating the following coverages, written on an occurrence basis, which is provided by a company acceptable to County and authorized to transact insurance business in the State of California:

(a) Commercial General Liability Insurance, including coverage for Bodily Injury and Property Damage, Personal Injury, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000.00 per occurrence and Fire Legal Liability of at least \$100,000 naming the County of Monterey, its officers, agents, employees as additional insureds;

(b) Business Automobile Liability coverage with a combined single limit for Bodily Injury and Property Damage of at least \$500,000.00 per occurrence;

(c) Workers Compensation Insurance with Employer Liability Limits of at least statutory limits of \$1,000,000.00 each person, \$1,000,000.00 each accident, and \$1,000,000.00 each disease.

(d) Lessee shall provide County with endorsement pages for both Business Auto and General Liability, naming the County of Monterey as additional insured and to include primary and non-contributory language. Such endorsements shall provide that Lessee's insurance is primary to any insurance or self-insurance maintained by County and that County's addition as an additional insured to Lessee's insurance will not result in any claim for contribution by County's insurance to a loss covered by Lessee's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

(e) The certificates of insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County. Lessee agrees that the insurance herein provided for shall be in effect at all times during the term of this MOU and survives termination of this MOU, extending through the expiration of the statute of limitations on any claims that are or might be brought against County. In the event said insurance coverage expires at any time or times during the term of this MOU, Lessee agrees to provide County at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than one (1) year. In the event Lessee fails to keep in effect at all times the insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this MOU.

(f) If Lessee is self-insured, Lessee shall provide County with written acknowledgement of this fact at the time of the execution of this MOU and shall demonstrate, to County's satisfaction and in its sole discretion, self-insured coverage equivalent to the amounts and types of coverage set forth above. If at any time after the execution of this MOU, Lessee abandons its self-insured status, it shall immediately notify County of this fact and shall comply with the terms and conditions of this paragraph of this MOU.

(g) County shall not be liable for the payment of any premiums or assessments on the insurance coverage required by this MOU. The cost of the insurance coverage required by this MOU is to be borne solely by Lessee.

27. Entire Agreement. This MOU and all attached Exhibits constitute the entire agreement between County and Lessee. No prior written or prior contemporaneous or subsequent oral promises or representations shall be binding.

28. Severability. If any term, covenant, condition, or provision of this MOU is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

29. Mutual Consent. Notwithstanding anything herein contained to the contrary, this MOU may be terminated and the provisions of the MOU may be altered, changed, or amended by mutual written consent of the parties hereto.

30. Amendments and Modifications. No amendment, modification, or supplement to this MOU shall be binding on either party, unless it is in writing and signed by the party to be bound by the modification.

31. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provisions of this MOU.

32. Binding. The terms of this MOU and covenants and agreements herein contained shall apply to and shall bind and insure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.

33. Essence of Time. Time is of the essence for each and all of the provisions, covenants, and conditions of this MOU.

34. Each of the signatories to this MOU warrants that he/she is authorized to execute this MOU on behalf of the entity that he/she represents and is empowered to legally bind the entity he/she represents.

MONTEREY COUNTY

CONTRACTOR

By: *Eric A. Chatham*
Director of Information Technology

Date: 7/5/17

Carmel Unified School District
Contractor's Business Name*

By: *Karen Ferdinand*

Interim Superintendent
Name and Title

Approved as to Form¹

By: *Rebecca M. Guccione* Date: 6/21/2017
County Counsel

Date: June 30, 2017

By: _____

Approved as to Fiscal Provisions²
By: *[Signature]*
Auditor/Controller

Date: 6-30-17

Name and Title

Date: _____

EXHIBIT-A

**To MOU by and between
County of Monterey, on behalf of its Information Technology Department, hereinafter
referred to as "County"
AND
Carmel Unified School District, hereinafter referred to as "LESSEE"**

Equipment Data at Mount Toro

- **Radio System(s):** Kenwood TDR-850 Repeater
 - Space Occupied = 3 Rack Mount Units (RMU)

- **Tower Space Occupied:** Repeater system uses site shared antenna system
 - Transmitter Antenna = shared UHF Master Transmit Combiner
 - Receiver Antenna = shared UHF Master Receive Distribution

- **Primary Electrical Power Supply:** Site provided DC battery bank

- **Emergency Back-up Electrical Power Supply:** Site provided generator