

**RESOLUTION NO. 2010-96**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY MANAGER TO EXECUTE THE SACRAMENTO  
REGIONAL RADIO COMMUNICATIONS SYSTEM LICENSE AGREEMENT WITH  
THE COUNTY OF SACRAMENTO**

**WHEREAS**, the Elk Grove Police Department has been a member of the Sacramento Regional Radio Communications System (SRRCS) for four years; and

**WHEREAS**, being a member of SRRCS affords users the benefits of a county-wide two-way radio communications system; and

**WHEREAS**, SRRCS provides a reliable, efficient radio system and is a trusted regional consortium; and

**WHEREAS**, interoperability is key to responding to local and regional emergencies.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute the Sacramento Regional Radio Communications System license agreement with the County of Sacramento attached hereto as Exhibit A.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 26<sup>th</sup> day of May 2010.

  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
JASON LINDGREN, INTERIM CITY CLERK

APPROVED AS TO FORM:

  
SUSAN COCHRAN, CITY ATTORNEY

## EXHIBIT A

### SACRAMENTO REGIONAL RADIO COMMUNICATIONS SYSTEM LICENSING AGREEMENT

**THIS AGREEMENT** is made and entered into on this 1st day of July, 2010, by and between the **COUNTY OF SACRAMENTO**, a political subdivision of the State of California and the **CITY OF ELK GROVE** (hereinafter referred to as "Agency") which are collectively referred to as the "parties."

#### RECITALS

**WHEREAS**, a spirit of cooperation and collaboration has been demonstrated by several public agencies in the Sacramento area to develop a regional solution to meet the individual radio communications need of each agency; and

**WHEREAS**, the County of Sacramento, in coordination with several public safety and public service entities, has developed the Sacramento Regional Radio Communications System; and

**WHEREAS**, the Sacramento County Board of Supervisors contracted for the construction of the Sacramento Regional Radio Communications System; and

**WHEREAS**, the Sacramento Regional Radio Communications System includes a backbone communications system and end user equipment; and

**WHEREAS**, the Participants have pooled their individual frequencies and rights granted by the FCC; and

**WHEREAS**, the City of Elk Grove desires to contract with the County of Sacramento for a license for use of the backbone communications system.

#### WITNESSETH

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE PROMISES HEREIN CONTAINED, IT IS MUTUALLY AGREED AS FOLLOWS:

#### 1. DEFINITIONS

- A. AGREEMENT is defined as this Sacramento Regional Radio Communications System Licensing Agreement.
- B. ANNUAL BACKBONE MAINTENANCE AND OPERATION FEE is defined as the annual fee necessary to recover the direct costs incurred by the County of Sacramento for maintenance and operation of the Backbone and shall include, but not be limited to, the following:

- 1) Labor rates for County of Sacramento personnel assigned to work on or administer the Backbone. These rates will be the same as those charged by the County of Sacramento Office of Communications and Information Technology to County of Sacramento Departments for the same labor classes. These rates will be monitored and periodically adjusted by the Chief Information Officer as needed to minimize the variance between applied and actual costs. This rate structure is currently subject to federal and state audits for purposes of assuring compliance with grant and funding regulations.
- 2) Costs of all labor, materials, and supplies furnished or purchased for performance of maintenance of the Backbone, including the costs for any repairs, equipment upgrades, or replacements.
- 3) Comprehensive General Liability and Casualty insurance costs, including reserves for deductibles, for the Backbone.
- 4) A reserve for essential modifications for the Backbone. The reserve shall be financed by a surcharge upon the Annual Backbone Maintenance and Operation Fee. The surcharge shall be named the Fee for Enhancements and shall be applied to each radio operating within the System.
- 5) Such other direct administrative, financial, and operating costs and charges as are commonly and prudently included in maintenance and operation costs by standard accounting practices, including any legal fees incurred by SRRCS as a result of any action brought against SRRCS and/or any of the Participants relating to services provided by SRRCS.

C. BACKBONE is defined as:

- 1) All trunk repeater site equipment including transmitters, receivers, and supporting electronic equipment; buildings, towers, and power sources.
- 2) All electronic or other equipment or leased services used to interconnect the trunk repeater sites.
- 3) All electronic or other equipment or leased services used to connect dispatch centers to the trunk repeater sites.
- 4) The electronic equipment in the various dispatch centers that appears on the Backbone side of the Demark Point and is used to translate the signals to a suitable audio or digital signal for use by the dispatch center.

- D. DEMARK POINT is defined as a location, a point, or a set of points in the same general area, where signals are transferred from the Backbone to End User Equipment.
- E. CHIEF INFORMATION OFFICER of the County of Sacramento is defined as the Director, Officer of Communications and Information Technology or Director of another County of Sacramento Department to the extent either has been assigned oversight of the Sacramento Regional Radio Communications System by the Board of Supervisors.
- F. END USER EQUIPMENT is defined as all equipment purchased by and under the control of the Participants.
- G. FCC is defined as the Federal Communications Commission of the United States.
- H. PARTICIPANTS shall be defined as any public agency or municipality which enters into an agreement similar to this Agreement with the County of Sacramento and is issued a license to use the Backbone by the County of Sacramento. The current Participants are listed in Attachment 2.
- I. PUBLIC SAFETY is defined as law enforcement, fire protection, emergency medical services, and emergency operations.
- J. RADIO is defined as any mobile, portable, control station or base station radio. Although Radios purchased and used solely as maintenance spares are considered as Radios under this definition, such spare Radios shall not be included in the calculation of fees (other than purchase and installation costs of the Radios), voting rights, or other apportionment under this Agreement. Radios purchased and maintained as shelf stock but not yet operational within the System shall be considered spares, but Radios that are used intermittently or on standby other than for maintenance purposes shall not be considered spares. The Schedule (Attachment 1) shall have a separate tabulation of spare Radios.
- K. SCHEDULE is defined as the listing of the total number of Radios to be purchased by Agency as approved by the SMG and attached hereto as Attachment 1.
- L. SECONDARY SYSTEM USER is defined as an agency which has received approval from the SMG to access the System on a separate revocable contract through one of the System Participants.
- M. SMG is defined as the Sacramento Regional Radio Communication System Management Group, which is comprised as set forth in Article 4.

- N. SYSTEM is defined as the Sacramento Regional Radio Communication System. This System is intended to provide reliable radio coverage from all Radios at all outdoor locations and limited indoor locations.
- O. SYSTEM MANAGER is defined as the Chief Information Officer.
- P. TAC is defined as the Sacramento Regional Radio Communications System Technical Advisory Committee, which is comprised as set forth in Article 4.
- Q. TOTAL BACKBONE LICENSE FEE is defined as the total amount to be paid to the County of Sacramento in a lump sum for participation in the System.
- R. VENDOR is defined as the company selected by County of Sacramento to design and supply the System.

**2. LICENSE - TERM OF AGREEMENT**

During the term of this Agreement and so long as AGENCY is not in significant breach of its terms and conditions, County of Sacramento grants to AGENCY a non-exclusive license to use the Backbone and the System and all components thereof for all of their intended purposes.

This Agreement is effective as of the day and year first hereinabove appearing and shall continue thereafter from year to year until July 1, 2020, unless terminated pursuant to Article 3, 15, or 16.

The parties acknowledge that the Backbone was designed to meet the radio communication needs of the Participants.

If no major capital investment is required to operate the Backbone, then AGENCY and the other Participants shall only be required to pay the County of Sacramento their *pro rata* share of the County of Sacramento's Annual Backbone Maintenance and Operation Fee and Fee for Enhancements as set forth in Article 8.

If at any time during the term of this Agreement, it becomes necessary as the result of the action of the FCC or other regulatory or legislative body to expend more money than is available in reserves for the purpose of bringing the System into compliance, AGENCY shall pay its *pro rata* share thereof based upon the formula set forth in Article 8, or, in the absence of an acceptable agreement to do so, the parties will treat participation under this Agreement as having been terminated for convenience pursuant to the following paragraph and Article 15.

In the event this Agreement terminates, the parties shall negotiate in good faith among themselves and the other Participants to arrive at a mutual and satisfactory solution to their then existing radio communications problems. To the greatest extent possible, this

solution shall involve sharing of facilities and costs and making use of existing facilities or sites.

### **3. MAJOR CAPITAL INVESTMENT**

The determination whether a major capital investment(s) is required to continue operation of the Backbone shall be made by the SMG with the advice of the TAC or an independent consultant as it deems necessary. The costs, if any, of the determination shall be divided proportionately according to number of Radios owned and operated among the total number of Participants remaining at the time of the determination.

If major capital investment is required to operate the Backbone to extend its useful life, the parties agree that they shall negotiate in good faith with each other and all of the other Participants to address the terms for financing of the procurement and installation costs of major capital improvements to the Backbone. If the parties cannot agree to the financing terms for such an investment, the County of Sacramento shall no longer be obligated to operate and maintain the Backbone for the benefit of AGENCY or the other Participants, and AGENCY shall no longer be entitled to access the Backbone.

### **4. SMG AND TAC - CREATION, ORGANIZATION, AND AUTHORITY**

#### **A. SMG**

- 1) The voting membership of the SMG shall have one member appointed by each Participant.

Each appointing authority shall appoint one alternate voting member who shall have full authority to act in the absence of the member to whom he or she is alternate. All appointments of voting members and alternates shall be communicated in writing to the Chief Information Officer, or the successor thereto, who shall act as Secretary to the SMG.

Each Participant shall appoint such auxiliary non-voting members to the SMG as it deems appropriate. These members shall have full rights to participate in all SMG activities and discussions, except voting. It is expected that each Participant will appoint sufficient members to fully represent all of its communication interests and to provide an SMG of sufficient breadth and depth of knowledge and experience to adequately carry out its responsibilities. Each Participant shall notify in writing the Chief Information Officer of all such appointments and of the termination or expiration thereof.

- 2) The SMG shall meet on a periodic basis and when requested by the Chief Information Officer or a voting SMG member, but such frequency shall be

not less than semi-annually, at a time and place designated by the Secretary who shall provide written notice thereof to the members and alternates at least 72 hours in advance of the meeting. Such notice shall include a proposed agenda. Sufficient voting members to carry a majority of the voting power of the SMG shall constitute a quorum thereof. Decisions of the SMG are made by consensus. In the event consensus cannot be met the Chair may call for a vote. A majority of the voting power of the full SMG shall be required to act. Each voting member of the SMG shall have one vote for each Radio which is part of the System and is owned or controlled by his or her agency.

- 3) The SMG shall have the authority to:
  - a) Elect officers and conduct meetings. The Chair of the SMG shall be elected from among the membership of the SMG for a term of no more than two years. The term will begin on July 1. The Chair may serve additional terms if nominated and elected.
  - b) Advise the Chief Information Officer as to all matters relative to the construction, expansion, operation, and management of the System.
  - c) Approve new Participants and Secondary System Users of the System. The County of Sacramento may not allow additional Secondary System Users, nor enter into Agreements with new Participants, without the consent of the SMG. If a new user is a Participant, the SMG shall determine the appropriate fee structure for the Backbone pursuant to Article 12. The Buy-In Fee, the Annual Backbone Maintenance and Operation Fee, and the Fee for Enhancements on account of a Secondary System User shall be the same as if the Secondary System User were an individual Participant, except that the SMG may specify a usage level for the Secondary System User and may reduce its Fees by factors which the SMG considers appropriate, which factors need not be the same for both Fees.
  - d) Determine how much capacity, if any, is available to a Participant who wishes to reenter the system after termination of participation pursuant to Article 15 ("terminating party"). In making such determination the SMG shall consider on the one hand that the terminating party has paid or is obligated to pay for certain capacity in the Backbone, and, on the other hand, any commitments of such capacity to other Participants or users, it being the intention of the parties to this Agreement that reentry by any such terminating party shall not be permitted if such reentry

causes an unreasonable exhaustion of capacity, diminution of reasonable expectations as to growth and capabilities, or shortening of the expected life of the System beyond that which might reasonably have been expected had the terminating party not terminated participation and the vacated capacity been otherwise committed.

- e) Approve expenditure of reserve funds for essential modifications by a two-thirds vote of the total voting power of the SMG.
- f) Establish procedures for, consider, and, to the extent possible, resolve all disputes between the parties or any of the Participants.
- g) To perform such other duties and carry out such other powers as are set forth throughout this Agreement.

**B. TAC**

- 1) The membership of the TAC shall be one member appointed by each Participant.

Each Participant may provide additional members to represent the interests of the Participant. Representatives on the TAC shall jointly provide services in kind without compensation from the System funding.

- 2) The TAC shall meet on a periodic basis and when requested by a TAC member, the SMG or the Chief Information Officer, but such frequency shall be not less than semi-annually, at a time and place designated by the chairperson.
- 3) The TAC shall be the primary body for the review and discussion of technical performance issues concerning the operations, reliability, and maintenance of the System. The TAC shall advise and make suggestions and recommendations concerning operations, reliability, and maintenance for the chairperson to carry forward to the SMG or Chief Information Officer for review and policy direction.

**5. DESIGN OF THE BACKBONE**

The County of Sacramento shall procure and install the Backbone. The parties acknowledge that the Backbone may be designed and constructed at an operational efficiency level which is less than the optimum design capacity of the Backbone as a means of reducing the costs of procurement and installation of the Backbone. The initial level of operation was essentially determined with input and advice from the SMG and



the TAC. The continuing enhancements shall be determined by the Chief Information Officer with input and advice from the SMG and the TAC.

**6. OWNERSHIP OF BACKBONE**

County of Sacramento shall hold legal title to all equipment comprising the Backbone during the term of this Agreement and upon its expiration, termination, or cancellation.

**7. MAINTENANCE AND OPERATION OF BACKBONE**

County of Sacramento shall be solely responsible for maintenance and operation of the Backbone, including the costs for any repairs and replacements, and subject to recovery of costs therefore pursuant to Articles 1 and 8 hereof. County of Sacramento shall devote as much staff time as it deems necessary for Backbone operations to minimize any downtime or disruptions to radio communications by Participants.

**8. ANNUAL BACKBONE MAINTENANCE AND OPERATION FEE**

AGENCY shall pay the County of Sacramento an annual fee for Maintenance and Operation of the Backbone each year during the term of this Agreement to be calculated as follows:

$$g \times \frac{c}{d} = \text{Annual Backbone Maintenance and Operation Fee}$$

Where:

c = The total number of radios owned and operated by AGENCY as of January 1<sup>st</sup> of each year or the number of radios AGENCY intends to operate on execution of this agreement whichever is greater.

d = The total number of Radios owned and operated by all Participants as of January 1st of each year

g = Total annual County of Sacramento Maintenance and Operation Costs as set forth in the definition of Annual Backbone Maintenance and Operation Fee in Section B of Article 1 above.

The County of Sacramento shall send AGENCY an invoice for the amount of the Annual Backbone Maintenance and Operation Fee on or about May 1st of each year. This fee shall be due and payable not later than July 1st of each year. Interest shall accrue at the rate of ten percent (10%) per annum from the July 1 due date.

INITIAL PAYMENT The initial payment of the Annual Backbone Maintenance and Operation Fee payment shall be pro-rated for the first year of participation in the system. The formula for fee calculation for the initial payment shall be calculated as follows:

(Annual Backbone Maintenance and Operations Fee per radio for fiscal year Agency executes the agreement) X (days until June 30) / 365.

Significant Increase in Radio Count During the Year: If AGENCY adds 10%, or more, additional radios during the fiscal year the County of Sacramento may send AGENCY a supplemental invoice which shall be payable on receipt.

**9. PURCHASE OF END USER EQUIPMENT**

County of Sacramento agrees that AGENCY may purchase its End User Equipment directly from an equipment vendor, using County of Sacramento contracts. The parties acknowledge that all warranties for such equipment are only enforceable against the vendor and County of Sacramento makes no express or implied warranty for End User Equipment.

**10. PURCHASE AND USE OF SECONDARY SYSTEM USER EQUIPMENT**

AGENCY may purchase End User Equipment for Secondary System Users (or may authorize such Secondary System User to purchase directly pursuant to the terms of the County of Sacramento's contracts) for use within the System provided:

- A. Such purchase and use is within the annual plan of AGENCY or otherwise approved by the SMG.
- B. The Secondary System User agrees in writing that it will comply with all applicable terms and conditions of this Agreement, all applicable regulatory requirements, and all rules, regulations, and policies pertaining to System usage.
- C. AGENCY shall be responsible to County of Sacramento for payment of all amounts due to County of Sacramento as a result of the purchase and use of such equipment.

Any Secondary System User shall enter into a written agreement with the Participant through whom its System usage is derived. Such agreement shall be subject to all terms and conditions developed by the SMG. The agreement shall provide for the Annual Backbone Maintenance and Operation Fee and the Fee for Enhancements to be paid on account of a Secondary System User in accordance with the determination of the SMG. Such Fees shall be paid to the County of Sacramento by the Participant through whom the System usage is derived. In the event the Secondary System User ceases participation in the System, the Radios used by it may be taken out of operation, in which case both Fees will cease at the end of the then current fiscal year, or may be continued in usage by

the Participant, in which case the Fees will be charged to the Participant on the same basis as all other Radios owned by the Participant.

The SMG may approve a Secondary System User as common to all Participants rather than as deriving its usage through an individual Participant. In such case, the SMG may authorize the County of Sacramento to contract with such Secondary System User for the common benefit of all Participants. The contract will be upon the above terms or such other terms as the SMG authorizes; provided, however, that the Radios used pursuant to the contract shall carry no voting power, and the Secondary System User shall be required to pay to the County of Sacramento for Fees only such amount as is prescribed by the SMG, it being the desire of the parties that all Participants should share equally in any benefits or burdens resulting from such usage.

**11. OPERATION OF RADIOS**

The County of Sacramento shall assign an identification number for each Radio purchased pursuant to and during the term of this Agreement. No Radio or other device may be placed in use within the System without first being approved as to compatibility by the SMG or the System Manager.

**12. SYSTEM OPERATIONS**

County of Sacramento and AGENCY agree that policy or management decisions regarding the design of the Backbone and the level of operation and maintenance of the System shall be under the jurisdiction of the Chief Information Officer. The Chief Information Officer shall be responsible for administration of this Agreement and the System. The SMG shall advise the Chief Information Officer in accordance with Article 4. In the event the Chief Information Officer reports to County of Sacramento's Board of Supervisors and any recommendation therein is contrary to advice rendered by the SMG, the Chief Information Officer shall state to the Board of Supervisors the position of the SMG. The Chief Information Officer shall inform the SMG of the date and time of the Board Report to give the SMG representative an opportunity to present the position of the SMG. The SMG representative shall be selected from those members of the SMG representing the majority opinion. Technical operation decisions shall be subject to the advice of the TAC with the approval of the SMG.

The Chief Information Officer, with the advice and consent of the SMG, may make rules, regulations and policies with respect to the System and its usage, and all users shall comply with those rules, regulations, and policies. In addition, all users shall comply with all applicable provisions of this Agreement and with all applicable regulations of the FCC or any other governmental agency having jurisdiction over System usage.

The Chief Information Officer shall issue annually to all Participants a financial statement showing the financial condition of the System. Such statement need not be reviewed by an independent accountant unless the SMG so directs and approves the

necessary expenditure. An annual proposed budget shall be prepared and distributed to all Participants and the SMG at least 30 days prior to its final adoption.

The County of Sacramento may contract with any Participant or Secondary System User for additions or improvements to the System provided that the cost thereof is borne in a manner which does not affect non-consenting parties and the additions or improvements are approved by the SMG.

The County of Sacramento may contract with additional agencies for use of the System. Any such contract shall be upon essentially the same terms and conditions as this Agreement and shall provide that such new Participant shall have the same rights, duties, and obligations as the original Participants. Any such contract shall require the payment by the new Participant of an appropriate Buy-In Fee that recognizes the contributions of the participating agencies in the development of the radio system. The Buy-In Fee shall be in an amount recommended to the Chief Information Officer by the SMG.

Any such contract shall be first approved by the SMG as to availability of capacity. Any such contract may provide for a lump sum payment of the Buy-In fee or may allow the new Participant to pay such fee with interest over a period of time acceptable to the SMG.

AGENCY shall pay the Buy-In Fee in the amount and in the manner described in Attachment 1; or, as an alternative to the Buy-In Fee, AGENCY may substitute compensation in the form and amount as described in Attachment 1.

**13. FREQUENCY ALLOCATION**

The County of Sacramento and AGENCY agree that if additional frequency capacity is desired to be added to the System, AGENCY, after approval by the SMG, may apply to the FCC for a license and shall pay all applicable fees.

Several of the Participants have frequencies that have been assigned to them by the FCC. The parties agree that these frequencies will be pooled for use by all of the Participants and users during the term of this Agreement and shall be subject to the management of the County of Sacramento and the System Manager. Each Participant retains all rights to the frequencies it has pooled.

**14. PUBLIC SAFETY PRIORITY**

The County of Sacramento and AGENCY agree that Public Safety shall be given priority access to the communications functions of the System over other uses of the Backbone.

**15. TERMINATION OF PARTICIPATION FOR CONVENIENCE**

AGENCY may terminate its participation in use of the Backbone pursuant to this Agreement for its convenience at any time upon 120 days advance written notice. In the event that participation is terminated, AGENCY shall no longer be entitled to access the Backbone or membership on the SMG or TAC, and shall be relieved from payment of the Annual Backbone Maintenance and Operation Fee and the Fee for Enhancements for the Backbone until such time as AGENCY elects to recommence participation by providing 120 days advance written notice of its election. Any such commencement of participation shall be effective as of July 1st next following the expiration of the 120 day notice period.

**16. CANCELLATION FOR BREACH**

Should either party fail to substantially perform its obligations in accordance with the Agreement provisions, the other party shall thereupon have the right to serve upon the breaching party a written notice of breach and requirement to cure. The notice shall advise the other party of the nature of the breach and provide a reasonable opportunity to cure. Such opportunity shall provide a minimum of 30 days (seven days in the case of non payment of money) following the date of service in which to cure the default, or, if the default is of such a nature that it cannot reasonably be cured within 30 days, to provide a plan for curing and to commence the cure and diligently prosecute it to completion. If the breaching party fails to cure within the period specified, the other party may serve upon the breaching party written notice of cancellation specifying the reasons therefore and the date of cancellation which shall not be sooner than 30 days following the date the notice is served.

If AGENCY cancels for breach and it is subsequently determined that County of Sacramento did not fail to substantially perform its obligations in accordance with the Agreement, then cancellation for breach by AGENCY shall be deemed and treated as termination of participation for convenience.

The parties agree that the rights granted under this Agreement for use of the System are unique, and in the event of a breach of the Agreement by County of Sacramento, the remedy of cancellation may be inadequate. Therefore, in the event of a material breach by County of Sacramento, AGENCY shall be entitled to the remedy of specific performance and any other remedy available at law or in equity.

**17. REMEDIES OF COUNTY OF SACRAMENTO UPON TERMINATION OR BREACH**

- 1) In the event of termination by AGENCY of participation for convenience, County of Sacramento shall continue to bill AGENCY for all radios that continue to operate on the backbone, and AGENCY shall be obligated to continue to pay such billings in the same time and manner as had there been no termination.

- 2) In the event of the failure of AGENCY to make any payment required herein when due, County of Sacramento may bring an action for the recovery of such payment and interest thereon. With respect to payments not yet due at the time of breach, County of Sacramento may bring an action, or actions, from time to time as such payments become due. The exercise of any right provided in this Agreement shall not preclude the County of Sacramento from exercising any other right so provided or at law, remedies provided herein or at law being cumulative and not exclusive.
- 3) If AGENCY has terminated participation in accordance with Article 15, the County of Sacramento shall be free to contract for and license the use of any capacity previously used by and any frequencies pooled by AGENCY pursuant to the provisions of this Agreement which are not taken by AGENCY upon termination of participation. Any right of AGENCY to revoke the termination and rejoin the system shall be subject to availability of capacity and frequencies at the time of re-application.

## **18. INDEMNIFICATION**

To the extent permitted by law, each party hereto does hereby assume liability for, and agrees to defend, indemnify, protect, save and keep harmless the other party and its directors, officers, employees, and its successors and assigns from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements (including legal fees and expenses) of any kind and nature imposed in, asserted against, incurred or suffered by such indemnified party or its directors, officers or employees or its successors and assigns by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of:

(i) any negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of the indemnifying party or any of its directors, officers, agents, servants, or employees in its or their performance hereunder; or;

(ii) violation by the indemnifying party or any of its directors, officers, agents or employees of any applicable federal, state or local laws and ordinances, and any and all lawful orders, rules and regulations issued by any authority with jurisdiction over the System.

In the event that both parties are responsible for any part of any liability hereunder, liability therefore shall be shared according to the principles of comparative fault.

The parties shall establish procedures to notify the other party where appropriate of any claims, administrative actions, or legal actions with respect to any of the matters described in this indemnification provision. The parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity.

Nothing set forth in this Agreement shall establish a standard of care for, or create any legal rights in, any person not a party to this Agreement. County of Sacramento's indemnification costs shall not be subject to recoupment as a Backbone operating cost.

**19. THIRD PARTY OBLIGATIONS**

The County of Sacramento shall be solely liable to third parties with whom it enters into contracts to effectuate the purposes of this Agreement. County of Sacramento shall pay directly such third parties for all amounts due under such contract. County of Sacramento shall indemnify and hold AGENCY harmless from any and all claims and liabilities arising from any such contract. County of Sacramento shall exert its best efforts to prevent any loss to AGENCY from the failure of proper performance of any third party. Agency's only obligation with respect to such third parties shall be limited to reimbursement to County of Sacramento for those expenses for which AGENCY is obligated to reimburse by virtue of the terms of this Agreement.

**20. WORKERS' COMPENSATION**

Responsibility for payment due by AGENCY shall be limited to the compensation set forth in this Agreement and, in particular, AGENCY shall not be responsible for providing workers' compensation insurance or any other protective insurance coverage that is based upon the relationship of employer and employee.

**21. RELATIONSHIP BETWEEN THE PARTIES**

Nothing herein shall be construed to create, nor do the County of Sacramento or AGENCY intend to create by the terms hereof, any contractual or other relationship, whether expressed or implied, of joint power, joint venture, partnership, principal-agent, independent contractor, or master-servant. It is expressly contemplated by the parties that the County of Sacramento will execute with each of the Participants an agreement essentially the same as this agreement and that those agreements and this Agreement will be considered together and will form the legal framework for the System. Any amendment to this form Agreement between County of Sacramento and any Participant for the benefit of a Participant shall first be approved by the SMG and shall be offered to all other Participants.

**22. ASSIGNMENT - SUCCESSORS AND ASSIGNS**

Neither party may assign this Agreement in whole or in part, nor any right, duty, or obligation provided herein, without the express written consent of the other party. The rights and liabilities set forth herein shall inure to the benefit and bind successors and assigns of the parties to this Agreement, but shall not inure to the benefit of any third party or person.

**23. MAINTENANCE OF RECORDS**





submit any disputes arising under the Agreement to a court of competent jurisdiction located in Sacramento County, California.

27. **NONWAIVER**

Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

28. **MODIFICATION**

No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by the authorized parties hereof.

29. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

30. **CAPTIONS**

The headings or captions to the Articles of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part thereof.

31. **SEVERABILITY**

If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of the Agreement shall remain in effect.

32. **SURVIVORSHIP**

Any responsibility for insurance or indemnity with respect to services provided under this Agreement shall not be invalidated due to the expiration, termination, or cancellation of this Agreement.

33. **MEDIATION**

In the event of a dispute between the parties arising under the terms of this Agreement, the parties shall submit their dispute to the SMG for review prior to initiating any legal proceedings. The SMG shall hold a hearing at which each party shall be entitled to present its case. The determination of the SMG regarding the merits of the claim and its proposed resolution shall be non-binding.

**34. ARBITRATION**

If, at any time, there occurs a controversy or dispute regarding the rights, duties and obligations of the parties concerning any provision set forth in this entire Agreement, excluding a dispute over the payment of money due under Article 17 (2), such controversy or dispute if not resolved by non-binding dispute resolution shall be conclusively determined by arbitration as follows:

- A. Within 10 days after notice by any party to the other requesting arbitration, one arbitrator shall be appointed for each party by that party. Notice of such appointment when made shall be given by that party to the other.
- B. The two arbitrators shall forthwith choose a third arbitrator after appointment of the second to act with them. If either party fails to appoint an arbitrator or if the two arbitrators shall fail to choose a third arbitrator within twenty (20) days of the appointment of the second, upon application of either party, an arbitrator or the third arbitrator shall then be promptly appointed by the then presiding judge of the Superior court of the State of California in and for the County of Sacramento acting in his or her individual capacity.
- C. Except as provided herein to the contrary, the arbitration shall be in conformity with and subject to sections 1280 through 1294.2 of the Code of Civil Procedure of California.
- D. The arbitrators shall conduct hearings in the City of Sacramento, State of California. The arbitrators shall proceed with due dispatch and shall, if reasonably possible, make a decision within sixty days after the appointment of third arbitrator. The decision of any two of three arbitrators shall be binding, final and conclusive on the parties. Such decision shall be in writing and delivered to the parties in such form that a judgment may be entered in any court of the State of California having jurisdiction thereof.
- E. Each party shall pay all costs of the arbitrator appointed by that party. All other costs of the arbitration shall be shared equally.

The arbitrators appointed pursuant to this provision shall be independent and knowledgeable in radio communication matters as well as the subject matter of the dispute or controversy. It is agreed that the decision of the arbitrators may include equitable remedies as the arbitrators may deem appropriate. In the event of emergency or other circumstances which require a decision of the arbitrators sooner than the above timetable will permit, the arbitrators shall meet and confer immediately upon appointment and establish a timetable to complete the arbitration and render a decision on a timely basis as required by the circumstances.

**35. AMBIGUITIES**

The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity shall be presumed to be construed against either party.

**36. INTEGRATION**

This Agreement embodies the entire agreement of the parties in relation to the scope of services herein described, and no other understanding whether verbal, written, or otherwise exists between the parties.

**37. AMENDMENTS**

This agreement may be modified by presentation of the proposed changes and affirmative majority vote of the SMG.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year first hereinabove appearing.

**COUNTY OF SACRAMENTO**  
**a Political Subdivision of**  
**the State of California**

**CITY OF ELK GROVE**

By: \_\_\_\_\_  
Chief Information Officer

By: \_\_\_\_\_  
Laura S. Gill  
City Manager

Approved as to Form

Approved as to Form

By: \_\_\_\_\_  
Supervising Deputy County Counsel

By: \_\_\_\_\_  
Susan Cochran  
City Attorney

Attest: \_\_\_\_\_  
Jason Lindgren  
Interim City Clerk

**SACRAMENTO REGIONAL RADIO COMMUNICATIONS SYSTEM  
LICENSING AGREEMENT**

**ATTACHMENT 1**

*The City of Elk Grove is a continuing Participant of SRRCS; there is no Buy-in Fee.*

**SACRAMENTO REGIONAL RADIO COMMUNICATIONS SYSTEM  
LICENSING AGREEMENT**

**ATTACHMENT 2**

**Current SRRCS Participants**

The California Department of Corrections and Rehabilitation  
The California Department of Transportation (Caltrans)  
The City of Citrus Heights including the Police and other City departments  
The City of Folsom including the Police and other City departments  
The City of Elk Grove including the Police and other City departments  
The City of Rancho Cordova including other City departments  
The City of Sacramento including the Police, Fire, and other City departments  
The City of West Sacramento including the Police, Fire, and other City departments  
The County of Sacramento including the Sacramento Sheriff's Department, the Department of Airports, the Coroner, the District Attorney, and other County departments  
The Elk Grove Unified School District  
The Elk Grove Water Services  
The Los Rios Community College District  
The Sacramento Regional Fire/EMS Communications Center including Cosumnes River Community Services District Fire Department, Courtland Fire Protection District, Folsom Fire Department, Herald Fire Protection District, Sacramento City Fire Department, Sacramento Metropolitan Fire District, Walnut Grove Fire Protection District, Wilton Fire Protection District, and the hospital's within the regional area  
The Sacramento Regional Transit District  
The Sacramento Transportation Authority  
The Twin Rivers Unified School District Police Services

**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2010-96**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )

***I, Jason Lindgren, Interim City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on May 26, 2010 by the following vote:***

**AYES :        COUNCILMEMBERS:     *Scherman, Detrick, Cooper, Davis, Hume***

**NOES:        COUNCILMEMBERS:     *None***

**ABSTAIN :    COUNCILMEMBERS:     *None***

**ABSENT:      COUNCILMEMBERS:     *None***

  
\_\_\_\_\_  
**Jason Lindgren, Interim City Clerk  
City of Elk Grove, California**