

AGREEMENT FOR COMMUNICATIONS FACILITIES MANAGEMENT AND CONSULTING SERVICES

This Agreement is made and entered into by and between the County of Lake, hereinafter referred to as "County", and Peter J. Gruchawka doing business as Accord Communications, hereinafter referred to interchangeably as either "Accord" or "Contractor", and collectively referred to as the "parties".

RECITALS

WHEREAS, located on certain properties (the "**Properties**") owned or otherwise legally controlled by County are improvements comprising telecommunications sites, including towers, radio buildings, and associated equipment employed for transmitting and receiving radio and other telecommunications signals and for conducting telecommunications activities related thereto (the "**Communications Facilities**"); and

WHEREAS, County desires to operate and maintain existing **Communications Facilities** and to develop and/or enhance the use of the existing and new **Communications Facilities** on the **Properties**; and

WHEREAS, Accord is engaged in the business of managing communications sites including but not limited to their development, construction, installation, operation, marketing, and licensing, and the management and maintenance of antenna systems, satellite receiving stations, microwave transmission equipment, and related electronic facilities and equipment designed for receiving and/or transmitting television, radio, video, voice, data and satellite signals for telecommunications purposes and other related and/or compatible uses and services; and

WHEREAS, Accord desires to provide to County **Consulting and Management Services**, as hereinafter defined, in connection with the management of existing and new **Communications Facilities** on the **Properties**, and County desires to secure such services from Accord.

NOW, THEREFORE, in consideration of the above recitals and of the mutual representations, conditions, covenants, and other valuable consideration, the parties agree as follows:

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, Accord shall provide to County the services described in the Scope of Services attached hereto and incorporated herein as Exhibit B at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibits A/B/C/D, the Agreement shall prevail.
2. **TERM.** This Agreement shall commence on July 1, 2018, and shall terminate as hereinafter provided. In the event County desires to temporarily continue services after the expiration of this Agreement, such continuation shall be deemed on a month-to-month basis, subject to the same terms, covenants, and conditions contained herein.

**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

3. COMPENSATION. Contractor has been selected by County to provide the services described hereunder in Exhibit "B" (Scope of Services), attached hereto.

The County shall compensate Contractor for services rendered, in accordance with the provisions set forth in Exhibit "C" (Fiscal Provisions), attached hereto, provided that Contractor is not in default under any provisions of this agreement. Compensation to Contractor is contingent upon appropriation of federal, state and county funds.

4. TERMINATION. This Agreement may be terminated by mutual consent of the parties or by either party upon 30 days written notice.

In the event of non-appropriation of funds for the services provided under this Agreement, County may terminate this Agreement, without termination charge or other liability.

Upon termination, Contractor shall be paid a prorated amount for the services provided up to the date of termination.

5. MODIFICATION. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning scope of services which do not affect the compensation may be modified by mutual written consent of Contractor and County executed by the County Public Services Director.

6. NOTICES. All notices between the parties shall be in writing addressed as follows:

County of Lake
Public Services Department
333 Second Street
Lakeport, CA 95453
Attn: Public Services Director

Contractor:
307 Cypress Avenue
P.O. Box 670
Kenwood, CA 95452
Attn: Pete Gruchawka

7. EXHIBITS. The Agreement Exhibits, as listed below, are incorporated herein by reference:

Exhibit A – Definitions
Exhibit B – Scope of Services
Exhibit C – Fiscal Provisions
Exhibit D – Compliance Provisions

8. TERMS AND CONDITIONS. Contractor warrants that it will comply with all terms and conditions of this Agreement and Exhibits, and all other applicable federal, state and local laws, regulations and policies.

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**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

9. INTEGRATION. This Agreement, including attachments, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior Agreements, related proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties.

10. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

Executed at Lakeport, California on June 26, 2018.

COUNTY OF LAKE

CONTRACTOR

CHAIR, Board of Supervisors

Peter J. Gruchawka

ATTEST:
CAROL J. HUCHINGSON
Clerk to the Board of Supervisors

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By: _____

By:  _____

**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

EXHIBIT "A" – DEFINITIONS

Consulting and Management Services may include, but not be limited to the following:

1. Manage and/or assist the County in managing the development, construction, installation, operation, marketing, and licensing of specified County **Communications Facilities** including, but not limited to, management and maintenance of antenna systems, satellite receiving stations, microwave transmission equipment, and related electronic facilities and equipment designated for receiving and/or transmitting television, radio, video, voice, data and satellite signals for telecommunications purposes and other related and/or compatible uses and services.
2. Market and/or assist the County in marketing the **Communications Facilities** and soliciting new licensees, lessees and sublessees to use the **Communications Facilities** for telecommunications and related purposes (collectively "**Tenants**"); Assist the County in preparing and negotiating licenses, sublicenses, leases, subleases and other agreements relating to use of the **Communications Facilities** for telecommunications and related purposes on substantially such forms as may be recommended by Accord and approved by County (collectively, "**Tenant Contracts**"); quote rates and terms for **Tenant Contracts** and respond to inquiries from existing **Tenants** or potential customers of the **Communications Facilities**.
3. Assist in planning, engineering, organizing, and supervising the technical operation of the **Communications Facilities**, including: supervision of authorized contractors and subcontractors at the **Communications Facilities**; recommend operating procedures and standards for the **Communications Facilities**; analyze technical and operating problems arising at the **Communications Facilities**; coordinate the repair if possible and/or supervise the maintenance, installation, supply and replacement of equipment at the **Communications Facilities**; apply its best efforts to cause the orderly use and growth of the **Communications Facilities** by wireless communication networks.
4. Act as County's representative and provider of **Management Services** for the **Communications Facilities** in accordance with the terms of this Agreement.

**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

EXHIBIT "B" – SCOPE OF SERVICES

1. **CONTRACTOR RESPONSIBILITIES.** As agreed to by the County and Accord on a case by case basis, Accord shall provide **Consulting and Management Services** relative to the **Communications Facilities** now located or any hereafter constructed on the **Properties** for and on behalf of County during the Term of this Agreement. Accord shall perform its duties, utilize its best efforts, and exercise the highest degree of good faith and professional competence so as to provide County with **Consulting and Management Services** for the **Communications Facilities** that comply with generally accepted standards of practice in effect at the time of performance. Except as provided above or as expressly set forth herein, Accord makes no other warranty, either express or implied, as to the **Consulting and Management Services** to be provided hereunder.

2. **RECORDS RETENTION.** Contractor shall prepare, maintain and/or make available to County upon request, all records and documentation pertaining to this Agreement, including financial, statistical, property, recipient and service records and supporting documentation for a period of five (5) years from the date of final payment of this Agreement. If at the end of the retention period, there is ongoing litigation or an outstanding audit involving the records, Contractor shall retain the records until resolution of litigation or audit. After the retention period has expired, Contractor assures that confidential records shall be shredded and disposed of appropriately.

3. **COUNTY RESPONSIBILITIES.** County shall make the **Communications Facilities** available for the provision of **Consulting and Management Services** by Accord and the further development and/or enhancement of their use by Accord in accordance with the terms of this Agreement.

County shall be solely responsible for the payment of all real and personal property taxes of County, costs of Capital Improvements, and deductible amounts under the general property and liability insurance maintained by County for the **Communications Facilities**.

County shall use its best efforts to provide Accord, and its respective employees, officers, directors, affiliates, agents, subcontractors, partners or stockholders (collectively "Agents") and to **Tenants** to the extent necessary and appropriate, with access to the **Properties** and the **Communications Facilities** twenty-four (24) hours per day, three hundred sixty-five (365) days per year, during the term hereof, and as necessary, to grant rights to Accord for ingress and egress between the **Properties** and the **Communications Facilities** and the most convenient public roads.

It is understood by County that Accord is not licensed as an attorney or real estate broker and County should not act or refrain from acting on the basis of any advice provided by Accord without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from an attorney and/or real estate broker licensed in the state of California. All licenses, sublicenses, leases, subleases and other agreements relating to use of the **Communications Facilities** shall be approved in their final form by County before execution by any party.

**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

EXHIBIT "C" – FISCAL PROVISIONS

1. COMPENSATION.

1.1 Accept as otherwise set forth herein, for services rendered in accordance with the provisions set forth in the Agreement, County agrees to compensate Accord for services under this Agreement, including travel time, at a rate of \$180.00 per hour. Said compensation is inclusive of out-of-pocket expenses. No extraordinary expenses will be reimbursed unless it is approved by COUNTY in advance of the expenditure.

1.2 Compensation Increases. Beginning upon the first (1st) anniversary of this Agreement on each anniversary thereafter during the Term (as hereinafter defined) of this Agreement, the annual hourly compensation shall increase by \$10.00 per hour.

2. INVOICES.

2.1 Contractor's invoices shall be submitted in arrears on a monthly basis, or such other time that is mutually agreed upon in writing, and shall be itemized and formatted to the satisfaction of the County.

2.2 County shall make payment within 20 business days of an undisputed invoice for the compensation stipulated herein for supplies delivered and accepted or services rendered and accepted, less potential deductions, if any, as herein provided. Payment on partial deliverables may be made whenever amounts due so warrant or when requested by the Contractor and approved by the Assistant Purchasing Agent.

3. AUDIT REQUIREMENTS AND AUDIT EXCEPTIONS

3.1 Contractor warrants that it shall comply with all audit requirements established by County and will provide a copy of Contractor's Annual Independent Audit Report, if applicable.

3.2 County may conduct periodic audits of Contractor's financial records, notifying Contractor no less than 48 hours prior to scheduled audit. Said notice shall include a detailed listing of the records required for review. Contractor shall allow County, or other appropriate entities designated by County, access to all financial records pertinent to this Agreement.

3.3 Contractor shall reimburse County for audit exceptions within 30 days of written demand or shall make other repayment arrangements subject to the approval of County.

**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

EXHIBIT "D" – COMPLIANCE PROVISIONS

1. **INFORMATION INTEGRITY AND SECURITY.** Contractor shall immediately notify County of any known or suspected breach of personal, sensitive and confidential information related to Contractor's work under this Agreement.

2. **NON-DISCRIMINATION.** Contractor shall not unlawfully discriminate against any qualified worker or recipient of services because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age.

3. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

3.1 The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:

A. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

B. Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the preceding paragraph; and

D. Have not, within a three-year period preceding this Agreement, had one or more public transactions terminated for cause or default.

3.2 Contractor shall report immediately to County, in writing, any incidents of alleged fraud and/or abuse by either Contractor or Contractor's subcontractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by County.

4. **AGREEMENTS IN EXCESS OF \$100,000.** Contractor shall comply with all applicable orders or requirements issued under the following laws:

**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

- 4.1 Clean Air Act, as amended (42 USC 1857).
- 4.2 Clean Water Act, as amended (33 USC 1368).
- 4.3 Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.)
- 4.4 Environmental Protection Agency Regulations (40 CFR, Part 15 and Executive Order 11738).

5. INDEMNIFICATION AND HOLD HARMLESS.

Each party shall indemnify and hold the other harmless against all actions, claims, demands, and liabilities and against all losses, damage, cost, expenses, and attorney's fees, arising directly or indirectly out of an actual or alleged injury to a person or property in the same proportion that its own acts and/or omissions are attributed to said claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party.

Contractor's obligations under this Section shall survive the termination of the Agreement.

6. STANDARD OF CARE. Contractor represents that it is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Contractor or designated subcontractors, in a manner according to generally accepted practices.

7. INTEREST OF CONTRACTOR. Contractor assures that neither it nor its employees has any interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder.

8. DUE PERFORMANCE – DEFAULT. Each party agrees to fully perform all aspects of this agreement. If a default to this agreement occurs then the party in default shall be given written notice of said default by the other party. If the party in default does not fully correct (cure) the default within 15 days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time period for corrective action of the party in default may be extended in writing executed by both parties, which must include the reason(s) for the extension and the date the extension expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

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AGREEMENT FOR COMMUNICATIONS FACILITIES MANAGEMENT AND CONSULTING SERVICES

9. INSURANCE.

9.1 Contractor shall procure and maintain Workers' Compensation Insurance for all of its employees.

9.2 Contractor shall procure and maintain Comprehensive Public Liability Insurance, both bodily injury and property damage, in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverage: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's liability.

9.3 Contractor shall procure and maintain Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased and non-owned vehicles used in connection with Contractor's business in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence.

9.4 Contractor shall not commence work under this Agreement until it has obtained all the insurance required herein above and submitted to County certificates of insurance naming the County of Lake as additional insured. Contractor agrees to provide to County, at least 30 days prior to expiration date, a new certificate of insurance.

9.5 In case of any subcontract, Contractor shall require each subcontractor to provide all of the same coverage as detailed hereinabove. Subcontractors shall provide certificates of insurance naming the County of Lake as additional insured and shall submit new certificates of insurance at least 30 days prior to expiration date. Contractor shall not allow any subcontractor to commence work until the required insurances have been obtained.

9.6 For any claims related to the work performed under this Agreement, the Contractor's insurance coverage shall be primary insurance as to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

9.7 The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The County, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds and shall be added in the form of an endorsement to Contractor's insurance on Form CG 20 10 11 85 or other Form acceptable to County. Contractor shall not commence work under this Agreement until Contractor has had delivered to County the Additional Insured Endorsements required herein.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

9.8 Insurance coverage required of Contractor under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude County from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of County to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

9.9 Any failure of Contractor to maintain the insurance required by this section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.

10. ATTORNEY'S FEES AND COSTS. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such part may be entitled.

11. ASSIGNMENT. Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of County except that claims for money due or to become due Contractor from County under this Agreement may be assigned by Contractor to a bank, trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to County. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

12. PAYROLL TAXES AND DEDUCTIONS. Contractor shall promptly forward payroll taxes, insurances, and contributions to designated governmental agencies.

13. INDEPENDENT CONTRACTOR. It is specifically understood and agreed that, in the making and performance of this Agreement, Contractor is an independent contractor and is not an employee, agent or servant of County. Contractor is not entitled to any employee benefits. County agrees that Contractor shall have the right to control the manner and means of accomplishing the result Agreed for herein.

Contractor is solely responsible for the payment of all federal, state and local taxes, charges, fees, or contributions required with respect to Contractor and Contractor's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security and payroll tax withholding.)

14. OWNERSHIP OF DOCUMENTS. All non-proprietary reports, drawings, renderings, or other documents or materials prepared by Contractor hereunder are the property of County.

15. SEVERABILITY. If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

**AGREEMENT FOR COMMUNICATIONS FACILITIES
MANAGEMENT AND CONSULTING SERVICES**

- 16. ADHERENCE TO APPLICABLE DISABILITY LAW.** Contractor shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.
- 17. HIPAA COMPLIANCE.** Contractor will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.
- 18. SAFETY RESPONSIBILITIES.** Contractor will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. Contractor agrees that in the performance of work under this Agreement, Contractor will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.
- 19. JURISDICTION AND VENUE.** This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. Contractor waives any right of removal it might have under California Code of Civil Procedure Section 394.
- 20. RESIDENCY.** All independent contractors providing services to County for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.
- 21. NO THIRD-PARTY BENEFICIARIES.** Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.