



# MARIPOSA COUNTY

Administration • 966-3222



## RESOLUTION - ACTION REQUESTED 2018-18

MEETING: January 9, 2018  
TO: The Board of Supervisors  
FROM: Dallin Kimble, County Administrative Officer  
RE: Agreement with Caltrans for Radio Tower / Snow Plowing in Fish Camp

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### RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with the State of California Department of Transportation (Caltrans) to Install an Antenna Pole for Shared State and County Use at the Fish Camp Fire Station; and Authorize the Board of Supervisors Chair to Sign the Agreement.

Caltrans would like to utilize radio room space in the Mariposa County Fire Department's station in Fish Camp and install an antenna pole for use by Caltrans and County Fire. In exchange, Caltrans would become responsible for plowing the snow on the road to the fire station.

This mutually beneficial arrangement provides an opportunity for improved communications. It also saves the County money that had previously been spent on contracting or conducting snow plow activities at the fire station. Staff recommends approval of the agreement.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

This would be a new agreement for Mariposa County.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the agreement. The County will continue to contract or conduct snow plow activities at the fire station.

### FINANCIAL IMPACT:

None

### ATTACHMENTS:

Revised Draft Lease Agreement-Fish Camp (DOCX)

**RESULT:** ADOPTED [UNANIMOUS]

**MOVER:** Marshall Long, District III Supervisor

**SECONDER:** Miles Menetrey, District V Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

**STANDARD LEASE COMMUNICATIONS SITE**

<u>LEASE COVERING PREMISES</u> <u>LOCATED AT</u> Fish Camp Mariposa County Fire Department - Company 33
<u>LESSOR'S FED. TAX. I.D., NO. OR</u> <u>SOCIAL SECURITY NO.</u> Tax ID #
<u>TENANT AGENCY</u> California Department of Transportation 56LA56009200

THIS LEASE ("Lease") is made as of 01/09/2018 by and between the County of Mariposa, hereinafter called the "LESSOR", and the State of California, Department of Transportation, hereinafter called the "STATE";

**WITNESSETH**DESCRIPTION

1. The LESSOR hereby leases unto the STATE and the STATE hereby leases from the LESSOR the certain premise consisting of 24 x 24 square feet of floor space for one radio equipment rack(s), one space on Lessor's land to build a tower, and with related power, situated at LESSOR's facility referred to as Fish Camp, in Mariposa County, State of California, on Lessor's parcel more particularly described as follows:

- a. Assessor's Parcel Number 009-170-019, with Latitude of 37-28-29.8 and Longitude of -119-38-26.8 ("Premises")

TERM

2. The term of this Lease shall commence on 01/09/2018 (the "Commencement Date"), and shall end on 01/08/2023 (the "Expiration Date"), with Three (3) Five-Year (5 year) options to extend, and the rights of termination set forth in this Agreement.

HOLDOVER

3. In the event the STATE remains in possession of the Premises after the expiration of the Lease term, or any extension thereof, this Lease shall be automatically extended on a month-to-month basis, subject to thirty (30) days termination by either party.

**EARLY TERMINATION**

4. Until State begins installation of the 30-foot antenna or the 20 AMP circuit, either party may terminate this Lease at any time during the term of the Lease, by giving written notice to the other party at least ninety (90) days prior to the date when such termination shall become effective. After State begins installation of the 30-foot antenna or the 20 AMP circuit, in the event of a breach of any of the terms, covenants or conditions of this Lease by either party, the non-breaching party may immediately terminate this Lease if such default continues for a period of thirty (30) days after receipt of written notice from the non-breaching party to the breaching party.

**RENT**

5. In lieu of rent, the STATE will plow the road to the radio site during the winter to provide access to the State and County radio equipment, and State will install a 30-foot antenna pole in a location agreed upon by both parties and a 20 AMP circuit in the equipment site for the State equipment. No additional consideration is payable by either party under this Lease. It is agreed that plowing the State Highway will have priority over any work on the county road or the radio site. Any work on the county road or radio site is subject to personnel and equipment availability. The State shall not be responsible for normal wear and tear to the road or to the radio site that results from winter plowing operations.

Correspondence shall be sent to:

Mr. Dallin Kimble  
County Administrative Office  
Mariposa County  
5100 Bullion St., 2<sup>nd</sup> Floor  
P.O. Box 784  
Mariposa, CA 95338

**NOTICES**

6. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in person or five (5) days after written notice is deposited in the United States Mail, certified, postage prepaid and addressed as follows:

To the  
LESSOR: Mr. Dallin Kimble  
County Administrative Officer  
5100 Bullion St., 2nd Floor  
P.O. Box 784  
Mariposa, CA 95338

To the  
STATE: Department of Transportation  
Office of Radio Communications  
1120 N Street, Mail Station 77  
Sacramento, CA 95814

Department of Transportation  
District 6 Maintenance  
1352 W. Olive Avenue  
P.O. Box 12616  
Fresno, CA 93778-2616

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE PREMISES ADDRESS

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

ACCESS

7. The STATE shall have the non-exclusive right during the term of this Agreement to use the existing improved and unimproved roads and other means of access to the Premises. If such roads or other means of access are separated by gates, all necessary keys and/or lock combinations shall be issued to the STATE. State will also receive from LESSOR all necessary keys and/or lock combinations that are necessary for the STATE to enter into the radio vault that houses STATE's radio equipment upon execution of this Agreement. Upon expiration or other termination of this Agreement, STATE's access and rights shall be terminated and STATE will promptly return all keys to LESSOR.

SUBLET & ASSIGN

8. The STATE may assign this Lease or sublet the Premises with the prior written consent of the LESSOR, which shall not be unreasonably withheld.

QUIET POSSESSION

9. The LESSOR agrees that the STATE, shall peaceably and quietly have, hold, and enjoy the Premises without suit, trouble, or hindrance from the LESSOR or any person claiming under LESSOR.

INSPECTION

10. The LESSOR reserves the right to enter and inspect the Premises at reasonable times, and to render services and make any necessary repairs to the Premises.

MAINTENANCE & REPAIR

11. LESSOR shall, at its own expense and to the reasonable satisfaction of the State, maintain the Premises and any improvements thereto in good order and repair, in a neat and safe condition, and in accordance with applicable local, state and federal laws, orders, rules and regulations.

A. The STATE shall, at its own expense and to the reasonable satisfaction of the LESSOR, keep and maintain the portion of the premise floor space for radio equipment rack(s), and space on Lessor's land to build a tower, and related power, occupied by the State, in good order and repair and in a neat and safe condition and

in accordance with applicable local, state and federal laws, orders, rules and regulations.

### INDEMNITY

12. The STATE is generally prohibited by law from indemnifying other parties. However, to the extent permitted by law, each party agrees to indemnify and save each other, its officers, agents, and employees, harmless from any loss, damage, or liability which shall be caused by or may arise from the negligence, willful misconduct or strict liability of the indemnifying party, or its agents, employees, representatives, contractors, and from all claims, demands, and causes of action that may be brought against each party, its successors, or assigns, caused by, arising out of, or in any way connected with the exercise by the parties of any of the rights herein granted.

### INSURANCE

13. LESSOR understands and agrees to the following:

- A. The State of California has elected to be insured for its motor vehicle and general liability exposures through a self-insurance program. The State Attorney General administers the general liability program through an annual appropriation from the General Fund. The Office of Risk and Insurance Management administers the motor vehicle liability program.
- B. Under this form of insurance, the STATE and its employees (as defined in Section 810.2 Government Code) are insured for any tort liability that may develop through carrying out official activities, including STATE official operations on non-STATE owned property. Should any claims arise by reason of such operations or under an official contract or license agreement, they should be referred to the Attorney General, State of California, Tort Liability Section, and P.O. Box 944255, Sacramento, California 94244-2550. Claims arising from operations of a STATE owned vehicle should be forwarded to the Office of Risk and Insurance Management, P.O. Box 989052 MS-403, West Sacramento, California 95798-9502.
- C. The State of California has entered into a Master Agreement with the State Compensation Insurance Fund to administer workers' compensation benefits for all State employees, as required by the Labor Code. (Exhibit A)

### SUBROGATION

14. To the extent authorized by any fire and extended coverage insurance policy issued to LESSOR on the herein Premises, LESSOR hereby waives the subrogation rights of the insurer, and releases the STATE from liability for any loss or damage covered by said insurance.

### UTILITIES & SERVICES

15. LESSOR shall provide commercial and standby electric service at no additional cost to STATE, to be used jointly by STATE and any other parties designated by LESSOR.

### ADDITION OF SERVICES & UTILITIES

16. STATE may run electric lines, telephone lines and/or other communication facilities to the demised Premises and shall have the right of ingress and egress to and from the same over other lands owned by the LESSOR, adjacent to the Premises and along the course or courses designated by the LESSOR. The cost of any installation shall not be the responsibility of the LESSOR.

## ELECTRONIC EQUIPMENT STANDARDS

17. With regard to specific statutory site standards and any other statutes pertaining to the use of electronic equipment, STATE agrees to install, maintain, and operate its electronic equipment in accordance with all such requirements. If STATE was in occupation of this site under a previous Lease, STATE shall have Two hundred (200) days from the commencement of this Lease to conform to any new statutory site standards. The STATE shall display on each piece of equipment the appropriate license from the federal regulatory agency.

## ELIMINATION OF INTERFERENCE

18. In the event that the STATE'S installation or operation obstructs or interrupts the radio or electronic equipment of the LESSOR or any tenant at the Premises at the time of the STATE's initial occupancy of the Premises, the STATE (also known as LESSEE) shall, upon receipt of written notification, immediately cease the interfering installation or operation and provide written notice to the LESSOR. In the event of LESSEE'S inability or refusal to immediately-cessate such interference, LESSOR may, at its option, document the interference and notify the Federal Communications Commission (FCC), disable LESSEE'S interfering equipment, or immediately terminate this Lease. If the LESSOR disables the interfering equipment, the LESSOR shall be responsible for damages and liabilities arising from the equipment being disabled, including physical injury and loss of life.

- (A) Within 5 (five) days after providing written notice to the LESSOR, LESSEE shall perform a preliminary investigation, tentatively identify the source of the interference, and develop a tentative solution to effectively mitigate or eliminate the source of the interference. The LESSEE shall review these matters with the LESSOR, and determine whether the tentative solution to mitigate or eliminate interference can be implemented without the assistance of the other tenants who lawfully occupy the Premises. Where the tentative solution can be implemented without the assistance of the other tenants, the LESSEE shall work with the LESSOR to implement the tentative solution.
- (B) In the event a tentative solution cannot be implemented without the assistance of the other tenants, the LESSOR shall provide notice to the other tenants that the interference has been caused, the tentative identification of the source of the interference, and the tentative solution to effectively mitigate or eliminate the source of the interference.
- (C) The LESSOR'S notice shall convene a meeting of the tenants of the Premises that will occur no later than 10 (ten) days after written notice is given by the LESSOR. The parties may bring third party professionals to the meeting in order to assist them. At the meeting, any of the parties shall have the opportunity to verify the existence of the interference, the tentative finding of the source of the interference, and the merits of the implementation of the tentative solution. If the majority of the parties agree upon the source of the interference and the proposed solution, the party that is determined to be the source of the interference shall (at its own cost) implement the proposed solution or take such other actions as are required to effectively mitigate or eliminate the interference. However, the party that is deemed to be the source of the interference does not

need to take any action if they had a prior right to use a frequency or set of frequencies, and the interference arises only because a subsequent tenant proposes to operate on a frequency that overlaps or interferes with a frequency that was previously approved by the FCC and LESSOR for use by the pre-existing tenant.

- (D) If the party that is deemed to be the source of the interference does not agree that they are the source of the interference or they are required to eliminate the interference, they, the LESSEE or LESSOR, may initiate legal action to enforce their respective rights under their respective leases.
- (E) LESSOR agrees it will not lease or rent use of the Premises to another party if such use would cause interference with any pre-existing tenant's then-in-use frequencies and signals, or with said tenant's equipment, or result in said tenant's use of the Premises causing interference with the other person's or entities' frequencies or signals.
- (F) If the LESSOR breaches its obligation under this Section 18, upon receiving notice from a pre-existing tenant of any such breach, LESSOR (at its sole cost and expense) will take all steps necessary to correct and eliminate such interference, including, without limitation, enforcing provisions in any license or other agreement between LESSOR and the other tenants causing such interference that compel such parties to cease operation, modify their equipment and/or antennas, or remove their equipment and/or antennas from the facilities or towers owned or leased and/or managed by the LESSOR at the Premises.
- (G) All leases affecting the Premises will include these provisions in their lease with the LESSOR.

#### AMENDMENTS & MODIFICATIONS

- 19. It is mutually understood and agreed that no amendments or modifications of the terms of this Lease shall be valid unless made in writing and signed by authorized representatives of the parties hereto, and that no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

#### SERVICE CONTACTS

- 20. Within fifteen (15) days after occupancy of the Premises by the STATE, LESSOR shall provide the STATE with the name, address, and telephone number of an agency or person who will serve as the contact of service with regard to LESSOR's responsibilities under this Lease regarding repairs, maintenance, and servicing of the Premises and any or all related equipment, fixtures, and appurtenances.

#### SURRENDER OF POSSESSION

- 21. Upon termination of this Lease, the STATE will surrender to the Premises to the LESSOR in as good order and condition as when it was received, except for reasonable use and wear and damage caused by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which STATE has no control. The STATE shall have no duty to remove any improvements or fixtures placed by it on the Premises or to restore any portion of the Premises altered by it, but STATE will remove improvements or fixtures to the extent such items cause damage to the Premises.

ESSENCE OF TIME

22. Time is of the essence of this Lease, and the terms and provisions of this Lease shall extend to and be binding upon, and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the respective parties

**IN WITNESS WHEREOF**, this Lease has been executed by the parties hereto as of the date written below.

LESSOR

LESSEE

COUNTY OF MARIPOSA

STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION:

APPROVED:

APPROVED:

By: 

By: 

Board of Supervisors Chair

Ferdinand Milanés  
Chief Office of Radio Communications

Date: 4/17/18

Date: 5/25/18

ATTEST:

By: 

By: 

René LaRoche, Clerk of the Board

Steve Fuller, CT Maintenance Manager II

APPROVED AS TO FORM:





Steven W. Dahlem, County Counsel

Randall Rodriguez, Attorney



EXHIBIT A



Governor Edmund G. Brown Jr.

July 1, 2017

**STATE OF CALIFORNIA  
PUBLIC LIABILITY AND WORKERS' COMPENSATION INSURANCE  
FISCAL YEAR JULY 1, 2017 / JUNE 30, 2018**

To Whom It May Concern:

In accordance with Government Code section 11007.4, the State of California has elected to be self-insured for liability exposures. Under this form of insurance, the State and its employees acting in the course and scope of their employment are insured for tort liability arising out of official State business. All claims against the State of California based on tort liability should be presented as a government claim to the Government Claims Program, P.O. Box 989052 MS 414, West Sacramento, CA 95798-9052. (Gov. Code section 900, et. seq.) Internet link: <http://www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx>.

The State of California has also elected to be insured for its motor vehicle liability exposures through the State Motor Vehicle Liability Self-Insurance Program (VELSIP). This program provides liability coverage arising out of the operations of motor vehicles used by state employees for official state business (California Vehicle Code Sections 17000 and 17001). Motor vehicle liability claims against the State of California should be presented to the Office of Risk and Insurance Management, P.O. Box 989052 MS-403, West Sacramento, CA 95798-9052, (800) 900-3634, [claims@dgs.ca.gov](mailto:claims@dgs.ca.gov). If your motor vehicle liability claim is not resolved within six months from the date of loss, California law requires you to file a formal claim with the Government Claims Program, P.O. Box 989052 MS 414, West Sacramento, CA 95798-9052. (Gov. Code section 900, et. seq.) Internet link: <http://www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx>.

The State of California has a Master Agreement with the State Compensation Insurance Fund regarding workers' compensation benefits for all state employees, as required by the Labor Code.

Sincerely,

Lynan Graf, CRIS  
Associate Risk Analyst  
Insurance Services Unit