

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is entered into by and between the City of Pomona (referred to herein as "City") and the California State Polytechnic University, Pomona (referred to herein as "Cal Poly Pomona" or "Licensee").

WHEREAS, on September 8, 2003, the City Council of the City of Pomona authorized the City's participation in the Joint Powers Authority ("JPA") for the Interagency Communications Interoperability System (referred to herein as "ICI System");

WHEREAS, the ICI System provides its JPA members with a shared wide-area radio communications network, which assists members with meeting or enhancing their public safety radio communications needs, and which the JPA members have determined to be the most effective and economical radio communications network for all participating public entities;

WHEREAS, on October 2, 2003, the ICI System JPA approved the City's membership in the JPA;

WHEREAS, the City's Radio System (as defined below) is part of the ICI System and provides the City with a wide-area radio network;

WHEREAS, the City has the legal authority and the technical ability to host additional radio units on the City's Radio System;

WHEREAS, on March 16, 2009, the City and Cal Poly Pomona (referred to herein individually as "Party" and jointly as "Parties") entered into a Wireless Communications Subscriber Agreement to allow Cal Poly Pomona's University Police Department to use the City's Radio System, which is on the ICI System;

WHEREAS, said Subscriber Agreement has since expired and Cal Poly Pomona wishes to continue using the City's Radio System; and

WHEREAS, the Parties desire to execute this Agreement, which grants Cal Poly Pomona a license to use the City's Radio System.

NOW, THEREFORE, the City of Pomona, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants Cal Poly Pomona a license to use the City's Radio System, subject to the following terms and conditions:

1. Definitions. The following definitions shall apply for purposes of this Agreement:

- A.** "City's Radio System" means the trunked radio communications system owned and operated by the City (used by the City's Police Department and Code Enforcement Division), and which is part of the ICI System by means of the City's membership in the ICI System JPA.
- B.** "Subscriber Radios" means hand-held mobile, control station, and base station two-way radios and associated equipment owned or used by Cal Poly Pomona, programmed to be compatible with the City's Radio System.

2. Term. The term of this Agreement shall commence on _____, 2017, and shall expire five (5) years thereafter, unless otherwise terminated or amended by the Parties in accordance with this Agreement.

3. License Fee.

- A.** For use of the City's Radio System, Cal Poly Pomona shall, annually and in advance, pay the City a License Fee of Twenty-Five Dollars (\$25.00) per radio, per month, for each Subscriber Radio Cal Poly Pomona connects to the City's Radio System pursuant to this Agreement.
- B.** If, during any year of the term of this Agreement, Cal Poly Pomona requests, and the Chief of Police approves, additional Subscriber Radios, then Cal Poly Pomona shall pay in advance the License Fees owed for said additional Subscriber Radios for the balance of the then-current year of the Agreement term. The per-month, per-radio, License Fees for additional Subscriber Radios shall not be prorated, but rather, shall be charged for the full month the additional Subscriber Radios begin connecting to the City's Radio System.
- C.** If, during any year of the term of this Agreement, Cal Poly Pomona terminates the Agreement pursuant to Section 5 below, Cal Poly Pomona may submit to the City a written request for a refund of the prepaid license fee for the then-current year, less the license fees incurred as of the termination date stated on the notice of termination (without proration). (*i.e.* The refund shall not exceed the total of the monthly license fees covering the balance of the then-current year.)
- D.** Cal Poly Pomona's roaming fees are not covered by this Agreement, and are governed by Cal Poly Pomona's agreement with Interagency Communications Interoperability System.

4. Use.

- A.** Pursuant to the License granted by the City to Cal Poly Pomona in this Agreement, Cal Poly Pomona may operate one hundred and two (102) Subscriber Radios on the City's Radio System. Each Subscriber Radio on the City's Radio System shall receive a Subscriber ID from the City.
- B.** Additional Subscriber Radios.
 - i.** Upon receiving written requests for additional Subscriber IDs for Cal Poly Pomona, the Chief of Police may grant such requests in writing. Adjustments to the number of Cal Poly Pomona's Subscriber Radios on the City's Radio System shall not require a formal amendment.
 - ii.** Cal Poly shall pay additional License fees (identified in Section 3 above) prior to receiving Subscriber IDs for said additional Subscriber Radios.
- C.** Cal Poly Pomona is responsible for maintenance and repair of its Subscriber Radios and ancillary equipment.
- D.** Cal Poly Pomona's Subscriber Radios and ancillary equipment shall meet all federal, state, and local regulations applicable to public safety radio communications.
- E.** Cal Poly Pomona's use of Subscriber Radios pursuant to this Agreement shall not interfere with the City's use of the City's Radio System. In the event Cal Poly Pomona's Subscriber Radios interfere with the City's use of the City's Radio System, the City shall notify Cal Poly Pomona of the interference, and Cal Poly Pomona shall

take immediate action to cease the interference. The Parties acknowledge that prolonged interference may cause irreparable injury to the City, and shall be deemed a material breach and grounds for immediate termination of this Agreement without prior notice to Cal Poly Pomona.

- F.** The City makes no warranty or representation that the City's Radio System is suitable for Cal Poly Pomona's use. The City will make its best efforts to provide Cal Poly Pomona with the same quality of Radio System use as the City has, but makes no guarantees as to the continued reliability or accessibility of the City's Radio System. In the event the City's Radio System has technical difficulties that prevent access to the Radio System, or the Radio System is otherwise offline, the City will make a good faith effort to immediately notify Cal Poly Pomona.
 - G.** Cal Poly Pomona's use of the City's Radio System is non-exclusive, and the City may allow other agencies to use the City's Radio System as necessary to preserve public safety.
- 5. Termination.** Either Party may terminate this License Agreement upon providing thirty (30) days' prior written notice addressed to each Party's representative as noted in this Agreement. The City may, however, immediately terminate this Agreement in the event Cal Poly Pomona's Subscriber Radios or ancillary equipment causes prolonged interference to the City's Radio System, which the Chief of Police determines unacceptably impedes the preservation of public safety.
- 6. Indemnification.** Cal Poly Pomona hereby agrees to protect, indemnify and hold the City and its elected and appointed officials, officers, directors, employees, agents, and volunteers free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and all other expenses incurred by the City to the maximum extent allowed by law arising in favor of any party, including claims, liens, debts, personal injuries, including employees of the City, death or damages to property (including property of the City) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of or as a consequence of the performance of the work performed hereunder, except only such injury to persons or damage to property due or claimed to be due to the sole negligence of the City. This provision is not intended to create any cause of action in favor of any third party against Cal Poly Pomona or the City or to enlarge in any way the Cal Poly Pomona's liability but is intended solely to provide for indemnification of the City for liability for damages or injuries to third persons or property arising from Cal Poly Pomona's negligent performance hereunder. This Section 6 shall survive the expiration or termination of this Agreement.
- 7. Insurance.**
 - A.** Cal Poly Pomona shall procure and maintain, during the period of this Agreement, comprehensive public liability insurance coverage, for its acts or omissions described herein in a form satisfactory to the other Party in the following minimum amounts:
 - i.** Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence / Two Million Dollars (\$2,000,000) in the annual aggregate, including public liability, property damage, automobile liability, and bodily injury.

- ii. Automobile liability insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) Combined Single Limit (CSL).
 - iii. Worker's Compensation insurance as required by the laws of the State of California.
 - B. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
 - C. At all times during the term of this Agreement, Cal Poly Pomona shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and, for the general liability and automobile liability policies, naming the City as an additional insured.
 - D. The insurance policies required by this Agreement shall contain an endorsement naming City, its elected or appointed officials, officers, directors, employees, volunteers, agents, and contractors as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Cal Poly Pomona agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
 - E. The insurance policies provided by Cal Poly Pomona shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Cal Poly Pomona's insurance and shall not contribute with it.
 - F. All insurance coverage provided pursuant to this Agreement shall not prohibit Cal Poly Pomona, and Cal Poly Pomona's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Cal Poly Pomona hereby waives all rights of subrogation against the City.
 - G. Procurement of insurance by Cal Poly Pomona shall not be construed as a limitation of Cal Poly Pomona's liability or as full performance of Cal Poly Pomona's duties to indemnify, hold harmless and defend under Section 6 of this Agreement.
8. **Notice.** All notices to be given pursuant to this Agreement shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the Parties at the addresses listed below, but each Party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing. The Parties shall also provide telephone numbers for contact in the event an immediate response is needed regarding use of the City's Radio System.

A. Notice to the City of Pomona:

Pomona Police Department
 490 W. Mission Blvd.
 Pomona, CA 91766
 (909)-620-2122
 Police Chief Paul Capraro

B. Notice to California State Polytechnic University, Pomona:

Cal Poly Pomona Police Department
3801 W. Temple Ave Building 109
Pomona, CA 91768
(909) 869-4909
Police Chief Dario Robinson

9. Amendments.

- A.** The Parties may amend this Agreement by executing a mutually signed written amendment.
- B.** In the event the provisions of this Agreement conflict with the City's obligations, duties, and rights as a member of the ICI System JPA, the Parties shall amend this Agreement to the extent necessary to reconcile said conflicts. If said conflicts cannot be corrected by amendment to this Agreement, the Parties agree to terminate this Agreement.

10. Assignment. Cal Poly Pomona shall not assign or otherwise transfer any rights, duties, obligations or interest in the License granted by this Agreement.

11. Force Majeure. The respective duties and obligations of the Parties hereunder shall be suspended while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the party from whom the affected performance was due.

12. Waiver of Breach. The waiver by either Party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

13. Construction of Agreement. Both Parties have had an opportunity to review the provisions of this Agreement with their respective legal counsel, and propose revisions to said Agreement. Therefore, the terms and provisions of this Agreement shall not be construed strictly in favor of or against either Party, regardless of which Party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

14. Representations and Warranties. Each of the Parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the Party's respective obligations hereunder and that such obligations shall be binding upon such Party without the requirement of the approval or consent of any other person or entity in connection herewith.

15. Captions. Captions and headings in this Agreement are for the convenience of reference only and shall not affect the interpretation of this License.

16. Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the United States and the State of California, without reference

to its conflicts of law principles. If suit is brought by a Party to this Agreement, the Parties agree that trial of such action shall be vested exclusively in the State courts of California in Los Angeles County, or in the United States District Court, Central District. Nothing in this section precludes either Party from seeking redress from the Federal Communications Commission.

17. Attorneys' Fees. Should any dispute arising out of this Agreement lead to litigation, the prevailing Party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

18. Severability. If any portion of this License is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in such court's opinion to render such portion enforceable and, as so modified, such portion and the balance of this License shall continue in full force and effect.

19. Entire Agreement. This License Agreement contains the entire agreement of the Parties with respect to Cal Poly Pomona's Subscriber Radios and use of the City's Radio System, and supersedes all prior negotiations, understandings or agreements, written or oral, express or implied.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be legally executed in duplicate this _____ day of _____, 2017.

CITY OF POMONA

**CALIFORNIA STATE POLYTECHNIC
UNIVERSITY, POMONA**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTEST:

Eva M. Buice, City Clerk

**APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE**

By: _____
Arnold M. Alvarez-Glasman, City Attorney