

LICENSE AGREEMENT BY AND BETWEEN THE CITY OF HUNTINGTON
BEACH AND BOLSA CHICA CONSERVANCY

This License Agreement ("Agreement") is made and entered into by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation, hereinafter referred to as "LICENSOR," and BOLSA CHICA CONSERVANCY, a 501(c)3 Nonprofit California Corporation, hereinafter referred to as "LICENSEE."

WHEREAS, LICENSEE desires access to that portion of LICENSOR'S property at 3831 Warner Avenue, Huntington Beach, California 92649, known as "Fire Station #7", to install and maintain new microwave equipment including microwave radios, antennas and associated equipment ("LICENSEE'S equipment") on the rooftop of Fire Station #7 in a specific location as determined by the Fire Chief ("License Area").

LICENSEE'S equipment is to achieve network connectivity between the LICENSOR'S property and the Balsa Chica Wetlands Interpretive Center, located at 3842 Warner Avenue, Huntington Beach, CA 92649; and

LICENSOR desires to allow such use and access as is necessary; and

The parties wish to enter into an agreement defining their respective rights and responsibilities concerning said License.

NOW, THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, the parties covenant and agree as follows:

1. GRANT OF LICENSE. LICENSOR hereby grants to LICENSEE, its employees, agents, contractors and invitees, a non-exclusive, non-transferable limited right to enter upon the License Area and to permit ingress and egress across LICENSOR's property for access to install and maintain LISENOR'S equipment as set forth herein.

2. TERM/TERMINATION. The term of this Agreement shall be for a period of twenty-four (24) years commencing on the date this Agreement is signed by LICENSOR. This Agreement may be terminated by either party by providing thirty (30) day's written notice to the other party at its address listed below. The LICENSOR may terminate this license immediately if at its sole discretion determines health and safety issues exist because of LICENSEE's equipment.

3. CONSIDERATION. LICENSEE agrees to pay LICENSOR a one-time license fee of Five Hundred Dollars (\$500.00) as consideration for the use and occupancy of the License Area during the duration of the term. Said fee shall be paid to the LICENSOR no later than sixty (60) days after execution of this Agreement.

4. INDEMNIFICATION, DEFENSE, HOLD HARMLESS. LICENSEE hereby agrees to protect, defend, indemnify and hold and save harmless LICENSOR, its officers, agents, and employees against any and all liability, claims, judgments, costs and demands, however caused, including those resulting from death or injury to LICENSEE'S employees and damage to LICENSEE'S property, arising directly or indirectly out of the grant of License herein contained, including those arising from the passive concurrent negligence of LICENSOR, but save and except its active concurrent negligence, sole negligence, or the sole willful misconduct of LICENSOR. LICENSEE will conduct all defense at its sole cost and expense. This provision shall survive termination of this Agreement.

5. WORKERS' COMPENSATION INSURANCE. Pursuant to the California Labor Code Section 1861, LICENSEE acknowledges awareness of Section 3700 et seq. of said code, which requires every employer to be insured against liability for worker compensation. LICENSEE covenants that it will comply with all such laws and provisions prior to accessing the License Area pursuant to this Agreement.

LICENSEE shall maintain such Workers' Compensation Insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, and Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit, at all times incident hereto, in forms and underwritten by insurance companies satisfactory to LICENSOR.

6. INSURANCE. LICENSEE shall carry at all times incident hereto, on all activities to be performed in the License Area as contemplated herein, general liability insurance, including coverage for bodily injury, and property damage. All insurance shall be underwritten by insurance companies in forms satisfactory to LICENSOR in its commercially reasonable discretion. Said insurance shall name LICENSOR, its officers, agents and employees as additional insureds. In the event of aggregate coverage, LICENSEE shall immediately notify LICENSOR of any known depletion of limits. LICENSEE shall require its

insurer to waive its subrogation rights against LICENSOR and agrees to provide certificates evidencing the same.

7. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENT. Prior to accessing and using the License Area pursuant to this Agreement, LICENSEE shall furnish to LICENSOR certificates of insurance subject to approval of LICENSOR evidencing the foregoing insurance coverages as required by this Agreement; said certificates shall provide the name and policy number of each carrier and policy, and shall state that the policy is currently in force and shall promise to provide that such policies will not be cancelled without thirty (30) days prior written notice to LICENSOR. LICENSEE shall maintain the foregoing insurance coverages in force until this Agreement is terminated.

The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of LICENSOR by LICENSEE under this Agreement. LICENSOR or its representative shall at all times have the right to demand the original or a copy of all said policies of insurance. LICENSEE shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

A separate copy of the additional insured endorsement to each of LICENSEE'S insurance policies, naming LICENSOR, its officers, agents and employees as additional insureds shall be provided to LICENSOR for approval prior to accessing the License Area pursuant to this Agreement. "Licensee may self-insure to satisfy the requirements of section 6-8".

8. WASTE. LICENSEE shall not damage or commit any kind of waste upon the License Area or any improvement, equipment or personal property thereon and shall not interfere in any manner with the operations or activities of LICENSEE. LICENSEE shall make no change in the use of the License Area nor shall the design of the License Area be changed other than as authorized herein without prior written consent of LICENSOR. LICENSEE shall not cause any workmen's or materialmen's liens to be placed upon the License Area and LICENSEE agrees to indemnify and hold LICENSOR harmless against any such liens, including but not limited to the payment of attorneys' fees.

9. MAINTENANCE. LICENSEE agrees to care for and maintain at its sole cost

and expense, the License Area in good and satisfactory condition as acceptable to LICENSOR in its commercially reasonable discretion.

Prior to termination of this Agreement, LICENSEE shall restore the License Area, as much as reasonably practicable, to the condition it existed prior to entry into this Agreement.

In the event LICENSEE does not maintain or restore the License Area as required by this Agreement, LICENSEE authorizes LICENSOR to perform such maintenance or restoration on LICENSEE'S behalf. All costs incurred performing said maintenance shall be assessed to and billed directly to the LICENSEE. LICENSEE agrees to pay such costs within thirty (30) days of billing.

10. ACCESS. LICENSOR grants permission to the LICENSEE and its authorized employees, agents, and contractors to enter LICENSOR'S property while escorted, in order to locate, install, inspect, test, operate, maintain, and remove the equipment provided for in this Agreement; provided that proper advance arrangements are made by the LICENSOR by the LICENSEE. LICENSEE'S exercise of such rights shall not cause undue inconvenience to LICENSOR. All of LICENSEE'S operations under this Agreement shall comply with all ordinances, regulations, and laws.

11. CONTROL OF EQUIPMENT. LICENSEE shall keep any equipment used or brought onto the License Area under its absolute and complete control at all times and said equipment shall be used on the License Area at the sole risk of LICENSEE.

LICENSEE shall ensure radio frequency interference does not occur. Radio frequency interference caused or created by radio equipment owned, operated or maintained by the LICENSEE shall be considered an immediate threat to public safety and shall be immediately resolved by the LICENSEE. The LICENSEE will license and manage frequencies assigned to them in accordance with the FCC regulations. Upon request, the LICENSEE agrees to provide the LICENSOR copies of all frequency licenses issued by the National Telecommunications and Information Administration (NTIA), or the FCC, authorization operation of the radio equipment. If not resolved within twenty-four (24) hours, the LICENSOR may remove the equipment at LICENSEE'S sole expense and cost.

12. INDEPENDENT CONTRACTOR. LICENSEE agrees that all work done or undertaken by it on the License Area shall be for its sole account and not as an agent, servant or contractor for LICENSOR.

13. HAZARDOUS SUBSTANCE. LICENSEE represents and warrants that it will not place, store, generate, use, release or deposit any hazardous substance on the License Area. LICENSEE further agrees to clean-up and remediate any hazardous substance on the License Area that is caused by LICENSEE, and hold LICENSOR harmless from and indemnify LICENSOR against any release of such hazardous substance caused by LICENSEE and any damage, loss, or expense or liability resulting from such release, including all attorneys' fees, costs and penalties incurred as a result thereof; provided, however, the foregoing indemnity shall not apply or relate to the discovery of any facts or pre-existing conditions in, on or under the License Area, including but not limited to those caused by LICENSOR, or any diminution of or impact on valuations of all or any portion of the License Area. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

14. DEFAULT. If LICENSEE uses the License Area for any purpose not expressly authorized by this Agreement or fails to act in accordance with the terms and conditions of this Agreement, if such default is not corrected within thirty (30) days after written notice thereof from LICENSOR to LICENSEE, LICENSOR may terminate this Agreement and prevent LICENSEE from using or remaining upon the License Area unless the nature of such compliance is such that it would reasonably take longer than thirty (30) days to comply, then no default shall occur so long as LICENSEE commences a correction within the thirty (30) day period and diligently pursues such correction until completion.

15. NO ASSIGNMENT. LICENSEE agrees that the License granted herein shall be personal to it and that it shall not assign or permit any third party to avail itself of any of the privileges granted hereunder, without the express written permission of LICENSOR.

16. NO TITLE INTEREST. No title interest of any kind is hereby given and LICENSEE shall never assert any claim or title to the License Area.

17. NOTICES. All notices given hereunder shall be effective when personally

delivered or if mailed, within forty eight (48) hours of the deposit of such notice in the U.S. Mail, postage prepaid, and certified with return receipt requested and addressed to LICENSOR or to LICENSEE at the respective addresses shown below:

LICENSOR:

City of Huntington Beach
Attn: Fire Department
2000 Main Street
Huntington Beach, CA 92648

LICENSEE:

Bolsa Chica Conservancy
Attn: Patrick Brenden
3842 Warner Avenue
Huntington Beach, CA 92649

18. NO DISCRIMINATION. LICENSEE agrees that in performance of this Agreement and in the use of the License Area authorized hereunder, it will not engage in, nor permit its officers, agents or employees to engage in, any discrimination or discriminatory practices against any person based on race, religion, creed, color, natural origin, ancestry, physical handicap, medical condition, marital status or gender.

19. ATTORNEY'S FEES. In the event suit is brought by either party to enforce the terms and provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees. The prevailing party shall not be entitled to recover its attorney's fees.

20. COMPLIANCE WITH CONTROLLING LAW. LICENSEE shall comply with all laws, ordinances, regulations, permits and policies of the federal, state and local governments applicable to this Agreement. This Agreement shall be governed and construed in accordance with the laws of the State of California.

21. NO PARTNERSHIP. Nothing contained in this Agreement shall be construed to mean that LICENSEE and LICENSOR are joint venturers or partners.

22. CAPTIONS. Captions and headings of the different articles contained herein are solely for the convenience of reference and are not to be considered parts, provisions or interpretations of this Agreement.

23. EXHIBITS. All exhibit(s) attached hereto are incorporated herein by reference.

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

25. SIGNATORIES. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify LICENSOR fully for any injuries or damages to LICENSOR in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

26. ENTIRETY. This Agreement contains the entire agreement between the parties. This Agreement shall be modified only by a subsequent written amendment, executed by both parties, as may be mutually agreed upon by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on_____

LICENSEE:

BOLSA CHICA CONSERVANCY

By:_____

_____ print name

ITS: [title]_____

By:_____

_____ print name

ITS: [title]_____

REVIEWED AND APPROVED:

City Manager

LICENSOR:

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State
of California

Mayor

City Clerk

INITIATED AND APPROVED



Fire Chief

APPROVED AS TO FORM:



City Attorney