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6/14/12

### LICENSE AGREEMENT

CITY OF FRESNO  
City Clerk's Office (Original)

THIS LICENSE AGREEMENT ("Agreement") is made and entered into effective the 1<sup>st</sup> day of January, 2012, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and HIGH PLAINS BROADCASTING LICENSE COMPANY LLC, a Delaware limited liability company, dba KGPE Television (hereinafter referred to as "LICENSEE").

### RECITALS

WHEREAS, LICENSEE (formerly known as KJEO CHANNEL 47) and CITY entered into a license agreement, dated September 5, 1996 (hereinafter referred to as the "Original License"), for LICENSEE'S use of CITY-owned property at 2245 N. 1<sup>st</sup> Street in Fresno, California (hereinafter referred to as the "Property") to install and operate a remote camera and microwave transmitter on the CITY'S Radio Park Tower (hereinafter referred to as the "Tower") located on the Property; and

WHEREAS, the Original License expired on September 4, 2003 and LICENSEE has continuously used said Property for such purpose through December 31, 2011; and

WHEREAS, LICENSEE has continuously paid a monthly license fee and during the period of January 1, 2011 through December 31, 2011 agreed to pay such monthly fee of \$115.00; and

WHEREAS, LICENSEE desires to remove the microwave transmitter (including a large dish, smaller dish and camera) and continue to use the Property to install and operate the remote camera and an access point and CITY is willing to allow LICENSEE to use such Property for this purpose.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Grant of License. In consideration of the sum of \$1,380.00, which shall be due and payable by LICENSEE to CITY upon execution of this Agreement and no later than January 1, 2012, CITY grants to LICENSEE a license (hereinafter referred to as "License") to install and operate a remote camera and access point consisting of 2 panel antennas and one security camera (hereinafter collectively referred to as the "Equipment") at the 180 foot level on the Tower, located on the Property, for the sole purpose of television news broadcasting and traffic reports. LICENSEE may not use the Property or Tower thereon for any other purpose or business. No later than each successive annual anniversary (i.e., January 1) during the life of this Agreement, the LICENSEE shall pay to CITY the license fee in an amount increased by 4% over the prior years' license amount. Upon the expiration of the Initial Term as defined in Section 6 below and for each respective Renewal Term as defined in Section 6 below, the annual license fee shall increase upon a mutually agreeable sum as provided in Section 6.

2. Incidental Rights. The License includes the following incidental rights to use the Property:

- (i) The right of access to the Property and to LICENSEE'S Equipment placed thereon by LICENSEE, its agents, independent contractors and employees for the purpose of installation, operation and maintenance of such Equipment, provided that LICENSEE, its agents, independent contractors and employees shall preserve and protect all existing vegetation adjacent to the Property to the maximum extent possible consistent with the work required, protect from damage all existing improvements, equipment and facilities on or near the Property and repair or restore any damage to such improvements, equipment and facilities resulting therefrom; and
- (ii) The right to modify the Tower only to the extent as may be necessary to accommodate LICENSEE'S Equipment so long as LICENSEE pays all costs incurred in connection with installation and removal of such modifications.

In exercising these rights, LICENSEE must use reasonable care and may not unreasonably increase the burden on the Property or interfere in any way with CITY'S, or any other occupant's, use thereof.

LICENSEE understands and acknowledges that CITY'S use of the Tower is primary and such use includes, but is not limited to, providing an elevated platform for radio antennas serving the CITY'S Police Department, Fire Department, and Public Utilities Department with public safety communication capability and control over CITY'S water wells.

3. Liens and Taxes. LICENSEE shall not permit any liens for labor or materials to attach to the Property as a result of placement of the Equipment upon the Property by LICENSEE hereunder, and if any such liens do attach, LICENSEE shall promptly cause them to be discharged of record. Failure of LICENSEE to discharge such liens within 30 days of their attachment shall be cause for CITY to revoke this License. LICENSEE shall pay any property taxes, including without limitation, possessory use taxes which may be applicable by LICENSEE'S use of the Property.

4. Utilities. LICENSEE shall be responsible for paying all costs and expenses incurred by the CITY for providing electrical power supply lines to the 180 foot level of the Tower, which shall be due and payable within 30 days of City's invoice, and paying all costs and expenses for the use of such utilities. The latter is included in the sum stated for consideration in Section 1 above.

5. License Non-assignable. This License is personal to the LICENSEE and shall not be assigned. Any attempt to assign the License shall automatically terminate it. No legal title or leasehold interest in the Property is created or vested in LICENSEE by the grant of this License.

6. Term, Renewal and Revocation. This Agreement shall be for an initial term of 5 years (the "Initial Term") and shall either expire or terminate in accordance with the terms stated herein. Upon mutual written agreement of the parties, this Agreement may thereafter renew for up to 5 individual, consecutive terms of 3 years as set forth herein (the "Renewal Term"). If LICENSEE provides the CITY with a written offer to increase the annual amount of the license fee and provides a written request for a Renewal Term at least 90 days prior to the end of the respective Initial Term or Renewal Term, and the CITY agrees in writing to such increase and Renewal Term at least 30 days prior to the end of the respective Initial Term or

Renewal Term, the Agreement will be renewed for the Renewal Term at any such increase in the annual amount of the license fee. The CITY'S Chief Information Officer shall have the authority to agree to any Renewal Term and increase in the amount of the license fee on behalf of the CITY. Notwithstanding the foregoing, the parties agree CITY may revoke this License with no further obligations of CITY to LICENSEE, under either of the following:

- (i) If CITY requires the Property or Tower for its own public use, CITY may revoke this License by having a written revocation notice delivered to LICENSEE at least 90 days prior to the termination date specified in the notice.
- (ii) Anytime after the first 2 years of any Renewal Term, the CITY may revoke this License to permit use of the Property or Tower for the purpose of television news broadcasting by other than the CITY or LICENSEE, provided the CITY has given LICENSEE right of first refusal to the same terms and conditions, offered by the other person(s), in a written notice at least 90 days prior to the termination date specified in the notice. However, if LICENSEE elects to exercise its right of first refusal by written notice to CITY accepting such terms and conditions within 45 days of receipt of CITY'S aforementioned notice to LICENSEE, this Agreement shall not terminate but shall be modified to the extent of such accepted terms and conditions in accordance with Section 20 herein.

7. Termination of Occupancy. LICENSEE, on or before the effective date of the expiration of this Agreement or earlier termination as provided herein, shall remove all of LICENSEE'S personal property and Equipment from the Property and shall surrender possession of the Property to CITY in good order and repair to the satisfaction of CITY, normal wear and tear excepted.

8. Waiver and Indemnification. LICENSEE, as a material part of the consideration to be rendered to CITY under this Agreement, waives all claims against CITY for damages to all personal property and Equipment in, on, or about the Property, and for injuries to persons in or about the Property, from any cause arising at any time. CITY shall not be liable to LICENSEE for any damage by or from any act or negligence of any other occupant of the Property or any occupant of adjoining or contiguous property.

To the furthest extent allowed by law, LICENSEE shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, LICENSEE or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of (i) LICENSEE'S use of the Property, or (ii) performance of this Agreement. LICENSEE'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If LICENSEE should contract for any work on the Property or subcontract all or any portion of the work to be performed under this Agreement, LICENSEE shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend CITY and each

of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

9. Insurance. Throughout the life of this Agreement, LICENSEE shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by CITY'S Risk Manager. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate.
- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.
- (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

In the event LICENSEE purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

LICENSEE shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and LICENSEE shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or (ii) LICENSEE shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, LICENSEE shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, LICENSEE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name CITY, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so LICENSEE'S insurance shall be primary and no contribution shall be required of CITY, its officers, officials, employees, agents and volunteers. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

LICENSEE shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the CITY's Risk Manager or his/her designee prior to City's execution of the Agreement.** Upon request of CITY, LICENSEE shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of the Agreement or any extension, LICENSEE fails to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY hereunder shall in any way relieve LICENSEE of its responsibilities under this Agreement.

The fact that insurance is obtained by LICENSEE shall not be deemed to release or diminish the liability of LICENSEE, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by LICENSEE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of LICENSEE, its principals, officers, agents, employees, persons under the supervision of LICENSEE, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

If LICENSEE should contract for any work on the Property or subcontract all or any portion of the work to be performed under this Agreement, LICENSEE shall require each consultant, contractor and subcontractor to provide insurance protection in favor of CITY, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the Contractor's certificates and endorsements shall be on file with LICENSEE and CITY prior to the commencement of any work by the respective consultant, contractor and subcontractor.

10. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address

set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

11. Compliance With Law. All work related to the installation, operation and maintenance of LICENSEE's Equipment on the Property, shall be done in compliance with all applicable laws of the United States, the State of California and the CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

12. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

13. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

14. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

15. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

16. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

17. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

18. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

19. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

20. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and LICENSEE.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

HIGH PLAINS BROADCASTING LICENSE  
COMPANY LLC, a Delaware limited liability  
company, dba KGPE Television

By: Carolyn T. Hogg  
Carolyn T. Hogg,  
Chief Information Officer

By: Linda Downe  
Name: Linda Downe

ATTEST: Yvonne Spence, CMC  
REBECCA E. KLISCH  
City Clerk

Title: VP / General Manager  
(if corporation or LLC, Board  
Chair, Pres. or Vice Pres.)

By: Sherrie S. Badentacher  
Deputy 6/19/12

By: [Signature]  
Name: Erin Pasquale

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

Title: CFO / BM  
(if corporation or LLC, CFO,  
Treasurer, Secretary or Assistant  
Secretary)

By: Nancy A. Algier 3/12/12  
Nancy A. Algier Date  
Senior Deputy

Addresses:

CITY:  
City of Fresno  
Information Services Department  
Contract Administration  
2600 Fresno Street, Room 1059  
Fresno, CA 93721

LICENSEE:  
KGPE Television  
4880 N 1<sup>st</sup> Street  
Fresno, CA 93726



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 111  
COUNCIL MEETING 6/14/2012

APPROVED BY

*Carolyn T. Hogg*  
DEPARTMENT DIRECTOR

*Rebecca Smith*  
CITY MANAGER

June 14, 2012

**FROM:** CAROLYN T. HOGG, Chief Information Officer/Director *CH*  
Information Services Department

**BY:** BRYON HORN, Information Services Manager *BH*  
Information Services Department

**SUBJECT:** Approve a License Agreement with High Plains Broadcasting License Company LLC, dba KGPE Television, for lease of space on the Radio Park Tower and authorize the Chief Information Officer or her designee to execute the Agreement on behalf of the City **(Property located in District 7)** – Information Services Department

**RECOMMENDATIONS**

Staff recommends approval of the License Agreement with High Plains Broadcasting License Company LLC, dba KGPE Television, for leasing antenna space on the Radio Park Tower owned by the City of Fresno and authorize the Chief Information Officer, or her designee, to execute the agreement on behalf of the City.

**EXECUTIVE SUMMARY**

Since September 1996, the City of Fresno has leased space on the Radio Park Tower at 2245 North First Street, to KGPE Television (formerly known as KJEO Channel 47) for the installation and operation of a remote camera and associated antenna and transmitting equipment. This equipment is used for the sole purpose of television news broadcasting and traffic reports. The previous License Agreement expired in September of 2003. Staff recommends that Council approve a new agreement with KGPE Television for an initial term of five years, with the option to renew for up to five individual, consecutive terms of three years upon mutual written agreement, effective January 1, 2012. This agreement will allow for the continued use of the tower space by KGPE Television for news broadcasting.

Presented to City Council  
Date 6/14/12  
Disposition Approved

**BACKGROUND**

The Information Services Department's Communications Division is responsible for management of tower space provided by the City of Fresno. The original License Agreement was beneficial to KGPE Television for their television broadcasting needs and has provided revenue to the City of Fresno in the form of annual lease payments. This new agreement will allow the continued use by KGPE Television for their broadcasting needs and will provide additional revenue for the City of Fresno

**REPORT TO CITY COUNCIL**

High Plains Broadcasting License Company, LLC Agreement

June 14, 2012

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Although the original license agreement expired, KGPE Television continued to pay the annual license fee of \$680.00 through December of 2010. During negotiations to establish a new agreement, KGPE Television began paying the negotiated new license fee of \$115.00 monthly beginning January 2011. Upon approval of the new agreement, KGPE Television will pay the new annual license fee of \$1,380.00. The new agreement also provides for a 4% annual increase in the license fee.

The City Attorney's Office has reviewed and approved this agreement as to form.

**FISCAL IMPACT**

The City of Fresno will initially receive an annual license fee of \$1,380, which is an increase of \$700 over the previous agreement. Also, the license fee will increase by 4% each year for the initial term.

Attachment: License Agreement with High Plains Broadcasting License Company