MEMORANDUM OF UNDERSTANDING BETWEEN THE MENLO PARK FIRE PROTECTION DISTRICT AND THE CITY OF MENLO PARK REGARDING THE INSTALLATION AND USE OF POLICE COMMUNICATIONS AT DISTRICT FIRE STATIONS NO. 1, 2 AND 4

The Menlo Park Fire Protection District (hereinafter, “District”), a Fire Protection District in the County of San Mateo, whose jurisdiction includes the City of Menlo Park (hereinafter, “City”), a municipal corporation, agree to this Memorandum of Understanding (“MOU”) as of September 9th, 2014 (“Effective Date”). District and City may be referred to individually as “Party” and collectively as “Parties.”

I. Purpose.

A. This MOU is entered into by the Parties based on the following facts, circumstances and understandings:

1. The District owns real property at 300 Middlefield Road, Menlo Park CA (“Fire Station No. 1”), 2290 University Avenue, East Palo Alto CA (“Fire Station No. 2”), and 3322 Alameda De Las Pulgas, Menlo Park CA (“Fire Station No. 4”) (collectively, the “Premises”).

2. The City provides local law enforcement services within portions of the District’s boundaries and desires to install the public safety communications equipment described more particularly in Exhibit A attached hereto (the “Communications Equipment”) on the Premises to enhance City public safety communications capabilities.

3. District is willing to allow the City to install and maintain the City Communications Equipment at specified locations set forth in Exhibit A (collectively, the “Sites”) on the Premises subject to the terms and conditions set forth in this MOU.

II. Term.

This MOU shall commence on the Effective Date hereof and will continue to remain in effect for five (5) years unless terminated by either Party as provided in Paragraph VII of this MOU, provided, however, this MOU shall continue in effect on a year-to-year basis following the expiration of five years, unless or until terminated by either party upon not less than sixty (60) days’ notice to the other party.
III. Permitted Uses; City and District Responsibilities.

A. The Sites identified on the Premises in Exhibit A may be used by the City solely for the purposes of installing, maintaining and operating the Communications Equipment.

B. The City may install, place, attach and affix to the Premises such antennas, radio transmitting and receiving equipment, conduits, wires, batteries and related equipment identified in Exhibit A at the designated Sites on the Premises.

C. City may perform construction, maintenance, repairs, additions to, and replacement of Communications Equipment as necessary and appropriate for its ongoing business. The City shall be responsible for all work necessary to prepare, modify, and maintain that portion of the Premises required for the City’s Communication Equipment.

D. Under no circumstances shall City’s use of the Premises interfere with the District’s use of the Premises as a fire station.

E. City shall provide compensation in the amount of One Dollar ($1.00) to District for use of District Premises under the terms of this MOU.

F. District shall not be responsible for any damage to City’s Communications Equipment in the event of any actions pursuant to Paragraph IV hereof. Repairs for damage caused by the City or the City’s agents to the District’s premises, property or equipment will be the responsibility of the City.

G. Following initial installation of the Communications Equipment, any modification, maintenance, improvements, removal, or additions to the Premises and or Communications Equipment by City must be approved by the District. Maintenance or any other work to be performed by City at the Premises must be approved and scheduled with the District in writing at least fifteen (15) days in advance, unless an emergency situation exists. District shall provide access to the Premises upon reasonable request. The District may deny requested modification, improvements, removal, or additions in the sole and exclusive discretion of the District.

H. This MOU is not an interest in real property, but a revocable license.

I. City is responsible for ensuring that its employees and agents conduct work in compliance with District approved safety plan and all other federal, state and local laws.
IV. Interference with Communications.

A. City hereby agrees that any Communications Equipment the City installs or operates on the Premises shall not interfere with any communications configurations, frequencies, operating equipment or other operations of District.

B. District shall have the right to remove or disable any City Communications Equipment that interferes with District communications configurations, frequencies, operating equipment or other operations at the City’s sole expense and without advance notice to City; provided however, that District will endeavor to provide such notice when possible.

V. Insurance.

A. During the Term of this MOU, any of the City’s agents not otherwise an employee of the City and assigned by City to install, maintain or perform work on the Premises shall maintain the following insurance:

1. Worker’s Compensation insurance in the amount meeting all applicable requirements of California law;

2. Commercial General Liability Insurance having minimum coverage limits of not less than one million dollars ($1,000,000) combined single limit per occurrence and two million dollars ($2,000,000) aggregate; and

3. Automobile Insurance (symbol 1) having minimum coverage limits of not less than one million dollars ($1,000,000).

B. The City shall deliver to District certificates of insurance evidencing such coverage and naming District as an additional insured. Policy forms, endorsements and insurance carriers provided by City to District to satisfy the requirements of this Section shall be subject to District’s reasonable approval authority.

C. Coverage afforded hereunder shall not be cancelled or otherwise reduced in coverage without thirty (30) days advance written notice to District.

VI. Indemnity.

A. City agrees to indemnify, hold harmless and defend District and all its successors and assignees, and its officers, directors, agents and employees from any and all claims, demands, loss, damages, actions, causes of action, suits, expenses and or liability whatsoever, including attorney’s fees and costs of suit arising from or occasioned by any act, omission, or negligence of the City or its agents, officers, servants or employees, in the performance of this MOU.
B. District agrees to indemnify, hold harmless and defend City and all its successors and assignees, and its officers, directors, agents and employees from any and all claims, demands, loss, damages, actions, causes of action, suits, expenses and or liability whatsoever, including attorney’s fees and costs of suit arising from or occasioned by any act, omission, or negligence of the District or its agents, officers, servants or employees, in the performance of this MOU.

VII. Termination.

A. This MOU may be terminated by either Party upon the provision of sixty (60) days advance written notice to the other for cause, unless the event or condition constituting “cause” is cured or resolved prior to the expiration of such notice period. Cause for termination hereof shall be:

1. Failure to comply with the terms hereof.

2. Communication Equipment which interferes with the use and performance of the other Party’s Communication Equipment.

3. Federal or State regulations regarding the Communication Equipment renders the MOU impractical and undesirable.

4. Any other circumstances that impair or degrades the performance and usability of the Communication Equipment or interferes with the use of the premises and fire station.

B. Upon termination, City agrees to remove all Communications Equipment and restore the Premises to District’s satisfaction. In the event City fails to comply with this requirement, District is authorized, upon the provision of fifteen (15) days advance written notice to remove all City Communications equipment at the City’s sole expense. Any dispute between the Parties under the terms hereof shall be resolved by mediation or if unsuccessful, by binding arbitration.

VIII. Miscellaneous Provisions.

A. Governing Law. The rights and obligations of the Parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of California. Venue for any action arising from this MOU shall lie in San Mateo Superior Court or the appropriate federal district court for the Northern District of California.

B. Entire Agreement. This MOU contains the full and entire agreement between and among the Parties with respect to the entire subject matter hereof and supersedes any and all previous or contemporaneous agreements and discussions, whether written or oral. Any and all prior or contemporaneous discussions, negotiations, writings, commitments and/or undertakings are merged herein, and no representations by and Party not embodied herein shall be valid or binding.
C. **Amendment.** This MOU may be amended only by a subsequent writing signed by all Parties to the MOU.

D. **Severability.** The invalidity in whole or in part of any provision of this MOU shall not void or affect the validity of any other of the provisions of this MOU.

E. **Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed an original; however all such counterparts shall constitute but one and the same instrument with the Effective Date hereof being the date set forth above herein.

F. **Assignment.** Neither Party will assign or transfer any interest in this MOU without the prior written consent of the other Party which shall not be unreasonably withheld or delayed, and any attempt by Party to assign this MOU or any rights, duties or obligations arising hereunder without such consent shall be void and of no effect.

G. **Notices.** All notices or other communications required hereunder shall be in writing and shall be personally delivered, or sent by national overnight courier service, or sent by facsimile transmission if also sent by one of the other methods provided in this Section, or sent by registered or certified mail, return receipt requested, and shall be deemed delivered upon the earlier date of (a) the date of delivery to the address of the person to receive such notice or (b) three (3) business days after the date of posting the United States Postal Service at the following addresses:

1. **If to District:**
   
   Menlo Park Fire Protection District  
   170 Middlefield Road,  
   Menlo Park CA 94025  
   Attn: Fire Chief

2. **If to City:**
   
   City of Menlo Park  
   701 Laurel Street  
   Menlo Park, CA 94025  
   Attn: Chief of Police
H. **Authority to Execute.** Each person signing this MOU warrants and represents that, to the extent he or she is executing this MOU for and on behalf of an entity, he or she has been fully empowered and properly authorized to execute this Agreement for and on behalf of said entity and instructed by those having the requisite authority to cause said entity to make and enter into this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed as of the Effective Date set forth above,

Date: 8-20-2014

Signature: [Signature]

Date: 9-11-2014

Signature: [Signature]

Acting City Manager
EXHIBIT A

Fire Station No. 1: Two UHF radio base stations, power supplies, antennas and associated telephone line multiplexers.

Fire Station No. 2: One UHF radio receiver, power supply, antenna and associated telephone line multiplexer.

Fire Station No. 4: One UHF radio receiver, power supply, antenna and associated telephone line multiplexer.