

1 RESOLUTION NO. 2010-084

2
3 SPONSOR Mr. Pry

4
5 DATE March 15, 2010 COMMITTEE Planning

6
7 **A Resolution authorizing the Executive to enter into a lease agreement with**
8 **OneCommunity for the lease of various County rooftops and other structures for the**
9 **installation of OneCommunity wireless network equipment in exchange for access to and**
10 **use of the OneCommunity wireless network for County operations, for a term of five years**
11 **commencing March 1, 2010 and ending February 15, 2015, with two options to renew for**
12 **an additional five-year term, for the Executive's Department of Law, and declaring an**
13 **emergency.**

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15 WHEREAS, the County of Summit is the owner of several buildings in and around
16 downtown Akron; and

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18 WHEREAS, the City of Akron has previously partnered with OneCommunity, a non-
19 profit organization based out of Cleveland, Ohio and the Knight Foundation to implement a
20 wireless network project known as "Connect Akron," which will begin in and around downtown
21 Akron, the purpose of which is to provide broadband access to the entire public, including the
22 underserved populations, and to further the development of the area; and

23
24 WHEREAS, as part of implementing the Connect Akron project, OneCommunity is in
25 need of access to the rooftops of several of the County owned buildings in and around downtown
26 Akron; and

27
28 WHEREAS, as the Connect Akron project expands into the rest of the City of Akron and
29 out into the County, OneCommunity may have necessity to use other building rooftops and other
30 structures owned by the County (i.e., communications towers) as part of developing the wireless
31 network; and

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33 WHEREAS, in exchange for allowing OneCommunity access to the County's rooftops
34 and other structures, OneCommunity has offered to provide wireless equipment and network
35 access, in a secure network, to the County for County operations and business, at no cost; and

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37 WHEREAS, currently, the County uses wireless equipment and a wireless network to
38 connect several of its buildings and, due to the age of the equipment, the wireless connectivity is
39 unreliable; and

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41 WHEREAS, by utilizing OneCommunity's wireless network and equipment, the County
42 will receive improved connectivity over its current situation and will not incur any cost to
43 replace the wireless equipment or purchase land-line service for the buildings; and

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45 WHEREAS, the wireless network that will be installed by OneCommunity will not only
46 be an asset for the County, but will also be an asset for the community as a whole and the County
47 will be a partner in the implementation of that asset; and

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4 WHEREAS, this Council finds and determines that it is necessary and in the best interest
5 of the County to authorize the Executive to enter into a lease agreement with OneCommunity for
6 the lease of various County rooftops and other structures for the installation of OneCommunity
7 wireless network equipment in exchange for access to and use of the OneCommunity wireless
8 network for County operations, for a term of five years commencing March 1, 2010 and ending
9 February 15, 2015, with two options to renew for an additional five-year term.

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11 NOW, THEREFORE, BE IT RESOLVED, by the Council of the County of Summit,
12 State of Ohio, that:

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14 SECTION 1

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16 The County Executive is hereby authorized to enter into a lease agreement with
17 OneCommunity for the lease of various County rooftops and other structures for the installation
18 of OneCommunity wireless network equipment in exchange for access to and use of the
19 OneCommunity wireless network for County operations, for a term of five years commencing
20 March 1, 2010 and ending February 15, 2015, with two options to renew for an additional five-
21 year term, in a form substantially similar to the agreement attached hereto as Exhibit A.

22
23 SECTION 2

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25 This Resolution is hereby declared an emergency in the interest of the health, safety and
26 welfare of the citizens of the County of Summit and for the further reason to immediately
27 commence the term of the lease so that the wireless network will become available to the County
28 as soon as possible.

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30 SECTION 3

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32 Provided this Resolution receives the affirmative vote of eight members, it shall take
33 effect immediately upon its adoption and approval by the Executive; otherwise it shall take effect
34 and be in force at the earliest time provided by law.

35
36 SECTION 4

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38 It is found and determined that all formal actions of this Council concerning and relating
39 to the adoption of this Resolution were adopted in an open meeting of this Council, and that all
40 deliberations of this Council and of any of its committees that resulted in such formal action,
41 were in meetings open to the public, in compliance with all legal requirements, including Section
42 121.22 of the Ohio Revised Code.

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5 INTRODUCED March 1, 2010

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8 ADOPTED March 15, 2010

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10 
11 CLERK OF COUNCIL


PRESIDENT OF COUNCIL

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13 APPROVED March 16, 2010

14

15 
16 EXECUTIVE

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18

19 ENACTED EFFECTIVE March 16, 2010

Voice Vote: 11-0 YES: Comunale, Crawford, Crossland, Feeman, Kostandaras, Poda, Prentice, Rodgers, Schmidt, Shapiro, Smith

ROOFTOP ACCESS LEASE AGREEMENT

This Lease Agreement is entered into this _____ day of _____, 2010, by and between the County of Summit (hereinafter "County"), a Charter County organized under the laws of the State of Ohio, with administrative offices located at 175 South Main Street, 8th Floor, Akron, Ohio 44308, and One Community (hereinafter "Tenant"), an Ohio non-profit corporation, with principal offices located at 800 W. St. Clair Avenue, Second Floor, Cleveland, Ohio 44113.

1. LEASE OF PREMISES.

(a) Lease of Downtown Akron Property. County agrees to lease to Tenant, and Tenant agrees to lease from County, certain space on the rooftops of numerous County-owned buildings located in and around downtown Akron for the purposes identified in Section 2, below (hereinafter "Premises"). The amount of space on each rooftop, the location of the space on each rooftop, and the buildings involved shall be identified on Exhibit A attached hereto and incorporated herein by reference. The parties acknowledge and agree that they may, by mutual agreement, amend, add or delete space and/or buildings from Exhibit A during the term of this lease, unless otherwise limited herein.

(b) Lease of Additional Buildings. County agrees to lease to Tenant, and Tenant agrees to lease from County, certain other available space from the County outside of the downtown Akron area for the purposes identified in Section 2, below (hereinafter "Additional Premises"). The Additional Premises shall consist of certain space on the rooftops of County owned buildings, communications towers to the extent permitted by law and certain space on any other County facility, as mutually agreed by the parties. The amount of space, nature and location of the space and the buildings/improvements involved shall be identified on Exhibit B, attached hereto and incorporated herein by reference. The parties acknowledge that at the time of the execution of this lease, many, if not all, of the locations that will constitute the Additional Premises are yet to be determined by the parties and will be supplemented to this Agreement upon mutual agreement of the parties. The parties also acknowledge and agree that they may, by mutual agreement, amend, add or delete space and/or buildings from Exhibit B during the term of this lease, unless otherwise limited herein.

2. PERMITTED USE OF PREMISES AND ADDITIONAL PREMISES. Tenant may use the Premises and Additional Premises for the installation, construction, maintenance, operation, repair, replacement and upgrade of certain equipment, cables, accessories, and improvements (hereinafter collectively "equipment") necessary in its implementation and operation of its Connect Akron wireless project and any other wireless connectivity project that is consistent with the use as stated herein, including, but not limited to, the establishment of a Connect Akron Access Point or other access point within each space identified on Exhibit A or Exhibit B. The type, nature and description of the equipment to be installed at each location shall be identified on Exhibit A and Exhibit B and agreed to by the parties. Tenant may also make any necessary electrical connection to each location's electrical system necessary to support the equipment installed at that location at Tenant's cost. Tenant may modify and/or replace the equipment identified on Exhibit A and Exhibit B, but the nature and use of the

equipment shall be substantially similar to the equipment initially installed. Any and all use of the Premises and Additional Premises by the Tenant shall be (i) in relation to the Connect Akron project; (ii) consistent with Tenant's non-profit status, and (iii) consistent with Tenant's mission as set forth on Exhibit C.

3. TERM. The term of this lease shall be a period of five (5) years commencing on March 1, 2010, and terminating on February 28, 2015. This agreement may be extended by the parties for two (2) additional five (5) year terms, provided that each agree to do so in writing prior to the expiration of the then-current term.

4. RENT/COMPENSATION TO COUNTY. In consideration of the aforementioned use of the Premises and Additional Premises, Tenant shall provide County with the following at no additional cost:

a. The ability to use Tenant's equipment and wireless transmission produced by the equipment to establish a secure wireless network for the County. Said wireless network shall be partitioned separately and apart from the wireless transmission that is available to the general public and other entities, shall be reasonably reliable, shall be secure in a fashion and to an extent satisfactory to the County, and shall be of a 5.1 GHz band. Tenant agrees to assist County with the establishment of the County's secure wireless network and the same shall be established and functional no later than June 1, 2010 for the following buildings: Ohio Building, Department of Job & Family Services Buildings, Medical Examiner's Building, Summit Center Building, Summit County Juvenile Court and New Animal Control Facility, all of which are more fully identified on Exhibit A, and by August 1, 2010 for all other locations identified on Exhibit A. At a minimum, Tenant shall maintain at all times sufficient number of access points and sufficient wireless transmission for the County to connect wirelessly between the following buildings: Ohio Building, Department of Job & Family Services Buildings, Medical Examiner's Building, Summit Center Building, Summit County Juvenile Court, and the New Animal Control Facility. In return, County will discontinue the use of its current wireless equipment and wireless network, which currently runs on 2.4 GHz band between these buildings. The parties shall cooperate with the establishment of the wireless connection to the Additional Premises at such time as the parties mutually agree.

b. The necessary equipment, materials and labor to extend the County's secure wireless network into and throughout the eight floors of the Ohio Building for use by the County's employees and to extend Tenant's free public-access into and throughout the Ohio Building for use by the public. The nature and quality of the County's secure wireless network in the Ohio Building shall be the same as identified in subsection (a), above. Said equipment shall be installed and the wireless network available throughout the Ohio Building no later than August 1, 2010.

The County and Tenant will continue to explore other potential uses of the Tenant's wireless transmission/networks that could benefit County (i.e. public safety purposes) and will amend this agreement as necessary to add these potential uses as they see fit. The parties agree to cooperate to the fullest extent possible to further each other's goals and service to the public.

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5. TERMINATION. This agreement may be terminated for cause upon thirty (30) day written notice to the other by either party in the event of a default by the other as identified herein. Otherwise, this agreement may be terminated by either party upon one hundred eighty (180) day written notice to the other for any reason.

6. UTILITIES. County shall pay the cost of any electrical charges related to the use of the Premises and Additional Premises and the equipment therein, provided Tenant continues to provide County the compensation set forth in Section 4, above. Any other utility costs, if any, shall be paid by Tenant.

7. INDEMNIFICATION. Tenant agrees to indemnify, defend, and hold County harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expense (including reasonable attorney's fees and court costs) arising directly from the actions or failure to act of the Tenant or its employees or agents, or the Tenant's breach of any provision of this agreement, except to the extent attributable to the negligent or intentional act or omission of County, its employees, agents or independent contractors.

8. INSURANCE. Tenant shall maintain such insurance in the amounts and upon the terms set forth in Exhibit C.

9. ACCESS. County shall provide access to Premises and Additional Premises at all times during installation of equipment. Following installation of equipment, County shall provide access to Premises and Additional Premises upon request by Tenant. County shall provide Tenant with contact information for County employees to provide access to Premises and Additional Premises both during business hours and 24/7 emergency or after hours access purposes.

10. REMOVAL/RESTORATION. All portions of the equipment brought onto the Premises and Additional Premises by Tenant will be and remain Tenant's personal property. County covenants and agrees that no part of the equipment constructed, erected or placed on the Premises and Additional Premises by Tenant will become, or be considered as being affixed to or a part of the Premises and Additional Premises.

11. MAINTENANCE. Tenant shall keep and maintain Premises and Additional Premises in good condition, reasonable wear and tear and damage from the elements excepted.

12. WARRANTIES. Tenant and County each acknowledge and represent that it is duly organized and has the right, power and authority to enter into this agreement and bind itself hereto through the party set forth as signatory for the party below.

County represents and warrants that: (i) County solely owns or controls the Premises and Additional Premises by lease or license; (ii) the Premises and Additional Premises are not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, lease, or any other agreements which would adversely affect Tenant's use and enjoyment of the Premises and Additional Premises under this agreement; and (iii) as long as Tenant is not in default County

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grants to Tenant sole, quiet, and peaceful use, enjoyment, and possession of the Premises and Additional Premises.

13. ASSISTANCE WITH SIMILAR RELATIONSHIPS. County shall assist Tenant in establishing contractual relationships similar to the relationship set forth in this Agreement with the municipalities and townships within the geographical jurisdiction of the County. County and Tenant agree that the establishment of these additional relationships will assist Tenant with meeting its stated mission, provide an opportunity for those municipalities and townships to benefit from the wireless network being created by Tenant and enable possible future collaboration between County, Tenant and those municipalities and townships in utilizing the wireless network to provide services to the public.

14. DEFAULT. Failure by either party to perform any term or condition of this agreement, and failure to cure within thirty (30) days after receipt of written notice of said failure shall be considered a default by that party. No such default, however, will be deemed to exist if party has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligent. Delay in curing a default will be excused if due to causes beyond the reasonable control of the party. If party remains in default beyond any applicable cure period, the other party will have the right to exercise any and all rights available to it under law and equity, including the right to cure party's default and to deduct the costs of such cure from any monies due.

15. ASSISGNMENT/SUBLEASE. Tenant will have the right to assign this agreement or sublease the Premises and Additional Premises and its rights herein, in whole or in part, only upon the written consent of the County.

16. NOTICES. All notices, requests, demands, and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:

One Community
800 W. St. Clair
Second Floor
Cleveland, OH 44113
Attention: Mark Ansboury

If to County:

County of Summit
175 S. Main Street
Eighth Floor
Akron, OH 44308
Attn: Richard E. Dobbins, Director of Law

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

16. SEVERABILITY. If any term or condition of this agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the unenforceable

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provision materially affects this agreement, then the agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

17. CASUALTY. If any part of Premises and/or Additional Premises is damaged by fire or other casualty so as to render the Premises and/or Additional Premises unsuitable, then Tenant may terminate this Agreement by providing written notice to the County, which termination will be effective as of the date of such damage or destruction.

18. MISCELLANEOUS.

A. Entire Agreement. This agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this agreement.

B. Governing Law. This agreement will be governed by the laws of the State of Ohio without regard to conflicts of law. Exclusive venue and jurisdiction for any disputes arising under this Agreement shall be in the Summit County Court of Common Pleas.

C. Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) whenever a party's consent is required under this agreement, except as otherwise stated in the agreement, such consent will not be unreasonably withheld, conditioned or delayed; and (iii) exhibits incorporated by reference into this agreement are an integral part of the agreement.

D. Successors. This agreement will bind and inure to the benefit of the parties' respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties have caused this agreement to be effective as of the last date written below.

COUNTY OF SUMMIT

ONE COMMUNITY

By _____

By _____

Print Name _____

Print Name _____

Its: _____

Its: _____

Date: _____

Date: _____

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Exhibit A- Premises

Name/Use	Address	Equipment to be Installed
Ohio Building	171-193 S. Main St. Akron, Ohio	
Summit Center	140 E. Market St. Akron, Ohio	
Medical Examiner	85 N. Summit St. Akron, Ohio	
DJFS Bldg 1	47 N. Main St. Akron, Ohio	
DJFS Bldg 2	31 N. Main St. Akron, Ohio	
DJFS Bldg 3	21 N. Main St. Akron, Ohio	
DJFS- Truth Bldg	37 N. High St. Akron, Ohio	
Juvenile Court	650 Dan St. Akron, Ohio	
New Animal Control Facility	250 Opportunity Pkwy Akron, Ohio	
County Jail	205 E. Crosier St. Akron, Ohio	
Courthouse & Annex	209 High St. Akron, Ohio	
Engineer	538 E. South St. Akron, Ohio	
CSB Campus	264 S. Arlington Akron, Ohio	
Bldg Standards/ Title Bureau/ Job Center	1030/1040 Tallmadge Ave. Akron, Ohio	

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Exhibit A (Cont.)

Name/Use	Address	Equipment to be Installed
DOES Garage	1035 Sweitzer Ave. Akron, Ohio	
Balch Street	220 S. Balch St. Akron, Ohio	
Board of Elections	470/488 Grant St. Akron, Ohio	
Safety Building	53 University Ave. Akron, Ohio	
ADM Facility	466/468 Howard St. Akron, Ohio	

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Exhibit B- Additional Premises

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Exhibit C- Insurance to be Provided by Tenant

LIABILITY INSURANCE

Tenant shall purchase and maintain, at its own expense, the following insurance coverages with minimum limits not less than as specified below. All insurance required hereunder shall apply to and cover all loss or liability caused by, arising from, or resulting from the services performed or required to be performed pursuant to this agreement, provided or required to be provided, hereunder, it being understood and agreed that the services may include hazardous activities.

1. Auto Liability Insurance:

Covering Owned, Non-owned and Hired Auto Liability

\$1,000,000 Combined single limit, bodily injury and property damage

The Auto Liability Insurance limit requirement can be satisfied by the purchase and maintenance of any combination of primary, excess and/or umbrella insurance.

The County, its elected and appointed officials, officers, employees, representatives, and agents shall be named as additional insureds on the Tenant's Automobile Liability policies. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CA 20 48 02/99 for Auto Liability, or a substitute form providing equivalent coverage.

2. Workers' Compensation:

Statutory limits required

Employers Liability, minimum annual limit of liability:

\$1,000,000 Bodily injury by accident, each accident

\$1,000,000 Bodily injury by disease, each employee

\$1,000,000 Bodily injury by disease coverage for the Tenant

The Employers Liability limit requirement can be satisfied by the purchase and maintenance of any combination of primary, excess and/or umbrella insurance.

Tenant shall subscribe to and comply with, throughout the entire term of this agreement, the Workers' Compensation laws of the State of Ohio. The Employers Liability insurance requirement may be satisfied by including such coverage within the General Liability policy.

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3. General Liability Insurance:

Written on an occurrence basis. Covering bodily injury, personal injury and advertising injury, property damage, and broad-form contractual liability as defined by the policy arising from or relating to this agreement, coverage as respects independent contractors, operating mobile equipment, products and completed operations, explosion, collapse and underground hazards.

\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal Injury and Advertising Injury
\$1,000,000	Bodily Injury and Property Damage Limit Each Occurrence

The County, its elected and appointed officials, officers, employees, representatives, and agents shall be named as additional insureds on the Tenant's General Liability policy. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CG 20 26 11/85, or substitute form providing equivalent coverage. The additional insured coverage afforded under the Tenant's policies shall include both ongoing operations (work in progress) and completed operations (completed work). The General Liability Insurance limit requirement can be satisfied by the purchase and maintenance of any combination of primary, excess and/or umbrella insurance.

PROPERTY INSURANCE:

Tenant shall purchase and maintain Property insurance covering construction machinery, equipment, special equipment, falsework, scaffolding, materials, mobile equipment, valuable papers, trailers, and tools owned by the Tenant in the performance of the services pursuant to this agreement. The Tenant also agrees to require all tiers of subcontractors to insure any and all property owned by the subcontractors in the performance of the services pursuant to this agreement. The County shall in no circumstance be responsible or liable for the loss or damage to, or disappearance of, any property owned by the Tenant or any subcontractors and used in the performance of the services pursuant to this agreement.

INSURANCE COVERAGE REQUIREMENTS

Primary Coverage: The insurance coverage to be purchased and maintained by the Tenant and its subcontractors as required herein shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by County which shall not contribute therewith, and there shall be severability of interests under the insurance policies required herein for all coverages provided under said insurance policies and otherwise provide cross liability coverage.

Thirty Days Notice: The insurance coverage required of Tenant and its subcontractors herein shall incorporate a provision requiring the giving of written notice to County, the Tenant, and to any other person(s) or party(ies) reasonably designated by County, at least thirty (30) days prior to the cancellation, non-renewal, material modification (ten (10) days for nonpayment of premium) of any insurance policy required to be purchased and maintained pursuant to this agreement; this requirement may be satisfied by Tenant and subcontractors providing such written notice.

Subcontractors Insurance: Tenant shall not sublet or subcontract any part of this agreement, or otherwise utilize subcontractors, without assuming absolute responsibility for requiring and taking actions to know that each of its subcontractors (and each sub-subcontractors at every tier) purchases and maintains the types of insurance required herein with the same terms and conditions as required herein of the Tenant.

Notice of Occurrence: Upon Tenant's knowledge of any actual or alleged occurrence, event, or third-party claim(s) which may result in or give rise to a claim against, liability imposed upon, or loss suffered by Tenant or any of its subcontractors which may exceed One Million Dollars (\$1,000,000), Tenant shall (i) immediately provide the County with written notice of such occurrence, event or third-party claim(s) with reasonable detail; this requirement applies irrespective of when, where, or how the claim, liability, or loss occurred, whether or not the claim, liability or loss relates to or arises from the performance of services pursuant to this agreement, or the validity or status of such claim, liability or loss.

Evidence of Insurance: Tenant shall submit to the County not more than ten (10) calendar days prior to the beginning of the term of this agreement, certificates of insurance evidencing the effectiveness of the insurance policies required by this agreement, and, if requested in writing by the County, copies of the entire policies and all endorsements to any such policies.

At any time during the term of this agreement, Tenant shall promptly provide certificates of insurance to the County evidencing the effectiveness of the insurance coverages required pursuant to this agreement, and if requested in writing by the County, copies of the entire policies, including all endorsements no less frequently than upon the renewal of any insurance coverage required by this agreement.

No Limitation: The types and limits of insurance to be purchased and maintained by the Tenant and its subcontractors pursuant to this agreement shall not be deemed to constitute a limitation of the Tenant's or its subcontractors' liability hereunder or otherwise, or otherwise to limit or affect the Tenant's indemnification obligations hereunder; by requiring insurance herein, the County does not represent or warrant that coverage and limits will be adequate or sufficient to protect the Tenant or its subcontractors. If Tenant or subcontractors fail(s) to purchase and maintain, or fail(s) to continue in force throughout the term of this agreement, insurance in the types and with limits of liability required herein, County may purchase such insurance and the cost thereof shall be borne by the Tenant. Tenant agrees to promptly pay the County the amount incurred by the

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County to purchase such insurance.

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