

**COUNTY OF EL DORADO
FOR OFFICE OF EMERGENCY SERVICES**

**FACILITY USE AGREEMENT # 498-0411
MOUNTAIN CELLULAR**

THIS AGREEMENT, is made as of the 01st day of May, 2003 by and between COUNTY OF EL DORADO, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and El Dorado Cellular, a California Corporation, dba Mountain Cellular whose principal place of business at 5174 Hillside Circle El Dorado Hills, CA 95762 (hereinafter referred to as "MOUNTAIN CELLULAR")

WITNESSETH

WHEREAS, County is the owner of that certain real property located in El Dorado County, California, commonly known as the Placerville Sheriff's Department antenna tower and communications vault, located at 300 Fair Lane, Placerville, CA 95667 and depicted on the map attached hereto and marked as Exhibit "A" (hereinafter referred to as the ("PV Property"); and

WHEREAS, COUNTY desires to improve law enforcement radio communication for the public good; and

WHEREAS, COUNTY desires to grant to MOUNTAIN CELLULAR and MOUNTAIN CELLULAR desires to receive authorization from COUNTY to use said PV PROPERTY for the purpose of mounting antennae on the tower and placing communications equipment in the vault described in Exhibit "B"; and

WHEREAS, it is the intent of the parties hereto that such use shall be in conformity with all applicable state and local laws;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the COUNTY and MOUNTAIN CELLULAR mutually agree as follows:

1. COUNTY hereby grants to MOUNTAIN CELLULAR and MOUNTAIN CELLULAR hereby agrees to accept from the COUNTY this authorization for use of those portions of the PV PROPERTY described herein below for the purpose of mounting antennae on the existing antenna tower and placing communications equipment in the equipment vault.
2. Said use shall be limited to those portions of PV PROPERTY described as the "antenna tower and communications equipment vault" located at the Placerville Sheriff's Department. COUNTY shall specify locations and mounting standards for all antennae and communications equipment, and shall retain approval authority for any subsequent changes thereto.
3. **COMPENSATION:**
 - A. The COUNTY currently licenses communication equipment in MOUNTAIN CELLULAR's vault located at Union Hill Radio Facility in Pollock Pines, CA 95726 as depicted in that certain License Agreement # 069-LO011 between the COUNTY and MOUNTAIN CELLULAR.

B. As long as said License Agreement # 069-L0011, Amendment to the License Agreement and this Facility Use Agreement # 498-0411 are in full force and effect, neither Licensee and/nor Licensor shall be obligated to exchange rent payments.

C. If and when License Agreement # 069-L0011, it Amendment or this Facility Use Agreement # 498-0411 terminates or is significantly modified, Licensee and Licensor shall re-negotiate compensation for the remaining agreement. Said re-negotiated compensation shall be documented in writing and shall become in full force and effect only upon full agreement and execution by the parties thereto.

4. **TERMINATION:** Either party may terminate the agreement by giving written notice to the other party of such termination, effective three (3) months after the date of such notice. Notices required by this agreement shall be mailed to the following addresses for each party.

COUNTY

El Dorado County General Services Dept.
380 Fair Lane
Placerville, CA 95667
Attn: Director of General Services
530-621-5847

MOUNTAIN CELLULAR

Mountain Cellular
5174 Hillside Circle
El Dorado Hills, CA 95762
Attn: Scott Hamilton
916-941-7935

5. **TERM:** The period of performance of this agreement shall commence on May 01, 2003, and shall expire on May 31, 2008. This agreement may be extended for three (3) additional five (5) year periods by mutual consent of the parties hereto (not to exceed Mountain Cellular's master lease with the property owner). Said extension shall be requested by either party, in writing, a minimum of thirty (30) days prior to termination of the then current term.

6. **ASSIGNMENT OF RIGHTS:** Neither party may sublet nor assign any of its rights granted herein without first obtaining the prior written consent of the other party.

8. **INSURANCE REQUIREMENTS:**

MOUNTAIN CELLULAR shall maintain, at MOUNTAIN CELLULAR's own expense during the term hereof, insurance with respect to its business, the PV PROPERTY and all activities, on or about or in connection with the PV PROPERTY, of the types and in the minimum amounts described generally as follows:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of MOUNTAIN CELLULAR as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. MOUNTAIN CELLULAR shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is in full force and effect.
- D. The insurance shall be issued by an insurance company acceptable to the El Dorado County Risk Manager, or be provided through partial or total self-insurance likewise acceptable to COUNTY's Risk Manager.

- E. The certificate of insurance must include the following provisions stating that the COUNTY of El Dorado, its officers, officials, and employees are included as additional insured, but only insofar as operations under this Agreement are concerned. This provision shall apply to liability policies except worker's compensation and professional liability insurance.
- F. MOUNTAIN CELLULAR's insurance coverage shall be primary as respects COUNTY, its officers, officials, and employees. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, or employees shall be excess of MOUNTAIN CELLULAR's insurance and shall not contribute with it.
- G. MOUNTAIN CELLULAR's insurance coverage shall not be cancelled without thirty (30) days prior written notice to COUNTY.
- H. Any deductibles or self-insured retention must be declared to and approved by COUNTY. At the option of COUNTY, either insurer shall reduce or eliminate such deductibles or self-insured retention as respects COUNTY, its officers, officials and employees; or MOUNTAIN CELLULAR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- I. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to COUNTY, its officers, officials and employees.
- J. The insurance companies shall have no recourse against COUNTY of El Dorado, its officers, officials or employees for payment of any premiums or assessments under any policy issued by any insurance company.
- K. MOUNTAIN CELLULAR's obligations shall not be limited by the foregoing requirements and shall survive the expiration of this Agreement.
- L. In the event MOUNTAIN CELLULAR cannot provide an occurrence policy, MOUNTAIN CELLULAR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of this Agreement.
- M. The Certificate of insurance shall meet additional standards as may be determined by COUNTY's Risk Manager as essential for protection of COUNTY.
9. MOUNTAIN CELLULAR shall defend, indemnify and hold COUNTY harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney fees and costs incurred, brought for, or on account of injuries to or death of any person, including but not limited to workers, COUNTY employees, and the public, or damage to PV PROPERTY, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with MOUNTAIN CELLULAR's activities, use of the PV PROPERTY, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the COUNTY, MOUNTAIN CELLULAR, and employee(s) of any of these, except for the active negligence of COUNTY, its officers and employees, or as expressly prohibited by statute. This duty of MOUNTAIN CELLULAR to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.
10. Not Used

11. Independent Contractor: MOUNTAIN CELLULAR agrees that MOUNTAIN CELLULAR, and any agents and employees of MOUNTAIN CELLULAR, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of COUNTY.
12. It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on either of the parties hereto.
13. Not used.
14. This Agreement is to be governed by and construed in accordance with the laws of the State of California.
15. Time is of the essence in this Agreement and the performance of each and every provision hereof.
16. The County Officer or employee with responsibility for administering this Agreement is George C. Cuttrell, Director of General Services, or successor.

This document and the exhibit referred to herein, constitutes the entire Agreement between the parties and incorporates or supersedes all prior written or oral agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

Mountain Cellular

Dated: APR 17, 2003

By: [Signature]
 Scott A. Hamilton
 Vice President - Operation & General Manager

COUNTY OF ELDORADO

Dated: 3-16-04

By: [Signature]
RUSTY DURRAY Chairman

ATTEST: DIXIE L. Foote
 Clerk of the Board

By: [Signature] 3-16-04
 Deputy Clerk

**EXHIBIT "A"
EQUIPMENT**

A 19 inch rack space will be reserved for the COUNTY'S growth needs in the Commercial side of the vault.

Antenna space will be reserved on the tower for two (2) additional antennas. Location to be determined as needed.

**EXHIBIT "B"
EQUIPMENT**

Motorola SC 611 self contained 800 mhz CDMA cell site

Size:

Height = 34 inches

Width = 28 inches

Depth = 12 inches

Floor or wall mounting options

Power: 120VAC 20amp Breaker

Antenna (2): Antenna Specialist #ASPA2972 800mhz 8dbi gain (25 inches tall) omni wips

