

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, (hereafter, "Agreement") is entered into this 23rd day of July, 2021, by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION**, P.O. Box 1149, Santa Fe, New Mexico, 87504-1149, (hereinafter "NMDOT") and **EASTERN NEW MEXICO UNIVERSITY**, (New Mexico Public Broadcasting) Portales, New Mexico, 88130, (hereinafter, "Permittee").

SECTION 1- - NMDOT AGREES:

1. To permit its property, hereinafter referred to as "Premises", described below and as shown on the drawings attached hereto as Exhibits "A & A-1", to be used for the installation of equipment on existing tower and shelter:

Lying within a tract of land lying and being situate in the SE ¼ SW ¼ of Section 35, T10S, R23E, N.M.P.M, Chavez County, New Mexico, and being more particularly bounded and described as follows:

For a tie begin at the southwest section corner of said Section 35, thence N 1°04'W. 100 feet, thence N 89°48'E, a distance of 1,690.9 feet for the point of beginning.

Thence N 0°52' W. 1,192.6 feet to a point on the north line of SE1/4 SW ¼, thence N 89° 10E. 728.3 feet along said north line SE1/4 SW1/4, thence S 0°52'E. 1,199.7 feet to a point on the north right of way line, U.S. 70-380, thence S 89°48'W. 728.3 feet to the point of beginning, containing 20 acres, more or less.

2. In consideration of Permittee's performance under the terms and conditions of this Agreement, to permit the described premises to be used for a period of FIVE (5) YEARS from the date all parties have signed this Agreement, unless this Agreement is otherwise terminated or revoked as provided herein.
3. Subject to the NMDOT's approval, Permittee may have the option of extending this Agreement for up to THREE (3) additional FIVE (5) YEAR periods, but in no event may the original Agreement plus any extensions thereof exceed a total of TWENTY (20) years. Each extension shall be exercised by giving written notice to the NMDOT at least 30 days prior to the expiration of the original term or the then current extension period, as applicable, unless the Agreement is otherwise terminated or revoked as provided herein.

If the Permittee fails to give such timely notice to the NMDOT, this Agreement will expire, and the granting of an extension will be solely within the NMDOT's.

SECTION 2 – PERMITTEE AGREES:

1. To develop and use the described Premises solely and exclusively for the purpose of installing equipment on existing tower and shelter in accordance with the Plans attached hereto as Exhibit "B" and subject to the conditions contained herein and, in a manner, not inconsistent with or detrimental to NMDOT's use of its property for highway and transportation purposes. It is expressly agreed between the parties that the granting of this permission or license does not convey or in any way transfer any interest or rights to the Premises other than as indicated herein.
2. That the Premises may not be used for any other purposes than the purposes described in this Agreement and in conformance with the Plans described in Exhibit "B" unless the Permittee obtains prior written approval by the NMDOT. Permittee may not upgrade, reconstruct, add additional facilities or equipment, modify, or expand the facilities without obtaining prior approval of NMDOT.
3. That ingress to and egress from the Premises, as described on Exhibit's "A & A-1" will be granted only upon request by the Permittee to NMDOT's District Engineer or designee. It is understood that such approved access shall occur during normal business hours unless emergency action or maintenance is required.
4. Prior to any entry for construction, reconstruction, or major maintenance, Permittee shall submit and receive approval of NMDOT of a safety plan addressing the manner in which the work will be performed and the safety measures to be taken by the Permittee.
5. This License Agreement shall not be transferred, assigned, or conveyed to another Party without prior written approval of NMDOT. Any attempt by Permittee to transfer or assign this Agreement to another person or entity shall cause the Agreement to immediately terminate and to be of no further force or effect.
6. Permittee shall not contract, lease, sublease, co-locate or accommodate any income producing private facility or equipment on the Premises or Permittee's improvements without prior approval of NMDOT, which may require a sharing with NMDOT of the revenues generated by an approved private facility.

7. To maintain, at Permittee's cost, all improvements including tower and shelter, in good condition both as to safety and appearance. Said maintenance shall in no way cause interference with NMDOT's use of the Premises. If the NMDOT determines that Permittee has failed to adequately maintain the safety and appearance of its improvements, the NMDOT will send a written notice to the Permittee requesting a correction of the condition. The NMDOT may terminate this Agreement or enter the premises to perform the necessary maintenance work if the Permittee has not done so in a satisfactory manner, as determined by the NMDOT, and within FIFTEEN (15) DAYS from the date of written notice of the condition needing repair. In that event, the Permittee shall reimburse all costs incurred by the NMDOT in performing the maintenance work. The NMDOT shall have the right to terminate this Agreement if Permittee fails or refuses to reimburse said costs within the time prescribed by the NMDOT.
8. To be responsible for and pay the costs of all utility service (electricity, water, gas, as applicable) for the facilities or improvements installed upon the Premises.
9. To allow entry by authorized NMDOT representatives when deemed necessary by NMDOT for purposes of inspection of facilities and improvements on the Premises for the purpose of insuring compliance with all provisions of the Agreement.
10. Permittee agrees to allow access to the property described herein at any and all times to utility companies for maintenance of any existing and future utilities that include monitoring and remediation activities. The described activities include, but are not limited to installation, operation, and maintenance of such utilities.
11. Permittee agrees to be responsible for any and all claims of injury to persons or property arising out of the negligent acts, errors and omissions of Permittee, its employees, agents, business invitees and customers in the maintenance and use of the described Premises to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30.
12. Permittee agrees to require any contractor or subcontractor doing construction activities on the Premises to purchase, at Permittee's cost, a policy of either comprehensive general liability insurance or commercial general liability insurance, with an amount and coverage acceptable to NMDOT and which names NMDOT and Permittee, as an additional insured.

A certificate of insurance showing the required coverage shall be provided to the NMDOT prior to any construction on the Premises.

13. Permittee will not allow its contractors or subcontractors to enter or to use the described Premises until such time as the required insurance policies are in force with appropriate certificates of insurance having been delivered to the NMDOT.
14. Permittee for itself, its heirs, successors-in-interest and assigns as a part of the consideration for this Agreement, hereby covenants and agrees that if it constructs, maintains or otherwise operates facilities on the described Premises for a purpose for which a NMDOT program or activity is extended, or for another purpose involving the provision of similar services or benefits, Permittee shall maintain and operate such facilities and services in compliance with all applicable laws.
15. This Agreement may be terminated by the NMDOT if the Permittee violates any provision of this Agreement and after written notice of such violation, the violation is not corrected within such time as the NMDOT deems reasonable.
16. If the site is abandoned or is not used for the purposes set forth herein for a period of NINETY (90) DAYS after completion of improvements on the property, the Agreement may be terminated at the NMDOT's discretion.
17. This Agreement may be terminated for the convenience of either party upon written notice received NINETY (90) DAYS in advance of the termination date without the necessity of showing the other's breach or default.
18. This Agreement may be terminated if the NMDOT determines it needs the Premises for highway or transportation purposes. In that event, the NMDOT shall provide written notice THIRTY (30) DAYS in advance of the termination date.
19. If this Agreement is revoked, terminated, or canceled as provided herein, Permittee shall vacate and remove the improvements from the described premises. Such removal must occur within thirty (30) days of the date of termination or cancellation as provided herein. NMDOT may either accept possession of the remaining improvements or it may require removal of all improvements. If it becomes necessary for the NMDOT to remove the improvements, the Permittee shall be required to reimburse the NMDOT the costs of removal. Nothing in this provision shall operate as a waiver of NMDOT's right of re-entry or any other right or remedy of NMDOT.

20. Upon termination of this Agreement, the NMDOT shall have the right to re-enter and repossess the property described herein, and upon such termination, any permission Permittee may have under this Agreement to occupy or use the right of way shall be extinguished and this Agreement shall have no further effect.
21. If this Agreement is terminated in accordance with the terms hereof, the NMDOT and the FHWA shall not be liable or responsible to Permittee for damages of any nature that may be incurred by Permittee as a result of the termination of the Agreement.
22. The parties agree that the Permittee is not entitled to relocation benefits under the New Mexico Relocation Assistance Act, NMSA 1978, Sections 42-3-1 through 42-3-15.
23. Excepting the terms and conditions required by law and regulation, this Agreement may be amended by mutual, written agreement and acceptance of the parties. This Agreement may be terminated as provided herein in the event of a dispute resulting from the failure of the parties to agree and accept changes to this License Agreement.

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

PERMITTEE

By: Smart, Scott Digitally signed by Smart, Scott
Date: 2021.07.1 916:13:26 -06'00'
Eastern New Mexico University
_____, 2021

**NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

By: [Signature]
Cabinet Secretary or Designee
7/23, 2021

**Reviewed and approved as to form and legal
sufficiency, by NMDOT's Office of General Counsel**

By: Kenneth B Baca, General Counsel

July 17, 2021

**Reviewed and approved as to form and legal
sufficiency, by Permittee's Office of General Counsel**

By: _____
_____, 2021

Exhibit A

NMDOT
District 2
Roswell, NM

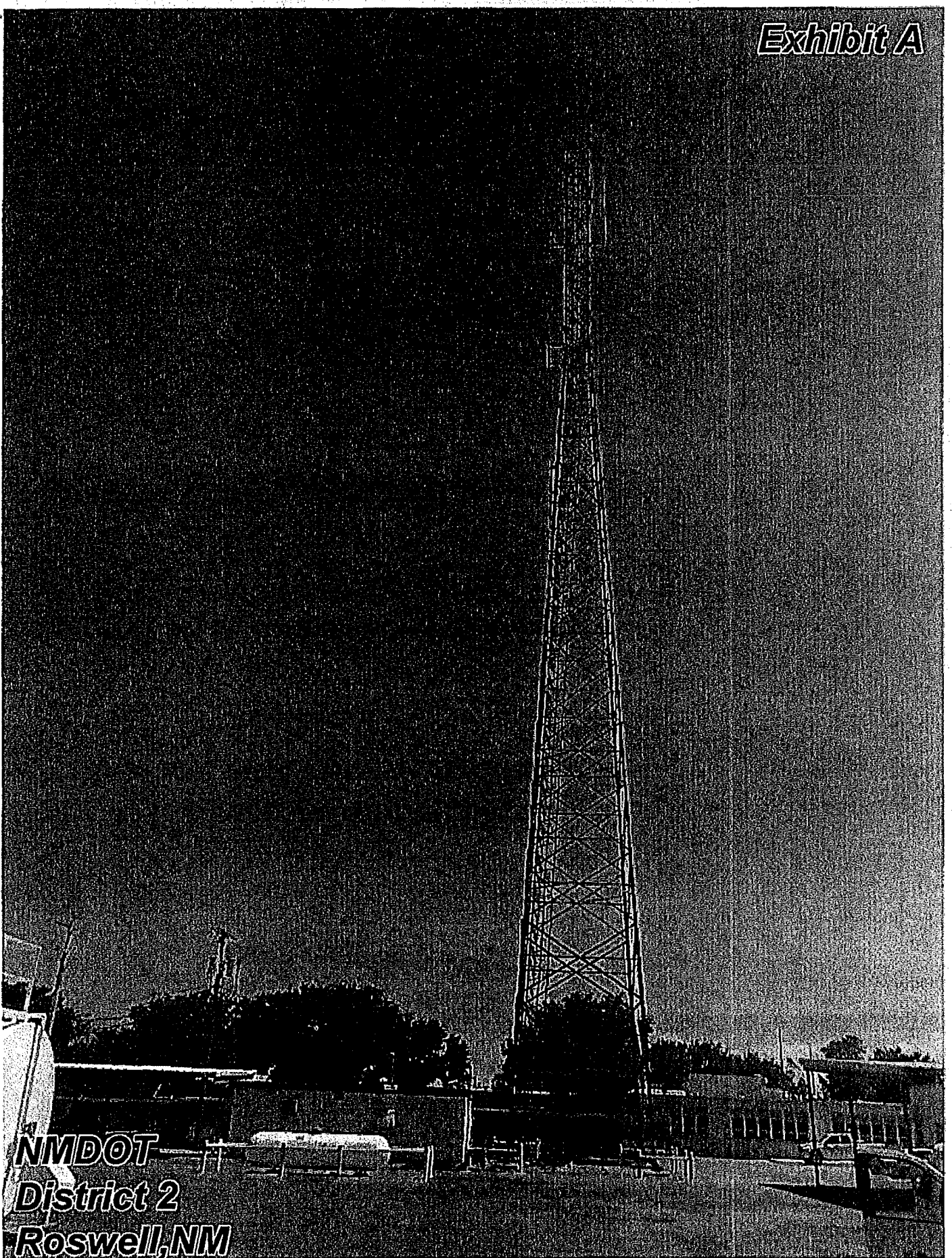


EXHIBIT A-1

LOCATION OF RADIO TOWER
FOR EASTERN NM UNIVERSITY
AT NM DEPT OF TRANSPORTATION
DISTRICT 2 CAMPUS
ROSWELL, NM

Legend

 EASTERN NM UNIVERSITY RADIO TOWER



Exhibit - B

EQUIPMENT TOWER INSTALLATION:

- 1 each: Main ten foot parabolic dish antenna mounted at approximately 180 ft AGL – Hwy Dept. to Tinnie @ azimuth 274.2oT
- 1 each: Diversity eight foot parabolic antenna mounted approximately 150 ft AGL @ - Hwy Dept. to Tinnie @ azimuth 274.2oT
- 1 each: Main eight foot parabolic dish antenna mounted approximately 120 ft AGL @ - Tinnie to Comanche Hill @ azimuth 93.2oT
- 1 each: Diversity six foot parabolic dish antenna mounted approximately 90 ft AGL @ - Tinnie to Comanche Hill @ azimuth 93.2oT

*Each antenna to be fed with EW59 elliptical waveguide from antennas to equipment room

EQUIPMENT SHELTER INSTALLATION:

- 1 each: 19 inch x 6 ft high relay rack with 2 each MDR-8000 series microwave radios
- 1 each: 19 inch x 6 ft high relay rack with one NetVx network gateway and Axess computer remote control (requires 120 vac 20A circuit)
- 1 each: 19 inch x 6 ft high battery rack with 4 each 12 volt lead acid batteries and rectifiers (requires 120 vac 30A circuit)