

## LEASE AGREEMENT

This Lease Agreement ("Agreement") is entered into by and between the County of Marin, a political subdivision of the State of California ("County"), and Sonoma County Water Agency, a body corporate and politic, organized and existing under and by virtue of the laws of the State of California ("Lessee").

WHEREAS, County is the owner of certain real property situated in the unincorporated area of Lagunitas, County of Marin, State of California, hereinafter called "Property", commonly known as Assessor Parcel No. 168-240-01, also identified as Mount Barnabe Communications Site; and

WHEREAS, Lessee desires a Lease from County over a portion of County's Property to design, build, own, operate and maintain a weather radar system known as the Advanced Quantitative Precipitation Information System Weather Radar Project (Project); and

WHEREAS, the Advanced Quantitative Precipitation Information System is used to provide more precise precipitation forecasting for atmospheric rivers to protect the community; and

WHEREAS, the use of the Premises, described herein, provides an emergency service to the Marin County community and is considered a public benefit; and

NOW THEREFORE, County, for and in consideration of the terms, covenants and promises contained herein, does hereby grant this Lease to Lessee, and Lessee hereby accepts from County the non-exclusive right to operate, use, maintain, alter, repair, replace, and/or remove a weather radar system along with any associated facilities, improvements and appurtenances contained within a portion of the Property hereinafter called "Premises" and further described below in Section 1, located in the unincorporated area of Lagunitas, Marin County, California.

NOW, THEREFORE the parties hereto agree, in consideration of the mutual covenants and obligations, to the terms and conditions hereinafter set forth as follows:

1. Leased Premises.

The Premises herein leased is described as a 1,280 square foot portion of County lands known as Mt. Barnabe Communications Site, unincorporated Lagunitas, commonly identified as Assessor Parcel No. 168-240-01. Said portion of County lands is shown on Exhibit "A", attached hereto and incorporated herein by reference, and as depicted in Exhibit B. The parties hereto acknowledge that other licenses, leases or easements for communication and other purposes may currently exist on the Property.

2. Use.

The County grants to Lessee, subject to the rights and privileges of current tenants and other grantees, the right and privilege to use the Premises for any lawful activity in connection with the provision of and installation and operation of a stationary weather radar system. The County further agrees not to grant a right to any other party for use of the Property or permit any other party to use the Property if such use would in any way affect or interfere with Lessee's use of the Lease Space, or interfere with Lessee's facilities, except for uses permitted under previous licenses, leases or easements on the Property. The County agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. Term.

The term of this Lease shall be ten (10) years, commencing upon full execution of this Lease by County and Lessee,.

4. Lease Fee Payments.

Lessee shall pay County One Dollar (\$1.00) per year. Lessee has the option to pay the Rent in advance for the term of this Lease Agreement in the amount of Ten Dollars (\$10.00) or on a year-to-year basis.

5. Access and Utility Easements.

A. Lessee is hereby given a right-of way, subject to the limitations, restrictions, covenants, conditions, leases, licenses and easements of record, for ingress and egress to the Premises over, upon, and across the County owned property required for the erection, installation, operation, maintenance, replacement and removal of Lessee's facilities and related equipment and other necessary appurtenances and for power and data communication lines used in connection with Lessee's facilities (the "Access Easement"). Lessee shall have the right, subject to receiving prior written approval from the County to improve any Access Easement in order to conform the access to the Premises for its necessary and required uses.

B. Lessee shall have the right to enter the Property for the purpose of making necessary inspections and engineering surveys, and other tests reasonably necessary to determine the suitability of the Premises for Lessee's facilities and for the purposes of preparing for the construction of the Lessee facilities. Lessee shall repair any

damage to the Property caused by any tests performed and shall return the Property to the condition that existed prior to any tests.

- C. Lessee shall have access 24-hour\seven days-a-week to the Property for construction, installation, operation, maintenance and repair of Premises. Lessee shall cooperate with, and adhere to, the County's access and security rules designed to promote the security and integrity of the Property wherein the Premises is located; however, the County agrees not to unreasonably restrict entry to the Premises by authorized Lessee employees, agents, contractors and sub-contractors.
- D. Lessee shall pay its prorata share of the costs for improving, maintaining, repairing and restoring the mutual access (Access Easement) to the Property as defined as parcel two in Exhibit "A" attached hereto and made a part hereof. Lessee's prorata share of the hereinabove mentioned costs shall be determined by mutual agreement of the parties hereto.

6. Utilities at Lessee's Cost.

Lessee shall be solely responsible for and promptly pay all charges for propane, gas, electricity, telephone service, or any other utility used or consumed by Lessee on the Premises. Lessee shall have an electrical current meter installed on the Property to service the Premises and the cost of such meter and of such installation, operation, maintenance, and repair shall be paid for by Lessee.

7. Holding Over.

Should Lessee, with the County's written consent, continue to utilize the Premises or any portion thereof after the expiration of the term, Lessee shall continue to do so subject to all terms and conditions of this Agreement.

8. Notice.

This Lease shall be administered on behalf of County by the Chief Real Property Agent, Real Estate Division, Department of Public Works, whose mailing address is:

**COUNTY**

County of Marin  
Department of Public Works, Real Estate Division  
P.O. Box 4186  
San Rafael, CA 94913

**LESSEE:**

Sonoma County Water Agency  
Right of Way section  
404 Aviation Blvd.  
Santa Rosa, CA 95403

Any notice or notices provided by this Lease, or required by law to be given or served upon County or Lessee, may be given or served by depositing the same in the United States Mail, postage prepaid, addressed as set out in this clause.

9. Indemnification.

(a) With respect to the Property and except for the gross negligence or willful misconduct of the County or its agents, employees or contractors, Lessee shall indemnify, hold harmless, and defend the County from any and all claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of the Leased use of the Property by Lessee, or Lessee's officers, contractors, licensees, agents, employees, guests, invitees, or visitors in or about the Premises. The County shall not be liable for any loss or damage to persons or property sustained by Lessee or other persons, which may be caused by theft, or by any act or neglect of any other Lessee, tenant or occupant of the Property, or by any Third Parties. The indemnity obligations hereunder survive the termination of this Agreement.

(b) With respect to the Property and except for the negligence or willful misconduct of Lessee or its agents, employees or contractors, the County shall indemnify, hold harmless, and defend Lessee from any and all claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of the County's gross negligence or willful misconduct with respect to the County's access, use or occupancy of the Property. Lessee shall not be liable for any loss or damage to persons or property sustained by the County or other persons, which may be caused by theft, or by any act or neglect by any other Lessee, licensee, tenant or occupant of the Property, or by any Third Parties. The indemnity obligations hereunder survive the termination of this Agreement.

10. Taxes.

In the event Lessee's presence as a Lessee subjects the Property or County to a tax or assessment event, property tax, personal tax, or otherwise, Lessee shall pay all taxes and assessments levied upon or by reason of Lessee's interest in the Premises herein Leased. All payments of taxes or assessments or both shall be prorated for the initial year and for the year in which the Agreement terminates.

11. Lessee's Right to Terminate.

Lessee shall have the right to terminate this Agreement at any time upon the occurrence of any of the following event:

- A. Upon providing the County six (6) months advance written notice;
- B. Upon revocation, expiration or termination of necessary approvals of any agency, board, court or other governmental authority or third party for the construction and/or operation of the facilities or access thereto or if Lessee reasonably determines the cost of obtaining such approval is unfeasible; or,
- C. If Lessee reasonably determines that the Premises is not appropriate under Lessee's design or engineering specifications for its operation or that of the public safety and weather radar system to which the facility belongs.

12. County's Right to Terminate.

County shall have the right to terminate this Agreement at any time upon the occurrence of any of the following:

- A. Failure by Lessee to comply with any material term, covenant or condition of this Agreement, if such failure is not cured to the satisfaction of County within thirty (30) days after written notice thereof to Lessee;
- B. Lessee acknowledges that County uses the Property for communication purposes. Lessor reserves the right to terminate this Lease Agreement for reasonable purposes as determined by County and upon providing Lessee six (6) months advance written notice.

13. Insurance.

Lessee, at Lessee's own cost and expense shall maintain liability insurance on an "occurrence" basis for the benefit of the Lessee as named insured and the County, its officers, elected and appointed officials, agents, boards, commissions, and employees as additional insured against claims for bodily injury, death, personal injury, and property damage liability with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate in connection with Lessee's use of the Premises. All such insurance shall be effected under valid and enforceable policies and shall be issued by insurers authorized to do business in the State of California and with general policy holder's rating of at least A- and financial rating of VII or

better as rated by A.M. Best's Insurance reports and shall provide that County shall be given thirty (30) days written notice from the insurer prior to any cancellation of coverage, except ten (10) days' notice is sufficient if cancelled for non-payment of premium. On or before the date this Lease entered into, Lessee shall furnish County with a certificate evidencing the aforesaid insurance coverages and renewal policies or certificates shall be furnished to County prior to the expiration date of each policy.

14. Fixtures.

The County agrees that no part of the improvements constructed, erected or placed by Lessee on the Premises shall be considered as being fixed to or a part of the County's real property, it being the specific intention of the County to agree that the weather radar system erected or placed by Lessee on the Premises shall be and remain the property of Lessee. At the expiration or termination of this Agreement, Lessee shall remove, at its sole expense, from the Premises any and all fixtures and improvements constructed and erected thereon including underground conduit and foundations unless otherwise directed by County

15. Assignment.

Lessee shall not voluntarily or by operation of law assign, transfer, license, or otherwise transfer or encumber all or any part of its interest in this Agreement without the County's prior written consent, which consent shall not be unreasonably withheld. County acknowledges Lessee's intent to assign this Lease Agreement to Scripps Institute, or another public agency or educational institution, during the term of this Lease Agreement.

16. Hazardous Materials.

Lessee understands that the County has undertaken no internal investigation of its files, examination of its employees or testing of the Premises with respect to whether or not the Premises has been used for the generation, storage, treatment or disposal of hazardous materials (as defined in "16 A through 16 E" below) and with the qualification the County represents that it has no present knowledge that the Premises has been so used in connection with hazardous materials.

Lessee shall not use, store, or bring onto the Property or Premises, any hazardous materials except in accordance with all federal, state and local laws and regulations. In the event of leakage or spillage from any of Lessee's equipment or any vehicle under the control or custody of Lessee or any contractor or agent for Lessee, Lessee shall at its own expense promptly clean the County's Property and Premises to the reasonable satisfaction of the County, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of

required compliance with federal, state or local environmental regulations incurred by the County or Lessee as a direct consequence of Lessee's use of the Property or the Lease Space shall be borne by Lessee, including any fines and judgments levied against the County. Lessee agrees that in the event the Lessee uses, stores, or brings onto the Property or Premises, any hazardous materials and such act(s) result(s) in damage or injury to the Property or Premises, or to County, County's employees, agents, or contractors, Lessee shall at its own expense, indemnify and hold County, or any of County's employees, agents, or contractors harmless as a result of the damage or injury, including without limitation, to promptly clean County's Property to the reasonable satisfaction of County, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state or local environmental regulations incurred as the result of the above mentioned acts by the Lessee shall be borne by the Lessee, including any fines and judgments levied against either party.

The County agrees that in the event the County uses, stores, or brings onto the Property or Premises, any hazardous materials and such act(s) result(s) in damage or injury to Lessee, or any of Lessee's employees, agents, or contractors, the County, shall at its own expense, indemnify and hold Lessee, or any of Lessee's employees, agents, or contractors harmless as a result of the damage or injury, including without limitation, to promptly clean Lessee's Premises to the reasonable satisfaction of Lessee, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state or local environmental regulations incurred as the result of the above mentioned acts by the County shall be borne by the County, including any fines and judgments levied against either party.

As used in this section, hazardous materials shall mean:

- A. "Hazardous substances" and "pollutants and contaminants" as defined in CERCLA, 42 USC Sections 9601 (14) and (33) and regulations issued pursuant thereto, or their successors;
- B. "Extremely hazardous substances, hazardous chemicals" and "toxic chemicals" as defined in the Emergency Planning and Community Right to Know Act, 42 USC Sections 11002 (a), 11021(e), and 11023 (c), and regulations issued pursuant thereto, or their successors;
- C. "Hazardous chemicals" within the meaning of OSHA's Hazard Communication Rules, 29 CFR Section 1910.1200, or their successors;
- D. Any such materials regulated under state or local environmental laws and regulations similar to the foregoing federal authorities listed in A-C above, or their successors; and

- E. Any materials not covered by, or exempted from, the sources listed in paragraphs A-D above or their successors, that may nevertheless pose a threat to the County's function as a public agency or to human health or welfare or to the environment including, without limitation, petroleum, including crude oil or any fraction thereof, and radon.

17. Interference.

The County's use of the Property as a Fire Lookout Station shall take priority and precedence over any other operations on the Property including the Premises. Lessee's facilities on the Property shall be constructed in such a manner as to not hinder lookout operations on the Property. Further, Lessee's facilities on the Premises shall be constructed in such a manner as to not interfere with County's communications facilities, nor the communications facilities of any current Tenant of the Property. In the event Lessee's operation of its Project on the Premises conflicts with the County's operations and/or operations of any Tenants, Lessee shall take all reasonable steps to cooperate with the County and/or its Tenants (including the cessation of transmitting and receiving radio signals) in an effort to eliminate interference. In the event Lessee determines that interference is occurring due to any existing or future use of other communication facilities, operations or equipment on the Property, the County agrees to take reasonable steps, within its rights necessary to correct and eliminate such interference.

18. Merger.

This Agreement contains all the agreements of the parties hereto and no prior agreements or understandings shall be effective or binding for any purpose.

19. Amendment or Modification.

This Agreement may be amended or modified only by the mutual written consent of both parties hereto.

20. Time is of the Essence.

Time is of the essence with respect to the performance of every provision of this Agreement in which time or performance is a factor.

21. Removal of Improvements Upon Expiration of Term or Termination of Agreement.

Upon the expiration of the term of this Agreement or its termination as provided for herein by either party, Lessee shall remove all improvements



constructed, erected or placed by Lessee on the Premises at its sole cost and restore the Premises and the Property to its original condition existing as of the commencement date save and except normal wear and tear, unless otherwise directed by County.

22. Condemnation.

If a condemning authority other than the County takes all of the County's property or a portion sufficient to render the Premises unsuitable for Lessee's use, Lessee shall terminate the Lease as of the date when possession is delivered to the condemning authority. In any condemnation proceeding Lessee shall be entitled to make a claim against the condemning authority for just compensation including the value of Lessee's Facilities if not removed, moving expenses, prepaid rent, business dislocation expenses, bonus value of this Agreement and any other amounts recoverable under condemnation law. Sale of all or a portion of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

23. Permitting and Construction.

Lessee shall be responsible for the maintenance and upkeep of the Project referred to herein in this Lease, including keeping the improvements in a safe condition in accordance with all applicable laws, ordinances, rules, orders and regulations of any federal, state, regional, county or municipal entities having jurisdiction. All work performed on said Project shall be subject to the securing of and subject to the conditions of all necessary permits of all jurisdictional agencies including, but not limited to, the County of Marin and compliance with the California Environmental Quality Act. No enlargement or expansion of the uses, Improvements, nor physical expansion of the Property shall be allowed. Lessee shall notify the County five (5) business days prior to commencing any construction to the site. All construction will be subject to reasonable inspection by the County.

24. Applicable Law.

This Agreement which is governed by the laws of the State of California applies to and binds the successors and assigns of the parties.

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

**COUNTY OF MARIN:**

\_\_\_\_\_  
President, Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Chief Deputy County Counsel

**LESSEE:**  
**Sonoma County Water Agency**

\_\_\_\_\_  
Grant Davis, General Manager

Approved as to Form:

\_\_\_\_\_  
Deputy County Counsel

## EXHIBIT A

The Property is all that real property situated in the unincorporated area of the County of Marin, State of California and is more particularly described as follows:

### PARCEL ONE

BEGINNING at a point common to the courses North 1° 24' West 1304.58 feet and North 3° 28' West 569.00 feet on the Westerly boundary line of the lands of Dickson, as said lands are described in that certain Deed of Trust from Fred W. Dickson to Wm. P. Murray and A. C. Latno, dated January 1, 1937 and recorded January 14, 1937 in Liber 321 of Official Records at page 181, Marin County Records; said point also being distant South 3° 28' East 569.00 feet from the Northwest corner of the said Dickson Tract of land; running thence from the said point of beginning along the said Westerly boundary. North 3° 28' West 128.31 feet; thence leaving said boundary North 86° 32' East 208.00 feet, South 3° 28' East 208.31 feet. South 86° 32' West 210.89 feet to the aforementioned Westerly boundary; thence along said boundary North 1° 24' West 80.05 feet to the point of beginning.

### PARCEL TWO

ALSO an easement for ingress and egress over a strip of land 30.00 feet in width, being 15.00 feet on each side parallel with and adjacent to the following described center line: BEGINNING at a point in the center line of Portola Avenue, said point being distant North 89° 07' West 15.85 feet from the most Northerly corner of Lot 103, as said lot and Avenue is shown on that certain Map entitled Subdivision 10, Lagunitas Tract, and filed June 7, 1916 in Book 4 of Maps, page 101, Marin County Records; running thence North 7° 36' East 89.71 feet; North 38° 00' East 132.49 feet; thence on a curve to the left whose radius is 100 feet, distant 90.23 feet; thence North 13° 42' West 183.17 feet, North 1° 58' West 152.17 feet; thence on a curve to the right whose radius is 100.00 feet; distant 163.39 feet thence South 88° 21' East 220.77 feet; thence on a curve to the left whose radius is 120.00 feet, distant 268.75 feet; thence North 36° 40' West 430.71 feet; thence on a curve to the right whose radius is 100.00 feet, distant 99.86 feet; thence North 20° 33' East 116.83 feet; North 31° 09' East 187.27 feet, North 17° 26' East 164.05 feet. North 23° 07' East 90.24 feet; thence on a curve to the right whose radius is 153.63 feet, and whose center angle is 24° 19' distant 65.20 feet; thence on a curve to the left whose radius is 100.00 feet, and whose central angle is 58° 54' distant 102.80 feet, thence North 11° 28' West 123.19 feet, North 23° 52' West 374.87 feet, to a point that is 52.55 feet from the Northerly boundary line of the lands of Dickson, as said lands are described in that certain deed of trust from Fred W. Dickson to Wm. P. Murray and recorded January 14, 1937 in Liber 321 of Official Records, at page 181, Marin County Records; thence on a curve to the left whose radius is 45.00 feet, distant 116.87 feet; thence South 7° 20' West 44.22 feet; thence on a curve to the right whose radius is 80.00 feet, distant 98.72 feet; thence South 78° 02' West 187.04 feet, thence on a curve to the left whose radius is 112.00 feet, and whose central angle is 59° 00', distant 115.33 feet; thence on a curve to the right whose radius is 73.75 feet, and whose central angle of 101° 32' 30" distant 130.70 feet, thence North 59° 25' 30" West 113.95 feet, thence on a curve to the left whose radius is 100.00 feet, distant 97.75 feet, thence South 64° 34' West 80.49 feet, South 46° 52' West 86.32 feet, South 84° 27' West 90.34 feet, North 72° 35' West 117.90 feet, South 73° 28' West 85.60 feet to a point that is 15.00 feet from, and on a bearing of South 17° 22' East, the aforesaid Northerly boundary of the lands of Dickson; thence on a curve to the left, whose radius is 72.00 feet, distant 77.70 feet, thence South 11° 38' West 69.26 feet, thence on a curve to the right, whose radius is 70.00 feet, distant 88.98 feet; thence South 84° 28' West 263.82 feet; thence North 76° 49' West 139.72 feet; thence on a curve to the left whose radius is 100.00 feet, distant 51.75 feet; thence South 73° 32' West 445.53 feet to a point that is distant South 17° 22' East 15.00 feet from the aforesaid Northerly boundary of the lands of Dickson, thence on a curve to the left, whose radius is 100.00 feet, distant 61.70 feet, South 26° 43' 30" West 197.69 feet, thence on a curve to the left whose radius is 100.00 feet, distant 67.30 feet; thence South 11° 50' East 140.27 feet, thence on a curve to the right, whose radius is 70.00 feet, distant 132.84 feet; thence North 83° 06' West 174.42 feet, North 61° 15' 30" West 85.02 feet; thence on a curve to the left whose radius is 67.95 feet, and whose central angle is 62° 48' 30", distant 74.47 feet, thence on a curve to the right, whose radius is 123.00 feet, and whose central angle is 97° 29' 30" distant 209.29 feet, thence North 26° 34' 30" West 29.91 feet; thence on a curve to the left whose radius is 84.00 feet, distant 152.24 feet; thence South 22° 18' West 148.28 feet, South 6° 57' West 178.24 feet, South 12° 55' West 43.00 feet to a point which bears South 16° 56' East 446.39 feet from the Northwest corner of the said Lands of Dickson.

Assessor's Parcel No: 168-240-01

EXHIBIT B-  
AQPI Barnabe Lease Area

