

DRAFT DATED December 10, 2019
REVOCABLE LICENSE AGREEMENT FOR UNITED STATES GEOLOGICAL SURVEY USE
OF COUNTY TELECOMMUNICATIONS FACILITIES AT
SONOMA MOUNTAIN

This Revocable License Agreement for Use of County Facilities (this "Agreement"), dated _____, 20____ ("Effective Date"), is entered into by and between the COUNTY OF SONOMA, a political subdivision of the State of California ("County"), and the UNITED STATES GEOLOGICAL SURVEY ("USGS" or "Licensee"). County and Licensee are sometimes collectively referred to herein as the "Parties" and singularly, a "Party."

RECITALS

WHEREAS, County is the owner of that certain property known as the Sonoma Mountain Communications Site located at 2482 Sonoma Mountain Road, Petaluma, California on Sonoma County APN 136-190-016, (hereinafter, the "Site") which Site is more particularly described in the Grant of Easement between the County and John L. Stevenson dated August 18, 1959 (the "Easement Agreement"), attached as **Exhibit A** hereto;

WHEREAS, the County has constructed, owns and operates an existing one hundred eighty-five (185) ft. radio telecommunications tower ("Tower"), an existing forty (40) ft. microwave support structure ("Structure") and a radio communications vault ("Vault") located at the Site;

WHEREAS, since 1997, Licensee has operated its equipment at the Site for earthquake monitoring in the Northern California Seismic Network (NCSN), as part of the USGS mission to provide science to safeguard communities from natural hazards. Said equipment is a node on the USGS private microwave backbone, designed to transmit seismic data for rapid earthquake detection, including Earthquake Early Warning (see <https://www.shakealert.org/> for more details). The Site is also a reception point for many seismic monitoring sensors in the surrounding area. All seismic data collected in the NCSN is publicly available and used for seismological research worldwide. Earthquake location and magnitude information (e.g. shake maps) are used by first responders to allocate resources where they are needed most following a large event;

WHEREAS, Licensee desires to move and consolidate certain equipment racks within the Vault, build a new tower, leave certain antennas on the Tower, and remove and discard certain other existing antennas. Licensee desires to continue to locate its telemetry equipment at the Site and perform certain improvements thereon;

WHEREAS, Licensee desires to : (i) move and consolidate three (3) existing equipment racks down to two (2) equipment racks within the Vault; (ii) build a new 12 ft. by 12 ft. concrete pad; and (iii) construct a new self-supporting forty (40) ft. tower on said pad at the Site. Upon completion of construction, Licensee desires to migrate six (6) of its Yagi antennas from the Structure to the USGS Tower, continue to operate two (2) of its 4 ft. dish antennas from the Structure, and continue to utilize some of the County's infrastructure at the Site in connection with Licensee's operations;

WHEREAS, Licensee has submitted an application for operations to County for review and County has provided comment, revisions and approval of Licensee's application. Licensee shall pay for, obtain all

approvals and cause the completion of the USGS Tower according to plans and specifications approved by County;

WHEREAS, at its sole cost and expense, Licensee will operate and maintain all of its equipment whether on the Structure, the USGS Tower or in the Vault; and install a new submeter to monitor energy use of its equipment;

WHEREAS, County finds that Licensee's continued use and proposed new uses at the Site for the earthquake monitoring operations is of critical public benefit and not inconsistent with County's operations and other licensees at the Site; and

NOW, THEREFORE, in consideration of the Premises and of the agreements of the respective parties herein set forth, it is mutually agreed as follows:

AGREEMENT

1. **License.** County hereby grants Licensee a license, subject to all the terms and conditions of this Agreement, to utilize a portion of the Site as described in **Section 2** below.

2. **Premises, New Equipment, Equipment List.**

2.1 **Rack Space.** Licensee shall consolidate its existing three (3) equipment racks down to two (2) equipment racks and to migrate said racks to a different location within the Vault approved by County. Specifically, Licensee shall use a portion of the Vault on the Site as generally shown or described in **Exhibit B-1** ("Licensee's Vault Space").

2.2 **New USGS Tower.** County grants a license to Licensee to use a portion of the land at the Site to install, construct and operate a new 12' by 12' concrete pad and upon which USGS shall install new forty foot (40') three leg self-supporting tower (the pad and tower shall be collectively referred to as the "USGS Tower"). County further grants a license to Licensee to install a Vault penetration required to route its transmission cables to the USGS Tower, at the location identified at **Exhibit B-2**, attached hereto and made a part hereof. Licensee shall submit all drawings, plans and specifications for said USGS Tower to County for its review, modification and approval.

2.3 **New Submeter.** Licensee shall install a new submeter at the location on the Vault approved by County at the location identified at **Exhibit B-3**.

2.4 **Licensee's Equipment.** Licensee is hereby authorized to operate, utilize and make beneficial use of the equipment listed on **Exhibit C** (the "Licensee-Owned Equipment").

2.5 **Relocation.** County reserves the right to relocate the Licensee-Owned Equipment within the Site, provided said relocation does not unreasonably and detrimentally affect the operation and performance of Licensee's equipment.

2.6 **Premises.** All portions of the Site which are licensed to Licensee hereunder and referenced above, shall be referred to herein as "Premises".

2.7 **Review of Plans.** County's execution of this Agreement will signify its preliminary approval of the location and site lay-out of the USGS Tower and Licensee-Owned Equipment as reflected on **Exhibit B** and **Exhibit C**. If **Exhibit B** and **Exhibit C** includes only conceptual drawings of the initial installation of the USGS Tower and Licensee-Owned Equipment, County must approve actual construction drawings, which approval will not be unreasonably withheld, prior to commencement of construction, provided the actual construction drawings are generally consistent with said exhibits. Licensee has the right to install and operate transmission cables from the Vault to the antennas, electric lines from the main feed to the Vault and communication lines from the

main entry point to the Vault and to make improvements, alterations, or additions appropriate for Licensee's use. The date upon which the USGS Tower receives its final permit to operate shall be referred to as "Completion of Construction."

2.8. Post Construction. After Licensee's installation of USGS Tower and Licensee-Owned Equipment on the Premises, the Parties shall inspect the Premises to: (i) insure that all construction material and debris have been removed from the Premises and the Site, (ii) make sure all safety and emergency signs are posted, and (iii) the construction was performed consistent with the approval plans and permits. If Licensee has failed to comply with items (i)-(iii) above, Licensee shall have thirty (30) days to so comply. If Licensee fails to do so, County may perform the necessary work and bill Licensee for the cost of such work. Licensee shall use best efforts to complete all work associated with installation of the USGS Tower and Licensee-Owned Equipment no later than **[USGS TO PROVIDE]** _____, 2020.

2.9 Structural Analysis. Licensee shall be solely responsible for any cost or expense for any and all maintenance and repairs required to ensure the Licensee's tower complies with all federal, state, and local laws, ordinances, rules and regulations. Licensee shall perform a structural analysis that complies with the latest version of TIA-222 at least every five (5) years, or as regulations mandate. Licensee shall cause a copy of that analysis to be delivered to the County for its benefit promptly upon preparation.

3. Non-exclusive License. The license herein granted is non-exclusive. County continues to maintain and control the Site and Premises including, without limitation, leasing, sub-leasing and granting of additional licenses.

4. Term.

4.1 Initial Term. The initial term of this Agreement shall be deemed to commence on January 1, 2019 ("Commencement Date"), and shall end on the ten (10) year anniversary of the Commencement Date (the "Initial Term"). The first year of the Initial Term shall also be deemed the "Base Year".

4.2 Renewal Term. Licensee may extend the term of this Agreement for up to four (4) successive terms of five (5) years each (each a "Renewal Term"). Each Renewal Term shall run from anniversary of the Commencement Date for five (5) years. In addition, Licensee shall give County a written notice of intent to renew at least ninety (90) days before the expiration of the existing Initial Term or Renewal Term.

4.3 Renewal Term Rent. During any such continued renewal period, Licensee shall pay the monthly rent in the amount which was payable during the immediately preceding month, subject to any rent adjustments as provided under **Section 5** of this Agreement.

4.4 Early Termination. The Initial Term together with each and any Renewal Term shall constitute the term ("Term") of this Agreement. The Term is subject to earlier termination in accordance with **Section 24** and subject to **Section 35.1** of this Agreement.

5. Consideration.

5.1 Base Rent. Upon execution of this Agreement, Licensees shall pay as past rent for the Premises, the sum of Three Thousand Two Hundred Forty-Four Dollars (**\$3,254.00**) per month for the period from the Commencement Date through the end of the month containing the Effective Date. Thereafter, Licensee shall pay to County on or before the fifth (5th) day of the month, as rent for the Premises the sum of Three Thousand Two Hundred Forty-Four Dollars (**\$3,254.00**) ("Base Rent") per month, prorated for any partial month, without deduction, offset, prior notice or demand, in lawful money of the United States. Rent and all other payments

required hereunder shall be sent to the address identified in **Section 30** below, or such other address as County may direct payment to be sent.

5.2 Base Rent Escalations. On the each anniversary of the Commencement Date and for every year of the Initial and any Renewal Term(s), the monthly Base Rent will increase by three percent (3.0%).

5.3 Components of Base Rent. Base rent is based on the equipment and rates set forth in the table set forth below:

Component	Rate	Qty	per year	per month
Ground Space for USGS Tower	\$29,652 (based on \$98.84 per sq. ft.)	144	\$14,233	\$1,186
Equipment Racks in Sonoma Vault	\$7,010	2	\$14,020	\$1,168
4-ft Microwave Dishes on Sonoma Tower	\$4,800	2	\$9,600	\$800
Cameras mounted on Sonoma Tower and Vault	\$300	2	\$600	\$50
Connection to County Generator	\$600	1	\$600	\$50
Total (at Commencement Date)			\$39,048	\$3,254

6. Use. Licensee's use of the Premises shall be for transmitting seismic data for rapid earthquake detection and as a reception point for seismic monitoring sensors in the surrounding area, through use of Licensee-Owned Equipment, the USGS Tower, related equipment to and in the Vault, and necessary connections to power and for no other purposes. No other use shall be permitted. Rules and regulations may be adopted by County and provided to Licensee for the safety, care and cleanliness of the Premises and the preservation of good order thereon, and Licensee hereby agrees to comply with them.

Licensee shall have a non-exclusive right of ingress and egress to the Site and the Premises over the access road described at **Exhibit A** which is permitted only in accordance with the terms of this Agreement and the Rules and Regulations attached hereto as **Exhibit D**, and any security clearances required by the County Sheriff's Telecommunications Bureau. Licensee shall be responsible to make any repairs necessary due to its installation of Licensee Owned Equipment and use of the access road to the Site.

7. Utilities/Repairs/Maintenance.

7.1 Utilities - Electrical Power; Submeter; Readings; Reconciliation.

7.1.1 The County will provide electrical power to the Site and the Licensee-Owned Equipment and the USGS Tower. Licensee shall install a submeter concurrently with construction of the USGS Tower. During the first year following Completion of Construction, Licensee shall pay \$150/month to County for estimated electrical usage.

7.1.2 Within sixty (60) days of the anniversary of Completion of Construction, County will review readings from the submeter. Licensee and County will calculate the utility charge for the period covered. Upon the first anniversary of Completion of Construction, the utility charge amount will become the "Estimated Utility Charge".

7.1.3 Licensee shall pay for said electrical charges within thirty (30) days of receipt of invoice. The Estimated Utility Charge will be payable in advance to County in the same manner as Base Rent and Licensee shall continue to pay such Estimated Utility Charge in advance during the Term. The parties agree that the Estimated Utility Charge will be applied as the Utility Charge for the first year of the Agreement.

7.1.4 Based on the submeter readings conducted annually within sixty (60) days of the anniversary of the Completion of Construction, County will calculate the actual Utility Charge for the immediately preceding twelve (12) month period based on readings from the submeter and on the rates charged by the County's servicing utility for said twelve (12) month period. County will provide a reconciliation invoice to Licensee within thirty (30) days following said calculations.

7.1.5 If the aggregate Utility Charges paid during the calculation period exceeds the total Estimated Utility Charges paid during same period, then Licensee shall pay the amount of such shortfall to County within thirty (30) days of notice of such calculation. If the aggregate Utility Charges for the calculation period are less than the total Estimated Utility Charges paid during the same period, then the amount of any excess payment will be credited to Licensee's next due Utility Charge(s).

7.1.6 Upon the second anniversary of the Completion of Construction and on each such anniversary thereafter, the Estimated Utility Charge for the subsequent year of the Agreement will be provided by County to Licensee utilizing readings from Licensee's submeter, as necessary to cover the expected Utility Charges for the next year based on the average prior year use and the then current electricity rate paid to the electricity provider by the County for its electrical service.

7.1.7 County reserves the right to conduct submeter readings and perform a reconciliation of the actual Utility Charges against the Estimated Utility Charges at any time.

7.2 Repairs and Maintenance Licensee shall pay the sum of One Hundred Fifty Dollars (\$150.00) per month to reimburse to County, for the costs of ongoing Site operation and maintenance, including, but not limited to, periodic road maintenance, fuel and generator maintenance and permitting costs, other routine maintenance, repair and replacement costs incurred by County for the Site, including the Structure and the Vault (collectively "Site Maintenance Fee"). Licensee shall also reimburse County for the cost of any repair(s) that are needed to the Site or Premises, as a result of Licensee's negligence or willful acts. Reimbursements due to County for the cost of any repair that is needed as a result of Licensee's negligence or willful acts and Site Maintenance Fee shall be paid to County within thirty (30) days of receipt of invoice by Licensee for said repairs and maintenance. Charges for site inspections to address such repairs will be based on current staff labor billing rates. The Site Maintenance Fee will increase by three percent (3.0%) annually on the Commencement Date.

7.3 Vegetation Management. County shall be responsible for the clearing of vegetation at the Site. Licensee shall reimburse the Telecommunications Bureau in the amount of Two Hundred Sixty Dollars (\$260.00) per year for vegetation management (the "Vegetation Management Fee") within thirty (30) days of receipt of invoice. The Vegetation Management Fee will increase by three percent (3.0%) annually on the Commencement Date.

7.4 Generator. County will provide an emergency power generator, including fuel storage, at the Site for benefit of the Premises. A portion of the cost to maintain the generator, for use of

emergency power and fuel costs, will be invoiced to Licensee and included in the amount set forth in **Section 7.2** above.

8. Equipment Installation and Operation. Licensee shall be solely responsible for the cost of maintenance, repair or replacement of the Licensee-Owned Equipment listed on **Exhibit C** and responsible for Licensee's proportionate share of maintenance, repair or replacement of the Shared Use of County Owned Equipment listed on **Exhibit C**. Furthermore, Licensee shall be solely responsible for any cost or expense for any and all maintenance and repairs required to ensure the Premises comply with all federal, state and local laws, ordinances, rules and regulations, including without limitation, alterations or repairs necessitated by the Americans with Disabilities Act (See **Section 33.9**). All material alterations or replacement of the Licensee-Owned Equipment and/or the USGS Tower or portion thereof, shall be subject to County's prior written approval. Additionally, Licensee's proposed installation of any new equipment shall be subject to County's prior written approval, which may be withheld in County's sole discretion. The Licensee-Owned Equipment and the USGS Tower will be installed, operated and maintained in accord with the terms of this Agreement. Licensee acknowledges and agrees that County's communications and the communications of other public agencies at the Site are necessary for critical public safety, public service and law enforcement purposes.
9. Covenant of Noninterference. Licensee will not commit any act or omission that would in any way interfere with County's transmissions or communications or any other preexisting communication facility or antenna. Licensee shall reasonably cooperate with current and future users of the Premises and with any other third parties who are impacted by Licensee's use of the Premises. Subsequent lessees or licensees shall be subject to the foregoing requirements with respect to their use, maintenance or operation of equipment in or around the Premises. County shall advise all Site licensees when changes are made to equipment that may cause interference to other licensees.
10. Taxes. Licensee agrees to pay any and all lawful taxes, assessments, or charges that may at any time be levied by any public entity upon any improvements made as a result of this Agreement.
11. Possessory Interest. Licensee expressly recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest.
12. Compliance with Laws. Licensee represents and warrants to County that Licensee has complied with all laws applicable to the acceptance and use of the license herein granted. Licensee shall observe and comply at all times with all applicable federal, state and county statutes and ordinances, rules, regulations, directives, and orders of governmental agencies now in force or which may hereinafter be in force relating to or affecting the use of the license herein granted, including all applicable FCC rules and regulations. Prior to full execution of this Agreement, Licensee shall provide County with all current licenses to operate its equipment and shall forward any new or renewal licenses during the Initial Term or any Renewal Term of this Agreement.
13. Annual Inspection by County. Licensee acknowledges that the Premises shall be subject to an inspection on not more than an annual basis, for compliance with all applicable federal, state and county statutes and ordinances, rules, regulations, directors, and orders of governmental agencies, including Sonoma County Sheriff's Office, Telecommunications Bureau and the Permit and Resource Management Department. The cost of said inspection fee shall not exceed Five Hundred Dollars (\$500) per inspection. Licensee shall be solely responsible for the inspection fee for said

annual inspection of the Premises performed by County within sixty (60) days of receipt of invoice therefor.

14. Waste; Nuisance. Licensee shall not commit, suffer, or permit the commission by others of: (i) any waste or nuisance on the Premises; (ii) any action or use of the Premises, which interferes, or conflicts with the use of the Premises by County or any authorized person; or (iii) any action on the Premises in violation of any laws or ordinances.
15. Inspection. County shall be permitted to enter and inspect the Premises at any and all times.
16. Extent of Grant of License. This Agreement and the license herein granted are valid only to the extent of County's jurisdiction as a lessee of the Site. Acquisition of any other necessary permits or entitlements for use are the responsibility of Licensee. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY COUNTY.
17. Deposit Refund. (This section left intentionally blank.)
18. Bankruptcy. In the event of bankruptcy of Licensee or writ of attachment of execution against Licensee, this Agreement shall, at the option of the County, immediately terminate.
19. Non liability of County. Except as may be provided herein to the contrary, County, its officers, agents, and employees shall not be liable to Licensee for any loss or damage to Licensee or Licensee's property from any cause. Licensee expressly waives all claims against County, its officers, agents, and employees, unless such injury or damage is caused by or due to the sole negligence or willful misconduct of County, its officers, agents, and employees. Licensee hereby agrees to accept the Premises in its "as-is" physical condition and its "as-is" state of repair.
20. Indemnification. Licensee agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to County, and to defend, indemnify, hold harmless, reimburse and release County, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense, including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by County to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Licensee, arising out of or in connection with any of the circumstances described in Sections 20, 20.1, 20.2, 20.3 and 20.4, whether or not there is concurrent negligence on the part of County, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of County. If there is a possible obligation to indemnify, Licensee's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. County shall have the right to select its own legal counsel at the expense of Licensee, subject to Licensee's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Licensee or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.
 - 20.1 Use of Site and Premises. Use of the Site and Premises in any manner by Licensee, its agents, employees, invitees, sublicensees, licensees and contractors, and the agents, employees,

patrons, contractors and invitees of sublicensees, including any use of the Site and Premises not allowed under this Agreement.

20.2 Breach by Licensee. Any breach by Licensee of the terms, covenants or conditions herein contained.

20.3 Approval of Agreement. The approval of this Agreement by County.

20.4 Other Activities. Any other activities of Licensee, its agents, employees and sublicensees.

21. Insurance. With respect to the rights granted hereunder, Licensee shall maintain and shall require all of its subcontractors to maintain insurance as described in **Exhibit E** attached hereto and made a part hereof.
22. Liability for Loss or Damage to County Property. Licensee shall be liable to County for any loss or damage to the Premises arising from or in connection with Licensee's performance hereunder or any of its officers, agents, and employees.
23. Nondiscrimination. In the performance of this Agreement, Licensee shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability.
24. Termination by County or Licensee. In recognition of Licensee's substantial investment in construction of the USGS Tower and new concrete pad at the Site, during the Initial Term, only Licensee shall have the right to terminate this License. Subsequent to the Initial Term, either Party may terminate this Agreement for any reason whatsoever upon ninety (90) days prior written notice to the other Party. Notwithstanding the foregoing, County may immediately terminate this Agreement for cause upon any material breach by Licensee of the terms hereof, including without limitation, failure to pay rent in a timely manner or perform its maintenance obligations.
25. Default and Right to Cure. Except as otherwise specified in this Agreement, a Party shall be deemed in default under this Agreement if it fails to make any payment, or to perform any obligation required of it within any applicable time period specified and does not commence curing such breach within thirty (30) days after receipt of written notice of such breach from the non-defaulting Party ("Default"). This Agreement shall not be terminated due to any Licensee Default unless County shall have given Licensee not less than thirty (30) days prior written notice, after the expiration of the cure period described above, and Licensee fails to cure or commence the cure of such Default within the second thirty (30) day notice period. If there is any conflict between this **Section 25** and other remedies available under applicable state law, the provisions of this **Section 25** shall apply.
26. License is Personal. The license herein granted is personal to Licensee and no right hereunder may be assigned, sublet, or otherwise transferred in whole or in part without the prior written consent of County, and any attempt to assign, sublet or transfer shall be of no force or effect whatsoever unless and until County shall have given its written consent thereto. County may withhold its consent for any reason.

27. Provisions are Conditions of Use/Occupancy. Each provision of this Agreement shall be deemed a condition of the right of Licensee to use or continue to occupy the Premises.
28. Licensee to Act in Independent Capacity. Licensee, its officers, agents, and employees shall act in an independent capacity and shall not represent themselves to be or be construed to be officers, agents, or employees of County.
29. License Not a Lease. This Agreement does not constitute a lease, but constitutes a mere revocable license and Licensee is limited to the use of the Premises expressly and specifically described above. Licensee shall have no right or privilege in any respect whatsoever to use any other part of the property of County for any purpose whatsoever. Licensee disclaims any interest that when coupled with the license herein granted would render it irrevocable.
30. Notice. Any notice required or permitted to be given under this Agreement shall be in writing. Delivery of such written notice shall be conclusively taken as sufficiently given forty-eight (48) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid, addressed as follows:

If to COUNTY: County of Sonoma
General Services Department
Attn. Real Estate Manager
2300 County Center Drive, Suite A200
Santa Rosa, CA 95403
Tel: 707 565 2550 and

Sheriff Telecommunications Bureau
2796 Ventura Avenue
Santa Rosa, CA 95403
Tel: 707 565-1984
Fax: 707 565-6002
E-Mail: radio@sonoma-county.org

If to LICENSEE: Department of Interior
United States Geological Survey (USGS)
Attn: Branch of Management Services
3020 State University Drive East
Sacramento, CA 95819
650-329-4051 or 916-278-9427

Any notice required or permitted to be given by County under this Agreement, including under **Sections 24** and **25** hereof, may be made by the Director of the General Services Department. Either Party may at any time change its address for notices by giving written notice of such change to the other Party in the manner provided in this **Section 30**.

31. No Continuing Waiver. The waiver by County of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver of any subsequent breach of the same, or of any other provision of this Agreement.

32. Surrender and Equipment Removal. Upon the expiration or sooner termination of this Agreement and at County's election, Licensee, at its sole cost and expense, shall remove or relocate such of its structures and equipment, including the Licensee-Owned Equipment and USGS Tower, as designated by County, restore the Premises to its original condition, and vacate the Premises. At County's election and direction to Licensee, footings, foundations, and concrete will be removed to a specified depth of below grade. The access rights granted to Licensee hereunder shall continue during such reasonable period after the termination or expiration of the Term as is necessary for Licensee to remove all such property of Licensee as may be requested by County. Should Licensee neglect to restore the Premises to a condition satisfactory to County within thirty (30) days after County's tender of written notice of the same, County may perform such work or have the work performed and Licensee shall immediately reimburse County for all direct and indirect costs associated with such work upon receipt of an invoice therefore. This Article shall survive the expiration or termination of this Agreement.
33. General Provisions.
- 33.1 Time of Essence. Time is and shall be of the essence of this Agreement and of each and every provision contained in this Agreement.
- 33.2 Incorporation of Prior Agreements; Amendments. This Agreement contains all the agreements of the Parties with respect to any matter mentioned herein. No prior agreement, or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by the Parties in interest at the time of the modification, and this sentence may not be modified or waived by any oral agreement, whether executed or unexecuted.
- 33.3 Binding Effect; Choice of Law. This Agreement shall be binding upon and inure to the benefit of the Parties, their personal representatives, successors, and assigns. This Agreement shall be governed by the laws of the State of California and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.
- 33.4 Amount Due Payable in U.S. Money. All sums payable under this Agreement must be paid in lawful money of the United States of America.
- 33.5 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the Parties do not intend to create any rights in third parties.
- 33.6 Construction of Agreement; Severability. To the extent allowed by law, the provisions in this Agreement shall be construed and given effect in a manner that avoids any violation of statute, regulation, or law. County and Licensee agree that in the event any provision in this Agreement is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement. Licensee and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of this Agreement will not be construed against one Party in favor of the other. Licensee and County further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

33.7 Relationship. The Parties intend by this Agreement to establish the relationship of licensor and licensee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of licensor and licensee.

33.8 Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions hereof, and shall have no effect upon the construction or interpretation of any part hereof.

33.9 Certified Access Specialist Disclosure. Pursuant to California Civil Code Section 1938, the subject property has not been inspected by a “Certified Access Specialist”.

34. Hazardous Materials.

34.1 Licensee shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept or used in or about the Premises by Licensee, its agents employees, contractors or invitees, without the prior written consent of County, which County shall not unreasonably withhold as long as Licensee demonstrates to County’s satisfaction that such Hazardous Materials: (i) are necessary or useful to Licensee’s business and will be used, kept and stored in a manner that complies with all laws, statutes, ordinances, rules, regulations, orders, requirements, and policies of any and all governmental agencies and authorities and any fire insurance underwriters applicable to any such Hazardous Materials (“Hazardous Materials Laws”); and (ii) do not otherwise, due to the quantity, nature or use of such Hazardous Materials, substantially increase the risk of fire or other casualty to the Premises.

34.2 To the extent any Hazardous Materials are used, kept, or are present in or on the Premises after the commencement of this Agreement, Licensee shall ensure that all such Hazardous Materials, and all uses thereof, are in full compliance with all Hazardous Materials Laws.

34.3 If Licensee breaches the obligations stated in this **Section 34** or if the presence of Hazardous Materials on or about the Premises after the commencement of this Agreement results in contamination of the Premises, then Licensee shall indemnify, defend (with Counsel approved by County) and hold County harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses which arise during or after the term of this Agreement as a result of such breach or contamination. This indemnification of County by Licensee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials in, on or under the Premises. Without limiting the foregoing, if a release or discharge of Hazardous Materials occurs on or about the Premises after the commencement of this Agreement, Licensee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing before such release or discharge of Hazardous Materials, provided that County’s approval of such actions shall first be obtained. Upon termination of this Agreement, Licensee shall surrender the Premises to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials Laws. This indemnification shall survive the termination or expiration of this Agreement.

34.4 As used herein, the term “Hazardous Materials” includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C §9601 et seq.), the Hazardous

Materials Transportation Act, as amended (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), Section 25117 of the California Health and Safety Code, Section 25316 of the California Health and Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.

LICENSEE HAS CAREFULLY READ AND CONSIDERED THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND HEREBY AGREES THAT LICENSEE SHALL BE BOUND BY ALL SAID TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

“LICENSEE”: DEPARTMENT OF INTERIOR
UNITED STATES GEOLOGICAL SURVEY

By: _____

Print Name: _____

Title: _____

The Board of Supervisors of the County of Sonoma hereby authorizes the Director of General Services to convey this license pursuant to Summary Action Item No. ____ dated _____, 2020.

“COUNTY”: COUNTY OF SONOMA, a political
subdivision of the State of California

By: _____

Caroline Judy, Director
Department of General Services

APPROVED AS TO FORM
FOR COUNTY:

Deputy County Counsel

APPROVED AS TO SUBSTANCE FOR COUNTY AND
EVIDENCE OF INSURANCE ON FILE:

Real Estate Manager

Sheriff

Exhibit A

Property

Sonoma Mtn. – USGS - 2019

That certain parcel of land located in the unincorporated area of the County of Sonoma, State of California, commonly known as the located at 2482 Sonoma Mt. Road, Petaluma, CA, 94954, being Sonoma County Assessor's Parcel #136-190-016, and as more particularly described in the Grant of Easement agreement attached hereto as Exhibit A.

Exhibit B-1

See Attached Licensee Vault Space



Exhibit B-2

See Attached New USGS Tower Diagram with Antenna System(s)

(USGS TO PROVIDE CURRENT APPROVED PLANS)

Exhibit B-3

County Structure with USGS antennas shown



Exhibit B-4

Location of new USGS Owned Submeter
(USGS TO PROVIDE)

DRAFT

Exhibit C

**Sonoma Mtn– County of Sonoma Communications Facility
the Licensee-Owned Equipment List**

A. Licensee-Owned Equipment [CONFIRM]

- 1) six (6) yagis on new USGS Tower
- 2) two (2) 4' microwave dish antenna on County owned Structure
- 3) eight (8) radios on 2 racks
- 4) two (2) video surveillance cameras

B. Shared Use of County Owned Equipment [CONFIRM]

- 1) Use of County's Power Supply System
- 2) Use of County's "Ice Bridge" and feed lines

EXHIBIT D

RULES AND REGULATIONS

1. No sign, placard, name or notice shall be installed on or about the Premises without the written consent of County, and County shall have the right to remove any such sign, placard, name or notice without notice to and at the expense of Licensee.
2. Access roads shall not be obstructed by Licensee or used for any purpose other than for ingress to and egress from the Site and Premises.
3. Physical Access; Administrative Policy 9-4.
Licensee agrees to comply with the County and Sheriff Office T-Comm Bureau access regulations and security policies when entering and using County facilities.
 - (a) **County Administrative Policy 9-4 Information Technology Professionals Policy Manual** requires that background investigations, or security clearance, be conducted on individuals requesting access to County facilities. Licensee, or its contractor personnel requiring access to the County's Telecommunication sites listed in this Agreement must complete the attached Exhibit A, "Request for Facility Clearance" attached to and incorporated herein by this reference, request and return it to the Sheriff's Personnel Bureau to obtain such security clearance. Background investigations may require the person requesting access to submit a consent and waiver form permitting County to obtain personal employment and/or professional qualification information from third parties, and releasing such third parties from any liability for disclosing information to County.
 - (b) All personal information provided will be maintained by the County in strictest confidence to the extent allowed by law. The type of clearance required can vary based on the background investigation previously conducted by other law enforcement and governmental agencies. The Sheriff's Office maintains sole discretion in determining what level of background investigation may be needed. Sheriff's Office may restrict access to any person at any time at its sole discretion.
 - (c) No person shall enter the Premises herein until approval has been obtained in writing from the Sheriff's Office and corresponding access has been granted, via issuance of either keys or access pass by Sheriff's Telecommunications staff. Licensee's authorized persons are required to email Sheriff-TComm@sonoma-county.org prior to their accessing Telecommunications facilities. Persons granted access to facilities are prohibited from lending their keys, passes, etc. to other personnel. If Licensee has a need to bring contractors or other professional staff on site, Licensee personnel authorized to access the Site shall escort such persons at all times. Failure to follow such procedures shall result in access being revoked.
 - (d) Licensee personnel are required to immediately notify Sheriff's Personnel Bureau staff when a person authorized for clearance no longer works for the agency. Licensee, and its contractors, are required to return keys/passes, within 24 hours of the notification. Keys / passes will be re-issued when a new security clearance has been completed for the replacement personnel. To ensure the most efficient delivery services, report all telecommunication issues during Regular Hours to the T-Comm Bureau at: 707 565-1984.

- (e) In no circumstance will Licensee be allowed to access the County Microwave Tower (described as the Structure herein), without prior written consent of County, which must be requested at least seventy-two (72) hours in advance. County's approval to access the Microwave Tower may be subject to an escort fee, charged at then then current rates of the T-Comm Bureau. Any personnel of Licensee will be subject to confirmation of Licensee's personnel certifications, insurance certificates and other requirements at the sole discretion of the County. With County's prior written approval, County agrees to Licensee's use of a lift to access Licensee's equipment mounted on the Structure. In accordance with such alternative access, no personnel climbing certification will be required of Licensee to access Licensee's equipment on the Structure.
4. Access, electric lock combination and keys for gates must be authorized by the Sonoma County Sheriff T-Comm Bureau at: 707 565-1984. Licensee shall not alter any lock or install any new or additional locks or any bolts on any gates, doors or windows of the Premises.
 5. County will direct Licensee as to where and how cables, wires and chases, if any, are to be introduced. No boring or cutting for wires will be allowed without the written consent of County.
 6. County reserves the right to exclude or expel from the Premises any person who violates any of these rules and regulations or the License to which these rules and regulations are made a part.
 7. All gates and doors shall be left locked when the Premises are not in use.
 8. Licensee's equipment or frequency additions or changes must be made pursuant to the terms of **Section 9** of this Agreement.
 9. Any interference caused by Licensee's equipment to the equipment of County or County's operations at the Site shall be resolved, to the County's satisfaction, within twenty four (24) hours of telephonic notice to Licensee. (Property Services Hotline: 800-357-7641, 7 am to 6 pm Central Time; after hours emergencies call the NOCC: 888-859-1400). If Licensee's equipment is causing interference which may put first responders or the public at risk, the County may, in its sole discretion, immediately shut down or remove the equipment or transmissions causing the interference.
 10. Licensee shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or other hazardous material, or use any method of heating or air conditioning other than that supplied by County, provided, however, that Licensee may use back-up batteries consistent with all applicable regulations including those of the County of Sonoma.

Exhibit E

County Insurance Requirements

During the term of this Agreement, or any extensions of the term, Licensee shall maintain insurance and/or self-insurance as described below, unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Licensee shall require its contractors, subcontractors and agents to maintain the same insurance.

Failure to demand evidence of full compliance with the insurance requirements set forth in this License or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the term of this Agreement.

1. Workers Compensation and Employers Liability Insurance

- a. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- b. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- c. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- d. *Required Evidence of Insurance:*
 - i. Subrogation waiver endorsement, and
 - ii. Certificate of Insurance

2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; the General Aggregate shall apply separately to each location. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Licensee maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Licensee.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. Licensee is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Licensee has a claim against the insurance or is named as a party in any action involving the County.
- d. County of Sonoma, its officers, agents and employees shall be endorsed as additional insureds for liability arising out the ownership, maintenance or use of that part of the premises Licensed to Licensee (Insurance Services Office endorsement CG 20 26 or equivalent).
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- g. The policy shall cover inter-insured suits between County and Licensee and include a

“separation of insureds” or “severability” clause which treats each insured separately.

h. Required Evidence of Insurance:

- i. Copy of the additional insured endorsement or policy language indicating that insurance for County is primary and non-contributory.
- ii. Copy of the additional insured endorsement or policy language granting additional insured status, and
- iii. Certificate of Insurance.

3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident.
- b. Insurance shall apply to all owned, hired and non-owned autos. Required Evidence of Insurance: Certificate of Insurance

4. Pollution Liability Insurance

- a. Minimum Limits: 1,000,000 per pollution Incident; 1,000,000 Aggregate. If Licensee maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Licensee.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. Licensee is responsible for any deductible or self-insured retention and shall fund it upon County’s written request, regardless of whether Licensee has a claim against the insurance or is named as a party in any action involving the County.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of work.
- d. Insurance shall be continued for five (5) years after the expiration or earlier termination of this Agreement. If the insurance is on a Claims-Made basis, the continuation Insurance may be provided by: (a) renewal of the existing policy; (b) an extended reporting period endorsement; or (c) replacement insurance with a retroactive date no later than the Commencement Date of this License.
- e. County of Sonoma, its officers, agents and employees, shall be additional insureds for liability arising out of the ownership, maintenance or use of the Premises. The foregoing shall continue to be additional insureds for five (5) years after the expiration or earlier termination of this Agreement.

5. Increases in Limits of Insurance

County may periodically require higher policy limits as deemed appropriate by County’s Risk Manager.

6. Documentation

- a. The Certificate of Insurance must include the following reference: **Sonoma Mtn - USGS License 2020.**
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Licensee agrees to maintain current Evidence of Insurance on file with County for the required period of insurance.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: County of Sonoma, its officers, agents and employee, Attn: Real Estate Manager,

County of Sonoma General Services Department, 2300 County Center Drive, Suite A200, Santa Rosa, CA 95403.

- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Licensee shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.

7. Policy Obligations

Licensee's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

8. Material Breach

If Licensee fails to maintain insurance that is required pursuant to this License, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Licensee resulting from said breach. Alternatively, County may purchase such required insurance and Licensee shall immediately reimburse County for any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.