

EQUIPMENT STORAGE
AND
STOCKPILE SITE

LICENSE AGREEMENT

This LICENSE AGREEMENT, hereinafter referred to as AGREEMENT, made and entered into this _____ day of _____, 2019, by and between the REBECCA MIRIAM SCALES, a widowed woman, hereinafter referred to as OWNER, and the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter referred to as COUNTY.

WITNESSETH:

WHEREAS, OWNER represents and warrants that it is the owner in fee of a parcel of land in Section 7, Township 1 North, Range 1 West, Humboldt Base and Meridian, also known as Assessor's Parcel Number 102-111-001, and as such, has the exclusive right to enter into this AGREEMENT; and

WHEREAS, COUNTY desires to enter upon and use a portion of said property, hereinafter referred to as SITE, for the purposes of stockpiling aggregate material and temporary equipment storage of equipment; and

WHEREAS, COUNTY'S use of the SITE is for the specific purpose of maintaining and repairing COUNTY roads; and

NOW, THEREFORE, in consideration of the mutual covenants and promises contained below, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties hereto, COUNTY and OWNER agree as follows:

1. **AGREEMENT**

OWNER grants to COUNTY, subject to all terms and conditions set forth in this AGREEMENT, the use of a portion of OWNER'S real property, located at 100 Centennial Road, in the Bear River Ridge area of Humboldt County, as identified by Assessor's Parcel Number (APN) 102-111-001. The Assessor's Parcel Map is attached hereto and incorporated herein as Exhibit A.

2. **LICENSE NOT A LEASE**

This AGREEMENT does not constitute a lease, but constitutes a mere license agreement and COUNTY is limited to the use of said SITE expressly and specifically as described in Clauses 1 and 3 herein.

3. **USE OF PREMISES**

OWNER grants to COUNTY the right to use said SITE for COUNTY'S stockpiling/storage of road maintenance materials and intermittent storage of a road grader and other appurtenant equipment, hereinafter referred to as ACTIVITIES.

OWNER grants to COUNTY the right of ingress and egress over a portion of OWNER'S real property for purposes of COUNTY'S ACTIVITIES.

COUNTY shall have six (6) months beyond this AGREEMENT'S termination date to remove equipment and stockpiled aggregate material from SITE and to return said SITE to preexisting form to the extent feasible.

4. **TERM**

The AGREEMENT shall commence upon Board approval, with the first term extending from the date of Board approval through June 30, 2024.

Notice of termination of this AGREEMENT shall be sixty (60) days following date set forth in written notice of termination by either party to the other party. Notice shall be provided pursuant to Clause 15, herein titled NOTICE.

5. **COMPENSATION**

COUNTY shall pay to OWNER the sum of Fifty Dollars (\$50.00) per month as compensation for the use of said SITE for an annual rate of Six Hundred Dollars (\$600.00), payable in advance prior to July 1 of each calendar year.

Payments herein required shall be made to:

Rebecca Scales
1154 Port Kenyon Road
Ferndale, CA 95536

6. **OWNER'S ACCESS TO PREMISES**

OWNER shall have access to and use of said SITE at all times and COUNTY shall not restrict OWNER'S use thereof.

7. **MAINTENANCE**

COUNTY, at COUNTY's expense, agrees to maintain the SITE access road from said SITE to the junction of Bear River Ridge (County) Road.

COUNTY, at COUNTY's expense, agrees to maintain said SITE in a clean and orderly manner, one free of materials deleterious to the environment.

8. **IMPROVEMENTS AND ALTERATIONS**

COUNTY may make non-structural alterations or improvements to the SITE as a means of enhancing safety and/or increasing operational efficiency. However, COUNTY shall not make alterations or improvements that would result in physical expansion of the SITE; or result in the removal of mature trees; or modify nearby watercourses or wetlands without prior written consent of the OWNER.

Upon termination of AGREEMENT, COUNTY shall bear the cost of closing SITE. Closure shall be limited to site grading, seeding, and straw mulching. Seeding and mulching shall be specific to areas of exposed mineral soil susceptible to erosion and the offsite release of fine sediment.

9. **SMOKING**

Pursuant to Humboldt County Code §971-1 et seq., COUNTY owned or leased premises are smoke free. COUNTY shall comply with said provision.

10. **COMPLIANCE WITH LAWS**

COUNTY shall comply with all federal, state, and local laws, agreements, permits, regulations, and statutes applicable to the use of said SITE.

OWNER does not warrant its authority to permit the use of said SITE. COUNTY shall be solely responsible for acquiring, at its sole cost and expense, all permits, licenses, variances, and the like requisite that may become necessary over time.

11. **REPRESENTATIONS**

OWNER makes no representations as to the present or future conditions, natural or man-made, of SITE, the character of the traffic on any of its roads, the condition of access roads, or risks associated with or arising from other persons on SITE. COUNTY has entered into this AGREEMENT at its own risk and assumes all risk of personal injury and property damage to itself, its agents, servants, employees, contractors, successors, and assigns in connection with ACTIVITIES under this AGREEMENT. Nothing in this AGREEMENT shall be construed as a guarantee of the type of work or quantity or quality of any products located in or on SITE.

COUNTY represents that it, or its contractor(s), is experienced and competent in performing the ACTIVITIES herein described and further represents it is familiar with and will comply with all the applicable statutes, rules, and regulations promulgated by federal, state, county, local, and other governmental agencies having control over, or an interest in, the ACTIVITIES hereunder. COUNTY agrees to conduct its ACTIVITIES in a diligent and workmanlike manner in accordance with the highest standards and practices recognized in the industry. COUNTY shall not unnecessarily damage trees while conducting its ACTIVITIES.

12. **RESPONSIBILITIES OF COUNTY**

COUNTY shall promptly report to OWNER any violations of any laws, regulations, or permits of which COUNTY has knowledge and promptly send to OWNER a copy of any notice of violation received by COUNTY. A copy of all citations or other written documents COUNTY receives from any agency shall accompany the notice of violation.

SITE access shall be limited to normal business hours unless otherwise approved by OWNER, with the exception of natural disasters, in which case said SITE shall be available to COUNTY 24-7 without prior approval by OWNER.

COUNTY shall maintain said SITE used by COUNTY in an orderly, clean, and sanitary manner as required by OWNER.

In the event of any violation of this AGREEMENT, or of dangerous fire weather, or of possible damage to roads by their use in wet weather, OWNER shall notify COUNTY'S Public Works Deputy Director of Roads, and COUNTY shall immediately suspend the ACTIVITIES or take steps to address the situation as OWNER may direct.

COUNTY shall limit ACTIVITIES to those described above, and shall not construct or erect any buildings, structures, equipment, or improvements on the SITE without prior written

consent of OWNER.

COUNTY shall acquaint itself with and confine the ACTIVITIES within the property boundaries, and shall be responsible and liable for any trespass outside such boundaries as a result of the ACTIVITIES.

COUNTY shall return any and all keys that have been issued by OWNER for access to SITE at the expiration or termination of this AGREEMENT.

COUNTY shall not cut merchantable trees without prior written consent of OWNER.

COUNTY shall promptly pay and discharge all liabilities to vendors and contractors for all labor and material employed in the ACTIVITIES. COUNTY shall indemnify, defend, and hold harmless OWNER from any losses, costs, and expenses, including attorneys' fees, incurred to remove any construction, mechanics, or materialman's liens filed against OWNER'S real property by any vendors or contractors supplying goods or services.

12. **FIRE AND FIRE PREVENTION**

COUNTY shall not undertake any burning of debris.

COUNTY assumes full responsibility for personal injury or property damage resulting from the ACTIVITIES by fire or otherwise, including without limitation damage to any timber, logs, logging works, or equipment, and agrees to conform to all laws of the State of California pertaining to forest fires and their prevention and to all rules and regulations of the various departments and subdivisions thereof, as well as those of OWNER, the U.S. Forest Service, and any other public authority.

13. **COUNTY'S INSURANCE**

Without limiting COUNTY'S indemnification provided herein, COUNTY shall take out and maintain, throughout the term of this AGREEMENT, the following policies of insurance placed with insurers with a current A.M. Bests rating of no less than A: VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of COUNTY, its agents, employees, or sub-lessees:

A. **Comprehensive/Liability Insurance**

Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:

(1) The OWNER, its officers, employees and agents, are covered as additional insured for liability arising out of the operations performed by or on behalf of COUNTY. The coverage shall contain no special limitations on the scope of protection afforded to OWNER, its officers, agents, and employees.

(2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of the premium) to OWNER by certified mail.

(3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

(4) For claims related to this project, COUNTY'S insurance is primary coverage to the OWNER'S, and any insurance or self-insurance programs maintained by OWNER are excess to COUNTY'S insurance and will not be called upon to contribute with it.

(5) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, employees and agents.

B. By its signature hereunder, COUNTY certifies that COUNTY is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and COUNTY will comply with such provisions in connection with any work performed on the premises. Any persons providing services with or on behalf of COUNTY shall be covered by workers' compensation (or qualified self-insurance).

14. HOLD HARMLESS INDEMNIFICATION

A. COUNTY shall indemnify, defend and hold harmless OWNER and its officers, officials, employees, and volunteers from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorneys' fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with COUNTY'S duties and obligations under this AGREEMENT and any amendments hereto.

B. OWNER shall indemnify, defend and hold harmless COUNTY and its officers, officials, employees, and volunteers from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorneys' fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with OWNER'S duties and obligations under this AGREEMENT and any amendments hereto.

C. Notwithstanding Sections (A) and (B), in the event that OWNER and COUNTY are both held to be negligently or willfully responsible, OWNER and COUNTY will bear their proportionate share of liability as determined in any such proceeding. Each side will bear their own costs and attorneys' fees.

D. Acceptance of insurance, if required by this AGREEMENT, does not relieve OWNER from liability under this indemnification clause. This indemnification clause shall apply to all damages, and claims for damages, suffered by OWNER regardless if any insurance is applicable or not.

15. NOTICE

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the respective addresses set forth below. Notice shall be deemed communicated five (5) COUNTY working days from time of mailing if mailed as provided herein.

OWNER:
Rebecca Scales
1154 Port Kenyon Road
Ferndale, CA 95536

COUNTY:
County of Humboldt
Department of Public Works
1106 Second Street
Eureka CA 95501

16. **LICENSE IS PERSONAL**

The License herein granted to COUNTY is personal and no right hereunder may be assigned, sublet, or otherwise transferred in whole or in part without prior written consent of OWNER, which consent may be withheld in OWNER'S sole discretion, and any attempt to assign, sublet, or transfer shall be of no force or effect whatsoever unless and until OWNER shall have given written consent.

17. **NUCLEAR FREE CLAUSE**

OWNER certifies by signature below that OWNER is not a nuclear weapons contractor, in that OWNER is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. OWNER agrees to notify COUNTY immediately if they become a nuclear weapons contractor, as defined above. COUNTY may immediately terminate this AGREEMENT if it determines that the foregoing certification is false or if OWNER becomes a nuclear weapons contractor.

18. **JURISDICTION AND APPLICABLE LAWS**

This AGREEMENT shall be construed under the laws of the State of California. Any dispute arising hereunder or relating to this AGREEMENT shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure Sections 394 and 395.

19. **COUNTY'S RIGHT TO ERECT SIGNS**

COUNTY shall have the exclusive right to erect and maintain upon the premises all signs that it deems appropriate. OWNER agrees that no signs or advertising matter of any nature other than COUNTY'S shall be permitted upon that portion of the premises occupied by the COUNTY. OWNER shall cooperate with COUNTY in obtaining any variances from restrictions placed on the use of signs by local authorities. OWNER and COUNTY shall mutually agree as to the location, size, and style of any signs.

20. **TERMINATION**

COUNTY and OWNER reserve the right to terminate this AGREEMENT on seven (7) days notice for any cause or reason provided by the AGREEMENT itself, or by law, or upon the happening of one or more of the following:

- A. The making by COUNTY or OWNER of any general assignment for the benefit of creditors.
- B. The failure of COUNTY or OWNER to remedy any default, breach, or violation of federal/state/county laws or regulations by COUNTY or OWNER or its employees.
- C. The violation of any of the provisions of this AGREEMENT.

D. Said SITE becomes damaged due to fire, flood, earthquake, or any other natural disaster.

E. Intentionally supplying COUNTY or OWNER with false or misleading information or misrepresenting any material fact on its application or documents or in its statement to or before COUNTY or OWNER, or intentional failure to make full disclosure on its financial statement or other documents.

21. **AGREEMENT MODIFICATION**

This AGREEMENT may be modified only by subsequent written agreement signed by COUNTY and OWNER.

22. **OWNER NOT OFFICER, EMPLOYEE, OR AGENT OF COUNTY**

While engaged in carrying out and complying with the terms and conditions of this AGREEMENT, OWNER is an independent contractor and not an officer, employee, or agent of COUNTY.

23. **COUNTY'S EMPLOYEES**

COUNTY'S employees shall be deemed employees of COUNTY and will not for any purpose be considered employees or agents of OWNER. OWNER shall exercise no control or supervision over the employees of COUNTY hereunder. It is understood and agreed that no relationship of employer and employee is or shall be deemed to exist either between OWNER and COUNTY or between OWNER and any other person(s) performing labor or services on behalf of COUNTY. COUNTY shall furnish and be responsible for its own employees, agents, and equipment. It is expressly understood that OWNER has no authority over COUNTY'S agents or employees, and any complaint by OWNER about COUNTY'S agents or employees will be brought by OWNER to COUNTY'S attention in the manner prescribed in Section 15, or through direct communication with COUNTY'S Public Works Deputy Director of Roads.

24. **SAFETY**

COUNTY shall comply with all federal, state, and local safety and health laws, regulations, and standards, including California Labor Code Sections 6400 et seq., related provisions of the California Code of Regulations and standards of the California Occupational Safety and Health Board, all as amended from time to time, and if applicable shall operate under a current Injury and Illness Prevention Plan that complies with Section 3203 of Title 8 of the California Code of Regulations. Failure of COUNTY to comply with all federal, state, and local health and safety laws, rules and regulations is grounds for immediate termination of this AGREEMENT.

25. **HAZARDOUS MATERIALS**

COUNTY shall indemnify OWNER and hold OWNER harmless from and against any and all loss, cost, damage, expense, or claim of any kind and nature (including without limitation, court costs, expenses, and attorneys' fees) paid, incurred, or suffered by, or asserted against OWNER, as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from SITE, of any Hazardous Materials arising out of, in connection with, or in any manner related to ACTIVITIES or of any actions or omissions of COUNTY. The provisions of this section shall survive the expiration or termination of this AGREEMENT.

OWNER shall indemnify COUNTY and hold COUNTY harmless from and against any and all loss, cost, damage, expense, or claim of any kind and nature (including without limitation, court costs, expenses, and attorneys' fees) paid, incurred, or suffered by, or asserted against COUNTY, as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from SITE, of any Hazardous Materials arising out of, in connection with, or in any manner related to any actions or omissions of OWNER. The provisions of this section shall survive the expiration or termination of this AGREEMENT.

26. **HAZARDOUS MATERIALS SPILL NOTIFICATION AND RESPONSE**

In the event of a spill or release of Hazardous Materials, COUNTY or OWNER shall promptly comply with all federal, state, and local spill notification and response requirements.

COUNTY shall, at a minimum:

- A. Prevent further spilling or release;
- B. Take appropriate corrective actions to mitigate the spill; and
- C. Specifically comply with federal, state, and local spill notification and reporting requirements, and notify the other party of any spill event.

COUNTY shall be responsible for the response and restoration costs associated with any release of hazardous materials in connection with COUNTY'S activities.

OWNER shall be responsible for the response and restoration costs associated with any release of hazardous materials in connection with OWNER'S activities.

27. **ATTORNEYS' FEES**

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this AGREEMENT to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by County Counsel) on appeal, if any. As used herein, "the party prevailing" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

28. **REAL PROPERTY TAXES**

OWNER shall pay all real property taxes and general and special assessments levied and assessed against the property. Any improvements created by COUNTY, by action of this AGREEMENT that may create any assessments, shall be the responsibility of OWNER.

29. **WAIVER OF BREACH**

The waiver by COUNTY or OWNER of any breach of any provision of this AGREEMENT shall not constitute a continuing waiver of any subsequent breach of the same or a different provision of this AGREEMENT.

30. **BREACH, REMEDY FOR**

In the event of breach of this AGREEMENT by COUNTY or OWNER, COUNTY and/or OWNER shall have all rights and remedies provided by law.

31. **SURRENDER OF PREMISES**

Upon termination of this AGREEMENT, COUNTY shall surrender the premises to OWNER in good condition and repair, except for normal wear and tear. COUNTY shall be under no obligation to repair or restore the whole or any portion of the SITE, which may be damaged by reason of fire, earthquake, the elements, or other casualty.

32. **BINDING EFFECT**

All provisions of this AGREEMENT shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, successors, and assigns.

33. **MISCELLANEOUS PROVISIONS**

A. The ACTIVITIES under this AGREEMENT shall in no way interfere with the land management and logging activities conducted by OWNER, OWNER'S contractors, or assigns, or use by other counties. COUNTY shall supervise all persons connected with COUNTY under this AGREEMENT to assure that its ACTIVITIES are within the boundaries specified in this AGREEMENT.

B. Sections and sub-headings in this AGREEMENT are for convenience only and shall not be considered part of this AGREEMENT or used in its interpretation.

C. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument, which may be sufficiently evidenced by one counterpart.

D. If any provision contained herein is declared by a court of competent jurisdiction to be void or unenforceable as written, the parties intend and desire that such provision be enforced and enforceable to the fullest extent permitted by law and that the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the balance of this AGREEMENT.

E. Each of the parties hereto has been or has had the opportunity to be represented, to the extent desired, by legal counsel of its choice in respect to this transaction.

F. Portions of this AGREEMENT are intended to survive any expiration or termination of this AGREEMENT. Accordingly, all provisions hereof which contemplated performance after any such event shall so survive, as shall all indemnity and restoration obligations of COUNTY, and the right to exercise remedies for default.

This AGREEMENT terminates and supersedes COUNTY's MARCH 18, 2014 license agreement regarding APN 102-111-001 and use of SITE.

IN WITNESS WHEREOF, this AGREEMENT has been executed in duplicate by the parties hereto upon the date first above written.

COUNTY OF HUMBOLDT:

OWNER:

BY _____
CHAIRPERSON,
BOARD OF SUPERVISORS,
COUNTY OF HUMBOLDT,
STATE OF CALIFORNIA

BY Rebecca Miriam Scales
REBECCA MIRIAM SCALES

EXHIBIT A

