

**TOWER SPACE USAGE AND MAINTENANCE AGREEMENT
BY AND BETWEEN
HOOPA VALLEY TRIBE
AND
COUNTY OF HUMBOLDT**

This License entered into this 18 of May, 2021, by and between the Hoopa Valley Tribe, a sovereign Tribal government, hereinafter referred to as "LICENSOR," and the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "LICENSEE," is made upon the following considerations:

WHEREAS, LICENSOR is beneficial owner of a communications tower (the "Tower") located on a parcel of land (the "Site") on Sugar Pine Mountain, located at approximately 8N, Range 4E, Section 32, and also known as the Sugar Pine Mountain Communications Site; and

WHEREAS, LICENSOR has delegated authority and responsibility over management of the Sugar Pine Mountain Communications Site to its Office of Emergency Services ("Hoopa OES"); and

WHEREAS, LICENSEE, by and through its County Administrative Office – Information Technology Division, desires to use the Tower for certain communications equipment, more fully described below (collectively, "LICENSEE'S Equipment").

NOW, THEREFORE, in consideration of the mutual promises, conditions and other good and valuable consideration of the parties hereto, it is agreed as follows:

1. PERMISSIVE USE:

A. Usage. LICENSOR hereby confers upon LICENSEE, and LICENSEE hereby receives and accepts from LICENSOR, a non-exclusive license and privilege, for the stated duration described below, to do all of the following:

1. Occupy attachment locations upon the Tower with 2 antennas, to be mounted on appropriate mounting arms, as required, together with the right to install and maintain said antennas;
2. Occupy the vault with one rack space of equipment, to include radio equipment and batteries, in support of the above – referenced antennas;
3. In order to power LICENSEE's equipment, to use space on existing poles, or poles installed at the sole discretion of OES, with solar panels that are of the same type and appearance as panels currently in place on the Site;
4. Install all radio systems in accordance with R56 standards;
5. Utilize Heliac type cable and Sureflex type jumpers and refrain from using braided cable on the tower;
6. Utilize low current draw radios that are suitable for a solar site.

7. Travel between the Site and the public highway over routes which LICENSOR is authorized to use; and

8. Traverse the Site as reasonably necessary to accomplish LICENSEE's purpose as contemplated herein.

B. Power Supply. All primary power for LICENSEE's equipment authorized above must be supplied as directed by LICENSOR.

C. Additional Equipment. All approved locations occupied by LICENSEE's Equipment are referred to hereinafter as "Licensed Space." LICENSEE shall not install any additional equipment on the tower or improvements on the ground without amendment to this License.

2. SCOPE OF LICENSE:

A. Use of License Space. The sole purpose for which LICENSEE may use the Licensed Space is Humboldt County Communications. LICENSEE's Equipment shall at all times comply with and conform to all laws and regulations applicable hereto, and shall be subject to LICENSOR's review and approval, which shall not unreasonably be withheld, conditioned or delayed, regarding the placement hereof, method of installation, avoidance of potential conflict, hazard or interference, and all other matters which LICENSOR deems, in LICENSOR's reasonable opinion, to affect LICENSOR's own operations or interests.

B. Other Access and Use of Site. The license and privilege described above is not exclusive and is subject to the reserved right of LICENSOR of access to all parts of the Tower and Site and the LICENSOR's right to license or lease other space within and upon the facilities of LICENSOR for other equipment. However, any equipment installed after execution of this License shall not unreasonably interfere with LICENSEE's operations and LICENSOR agrees to make reasonable efforts to ensure that subsequent leasing will not interfere with operation of LICENSEE's Equipment. Upon ten (10) days written notice from LICENSEE that such interference is occurring, LICENSOR shall take administrative steps to eliminate such interference, including termination of the subsequent license.

3. PLANS AND SPECIFICATIONS:

LICENSEE, at LICENSEE's expense and prior to commencing the installation of LICENSEE's Equipment, shall submit to LICENSOR a site and installation plan which includes a list of operating frequencies that will be used by LICENSEE. LICENSEE shall not install any equipment or commence work on the Tower or Site until LICENSOR approves, in writing, LICENSEE's site and installation plans, which shall be given in LICENSOR'S sole and absolute discretion. If LICENSOR does not approve any aspect of LICENSEE site and installation plan, LICENSEE shall not occupy the Licensed Space or any portion thereof, nor perform any work at the Site.

4. TIME OF INSTALLATION

LICENSEE's installation of LICENSEE'S Equipment on the Tower and Site shall be performed on dates, at times, and within time frames approved by LICENSOR in writing, and shall not interrupt or interfere with the operation of LICENSOR's communications systems or LICENSOR'S equipment unless LICENSOR agrees to such interruption or interference in writing.

5. TERM:

The term of this License shall begin upon execution by both parties and shall remain in full force and effect for five (5) years, unless sooner terminated as provided herein. Unless terminated as provided herein, LICENSEE may give LICENSOR ninety (90) days written notice if LICENSEE will request a License renewal, which shall be subject to the absolute discretion of LICENSOR.

6. TERMINATION:

A. Breach of Contract. In the event that either party fails to comply with any material provision of this License, or violates any ordinance, regulation, or other law applicable to its performance herein, the other party may, at its option, immediately terminate this License, upon written notice. Nothing in this provision shall impair or prejudice any remedy to which the non-breaching party may be entitled with respect to any breach or default of this License.

B. Without Cause. This License may be terminated by either party at any time by giving written notice to the other party ninety (90) days prior to the effective date of termination.

C. Casualty. If the Tower is partially, totally or substantially destroyed by casualty of any type or cause, as determined by LICENSOR, LICENSOR, in its sole and absolute discretion, may terminate this License or may repair or rebuild the Tower at LICENSOR's cost and expense. If LICENSOR elects to terminate this License, LICENSOR shall notify LICENSEE in writing whereupon such termination shall become effective. Upon completion of LICENSOR's work to rebuild the Tower, LICENSEE shall be entitled to occupy and resume using the Licensed Space. Notwithstanding the foregoing, if LICENSOR elects to rebuild the Tower but fails to complete reconstruction within ninety (90) days after the date of damage or destruction, LICENSEE may terminate this License upon written notice to LICENSOR.

7. LICENSE FEE:

In consideration for the public service provided by LICENSEE, LICENSEE shall not be charged any fee for this License.

8. UTILITIES:

A. Utility costs. LICENSOR shall be responsible for the payment of all utility services consumed by LICENSEE's operations, with reimbursements to be provided by LICENSEE as follows: LICENSEE shall be responsible for an equally shared cost of propane, an equally shared cost of generator maintenance, and an equally shared portion of any repairs LICENSOR reasonably deems necessary to the on-site generator, other support equipment, and the Tower. As used herein, "equally shared" means a share of LICENSOR's total utility expenses, evenly divided between LICENSOR and all licensees of the Site.

B. Payment. All billings of equally shared costs will be submitted to LICENSEE by OES on an annual basis and must be paid in full within thirty (30) days of their mailing.

C. Maximum Amount Payable. In no event shall the utility costs paid by LICENSEE under this License exceed Seven Thousand Five Hundred Dollars (\$7,500).

9. LIENS:

LICENSEE shall keep the Tower and the Site free and clear of all liens arising from or relating to the installation, repair, and maintenance of LICENSEE's Equipment on, and its removal from, the Tower and Site. If a lien is filed as a result of LICENSEE's work, installation, or operations, LICENSEE shall cause any such lien to be bonded or discharged of record within twenty (20) days of being notified of the lien. If LICENSEE fails to bond or discharge the lien within such twenty (20) day period, LICENSOR, in addition to any other rights or remedies available at law or equity, shall have the right to discharge the lien by paying the amount claimed to be due or to bond the lien at LICENSEE's expense. Any amount paid by LICENSOR in discharging or bonding any lien together with all costs and expenses, including, without limitation, attorney's fees and costs, shall immediately be due and payable by LICENSEE upon demand from LICENSOR, and LICENSEE agrees to indemnify and hold LICENSOR harmless from all such amounts.

10. MAINTENANCE, REPAIRS, AND REPLACEMENT:

A. TOWER and LICENSOR's Equipment. LICENSOR shall be responsible for proper maintenance of the Tower, and LICENSOR covenants to keep the Tower in good condition and repair, and in compliance with rules and regulations enforceable by the Federal Communications Commission, the Federal Aviation Administration, and other governmental authorities, provided, however that in the event LICENSEE's Equipment or the structural enhancements, if any, made by LICENSEE to the TOWER cause an increased burden of maintenance and repair affecting the Tower, LICENSEE shall pay such increased costs of maintenance and repair within thirty (30) days following receipt of LICENSOR's written demand therefor. LICENSOR shall solely and independently be responsible for the proper maintenance and repair of LICENSOR's equipment.

B. LICENSEE's Equipment. LICENSEE shall solely and independently be responsible for the proper maintenance and repair of LICENSEE's Equipment, and LICENSEE covenants to all times keep LICENSEE's Equipment in good condition and repair. LICENSEE shall have continuous access to LICENSEE's ground space at the Site, during normal business hours for routine maintenance and repairs and during any hour for emergency repairs or maintenance. All work upon the Tower to service LICENSEE's Equipment shall be performed at Licensee's sole expense by a qualified Tower services contractor. LICENSOR shall have the right to have a representative present during any maintenance, repair or replacement of LICENSEE's Equipment requiring ascension of the Tower, and LICENSEE shall exercise reasonable diligence to give LICENSOR advance notice of such work. Alterations, modifications, repairs and replacements of LICENSEE's Equipment shall not increase the number of antennas, cables, cabinets, or other Equipment so as to expand the space which LICENSEE occupies, nor shall LICENSEE increase the size or weight thereof or materially alter the location or appearance thereof without LICENSOR's prior written approval.

11. INTERFERENCE:

LICENSEE's Equipment shall be installed and operated in a manner which does not cause interference to any Protected User. "Protected User" shall mean any user of the Tower or the Site whose claimed protected operations chronologically predate LICENSEE's accused offending operations. LICENSEE agrees to immediately cure any such interference, or if such interference cannot immediately be cured, to temporarily reduce power or cease the offending operations, if so demanded by LICENSOR on the ground of interference, until a cure at full power is achieved. LICENSOR covenants to use LICENSOR's best efforts to protect LICENSEE from interference, caused or potentially caused by

subsequent uses or changes in use. Any interference which either party claims it is suffering, and for which a cure has not been found despite the joint efforts and mutual cooperation of the parties to do so, shall entitle the party suffering such interference to terminate this License without liability or penalty.

12.. INTERRUPTIONS:

LICENSOR and LICENSEE agree that LICENSOR shall have no responsibility or liability whatsoever, for interruptions, disruptions, or failures in LICENSEE's Equipment or the operation of LICENSEE's Equipment including, without limitation, equipment failures, utility failures, structural failures, or otherwise. LICENSOR shall not give any unauthorized access to LICENSEE's Equipment; however, LICENSOR shall not be responsible to LICENSEE for any unauthorized access. In conducting all maintenance, repair, or replacement work for which LICENSOR is responsible hereunder, LICENSOR shall take all reasonable steps not to interrupt or interfere with the operation of LICENSEE's communications system or equipment without LICENSEE's advance knowledge and concurrence.

13. INDEMNIFICATION:

A. Mutual Indemnity. Each party hereto shall hold harmless and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense and costs of any kind or nature, including, without limitation, attorney fees and other costs and fees of litigation, arising out of, or in connection with, the negligent performance of, or failure to perform, its duties and obligations hereunder, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party.

B. Comparative Liability. Notwithstanding Paragraph A above, in the event that both parties are held to be negligently or willfully responsible, each party will bear its proportionate share of liability as determined in any such proceeding. In such cases, each party will bear its own costs and attorneys' fees.

14. INSURANCE:

A. General Insurance Requirements. The LICENSEE and its contractors and agents shall at their own expense, procure and maintain appropriate insurance with limits not less than One Million Dollars (\$1,000,000) per occurrence with a One Million Dollar (\$1,000,000) aggregate. Said insurance shall be reasonable and appropriate for the use and activities contemplated under this License, including, but not limited to:

1. Worker's compensation in statutory amounts;
2. Employer's liability insurance with combined single limits of One Million Dollars (\$1,000,000); and
3. Automobile liability insurance against claims for bodily injury or property damage with combined single limits of One Million Dollars (\$1,000,000) which specifically covers all vehicles licensed, owned or used by LICENSEE.

B. Fire Insurance Requirements. LICENSEE agrees not to keep, use or sell on the Premises any article or conduct any activity thereon which may be prohibited by the standard form of fire insurance policy; LICENSEE acknowledges that the property is subject to forest fire risks. LICENSEE, employees,

contractors, sub-contractors, consultants, agents or any other persons entering the property on behalf of LICENSEE shall protect the property from any and all fire related hazards as a result of their use of the property.

C. Certificates of Insurance. LICENSEE prior to commencing work shall provide a Certificate of Insurance naming LICENSOR as an additional insured with respect to this License. Each certificate or policy shall require that, thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the Risk Manager of the Hoopa Valley Tribe. All such notices shall name the LICENSEE.

15. ASSIGNMENT OF LICENSEE'S INTEREST:

LICENSEE may not assign the Licensed Space or any part thereof without prior express written consent of the LICENSOR. Any and all assignments shall be subject to the terms and conditions of this License.

16. MULTIPLE USERS:

LICENSEE shall not sublet or otherwise subdivide the Licensed Space or any portion thereof or permit the Licensed Space to be occupied by multiple users claiming through or under LICENSEE.

17. REMOVAL OF LICENSEE'S EQUIPMENT:

A. Removal of LICENSEE's Equipment. LICENSEE's Equipment is agreed to be LICENSEE's personal property, and LICENSEE shall at all times be authorized to remove said property from the Licensed Space. Upon the expiration or termination of this License, LICENSEE shall:

1. Remove LICENSEE's Equipment in a good, efficient, and workmanlike manner;
2. Comply with all applicable legal requirements in completing such removal;
3. Repair any damage caused to the Tower or the Site caused by such removal;
4. Complete such removal in a manner that will not interrupt or interfere with the operation of LICENSOR's equipment, LICENSOR's communications system, or the equipment or communications systems of other users of the Site; and
5. Surrender the Licensed Space in good condition, ordinary wear and tear excepted.

B. Abandoned Equipment. In the event LICENSEE fails to remove any of LICENSEE's Equipment from the Tower or Site within ninety (90) days following the expiration or earlier termination of this License, LICENSEE shall be deemed to have abandoned LICENSEE's Equipment and LICENSOR shall be free to remove and dispose of LICENSEE'S Equipment in any manner within LICENSEOR's sole and absolute discretion, and without any liability to LICENSEE therefor. If LICENSEE is deemed to have abandoned LICENSEE'S Equipment to LICENSOR, pursuant to the preceding sentence, LICENSEE shall reimburse LICENSOR within five (5) days following LICENSOR's demand for all costs incurred by LICENSOR

in removing and disposing of LICENSEE's Equipment, said obligation to survive the termination of this License.

C. Removal of Structural Enhancements. Notwithstanding the foregoing, LICENSEE shall not have the right to, and may not, remove any structural enhancements to the Tower, and such structural enhancements shall immediately become the property of LICENSOR when and as the same have properly been installed.

18. CONDEMNATION AWARD:

In the event of condemnation, LICENSOR shall receive the entire condemnation award for the Tower, LICENSOR's equipment, and LICENSOR's real property interest in the Site, and LICENSEE hereby assigns to LICENSOR any and all right, title and interest of LICENSEE in and to such award.

19. ENVIRONMENTAL LAWS:

LICENSOR represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. LICENSEE shall not introduce or use any such substance on the Site in violation of any applicable law. LICENSOR shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, of all spills or other releases of Hazardous Substance, not caused by or contributed to by LICENSEE, which have occurred or which may occur on the Site.

20. NOTICES:

Any notice, request or demand required or permitted to be given pursuant to this License shall be in writing and shall be deemed sufficiently given if personally served or sent by certified mail, postage prepaid, with return receipt requested, addressed to the intended recipient at the address set forth below, or at such other address as the intended recipient may theretofore have specified by written notice to the sender in accordance with the requirements of this Section. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

LICENSOR: Hoopa Valley Tribe
P.O. Box 1348
Hoopa, CA 95546
Phone: 530-625-4211

LICENSEE: County of Humboldt
County Administrative Office – Information Technology Division
Attn: Information Technology Director
839 4th Street
Eureka, CA 95501
Phone: 707-445-7556

21. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any obligation, covenant, or condition herein shall not operate as a waiver of any such breach in the future, or of the breach of any other requirement of this License.

22. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Sections 9, 13 and 17 shall survive the termination or expiration of this License.

23. ALTERNATIVE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT:

In the event of any issue of controversy under this agreement the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve the issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

24. RELATIONSHIP OF PARTIES:

It is understood that this License is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. This agreement shall not constitute an encumbrance upon Indian lands within 25 U.S.C. 81.

25. NON-LIABILITY OF COUNTY AND TRIBAL OFFICIALS AND EMPLOYEES:

No official or employee of Humboldt County or of Hoopa Valley Tribe shall be personally liable for any default or liability under this License.

26. SEVERABILITY:

If any provision of this License is found to be void or invalid, such invalidity shall not affect the remaining provisions hereof, which shall instead continue in full force and effect. The parties hereby agree that, if any provisions are adjudged to be unenforceable, such provisions shall be deemed modified to the extent necessary to make them enforceable.

27. MODIFICATIONS:

No addition to, or modification of, the terms of this License shall be valid unless made in writing and signed by both of the parties hereto.

28. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth in this License are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this License.

29. INTERPRETATION:

This License, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

30. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in paragraphs 1 through 34 of this License, paragraphs 1 through 34 of this License shall have priority.

31. FORCE MAJEURE:

Neither CONSULTANT nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

32. NUCLEAR FREE CLAUSE:

LICENSOR certifies by its signature below that LICENSSOR is not a nuclear weapons contractor, in that LICENSOR 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. LICENSOR agrees to notify LICENSEE immediately if it becomes a nuclear weapons contractor, as defined above. LICENSEE may immediately terminate this License if it determines that the foregoing certification is false or if LICENSOR becomes a nuclear weapons contractor.

33. ENTIRE LICENSE:

This License constitutes the entire agreement between the parties and supersedes any prior understandings or oral or written licenses between them respecting the within subject matter.

34. AUTHORITY TO EXECUTE:

Each party covenants and warrants that the person signing this License on its behalf is duly authorized and empowered to execute and deliver this License. Each party covenants and warrants to the other that the execution and delivery of this License and the performance of such party's obligation hereunder have been duly authorized.

35. COUNTERPARTS:

This License, and any amendments hereto, may be executed in one (1) or more counterparts, each which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same license. A signed copy of this license, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this license, and any amendments hereto, for all purposes.

IN WITNESS WHEREOF, the parties hereto bind themselves to this Tower and Space License as of the day and year first above written.

HOOPA VALLEY TRIBE:

The Hoopa Valley Tribal Council

By: 

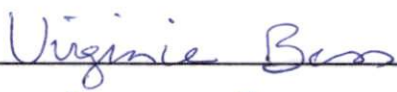
Name: BYRON NELSEN Jr.

Title: CHAIRMAN

Date: _____

COUNTY OF HUMBOLDT:

Board of Supervisors

By: 

Name: Virginia Bass

Title: Chair, Board of Supervisors

Date: 5/18/2021

Attest

By: 

Name: Ryan Sharp

Title: Deputy Clerk of the Board