

COMMUNICATIONS SITE LEASE AGREEMENT WITH ROCKY HILL COVE, LP

THIS LEASE AGREEMENT (the "Lease") is entered into on May 2, 2023, between ROCKY HILL COVE LP, a California Limited Partnership ("LESSOR"), and the COUNTY OF TULARE, a political subdivision of the State of California ("COUNTY") (each a "Party" and together, the "Parties" to this Lease), who agree as follows:

1. **LEASE:** LESSOR leases to COUNTY and COUNTY leases from LESSOR, the real property located in the County of Tulare, State of California described as an approximately 1.14 acre portion of Assessor's Parcel No. 255-140-007 (the "Premises"), located at the summit of Rocky Hill, in Porterville, more particularly described as being near the North half of the Southeast quarter of Section 20, Township 21 South, Range 28 East, Mount Diablo Base and Meridian, as depicted in *Exhibit A*.
2. **USE:** COUNTY shall have the right to construct and place a telecommunications repeater, tower, solar array, communications vault, and fencing on the Premises, with the Premises and the repeater together referred to as the "Communications Site" as depicted in *Exhibit B*. COUNTY shall use the Premises for all necessary and reasonable needs of COUNTY for the Communications Site. COUNTY shall comply with all laws concerning such use of the Premises. COUNTY shall not use the Premises in any manner that may constitute waste or nuisance. COUNTY shall keep the Premises and all adjacent areas of the LESSOR'S property in good condition and the fence's gate locked when the Communication Site is not manned.
3. **TERM/EFFECTIVE DATE:** This Lease is for a term of twenty (20) years, effective on the first day of the first month (the "Anniversary Date") after completion of the work as provided in *Exhibit C* (the "Work"). COUNTY shall have the option and right to renew this lease with two (2), ten (10) year options to renew upon the same terms and conditions, by serving a notice of exercise of the option to renew to LESSOR prior to the end of the initial term.
4. **RENT:** COUNTY shall pay to LESSOR a base monthly rent, without deduction, set off, prior notice, or demand of ELEVEN HUNDRED DOLLARS (\$1,100.00) payable in advance on the first day of each month, commencing on the first day of the following month the COUNTY breaks ground. However, for last month, COUNTY shall pay rent only for the days of actual occupancy, at a rate of 1/30th of the monthly rent per day. The rent shall be adjusted annually on every subsequent Anniversary Date following the first full year of the term by a flat two percent (2%), including any holdover periods.
5. **THE WORK/LUMP SUM PAYMENT:** LESSOR shall cause the Work, depicted and delineated in Exhibit's B and C, to be completed within 90 days of approval of this Lease by the Tulare County Board of Supervisors, plus such extensions of time, if any, made necessary by causes which could not be reasonably anticipated by a prudent contractor, and over which Lessor has no control. Upon completion of the completed pursuant to Section 6 and 7 of this

Lease, COUNTY is to pay LESSOR a one-time lump sum payment of TWENTY-NINE THOUSAND NINE-HUNDRED AND TWENTY DOLLARD (\$29,920.00)

6. **PREVAILING WAGE AND OTHER LABOR LAWS:** LESSOR acknowledges that the work outlined in Exhibit B and C, and potentially any subsequent alterations LESSOR makes to the premises under the terms of this Lease Agreement, are subject to such prevailing wage, apprenticeship, and anti-discrimination provisions of the Labor Code as are applicable to public works projects contracted for by LESSEE, including Labor Code section 1771. LESSOR will require all contractors and subcontractors who complete such work to: (a) maintain accurate and certified payroll records pursuant to Labor Code section 1776; (b) to make such records available for inspection by LESSEE and the Division of Labor Standards Enforcement of the Department of Industrial Relations, on a weekly basis and at no cost; and (c) to comply with all other applicable prevailing wage requirements. In addition, LESSOR's construction contract(s) will require contractor(s) and subcontractor(s) to maintain complete and accurate records with respect to the funds expended on such work, and will require that the contractor(s) and subcontractor(s) provide access to the Tulare County Auditor and to the State of California auditors, and to their agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of this Agreement. LESSOR will require that all such records be prepared in accordance with generally accepted accounting procedures, be clearly identified, and be readily accessible within the County of Tulare, upon request.

7. **ASSURANCES OF NON-DISCRIMINATION:** LESSOR will not discriminate in employment or the performance of the work or in the provision of services called for under this Agreement on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

8. **AS-IS CONDITION:** COUNTY acknowledges that as of the commencement of the term of this Lease, the Premises are in good condition and suitable to COUNTY'S proposed uses and COUNTY accepts the Premises in "as-is" conditions as of said date.

9. **ALTERATIONS:** COUNTY shall have the right, at its own expense, to make such changes and alterations to, including but not limited to, COUNTY'S repeater equipment and fencing, in and on the Premises as its operations may requires as long as there is no radio interference with other telecommunications equipment in the vicinity. Further, COUNTY shall have the right to complete renovation or replacement of its antenna and other equipment, provided that such changes or alterations are in conformance with reasonable, established engineering standards.

10. **MECHANICS LIENS:** COUNTY shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted or required under this Lease. COUNTY shall keep the building, all radio equipment, other improvements, and land on which the Premises are located free and clear of all mechanics liens resulting from construction or repair work done by or for

COUNTY, and shall hold LESSOR harmless from and defend LESSOR against any such lines or claims.

11. **UTILITIES:** COUNTY shall make all arrangements for, and pay for, all utilities and services furnished or to be used by COUNTY, including, without limitation, electricity, water, telephone and trash removal.

12. **INDEMNITY:** To the fullest extent permitted by law, LESSOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including LESSOR'S property, resulting from the negligent or intentionally wrongful acts or omissions of LESSOR or LESSOR'S officers, agents, employees, contractors and invitees with respect to the Premises. LESSOR'S obligation will continue beyond the expiration or termination of this Lease as to any act or omission which occurred during COUNTY'S tenancy.

This indemnification obligation shall continue beyond the term of this Lease as to any acts or omissions occurring under this Lease or any extension of this Lease.

13. **INSURANCE:**

- a. COUNTY agrees to procure/maintain general liability coverage of FIVE MILLION DOLLARS (\$5,000,000), subject to COUNTY's self-insured retention, and to name LESSOR as additional insureds arising out of use of that part of the Premises leased by COUNTY.
- b. LESSOR agrees to procure/maintain general liability coverage of ONE MILLION DOLLARS (\$1,000,000) and to name COUNTY as additional insureds arising out of use of that part of the Premises leased by COUNTY.

14. **ASSIGNMENT:** COUNTY shall not assign or encumber its interest in the tenancy, or sublease all or any part of the Premises, without the consent of LESSOR, which consent shall not be unreasonably withheld, delayed, or conditioned.

15. **DEFAULT:** The occurrence of any of the following shall constitute a default by COUNTY:

- a. Failure to pay rent when due, if the failure continues for ten (10) days after written notice has been given to COUNTY;
- b. Abandonment and vacation of the Premises;
- c. Failure to perform any other provision of this Lease if the failure to perform is not cured within a reasonable time after notice has been given of same to COUNTY.

Notices given under this section shall specify the alleged default and the applicable provisions of this Lease, and shall demand that COUNTY perform the provisions within the applicable period of time, or quit the Premises.

The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

In the event of a default, the Parties shall have the remedies now or later allowed by law.

16. **INTERFERENCE WITH COUNTY:** LESSOR shall not interfere with the operations of COUNTY'S Communications Site. Such interference shall be deemed a material breach by LESSOR. Should LESSOR secure leases with other communication entities for the construction of a communications site, LESSOR will ensure the other Parties' equipment does not interfere with COUNTY'S equipment and signals. In the event any such interference does not cease promptly, COUNTY shall have the right to terminate this Lease, which shall be COUNTY'S sole remedy in the event of such interference.

17. **INTERFERENCE WITH LESSOR'S ACTIVITIES:** COUNTY must:

- a) Stay on designated roads at all times. Access to the Premises is off Avenue 176, Strathmore, and the designated roads to the Premises pass through portions of Sections 16, 17, 20, and 21 of Township 21 South, Range 28 East, Mount Diablo Base and Meridian.
- b) Travel to and from the leased Premises directly and not wander or explore the hilltop or other sites.
- c) Not molest or disturb wildlife, cattle, bees or other agricultural activities.
- d) Never bring unauthorized persons to the Premises.
- e) Never provide access to unauthorized persons.
- f) Always keep gates to the Premises closed and locked at all times upon entering and leaving the Premises, unless otherwise specified by LESSOR or LESSOR'S employees. When passing through interior livestock gates the COUNTY must at each passing return the gate to the closed position if that is how it was found.

18. **TERMINATION FOR CAUSE:** Either Party may terminate this Lease for cause upon ten (10) days' prior written notice to the other Party. For purposes of this section, "cause" shall be defined as the failure of either Party to remedy any material breach of the Lease within thirty (30) days' written notice of the breach.

19. **SURRENDER:** On expiration or other termination of the tenancy, COUNTY shall surrender the Premises to LESSOR in good condition, ordinary wear and tear excepted. COUNTY shall remove all of its improvements to the Premises, including but not limited to towers, generators, fuel tanks and communications equipment and perform all restoration made necessary by the removal of any improvements or fixtures.

20. **SUCCESSORS:** This Lease shall be binding on, and inure to, the benefit of the Parties, their successors and assigns, except as otherwise limited by this Lease.

21. **NOTICE: NOTICES.** Any notice, consent, request, demand, or other communication required or permitted under this Lease shall be given in writing in one or more of the ways described below and shall be deemed effective if provided as follows: (i) by personal delivery,

which shall be effective on personal delivery to the recipient; (ii) by first-class mail to the recipient at its address set forth below, which shall be effective 3 mail-delivery days after deposit in a United States Postal Service office or mailbox; (iii) by certified mail, return receipt requested, to the recipient at its address set forth below, which shall be effective on delivery, provided that delivery is confirmed by a return receipt; (iv) by overnight delivery by Federal Express/United Parcel Service or other nationally or regionally recognized overnight carrier with charges pre-paid or charged to the sender's account, to the recipient at its address set forth below, which shall be effective on delivery, provided that delivery is confirmed by the delivery service; (v) by email transmission to the recipient at its e-mail address set forth below, using an established provider of registered e-mail services with headquarters in the United States that furnishes un-modifiable proof, (x) that the message was sent, (y) that the message was delivered to the recipient's e-mail server, and (z) of the time and date the message was delivered to the recipient, along with a verifiable electronic record of the content of the message. Any notice given by e-mail shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day. The Parties' addresses for purpose of giving notice under this Agreement are as follows. Any Party may change its address or email address by giving the other Party notice of the change in any manner permitted by this Agreement.

COUNTY:

Clerk, Tulare County Board of Supervisors
County Administration Building
2800 West Burrel Avenue
Visalia, CA 93291
(559) 636-5000

LESSOR:

Rocky Hill Cove, LP
Attn: Mitch Brown
14200 Road 284
Porterville, CA 93257-9374
mitch@ocsnet.net

With a Copy to:

Tulare County General Services
Attn: Property Management
2637 W. Burrel Ave., Suite 200
Visalia, CA 93291
(559) 205-1100
GSAProperty@tularecounty.ca.gov

22. **WAIVER:** LESSOR'S consent to or approval of any act by COUNTY shall not be deemed to waive or render unnecessary LESSOR'S consent to or approval of any subsequent act by COUNTY.

23. **EXHIBITS.** All Exhibits to this Lease are fully incorporated into and are integral parts of this Lease.

24. **INTEGRATION:** This instrument contains all the agreements of the Parties relating to the Premises and cannot be modified or amended except by a subsequent written amendment or other agreement in writing.
25. **NO THIRD-PARTY BENEFICIARIES:** Unless specifically set forth, the Parties to this Lease do not intend to provide any third-Party benefit or enforceable legal or equitable right or remedy.
26. **GOVERNING LAW:** This Lease shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles.
27. **HEADINGS:** Paragraph headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions of the headings.
28. **CONFLICT WITH LAWS OR REGULATIONS; SEVERABILITY:** This Lease is subject to all applicable laws and regulations. If any provision of this Lease is found by any court or other authority, or is agreed by the Parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Lease to either Party is lost, the Lease may be terminated at the option of the affected Party. In all other cases the remainder of the Lease shall continue in full force and effect.
29. **INTERPRETATION:** This Lease reflects the contributions of both Parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret uncertainty.
30. **AUTHORITY:** Each person executing this Lease on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind, and if such Party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right to enter into this Lease and perform all of its obligations hereunder.
31. **SEVERABILITY:** The unenforceability, invalidity, or illegality of any provision of this Lease shall not render the other provisions of the Lease unenforceable, invalid, or illegal.
32. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Parties shall preserve undestroyed, shall together constitute one and the same instrument. A signed copy or signed counterpart of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of a signed original or signed copy of this Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

LESSOR
Rocky Cove LP

Date: 3/30/23

By: [Signature]

Name: Mitchell F. Brown

Title: General Partner

Date: 3/29/2023

By: [Signature]

Name: Elizabeth J. Brown

Title: General Partner

COUNTY
COUNTY OF TULARE

Date: May 2, 2023

By: [Signature]

Chairman, Board of Supervisors

DENNIS TOWNSEND

ATTEST: JASON T. BRITT
County Administrative Office/
Clerk of the Board of Supervisors

By [Signature]
Deputy Clerk



Approved as to form:
County Counsel

By [Signature]
Deputy
Matter ID: 20221188

EXHIBIT A
Depiction of Rocky Hill, Porterville
The Premises

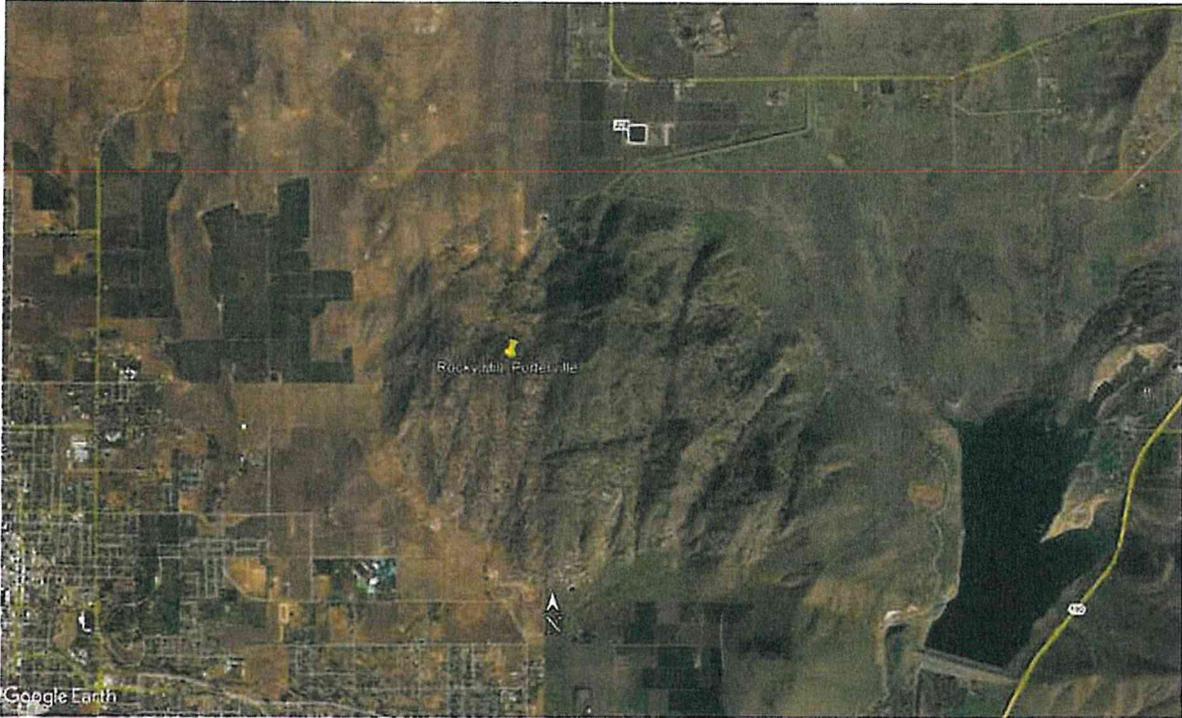


EXHIBIT B

**Depiction of Rocky Hill Communication Site
The Communication Site**



EXHIBIT C

Rocky Hill Communication Site

The Work – Lessor's Responsibility

1. Remove all rocks, if possible, trees, and flora in the area specified in Exhibit B.
2. Grade the land in the area specified in Exhibit B to allow for construction of a communications site tower, communications vault, and solar array.