

LEASE/LAND USE AGREEMENT

This is a lease and land use agreement between the County of Mendocino ("County") and CalNeva Broadband, LLC (CALNEVA) for the use of tower space ("Tower") in Gualala, California and real property ("Premises") use between County and CALNEVA. CALNEVA hereby acts as agent for Paul Hocket ("Property owner"), such agreement between CALNEVA and Property owner is described in Exhibit A.

- 1) **Description.** The Premises consists of:
 - a. a portion of that certain radio communications site commonly known as the Fish Rock Radio Communications Site located at 44701 Fish Rock Road, Mendocino County, California (APN 143-040-09 and APN 143-110-28) See attached Exhibit A.
- 2) **Usage.** The Tower and Premises may only be used for radio, data, television, and microwave reception and transmission facilities.
- 3) **Term.**
 - a. This lease and land use agreement commences on the first of the month after the signing of this lease.
 - b. The lease runs for a period of five (5) years to February 28, 2025.
- 4) **Rental Fee.**
 - a. County shall pay to CALNEVA a monthly fee of \$519.09 payable in advance on the first day of each calendar month during the term of this agreement for use of the Premises that houses Tower and communications building.
 - i. This fee shall be increased each year on the anniversary of the commencement date by three percent (3%) of the then current amount, or by the most recent annual percentage increase in the Consumers Price Index - All Items, All Urban Consumers (San Francisco) if greater. In no event shall the fee be decreased.
- 5) **Maintenance**
 - a. **Premises Use**
 - i. **Access.** CALNEVA will provide to County a key to access the Premises.
 - ii. **Appearance.** County will not do anything that would have the effect of making County's Tower and communications building more visible to passers-by on Fish Rock Road without consent from CALNEVA. No trees should be trimmed outside the Fish Rock side of the fence, and storage items should be placed away from that fence.
 - iii. **New Construction.** County may construct new buildings and other improvements only with consent of CALNEVA.
 - iv. **Safety.** County is responsible for the safety, maintenance, and code compliance of the Premises and its structures therein.

- v. **Trees.** Tall trees, both within the Premises, and within other nearby land owned by CALNEVA, may be trimmed back only with permission of CALNEVA.
- 6) **Ingress and Egress.** County is hereby given rights of ingress and egress to the Premises over, upon, and across adjoining lands and using established **rights-of-way granted** to CALNEVA by property owners for the purpose of erection, installation, maintenance and removal of CALNEVA'S communications equipment and other necessary appurtenances and for telephone lines and power lines used in connection with County's communications activities only. Such ingress and egress shall be over established roads. County shall have the right but not the obligation to improve any roads either by grading, graveling, or paving.
- 7) **Subleasing.**
- a. County shall refer any interested subleasing party to CALNEVA as it pertains to the Tower. CALNEVA shall be solely responsible for negotiating directly with any potential sub-lessee, maintaining any sublease agreement for Tower use, and receiving any and all funds from any such sublease agreements.
 - b. CALNEVA shall obtain, in writing, permission from County to sublease County's Tower. Said permission will not be unreasonably withheld from CALNEVA.
 - c. County acknowledges and approves the potential sublease of Tower space to KTDE Radio for relocation of their existing FM radio transmitter.
 - d. County will inform CALNEVA if there is any Tower Use Fee to be charged to any potential sub-lessee. The maximum Tower Use Fee that County may charge is up to 50% of the sublease agreement between CALNEVA and the third party. County will contract directly with any sub-lessee for any such Tower Use Fee, and County shall receive any and all proceeds of such Tower Use Fees. County agrees that it shall not charge any Tower Use Fees to any government entity sub-lessees.
- 8) **Indemnity.** The parties and each of them shall indemnify and hold harmless the other from any liability for injury or death of any person or damage to any property caused by the party's negligence or misconduct or that of its agents, employees, or contractors with respect to the Premises. In case a party to this lease shall, without fault in its part, be made a party to any litigation for which it is to be indemnified hereunder, then the other party shall protect and hold harmless and pay all costs, penalties, charges, damages, expenses, and reasonable attorney's fees incurred or paid by the party to be indemnified.
- 9) **Insurance.** Throughout the terms of this lease, CALNEVA and County shall provide and maintain general liability insurance against claims for personal injury, death, or property damage occurring on or about the Premises and resulting from the negligent act or omissions of CALNEVA and/or County, such insurance to afford protection to the limit of not less than Two Million Dollars (\$2,000,000) in respect to injury or death of a single person, and to the limit of not less than Two Million Dollars (\$2,000,000) in respect to any one accident, and to the limit of not less than One Million Dollars (\$1,000,000) in respect to property damage. Each party shall deliver to one another an insurance certificate providing proof of the above. Such

policy shall not be canceled or subject to reduction of coverage or other modification.

- 10) **Default.** If County defaults in the material performance of any of the covenants or conditions on its part to be performed, CALNEVA shall give County written notice of such default, and if County does not cure such default within thirty (30) days after the giving of such notice (or if such default is of such a nature that it cannot be cured within thirty (30) days and if County does not commence such cure within the thirty (30) day period and thereafter proceed with diligence to cure the default) or if County is adjudicated a bankruptcy, or a receiver of its property is appointed, County shall be in breach of this lease and CALNEVA may at its option terminate this lease on not less than fifteen (15) days written notice. On the date specified in said notice this lease shall terminate and County shall quit and surrender the Premises to CALNEVA.
- 11) **Representations.** County and CALNEVA, and their signatories, represent and warrant that they have full right, power, and authority to execute and perform this lease.
- 12) **Hazardous Materials.** County agrees that it shall not use, have present, or transport, on or about the Premises or Property any hazardous or toxic materials, wastes, or substances or any other pollutants or contaminants without the express written consent of CALNEVA. If at any time during the term of this lease, County knows or believes that any hazardous or toxic materials, wastes, or substances or any other pollutants or contaminants have come, or will come, to be located upon, about, or underneath the Premises, then County shall as soon as reasonably possible give verbal and follow-up written notice of that condition to CALNEVA. County covenants to investigate, clean up and otherwise remediate any release of such hazardous or toxic materials, wastes, or substances at County's cost and expense.
- 13) **Surrender of Premises.** Upon termination of this lease, County shall surrender the Premises in good condition. Any equipment, materials, or improvements left behind shall become the property of CALNEVA; CALNEVA may charge County reasonable amount for their removal and disposal. CALNEVA will have first right of refusal to own Tower upon County's default or surrender of the premises at a predetermined price of \$1.00 (one dollar). If CALNEVA terminates the lease with the County for a reason other than a default by the County, the County shall have the first right of refusal to take down the Tower and remove it from the Premises.
- 14) **Transferability.** This lease may be transferred or assigned by either party. The parties will give appropriate notice of such assignment.
- 15) **Legal Interpretation.** This lease and the rights and obligations of the parties hereto shall be interpreted, construed, and enforced in accordance with the laws of the State of California.
- 16) **Arbitration.** Any controversy or claim arising out of or relating to this lease, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

- 17) **Attorney's Fees.** In the event either party defaults in the performance of any of the terms of this lease the prevailing party shall be entitled to recover reasonable attorney's fees and expenses.
- 18) **Notices.** Any notice by either party to the other shall be in writing and shall be delivered in person or mail by registered or certified mail, postage prepaid, return receipt requested or by overnight delivery service to the following:

County:County of Mendocino

Attn: Executive Office/Central Services Division
501 Low Gap Road, Room 1010
Ukiah, CA 95482

CALNEVA: CALNEVA BROADBAND, LLC

PO Box 1389
Discovery Bay, CA 94505
Attn: Tom Gelardi, LLC Manager

The names or addresses for notice may be changed by giving notice in accordance with this paragraph.

- 19) **Entire Agreement.** This lease constitutes the entire agreement between the parties, there being no other terms, oral or written, except as herein expressed. No modification of this lease shall be binding on the parties unless it is in writing and signed by both parties hereto. Permissions required under the terms of this Lease must be given in writing. The parties waive all rights to claim the existence of legally-enforceable oral promises or agreements concerning either this Lease or the Premises.

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

COUNTY OF MENDOCINO

DEPARTMENT FISCAL REVIEW:

DEPARTMENT NAME: Executive Office

Janette Ram 05/12/2021

DEPARTMENT HEAD DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: IT

Line Item: 862061

Grant: ☐ Yes ☒ No

Grant No.: _____

CARMEL J. ANGELO, Chief Executive Officer

By: Janette Ram
PURCHASING AGENT

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management

CONTRACTOR/COMPANY NAME

By: see page 5a

NAME AND ADDRESS OF CONTRACTOR:

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS
County Counsel

By: Matthew Kiedrowski
Deputy

EXECUTIVE OFFICE/FISCAL REVIEW:

APPROVAL RECOMMENDED

By: Darcie Antle
Deputy CEO

Signatory Authority: \$0-25,000 Department; \$25,001-50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

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

COUNTY OF MENDOCINO

DEPARTMENT FISCAL REVIEW:

DEPARTMENT NAME: _____
see page 5

DEPARTMENT HEAD _____ DATE _____

Budgeted: ☐ Yes ☐ No

Budget Unit: _____

Line Item: _____

Grant: ☐ Yes ☐ No

Grant No.: _____

CARMEL J. ANGELO, Chief Executive Officer

see page 5

By: _____
PURCHASING AGENT

INSURANCE REVIEW:

see page 5

By: _____
Risk Management

CONTRACTOR/COMPANY NAME

By: John E. Selby, LLC MGR

NAME AND ADDRESS OF CONTRACTOR:

CALNEVA BROADBAND, LLC

PO BOX 1388

DISCOVERY BAY, CA 94505

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS
County Counsel

see page 5

By: _____
Deputy

EXECUTIVE OFFICE/FISCAL REVIEW:

APPROVAL RECOMMENDED

see page 5

By: _____
Deputy CEO

Signatory Authority: \$0-25,000 Department; \$25,001-50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

EXHIBIT A

Facility contains Building, Generator and Tower used for County of Mendocino and County of Sonoma Public Safety Communications and Microwave Network.

Building contains equipment racks containing County of Mendocino and County of Sonoma Public Safety Radio and Microwave Equipment

Tower contains County of Mendocino and County of Sonoma Antennas and Transmission lines.