

LICENSE AGREEMENT

This license agreement (“**Agreement**”) is dated _____, 2023 (the “**Effective Date**”), and is between CONTRA COSTA COUNTY, a political subdivision of the State of California (the “**County**”) and the DISH WIRELESS, L.L.C., a Colorado limited liability company (the “**Licensee**”).

RECITALS

- A. The County is the owner of real property located at 1850 Muir Road, Martinez, California (the “**Property**”), which is a portion of Assessor’s Parcel Number 155-280-011. The Property has been improved with buildings and a radio communication site that includes, among other things, a tower (the “**Tower**”).
- B. Licensee desires to obtain the County’s permission to use the Property for the limited purposes described in this Agreement. The County is willing to grant a license to use those portions of the Property shown on Exhibit A which include a ten (10) foot-wide non-exclusive access easement for ingress and egress, a thirty-five (35) square foot site for placement of Licensee’s ground equipment, and space on the Tower for the installation of Licensee’s antennae and related equipment, as more fully described and shown at the locations set forth in Exhibit A (together, the “**Licensed Premises**”) upon the terms and conditions set forth in this Agreement.

The parties therefore agree as follows:

AGREEMENT

- 1. **Grant of License.** Subject to the terms and conditions of this Agreement, the County hereby grants to the Licensee a nonexclusive revocable license to enter the Licensed Premises for the purposes described in Section 2 below and for no other purpose without the County’s prior written consent.
- 2. **Use of Premises.** The Licensee, including its contractors and consultants, may use the Licensed Premises for the purpose of ingress and egress along a ten (10) -foot-wide access route for placing, operating, modifying, repairing and maintaining Licensee’s ground equipment, and installing, operating, modifying, repairing and maintaining Licensee’s antennae on the Tower, together with the necessary appurtenances thereto, for a wireless communication facility, all as shown in Exhibit A.
- 3. **Term.** The initial term of this Agreement (the “**Initial Term**”) commences on the Effective Date, and it expires five years later on _____, 2028, unless terminated sooner, renewed, or extended as provided herein. The term of the Agreement shall automatically be extended beyond the Initial Term by up to four additional five (5) year periods, one (1) period at a time (each five-year period a “**Renewal Term**”) unless Licensee elects to terminate the license at the end of the then-current term by giving

County written notice at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term.

The County shall have the right to terminate this Agreement at any time if it determines the land is needed for public purposes upon twelve (12) months' written notice to Licensee.

If following the Effective Date: (i) a structural analysis shows that the Tower is not suitable for Licensee's permitted use; (ii) any application for governmental approvals is rejected, conditioned, materially delayed or otherwise not approved for any or no reason; (iii) any governmental approval issued to Licensee is canceled, expires, lapses or is otherwise withdrawn or terminated by the applicable governmental authority through no fault of Licensee, (iv) Licensee determines, in Licensee's discretion, that such governmental approvals cannot be obtained in a timely and commercially reasonable manner, then Licensee shall have the right to terminate this Agreement upon thirty (30) days' notice to Licensor.

In addition, either party may terminate this Agreement with thirty (30) days' written notice if the other party violates any term or condition of this Agreement, where such failure: (1) continues for a period of thirty (30) days after written notice thereof from the non-defaulting party, provided, however, that if the event for which the notice is given is of a nature that may not be reasonably cured within said thirty (30) day period, then such party shall not be in default for so long as such party commences to cure the failure within the thirty (30) day period and diligently pursues it to conclusion.

4. **License Fee**. During the term of this Agreement, Licensee shall pay a non-refundable license fee to the County monthly in advance (the "**Monthly Fee**"). The Monthly Fee for each month during the first year of the Initial Term is \$1,800.00 per month. Beginning with the Monthly Fee to be paid for each month during the second year of the Initial Term, the amount of the Monthly Fee shall increase 3.5% annually over the Monthly Fee due each month during the prior year, as set forth in the fee schedule below.

Fee Schedule	
<u>Year</u>	<u>Monthly Fee</u>
<u>Initial Term</u>	
1	\$1,800.00
2	\$1,863.00
3	\$1,928.21
4	\$1,995.69
5	\$2,065.54
<u>Renewal Option #1</u>	
6	\$2,137.84
7	\$2,212.66
8	\$2,290.10

9	\$2,370.26
10	\$2,453.22

Renewal Option #2

11	\$2,539.08
12	\$2,627.95
13	\$2,719.92
14	\$2,815.12
15	\$2,913.65

Renewal Option #3

16	\$3,015.63
17	\$3,121.17
18	\$3,230.42
19	\$3,343.48
20	\$3,460.50

Renewal Option #4

21	\$3,581.62
22	\$3,706.98
23	\$3,836.72
24	\$3,971.01
25	\$4,109.99

Monthly Fee payments are to be addressed and delivered to Contra Costa County, Department of Information Technology, 30 Douglas Drive, Martinez, CA 94553, Attention: Accounting, or to such other place as County may from time to time designate by written notice. The first Monthly Fee payment shall be made within twenty (20) business days after the Effective Date, with each subsequent Monthly Fee payment payable by the fifth (5th) day of the month for which it is made.

5. **Delinquent Fee.** A Monthly Fee shall be deemed delinquent if not received by County within ten days after the Monthly Fee is due. If the Monthly Fee becomes delinquent, Licensee shall be responsible for paying the Monthly Fee, a late fee of One Hundred and 00/100 Dollars (\$100.00), plus interest of 1.5% per month or portion thereof that the Monthly Fee remains unpaid.
6. **Prorations.** Notwithstanding anything to the contrary herein, the Monthly Fee payable hereunder for any period of time less than one month shall be determined by prorating the monthly rent herein specified based on a thirty (30) day month and on the actual number of days the Licensee occupies the Licensed Premises. If Licensee is due any refund of any portion of its Monthly Fee following the termination of this Agreement prior to the

expiration of the then current term, the County will issue such refund within sixty (60) days following the date on which this Licensee terminates.

7. **Improvements to the Premises.**

- a. Licensee may not construct any improvements on the Licensed Premises without prior written consent from the County. For the purposes of this Agreement, any equipment Licensee is permitted to install on the Licensed Premises is not considered to be an improvement to the Property or the Licensed Premises.
- b. Any improvements to the Licensed Premises by Licensee (with or without the consent of the County) must be removed by Licensee, at its sole cost, except those improvements that the County and Licensee agree are not required to be removed upon the termination of this Agreement. Licensee shall repair, at its sole cost, any damage caused by the removal of its improvements or equipment.
- c. If Licensee fails to remove any improvements or equipment it is required to remove, the County may remove them at Licensee's expense, and Licensee shall immediately reimburse the County upon Licensee's receipt of an invoice from the County.

8. **Permits and Approvals.** Licensee is responsible for obtaining any permits or approvals from any agency having jurisdiction. This Agreement does not constitute governmental approval by Contra Costa County of this use. The parties acknowledge and agree that Licensee's ability to use the Licensed Premises is contingent upon Licensee obtaining all certificates, permits, approvals and other authorizations that may be required by any Governmental Authority in accordance with Applicable Law (collectively, the "**Governmental Approvals**"). County hereby authorizes Licensee, at Licensee's sole cost and expense, to file and submit for Governmental Approvals. County shall: (x) reasonably cooperate with Licensee's efforts to obtain such Governmental Approvals; (y) promptly execute and deliver any and all documents necessary to obtain and maintain Government Approvals; and (z) take no action that would adversely affect Licensee's ability to obtain and/or maintain the Governmental Approvals. "**Applicable Law**" means any applicable federal, state or local act, law, statute, ordinance, building code, rule, regulation or permit, or any order, judgment, consent or approval of any Governmental Authority having jurisdiction over the parties or this Agreement.

9. **Nonexclusive Right of Use.** This Agreement is nonexclusive. The County reserves the right to issue licenses, easements, and permits to others that could affect the Property or the Licensed Premises; provided that the County's right shall not materially interfere with Licensee's use of the Licensed Premises.

10. **Existing Facilities.** It is understood and agreed that the County has leases, licenses, and/or easements with others for all or a portion of the Property.

The holders of the leases, licenses, and/or easements granted by the County have the right to enter on the Property and maintain their facilities. Licensee will not be compensated for damage resulting from such maintenance.

11. **Surface Rights Only; Damage.** The rights granted under this Agreement are surface rights only and no excavation is allowed except for installation of Licensee's utilities and related equipment in accordance with the plans attached hereto as Exhibit A. It is the responsibility of Licensee to contact property owners and holders of easements, leases, and licenses to determine if any real property over which Licensee wishes to use a vehicle is able to support the vehicle without damage to subsurface or surface facilities. If Licensee's use of real property pursuant to this Agreement causes damage to that real property, the Property, the Licensed Premises, or their vegetation, subsurface or surface facilities, Licensee shall repair the damage and return the affected property to a neat and safe condition satisfactory to the County and the affected users.
12. **Interference.** The Licensee shall cooperate with County and any of its current and future licensees to minimize technical interference between the telecommunication activities of the Licensee.
13. **Equipment Maintenance.** Licensee shall maintain all the equipment utilized for Licensee's purposes and may fix and repair said equipment at Licensee's sole cost.
14. **Maintenance.** The Licensee shall keep and maintain the Licensed Premises in good condition, reasonable wear and tear and damage from the elements excepted.
15. **Utilities.** The Licensee shall provide their own commercial electrical power at Licensee's sole cost and expense. Licensee shall provide their own standby power, if needed, at Licensee's sole cost and expense.
16. **Alterations to Premises.** Licensee shall have the right during the term of this License, with written consent of County, such consent not to be unreasonably withheld, to make alterations to Licensee's equipment. It is mutually understood and agreed that no alterations or variations of the terms of this License shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
17. **Equipment Change.** Any change in Licensee's approved equipment other than like for like or substantially similar replacements of equipment requires technical approval from County, consistent with Sections 2, "Use of Premises," and 12, "Interference". To initiate approval for a change of non like for like equipment, Licensee must first contact County to obtain written approval.
18. **Pollution.** Licensee, at its expense, shall comply with all applicable laws, regulations, and rules with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise,

environmental protection, waste disposal, and water and air quality, and shall furnish satisfactory evidence of such compliance upon request by the County.

Licensee may not permit hazardous materials to be handled at any time on the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Property due to Licensee's use and occupancy of the Property, Licensee, at its expense, shall clean all the property affected thereby, whether owned or controlled by the County or any third person, to the satisfaction of the County (insofar as the property owned or controlled by the County is concerned) and any governmental body having jurisdiction.

To the extent permitted by law, Licensee shall indemnify, hold harmless, and defend the County and the holders of rights to use the Property (each, an “**Indemnitee**”) against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, and attorneys' fees) incurred by any Indemnitee as a result of any discharge, leakage, spillage, emission or pollution, regardless of whether the liability, cost or expense arises during or after the term of this Agreement, unless such liability, cost or expense is proximately caused solely by the active negligence of the County.

Licensee shall pay all amounts due to the County under this section within ten days after any demand therefor. Licensee’s obligations under this Section shall survive the expiration or termination of this Agreement.

19. **Hold Harmless.** The Licensee shall defend, indemnify, save, and hold harmless the County, its officers, employees, agents, and representatives from and against all liabilities, judgments, costs, demands, fees, penalties, and expenses (collectively, “**Liabilities**”) that arise from or are connected with the negligence or willful misconduct of the Licensee, its officers, employees, contractors, agents, or representatives, or as a result of the County granting the Licensee a license under this Agreement, save and except for Liabilities that arise from the negligence or willful misconduct of the County. Licensee’s obligations under this Section shall survive the expiration or termination of this Agreement.
20. **Insurance.** Licensee agrees, at no cost to the County, to obtain and maintain during term of this Agreement, commercial general liability insurance with a minimum limit coverage of \$1,000,000 for each occurrence and \$2,000,000 aggregate for all claims or losses due to bodily injury, including death, or damage to property, including loss of use, and to **name Contra Costa County, its officers, agents, and employees as additional insured** thereunder. Licensee must provide for a thirty (30) days’ written notice to the County of cancellation or lapse. Licensee shall provide evidence of the coverage to the County prior to execution of this Agreement and annually thereafter.
21. **Assignment.** The Licensee may not assign its rights under this Agreement without the prior written approval of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Licensee may assign or transfer some or all of its rights and/or obligations under the Agreement to: (i) an Affiliate; (ii) a

successor entity to its business, whether by merger, consolidation, reorganization, or by sale of all or substantially all of its assets or stock; (iii) any entity in which a party or its Affiliate(s) have any direct or indirect equity investment; and/or (iv) any other entity directly or indirectly controlling, controlled by or under common control with any of the foregoing, and in each case, such assignment, transfer or other such transaction shall not be considered an assignment under this Section 21 requiring consent and the County shall have no right to delay, alter or impede such assignment or transfer. “**Affiliate(s)**” means, with respect to Licensee or, any person or entity, directly or indirectly, controlling, controlled by, or under common control with Licensee, in each case for so long as such control continues. For purposes of this definition, “control” shall mean (i) the ownership, directly or indirectly, or at least fifty percent (50%) of either: (a) the voting rights attached to issued voting shares; or (b) the power to elect fifty percent (50%) of the directors of such entity, or (ii) the ability to direct the actions of the entity. Notwithstanding the preceding, for purposes of this Agreement, EchoStar Corporation and its direct and indirect subsidiaries shall not be deemed to be “Affiliates” of Licensee unless after the Effective Date any such entity qualifies as a direct or indirect subsidiary of DISH Network Corporation.

22. **County’s Title.** Licensee hereby acknowledges County’s fee title in and to the Property and agrees never to assail or to resist the County’s title. Licensee agrees that it has not, and never will, acquire any rights or interest in the Property as a result of this Agreement, and that Licensee has not, and will not, obtain any right or claim to the use of the Property beyond that specifically granted in this Agreement. Construction of any improvements by Licensee on or about the Property does not give rise to a license coupled with an interest. The foregoing does not preclude Licensee from purchasing the Property under a separate agreement with the County.
23. **Amendments and Modifications.** No amendment, modification, or supplement to this Agreement shall be binding on either party unless it is in writing and signed by both parties.
24. **Surrender of Possession.** Upon termination or expiration of this Agreement, the Licensee shall peaceably and quietly leave, surrender, and yield to the County, the Licensed Premises in good order, condition, and repair. The Licensee shall remove all equipment from the Licensed Premises within 90 days after license expiration or termination, except in the case of fire or other natural disaster, in which case a removal date to be mutually agreed upon. Upon termination or expiration, and following removal of all equipment, a qualified representative of the County shall inspect the Licensed Premises to determine that the Licensed Premises is left in accordance with the terms of this Agreement.
25. **Notices.** Notices under this Agreement must be in writing and will be effective either when delivered in person or deposited as certified mail, postage prepaid, return receipt requested, or sent by a recognized overnight courier service, and directed to the other party at its address as stated below, or to such other address as the party may designate by written notice.

LICENSEE: DISH Wireless, L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112

COUNTY: Contra Costa County
Public Works Department
Attn: Real Estate Division
255 Glacier Drive
Martinez, CA 94553

26. **Governing Law.** This Agreement is governed by the laws of the State of California.
27. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. No alteration or variation of this Agreement is valid or binding unless made in writing and signed by both parties.
28. **Counterparts.** This Agreement may be executed in counterparts that, together, constitute one and the same instrument.

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The parties are signing this Agreement as of the date set forth in the introductory paragraph.

CONTRA COSTA COUNTY

LICENSEE

By _____
Brian M. Balbas
Public Works Director

By _____
Dave Mayo
Executive Vice President

**RECOMMENDED TO THE BOARD
OF SUPERVISORS FOR APPROVAL:**

By _____
Jessica L. Dillingham
Principal Real Property Agent

By _____
Margaret J. Eychner
Senior Real Property Agent

**APPROVED AS TO FORM:
THOMAS L. GEIGER, COUNTY COUNSEL**

By: _____
Stephen M. Siptroth, Assistant County Counsel

