

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

LONDON N. BREED, MAYOR

COMMUNICATIONS SITE LEASE

Between

**CITY AND COUNTY OF SAN FRANCISCO,
as Landlord,**

and

**COUNTY OF SAN MATEO
as Tenant,**

**For the lease of
40,000 square feet of space,
on Montara Mountain – North Peak,
constituting a portion of SFPUC Parcel No. 31
(and a portion of San Mateo County Assessor Parcel No. 093-030-050)
in**

unincorporated San Mateo County, California

_____ , 2022

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

**Anson B. Moran – President
Newsha K. Ajami – Vice President
Sophie Maxwell – Commissioner
Tim Paulson – Commissioner**

**Dennis J. Herrera
General Manager of San Francisco Public Utilities Commission**

Table of Contents

Section	Page
1. BASIC LEASE INFORMATION	1
2. PREMISES; ACCESSIBILITY DISCLOSURES; AS IS LEASE.....	5
2.1 Lease Premises.....	5
2.2 License; Tenant’s Access to City’s Property.....	5
2.3 Rights Reserved to City.....	6
2.4 Subject to Municipal Uses.....	7
2.5 Accessibility Disclosures.....	8
2.6 As-Is Lease.....	8
3. TERM.....	8
3.1 Term of Lease.....	8
3.2 Commencement Date and Expiration Date.....	8
3.3 Possession.....	9
3.4 Effective Date.....	9
3.5 Delay in Tenant’s Permits and Approvals.....	9
4. RENT; ADDITIONAL CHARGES	9
4.1 Rent.....	9
4.2 Periodic Adjustments in Base Rent.....	10
4.3 Additional Charges.....	10
4.4 Late Charges.....	10
4.5 Default Interest.....	10
4.6 Net Lease.....	11
4.7 Reserved.....	11
4.8 Taxes and Assessments.....	11
5. USE.....	12
5.1 Permitted Use.....	12
5.2 Covenants Regarding Use.....	12
5.3 Periodic Review.....	16
6. TENANT’S FACILITIES	16
7. ALTERATIONS	16
7.1 Tenant’s Alterations.....	16

7.2	Title to and Removal of Tenant’s Facilities and Alterations	18
7.3	Tenant’s Personal Property.....	19
7.4	Waiver of Landlord Lien.....	19
8.	CITY’S ALTERATIONS OF THE PROPERTY AND CITY’S FACILITIES.....	19
9.	MAINTENANCE AND REPAIRS.....	20
9.1	Tenant’s Responsibility for Maintenance and Repair.....	20
9.2	Project Review and Access Requirements.....	20
9.3	No Right to Repair and Deduct.....	20
10.	LIENS.....	21
11.	UTILITIES AND SERVICES	21
11.1	Utilities and Services.....	21
11.2	Mandatory or Voluntary Restrictions.....	22
12.	COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS.....	22
12.1	Compliance with Laws.....	22
12.2	Licenses and Approvals.....	23
12.3	Radiofrequency Radiation and Electromagnetic Fields.....	24
12.4	Compliance with City’s Risk Management Requirements.....	24
13.	SUBORDINATION	24
14.	DAMAGE OR DESTRUCTION.....	25
15.	CONSTRUCTION PROJECTS.....	26
16.	EMINENT DOMAIN	26
16.1	Eminent Domain.....	26
16.2	Temporary Takings.....	26
17.	ASSIGNMENT AND SUBLETTING; CO-LOCATION	27
17.1	Restriction on Assignment and Subletting.....	27
17.2	Notice of Proposed Transfer.....	27
17.3	City’s Response.....	27
17.4	Effect of Sublease or Assignment.....	28
17.5	Assumption by Transferee.....	28
17.6	Co-location.....	29
17.7	IPM Plan and Form CMD-12B-101.....	30
18.	DEFAULT	30

18.1	Events of Default.....	30
18.2	Remedies.....	31
18.3	Special Administrative Charges.....	32
18.4	City’s Right to Cure Tenant’s Defaults.....	33
19.	TENANT’S INDEMNITY.....	33
20.	INSURANCE.....	34
20.1	Tenant’s Insurance.....	34
20.2	General Requirements.....	36
20.3	Proof of Insurance; Failure to Provide.....	37
20.4	Lapsed Coverage.....	37
20.5	Review of Insurance Requirements.....	37
20.6	No Limitation on Lease Obligations or Liability.....	37
20.7	Tenant’s Facilities and Personal Property.....	37
20.8	Self Insurance.....	38
20.9	Waiver of Subrogation.....	38
21.	LIMITATION OF CITY’S LIABILITY.....	38
21.1	Limitation of City’s Liability.....	38
21.2	Consequential Damages.....	38
21.3	No Relocation Assistance.....	39
22.	CITY’S ACCESS TO PREMISES.....	39
22.1	City’s Access to the Premises.....	39
22.2	Pipeline and Utility Installations.....	40
22.3	Roadways.....	41
23.	TENANT’S ESTOPPEL CERTIFICATES.....	41
24.	RULES AND REGULATIONS.....	41
25.	SECURITY DEPOSIT.....	41
26.	SURRENDER OF PREMISES.....	42
26.1	Surrender Plan.....	42
26.2	Surrender.....	42
26.3	Quitclaim Deed.....	43
27.	HAZARDOUS MATERIALS.....	43
27.1	Definitions.....	43
27.2	No Hazardous Material in Premises.....	43

27.3	Tenant’s Environmental Indemnity.....	44
28.	SPECIAL PROVISIONS	44
28.1	Protection of Tenant Against Interference.....	44
28.2	Protection Against Tenant’s Interference.	45
29.	GENERAL PROVISIONS	45
29.1	Notices	45
29.2	No Implied Waiver.	46
29.3	Amendments.....	46
29.4	Authority.	46
29.5	Interpretation of Lease.....	46
29.6	City Consents, Approvals, Elections and Options.	47
29.7	Successors and Assigns.....	47
29.8	Brokers.	47
29.9	Severability.....	47
29.10	Governing Law.	48
29.11	Entire Agreement.	48
29.12	Attorneys’ Fees.	48
29.13	Holding Over.....	48
29.14	Time of Essence.....	49
29.15	Cumulative Remedies.....	49
29.16	Survival of Indemnities.	49
29.17	Signs.	49
29.18	Relationship of the Parties.....	50
29.19	Light and Air.....	50
29.20	Recording.	50
29.21	Non-Liability of City Officials, Employees and Agents.	50
29.22	Reserved	50
29.23	Non-Discrimination in City Contracts and Benefits Ordinance.	50
29.24	Requiring Health Benefits for Covered Employees.....	51
29.25	Notification of Prohibition on Contributions.....	53
29.26	Reserved	53
29.27	MacBride Principles – Northern Ireland.	53
29.28	Conflicts of Interest.	53

29.29 Drug-Free Workplace.	54
29.30 Tropical Hardwood and Virgin Redwood Ban.	54
29.31 Prohibition of Tobacco Sales and Advertising.	54
29.32 Prohibition of Alcoholic Beverage Advertising.	54
29.33 Sunshine Ordinance; Public Records Law.	54
29.34 Food Waste Reduction Ordinance.	55
29.35 San Francisco Packaged Water Ordinance.	55
29.36 Criminal History in Hiring and Employment Decisions.	55
29.37 Local Hiring Policy for Tenant’s Facilities and Alterations.	56
29.38 Tenant’s Compliance with City Business and Tax and Regulations Code.	57
29.39 Contractor Vaccination Requirements.	57
29.40 Cooperative Drafting.	58
29.41 Counterparts.	58

LIST OF EXHIBITS

Exhibit A	Aerial View of City’s Property
Exhibit A-1	Depiction of Tenant’s Access Route
Exhibit B	Depiction of Premises
Exhibit C	Tenant’s Existing Facilities (As-Built Plans)
Exhibit D	Confirmation of Commencement Date
Exhibit E	Environmental Compliance and Permitting Documentation
Exhibit F	Rules and Regulations
Exhibit G-1	Form of Co-Location Sublicense
Exhibit G-2	List of Existing Co-Location Parties (Approved Users)
Exhibit H	Copy of California Public Utilities Commission General Order No. 95
Exhibit I	SFPUC Montara – North Peak Antenna List

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
COMMUNICATIONS SITE LEASE**

(Lease #L4507)

(Supersedes and replaces SFPUC Revocable Permit dated April 23, 1963)

THIS COMMUNICATIONS SITE LEASE (this “**Lease**”) dated for reference purposes only as of _____, 2022, is made between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”), and the COUNTY OF SAN MATEO, a political subdivision of State of California (“**Tenant**”). City and Tenant are at times collectively referred to in this Lease as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. City, through the SFPUC, issued a San Francisco Water Department Revocable Permit, dated April 23, 1963 (“**Permit**”) to Tenant, as permittee, to erect and maintain a radio communications antennae and appurtenant building on approximately 40,000 square feet of City property located on the North Peak of Montara Mountain (“**Montara Mountain – North Peak**”) in San Mateo County.

B. The United States of America, acting by and through a duly authorized official of the Department of the Interior, National Park Service (“**NPS**”), Golden Gate National Recreation Area (“**GGNRA**”) (referred to in this Lease as the “**Government**”) constructed and maintained at Government’s cost and expense a new radio communication facility at Montara Mountain – North Peak, to replace Tenant’s existing antenna tower with a new antennae tower.

C. City and Tenant desire to replace the existing Permit with this Lease to provide more comprehensive terms and conditions to reflect the current use of the site.

D. Accordingly, the parties desire to enter into this Lease on the terms and conditions below.

Incorporating the foregoing recitals into this License, City and Tenant agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (“**Basic Lease Information**”). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: _____, 2022

Landlord: City and County of San Francisco, acting through its Public Utilities Commission

Tenant: County of San Mateo

Property (Section 2.1):

That portion of Assessor’s Parcel No. 093-030-050 (more commonly known as Montara Mountain – North Peak), in unincorporated San Mateo, San Mateo County, California, as described in and/or shown on the attached **Exhibit A**, and all appurtenances and improvements erected or placed on such parcel (“**Property**”). The Property is under the jurisdiction of City’s SFPUC.

Premises (Section 2.1):

The portion of the Property, consisting of approximately 40,000 square feet of space, constituting a portion of SFPUC Parcel No. 31 of the Peninsula Watershed as shown on the attached **Exhibit B (“Premises”)**.

License (Section 2.2):

In connection with the lease of the Premises and for the Term of the Lease, Tenant and the Approved Users [defined in **Section 17.6(c)** [Existing Co-location Arrangements] below) identified on **Exhibit G-2** shall have a nonexclusive and nonpossessory license (“**License**”) for (a) the placement and use of cables, wiring, and conduit in the locations and manner shown on the attached **Exhibit C** and as otherwise mutually agreed in writing between City and Tenant, (b) vehicular access, ingress, and egress in and over the existing driveway on the Property, and (c) pedestrian access within the Property to and from the Premises, all as shown on the plans described in the attached **Exhibit C** (collectively, the “**License Area**”).

Term (Section 3.1):

Eight (8) years

Commencement Date: _____

Expiration Date: _____

Extension Options (Section 3.5):

N/A

Base Rent (Section 4.1):

Lease Year	Annual Base Rent	Monthly Base Rent
1	\$2,400.00	\$200.00
2	\$2,496.00	\$208.00
3	\$2,595.84	\$216.32
4	\$2,699.67	\$224.97
5	\$2,807.66	\$233.97
6	\$2,919.97	\$243.33
7	\$3,036.77	\$253.06
8	\$3,158.24	\$263.19

Processing Fee (Section 4.7):

N/A

Adjustment Dates (Section 4.2):

Each of the following is an “**Adjustment Date**”:
(a) the first (1st) day of the second Lease Year,
(b) the first (1st) day of each subsequent Lease Year,
(c) the first (1st) day that Tenant Holds Over (as defined in **Section 29.13** [Holding Over] below), and any yearly anniversary thereof during the Holdover Period (as defined in **Section 29.13**), and, **(d)** at City’s election, the effective date of a Transfer (as defined in **Section 17.1** [Restrictions on Assignment and Subletting] below).

The term “**Lease Year**” means each twelve (12)-month period following the Commencement Date, except that **(i)** if the Commencement Date occurs on a day other than the first day of a calendar month, the First Lease Year shall begin on the Commencement Date and end on the last day of the twelfth (12th) full calendar month thereafter, and **(ii)** the final Lease Year shall end on the day this Lease expires or terminates, even if less than twelve (12) full months.

Security Deposit (Section 25):

N/A

Use (Section 5.1):

Installation, maintenance, repair, and operation of City-approved Tenant’s Facilities (defined in **Section 6** [Tenant’s Facilities] below) within the Premises and the License Area, as one of Tenant’s communications sites (a “**Communications Site**”), for Tenant’s transmission and reception of radio communication signals, such transmission and reception to be solely for the frequencies licensed to Tenant by the FCC, as further described in **Section 5.1** [Permitted Use] below.

Tenant’s Existing Facilities (Section 6):

Utilities and Services (Section 11.1):

All utilities and services (including gas, water, sewer, telephone service, trash collection, and janitorial service) necessary for use of the Communications Site as permitted by this Lease shall be obtained by Tenant at its sole cost directly from the service provider, and in accordance with **Section 11.1** [Utilities and Services] below, except:

Tenant shall contact Fraser Smith, PE, (415) 554-2420 of the SFPUC Power Enterprise to determine if the SFPUC will be the provider of electric power service for Tenant’s Facilities and the terms of service, as provided in **Section 11.1**.

**Notice Addresses of City
(Section 29.1):**

San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn.: Real Estate Director
Re: Lease No. L4507

with a copy to:

Office of the City Attorney
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Real Estate/Finance Team
Re: SFPUC Lease No. L4507

and to:

Peninsula Watershed Manager
San Francisco Public Utilities Commission
1657 Rollins Road
Burlingame, CA 94010

City's Key Contact for Notice:

SFPUC Real Estate Director
Telephone No.: (415) 487-5210

City's Access Contact (i.e., City's key contact for access and maintenance purposes) (See advance notice requirements in **Section 2.2**):

John Fournet
Acting Peninsula Watershed Manager
Office: (650) 652-3207
Email: JFournet@sflower.org

**City's Emergency Contact
(Section 2.2(b)):**

Dispatch Operator, (650) 872-5900

Notice Address for Tenant (Tenant to notify City of any changes, in accordance with **Section 29.1**):

County of San Mateo
555 County Center, 4th Floor
Redwood City, CA 94063
Attn: Real Property Manager

With a copy to:

County of San Mateo
Information Services Dept.
455 County Center, 3rd Floor
Redwood City, CA 94063
Attn: Communications Manager

Key Contact for Tenant:

William Dunbar, Communications Manager
wdunbar@smcgov.org
Telephone No.: (650) 599-1069

Emergency Contact for Tenant:

Public Safety Dispatch
dispatch_law@smcgov.org
Telephone No.: (650) 363-4915

Brokers (Section 29.8):

N/A

2. PREMISES; ACCESSIBILITY DISCLOSURES; AS IS LEASE

2.1 Lease Premises.

Subject to the terms, covenants, and conditions of this Lease, City leases to Tenant and Tenant leases from City, the Premises described in **Section 1** [Basic Lease Information] above, excluding therefrom and reserving unto City and its successors and assigns during the Term the rights described in **Section 2.3** [Rights Reserved to City] below. The Premises are located within the Property described in **Section 1** [Basic Lease Information] above). As used in this Lease, “**City’s Facilities**” means any and all water and wastewater pipelines, vaults, wells, hatch covers, appurtenances, facilities; drainage pipelines; power poles, towers, cables, conduits, wires, and appurtenances; communications antennas, equipment, cables; and other overhead, surface, and subsurface utility facilities owned by City and now or later located in, under, on, or about the Property for City’s collection, storage, transportation, or distribution of water, power, or wastewater and/or transmission or reception of communications signals, for municipal purposes, together with all related appurtenances and monuments. The Property (defined in **Section 1** [Basic Lease Information] above) and the Premises are shown generally on the attached **Exhibit A**, **Exhibit B**, and **Exhibit C**. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use, or operate any of City’s Facilities.

2.2 License; Tenant’s Access to City’s Property.

(a) License. City hereby confers on Tenant and the Approved Users identified on **Exhibit G-2** for the Term of this Lease, the License to use the License Area (defined in **Section 1** [Basic Lease Information] above), and as it may be modified during the Term with City’s prior written approval. The License Area may be used by Tenant and the Approved Users only as set forth in **Section 1** and this **Section 2.2**. The Parties intend that the License shall be coterminous with the Lease. Accordingly, termination or expiration of the Lease in accordance with its terms shall effect termination of the License. At its sole discretion, City may relocate the License Area at any time following reasonable notice to Tenant. Notwithstanding anything to the contrary contained in this Lease, the License does not constitute a grant by City of any ownership, leasehold, easement, or other property interest or estate whatsoever in any portion of the License Area.

The access rights included in the License are provided only for the purpose of installing, constructing, inspecting, maintaining, restoring, replacing, and operating Tenant’s Facilities located within the Premises or the License Area in accordance with the terms of this Lease.

(b) Tenant’s Access to the Property. Access by Tenant and the Approved Users to the Property is subject to the following requirements:

(c) Approved Access Route. Tenant and its Approved Users and vendors shall access the Property only through the American Tower Corporation access road from the Coast

Highway as shown and described on the attached **Exhibit A-1** in accordance with **subsection (ii)** below and any other SFPUC protocols as provided by the SFPUC's Watershed Manager.

(i) Emergency Access. Notwithstanding the following notice requirements, in the event of an emergency posing a threat to public health or safety or imminent injury to persons or damage to property, Tenant may contact City's Emergency Contact or take other action needed to prevent or minimize a threat to public health or safety or imminent damage to property. In the second such instance, Tenant shall contact City's Emergency Contact specified in **Section 1** [Basic Lease Information] before commencing the work and shall provide written notice to City describing the emergency actions as soon as reasonably practical thereafter (which may be after the emergency work is completed).

(ii) Access Permit. During any entry onto the Property, the Approved Users and Tenant's Agents (defined in **Section 29.5** [Interpretation of Lease] below) shall have in their possession at all times a current, unexpired access permit issued by SFPUC's Natural Resources and Land Management Division. The permit application form can be obtained online at www.sfwater.org or by contacting (650) 652-3201. The Approved Users and Tenant's Agents must be prepared to display the access permit to SFPUC staff whenever the Approved Users or Tenant's Agents are present on the Property. In the event of any conflict between the terms of the access permit and the terms of this Lease, this Lease shall control.

(iii) Required Notice to Dispatch Operator. In addition, forty-eight (48) hours before any of the Approved Users or any Agent of Tenant enters the Property to commence any approved maintenance, repair, replacement, or other construction, Tenant shall notify SFPUC's Dispatch Operator, by calling (650) 872-5900. Also, during the period of such operations, Tenant shall notify SFPUC's Dispatch Operator daily when any of the Approved Users or any Agent of Tenant commence and end such activities on or about the Property.

(iv) Construction Schedule. At least ten (10) business days prior to the commencement of any permitted construction, maintenance, repair, or replacement on the Premises or License Area, Tenant shall notify the SFPUC's construction inspector ("**Construction Inspector**"), currently at (650) 871-3015. The Construction Inspector may require Licensee to adjust such schedule from time to time.

(v) Additional Requirements for Work on Tenant's Facilities. In addition, prior to any construction or installation of Tenant's Facilities or Alterations, Tenant shall comply with the requirements of **Section 6** [Tenant's Facilities] and **Section 7** [Alterations] below.

2.3 Rights Reserved to City.

City and Tenant acknowledge that this Lease is intended to create only a leasehold in the Premises and a license to use the License Area. Nothing in this Lease shall be construed to confer on Tenant an easement or other permanent interest in all or any part of the Property. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Property and the Premises:

(a) Any and all water and water rights, including **(i)** any and all surface water and surface water rights, including riparian rights and appropriative water rights to surface streams

and the underflow of streams, and **(ii)** any and all groundwater and subterranean water rights, including the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered on the Property, including oil and gas rights, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with Tenant's permitted use of the Premises, without Tenant's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace, and reconstruct City's Facilities;

(e) The right to grant future leases, permits, licenses, easements, and rights-of-way over, across, under, in, and upon the Property, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain under this Lease as a result of the grantee's use of such easement or right-of-way;

(f) Without limiting the generality of **Subsection (e)** above, the right to grant future easements, leases, rights-of-way, permits and/or licenses over, across, under, in, and upon the Property for the installation, operation, maintenance, repair, and removal of **(i)** equipment for furnishing wireless telephone, radio, or other telecommunications services, including antennas, radio, devices, cables, and other equipment associated with a personal wireless service facility site, and **(ii)** commercial billboards, signs, and/or advertising kiosks, provided that **(A)** any such lease, permit, license, easement, or right-of-way shall not materially interfere with Tenant's normal use of the Premises as permitted by this Lease and **(B)** the grant of any such easement, lease, permit, license, or right-of-way shall be conditioned upon the grantee's written agreement with City not to materially interfere with the Tenant's use of the Premises set forth in **Section 5.1** [Permitted Use] below; and

(g) All rights of access provided for in **Section 22.1** [City's Access to the Premises] below.

2.4 Subject to Municipal Uses.

Tenant acknowledges that the Property constitutes a portion of City's watershed, which City holds for the purposes of collecting, storing, transporting, and distributing water for municipal use. Tenant's rights under this Lease shall be subject to City's use of the Premises for such municipal utility purposes and for other City uses. So long as there is no Event of Default (defined in **Section 18.1** [Events of Default] below) or any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default on the part of Tenant outstanding and no pending SFPUC infrastructure project, however, then subject to the terms and conditions of this Lease, City shall use reasonable efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. City shall not be liable for any damage to or

destruction of Tenant's Facilities, personal property, or Alterations resulting from any pipeline break or other malfunction of City's Facilities or from any repair or maintenance activities with respect to City's Facilities. The use of the term "**right-of-way**" in this document shall not be deemed to imply that City holds less than fee title to the Premises or otherwise call into question the nature of City's title to any portion of the Property.

2.5 Accessibility Disclosures.

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. Tenant is hereby advised that the Premises have not been inspected by a CASp.

2.6 As-Is Lease.

(a) Inspection of Premises. Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) As Is; Disclaimer of Representations. Tenant acknowledges and agrees that the Premises are being leased and accepted strictly in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws (defined in **Section 12.1** [Compliance with Laws] below governing the use, occupancy, management, operation, and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, and other title matters affecting any portion of the Premises, whether or not of record. Tenant acknowledges and agrees that neither City, SFPUC, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: **(i)** title or survey matters affecting the Premises, **(ii)** the physical, geological, seismological, or environmental condition of the Premises, **(iii)** the quality, nature, or adequacy of any utilities serving the Premises, **(iv)** the present or future suitability of the Premises for Tenant's business and intended uses, **(v)** the feasibility, cost, or legality of constructing any Alterations on the Premises if required for Tenant's use and permitted under this Lease, or **(vi)** any other matter whatsoever relating to the Premises or their use, including any implied warranties of merchantability or fitness for a particular purpose.

3. TERM

3.1 Term of Lease.

The Premises are leased for a term ("**Term**") commencing on the date specified in **Section 1** [Basic Lease Information] above as the Commencement Date, subject to this Lease becoming effective pursuant to **Section 3.4** [Effective Date] below.

3.2 Commencement Date and Expiration Date.

The dates on which the Term commences and expires pursuant to this Lease are referred to respectively as the "**Commencement Date**" and the "**Expiration Date.**" At the request of either

Party, following the Commencement Date, City and Tenant shall confirm the Commencement Date in writing, but failure to do so shall not affect the commencement of the Term. Such confirmation shall be substantially in the form of the attached **Exhibit D**.

3.3 Possession.

City and Tenant acknowledge that Tenant has possession of the Premises prior to the Commencement Date pursuant to that San Francisco Water Department Revocable Permit dated April 2, 1963 (“**Original Agreement**”) between City and Tenant. The Original Agreement has expired, and Tenant remains in possession of the Premises with City’s consent under a month-to-month holdover tenancy. City and Tenant agree that the Original Agreement and the holdover tenancy shall terminate effective upon commencement of the Lease Term, if not terminated sooner.

3.4 Effective Date.

This Lease shall become effective on the last to occur of the following (“**Effective Date**”): **(a)** the date SFPUC adopts a resolution approving this Lease, and **(ii)** the date the Parties have duly executed and delivered this Lease.

3.5 Delay in Tenant’s Permits and Approvals.

If Tenant does not obtain all permits and approvals necessary for Tenant to be legally entitled to construct and/or use, maintain, and operate a facility for providing communications services at the Premises within one hundred twenty (120) days after the Commencement Date, then either City or Tenant may terminate this Lease by written notice to the other Party given within ten (10) days after such 120-day period, in which event neither Party shall have any further rights or obligations under this Lease.

4. RENT; ADDITIONAL CHARGES

4.1 Rent.

(a) Base Rent

Beginning on the Commencement Date, Tenant shall pay to City during the Term the annual Base Rent specified in the Basic Lease Information (“**Base Rent**”) as the same may be increased pursuant to **Section 4.2** [Periodic Adjustments in Base Rent] below). The Base Rent shall be payable in monthly installments on or before the first day of each month, in advance, at the San Francisco Public Utilities Commission, Customer Service Bureau, Attention: Real Estate Billing, 525 Golden Gate Avenue, 3rd Floor, San Francisco, California 94102 (reference SFPUC Lease No. L4507), or such other place as City may designate in writing. Tenant shall pay the Base Rent without any prior demand and without any deduction or setoff. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Lease expires or terminates on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

(b) Additional Consideration

As additional consideration for City’s issuance of this Lease, City shall have the right to access and use **(i)** approximately eight (8) square-feet of rack space within the Tenant’s Facilities

(defined in **Section 6** [Tenant's Facilities] below) within the Premises; **(ii)** space on the existing GGNRA antennae tower for the installation and maintenance of City's radio microwave dish and related antenna facilities described on the attached **Exhibit J**; and **(iii)** an electrical power supply for City's radio microwave dish and related antenna facilities.

4.2 Periodic Adjustments in Base Rent.

Effective as of each Adjustment Date, (defined in **Section 1** [Basic Lease Information] above), the monthly Base Rent payable during the twelve-(12) month period commencing on such Adjustment Date shall be equal to one hundred four percent (104%) of the monthly Base Rent that was payable during the twelve (12) months immediately preceding such Adjustment Date (disregarding any temporary abatement of rent that may have been in effect during such preceding twelve (12)-month period. If the Base Rent for each Lease Year is separately specified in **Section 1** [Basic Lease Information], such specified Base Rent includes the rental adjustment for those Lease Years, subject to any adjustment that may be made upon a Transfer (defined in **Section 17.1** [Restriction on Assignment and Subletting]). If a rental adjustment is made as of the date of a Transfer, such adjusted Base Rent shall remain in effect until the next Adjustment Date.

4.3 Additional Charges.

Tenant shall promptly pay to City the amounts, if any, required under any other Section of this Lease, as additional rent ("**Additional Charges**"). Such Additional Charges shall be payable to City at the same place and in the same manner as the Base Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. As used in this Lease, the term "**Rent**" shall include the Base Rent and any Additional Charges.

4.4 Late Charges.

If Tenant fails to pay any Rent within ten (10) days after the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs of such costs and detriment being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City together with such unpaid amount.

4.5 Default Interest.

If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (collectively, "**Interest Rate**"). Interest shall not be payable, however, on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent such interest would cause the Interest Rate to be in excess of that which an individual is lawfully permitted to charge. Payment of interest and late charges shall not excuse or cure any default by Tenant.

4.6 Net Lease.

This Lease is intended by the Parties to be a “net lease.” Accordingly, Tenant shall pay to City the Base Rent, Additional Charges, and any other payments required by this Lease free of any deductions of any kind, without prior demand, and without abatement, counterclaim, or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant’s use or occupancy of the Premises, the License Area, this Lease or any permitted Alterations or installations of Tenant’s Facilities, except as may otherwise be expressly set forth in this Lease. Without limiting the foregoing, Tenant shall be solely responsible to pay each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable for by reason of its estate or interests in the Premises, the License Area and any improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, licensing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use, or occupancy of all or any portion of the Premises, License Area, or any permitted Alterations. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future law to terminate this Lease or to receive any abatement, diminution, reduction, or suspension of payment of such sums, on account of any such occurrence or situation.

4.7 Reserved.

4.8 Taxes and Assessments.

(a) Payment Responsibility. Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees, and other charges and impositions of every description levied on or assessed against all or any part of the Premises, any Alterations, Tenant’s Personal Property (defined in **Section 7.3** [Tenant’s Personal Property] below), the leasehold estate, any subleasehold estate, or Tenant’s use of the Premises, Tenant’s Facilities and/or any Alterations. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days before delinquency, subject to Tenant’s right to contest the validity of such charge pursuant to **Subsection (c)** below. Upon City’s request, Tenant shall furnish to City, within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment of such charges. With respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, however, Tenant shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and in that event, Tenant shall be required to pay the property taxes levied on such interest.

(c) No Liens. Tenant shall not allow or suffer a lien for any taxes payable by Tenant pursuant to this Lease to be imposed upon the Premises or upon any equipment or other

property located on the Premises without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes; provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty-five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify (defined in **Section 19** [Tenant's Indemnity] below) City, the other Indemnified Parties, and the Premises from and against any Claims arising out of any such proceeding or contest. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement. Tenant shall provide promptly such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease, including any applicable reporting requirements under San Francisco Administrative Code Sections 23.38 and 23.39.

5. USE

5.1 Permitted Use.

Tenant shall use the Premises solely for the installation, maintenance, repair, replacement, and operation of Tenant's Facilities, as a Communications Site for Tenant's transmission and reception of radio communication signals (such transmission and reception to be solely for the frequencies licensed to Tenant by the FCC). Tenant's permitted use of the Premises and License Area shall be limited solely to that enumerated in this Lease, and no person or entity other than Tenant, Tenant's Agents, and the Approved Users shall have the right to install, maintain, or operate Tenant's equipment or transmit or receive communications at, or otherwise use, the Premises or License Area during the Term of this Lease, without the express consent of City as provided in **Section 17** [Assignment and Subletting; Co-Location].

5.2 Covenants Regarding Use.

As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) No Unlawful Uses or Nuisances. Tenant shall not use or occupy, or permit the use or occupancy by any person or entity (including Tenant's Agents or the Approved Users) of, any of the Premises, the License Area, or any Alterations or Improvements (defined in Section 7.1 [Tenant's Alterations] below) in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy, or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to the activities of Tenant, Tenant's Agents, or the Approved Users on or about the Premises, the License Area, or any Tenant's Facilities or Alterations permitted under this Lease. Tenant shall not advertise in any manner on or about the Premises or on or about the Property; provided, however, that Tenant shall label Tenant's Facilities as required under **Section 5.2(d)** [Covenant to Label Tenant's Facilities] below, which may include placing one identification plate on each antenna, which plate shall be no larger than four (4) inches by six (6) inches and shall be reasonably approved in advance by City, in order to identify Tenant's Facilities as belonging to Tenant.

(b) Health and Safety. Tenant shall reduce power or suspend operation of Tenant's Facilities if and as necessary and upon reasonable notice to prevent exposure of workers or the public to radio frequency radiation from Tenant's Facilities in excess of the then-existing regulatory standards. Tenant shall promptly provide City with a copy of each radio frequency emission study conducted in connection with proposed or installed Tenant's Facilities at the Premises. City shall have the right to terminate this Lease without liability upon ninety (90) days' written notice to Tenant if, after notice and public hearing, the San Francisco Board of Supervisors determines that Tenant's continued use of the Premises will adversely affect public health and safety.

(c) Covenant to Protect City's Facilities. At all times during the Term, Tenant shall protect City's Facilities from any damage, injury, or disturbance arising from the use and/or occupancy of the Premises or License Area by Tenant, Tenant's Agents, or the Approved Users. If Tenant, any of its Agents or Invitees (defined in **Section 29.5** [Interpretation of Lease] or any of the Approved Users damages, injures, or disturbs any of City's Facilities, or any portion of City's Facilities (including monuments), Tenant shall immediately notify City of that occurrence, and, without limiting any of City's other rights under this Lease, City may take all actions it deems proper to repair such City's Facilities (including relocation of monuments) at Tenant's sole expense. Upon City's request, Tenant shall promptly remove or alter to City's satisfaction and at Tenant's sole cost, any Tenant's Facilities, Alterations or Tenant's Personal Property (as such terms are defined in **Sections 6** [Tenant's Facilities] and **Section 7** [Alterations]) placed on the Premises or License Area by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises and License Area for municipal utility purposes. Alternatively, subject to the approval of SFPUC's General Manager ("**General Manager**") at his or her sole discretion, Tenant may pay for the costs reasonably determined by the General Manager that City will incur as a result of such interference. City may adopt from time to time such rules and regulations with regard to Tenant's Facilities and operations on or about the Premises or License Area as City may determine are necessary or appropriate to safeguard against corrosion of City's pipelines and related City's Facilities. Tenant shall comply, and cause Tenant's Agents and all Approved Users to comply, with all such rules and regulations upon Tenant's receipt of a copy of all such rules and regulations.

(d) Covenant to Label Tenant's Facilities. Tenant shall label each conduit, wire, antenna, equipment rack, and other item of Tenant's Facilities installed on the Premises or License Area with a durable, permanent, waterproof label, in a form approved by City, containing "Lease No. L4507." At the entrance to the fenced or enclosed equipment area, Tenant shall affix a durable, waterproof plaque, in a form approved by City, stating the Lease number of this Lease, and Tenant's name, emergency phone number, and email address. Tenant shall update the plaque as necessary to keep the contact information current.

(e) Covenant to Protect Water Courses. Tenant shall not cause or allow any of its Agents or any Authorized User to cause, any ponding on the Premises or License Area or any flooding on adjacent land. Tenant shall not engage, and shall not permit any of Tenant's Agents or any Authorized User to engage, in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the Property, nor shall Tenant engage, nor permit any of Tenant's Agents or any Authorized User to engage, in any activity that pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(f) Covenant Against Dumping. Tenant shall not cause, nor permit any of Tenant's Agents or any Authorized User to cause, the dumping or other disposal on, under or about the Premises or License Area of landfill, refuse, Hazardous Material (defined in **Section 27.1** [Definitions] below) or other materials that are unsightly or could pose a hazard to human health or safety, native vegetation, or wildlife, or the environment.

(g) Covenant to Protect Trees and Native Vegetation. Without City's prior written approval, Tenant shall not engage, nor permit any of Tenant's Agents or any Authorized User to engage, in the cutting, removal, or destruction of trees or any native vegetation on the Premises or License Area. If trees and/or native vegetation adversely interfere with Tenant's telecommunication signal or encroach into the mandatory Defensible Space (defined in **Section 5.2(j)** [Vegetation Management; Defensible Space]), Tenant may trim such trees and/or vegetation as necessary to eliminate such interference or encroachment if: **(i)** Tenant provides City with sixty (60) days' written notice of its intent to trim, including a description of the interference and cause of the interference, a detailed description of the trees and/or native vegetation to be trimmed, and the extent to which such trees and/or vegetation will be trimmed, and **(ii)** City consents to the trimming, such consent not to be unreasonably withheld.

(h) No Tree Planting. Except as **(i)** required by a governmental entity as a condition to any permit or license necessary for the use of the Premises or License Area by Tenant, Tenant's Agents, or any Approved User and **(ii)** approved by City (such approval not to be unreasonably withheld), Tenant shall not plant or allow any trees on the Premises, nor shall Tenant plant or allow any other vegetation on the Premises or the License Area except as otherwise expressly provided in this Lease.

(i) Restrictions on Use of Chemical Herbicides and Pesticides. Tenant shall not cause or permit the application of biocides, defoliants, chemical fertilizers, pesticides, or other agrichemicals on or about the Premises or the License Area, except as provided in this Subsection.

Chapter 3 of the San Francisco Environment Code (Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Tenant shall not use, apply, or allow the use or application of any pesticides on the Premises or the License Area or contract with any party to provide pest abatement or control services to the Premises or the License Area without first receiving City's written approval of an IPM plan that **(i)** lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises or the License Area during the term of this Lease, **(ii)** describes the steps Tenant will take to meet City's IPM Policy described in Section 300 of the IPM Ordinance and **(iii)** identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with City. Tenant shall comply and shall require all of Tenant's Agents and all Approved Users contractors to comply, with the IPM plan approved by City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: **(A)** provide for the use of pesticides only as a last resort, **(B)** prohibit the use or application of pesticides on property owned by City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), **(C)** impose certain notice requirements, and **(D)** require Tenant to keep certain records and to report to City all pesticide use at the Premises or

the License Area by Tenant's staff or contractors. In addition, Tenant shall ensure that the pesticide is used only in those amounts and with that frequency of application that constitutes the minimum necessary for the control or containment of the noxious weeds and pests, and that the pesticide will not enter any water supplies.

If Tenant or any of Tenant's Agents or any Authorized User will apply pesticides to outdoor areas at the Premises or the License Area, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

(j) Vegetation Management; Defensible Space. Tenant acknowledges the importance of maintaining Defensible Space to minimize the risk of wildfires on City's lands. At all times during the Term, Tenant shall maintain clear, defensible space around its structures and equipment ("**Defensible Space**") on the Premises in accordance with the standards and requirements of **(i)** "General Order No. 95 – Rules for Overhead Electric Line Construction" prescribed by the Public Utilities Commission of the State of California, a copy of which is attached as **Exhibit H**, and **(ii)** Division 4, Part 2, Chapter 3 of the Public Resources Code of the State of California. No tree branches may hang over the Defensible Space. Tenant shall coordinate with SFPUC staff to identify and confirm in writing the boundaries of such Defensible Space. In removing vegetation, Tenant shall comply with the processes and restrictions set forth in this Lease, including those concerning pesticide use, protection of trees, and prohibition of burning. Tenant's clearing of Defensible Space must be completed by July 1 of each year during the Term. If Tenant fails to clear the vegetation by such date and does not remedy such failure within fourteen (14) days following City's delivery of written notice of such failure, then, without limiting the other remedies available to City under this Lease, or otherwise available at law or in equity (including the remedy under **Section 18.4** [City's Right to Cure Tenant's Defaults] below to perform such vegetation removal at Tenant's expense), City may charge an administrative fee to Tenant pursuant to **Section 18.3** [Special Administrative Charges] below.

(k) Covenant Against Waste. Tenant shall not cause, nor permit and shall not permit Tenant's Agents or any Approved User to cause, any waste, damage, or injury to the Premises or the License Area.

(l) Covenant Against Burning. Tenant shall not burn and shall not permit Tenant's Agents or any Approved User to burn, any weeds, debris, or other substances on or about the Property.

(m) No Off-Road Vehicles. Tenant shall not use, nor permit any of Tenant's Agents or any Approved User to use, any off-road vehicles on any portion of the Premises or License Area except on existing roads and driveways and in the manner for which such roads are intended.

(n) Use of Roads. Tenant shall not block or interfere or allow any of Tenant's Agents or any Approved User to block or interfere, with any travel on the roads on the Property.

If Tenant proposes to install a new access road, Tenant shall present the proposal to Project Review (defined in **Section 7.1** [Tenant's Alterations] below) in accordance with **Section 7.1** [Tenant's Alterations] below. If approved, the construction of the road shall be subject to the applicable provisions of this Lease, including **Section 2.2** [License; Tenant's Access to City's Property] above and **Section 7** [Alterations] below.

(o) **Watershed Management Plan.** Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's use and enjoyment of the Premises as contemplated by this Lease.

5.3 Periodic Review.

City and Tenant shall confer periodically to review the effectiveness of Tenant's vegetation management under **Section 5.2(j)** [Vegetation Management; Defensible Space] above and to review any issues related to Tenant's noncompliance with access requirements. If requested by City, City and Tenant shall meet at the Premises to conduct such review.

6. TENANT'S FACILITIES

Under the Original Agreement, Tenant installed the facilities described as Tenant's Existing Facilities in the Basic Lease Information and shown in the as-built plans attached as **Exhibit C** ("Tenant's Existing Facilities").

Tenant's Existing Facilities, as they may be modified, expanded, reduced, and replaced from time to time in accordance with **Section 7** [Alterations] below, are referred to in this Lease as "Tenant's Facilities."

7. ALTERATIONS

7.1 Tenant's Alterations.

(a) **Definitions.** The term "**Improvements**" means any buildings, structures, fixtures and other improvements, including signs, roads, trails, grading, driveways, parking areas, utility infrastructure, plantings and hardscape. The term "**Alterations**" includes any additional Improvements, equipment or facilities.

(b) **Tier 1 Work.** For Alterations to Tenant's equipment within Tenant's equipment shed, including like-for-like modifications or the addition of equipment within Tenant's equipment shed ("**Tier 1 Work**"), Tenant shall provide City ten (10) days prior written notice. City approval shall not be required for Tier 1 Work.

(c) **Tier 2 Work.** If Tenant engages in any work or alterations to Tenant's equipment on a tower that constitutes like-for-like exchanges or modifications to Tenant's tower equipment, or if Tenant replaces existing equipment outdoors within the fence enclosure ("**Tier 2 Work**"), Tenant shall provide City with sixty (60) days' prior written notice and a request for consent. City shall respond to Tenant's request in writing within ten (10) business days. Tenant

shall comply with the requirements of **Section 7.1(e)**. City may not unreasonably withhold its approval.

(d) Tier 3 Work.

(i) Any Improvements, Alterations or work not considered Tier 1 or Tier 2 Work, including the addition of antennas or equipment on a tower or the addition of equipment or Improvements outdoors within the fence enclosure, is “**Tier 3 Work,**” and requires City’s prior written consent and shall be conducted in accordance with City-approved plans and specifications (“**Approved Plans**”). City’s approval may be withheld at City’s sole discretion or may be conditioned on, among other things, an increase in Base Rent for proposed additional Tenant’s Facilities.

(ii) Project Review Process for Tier 3 Work; Required Studies and Analyses. Tenant shall submit a project review application to City at least one hundred twenty (120) days before the expected commencement of any proposed Tier 3 Work and shall undergo the SFPUC’s project review process (“**Project Review**”). City shall respond to Tenant’s request in writing within ten (10) business days, detailing Tenant’s next steps for Project Review. After Tenant successfully completes the Project Review process for Tier 3 Work one or more times, the SFPUC’s Watershed Manager or the Watershed Manager’s designee may waive the Project Review meeting requirement (but not the Project Review application requirement) in subsequent similar cases. In conducting any construction, maintenance, repair, expansion or replacement, Tenant shall comply with all conditions and measures imposed by the SFPUC. City reserves the right to require a structural review analysis, including engineering specifications and calculations for roof (if applicable) and structure weight and wind loading, stamped and signed by a California licensed professional engineer for Tier 3 Work. City reserves the right to require a watershed study to be conducted at Tenant’s expense, to ensure that the proposed Tier 3 Work is sited and designed to avoid or minimize potential impairment of the land’s scenic values.

(e) Consent. Where appropriate in City’s judgment, City will require that Tenant minimize the visual impact of proposed Tier 2 or Tier 3 Work through design, screening and siting. For example, City may require that the Tier 2 or Tier 3 Work blends with and/or complements the color, design and/or character of the surrounding context, whether natural backdrop, building or existing facility. In no event shall City’s approval of Tenant’s plans and specifications be deemed to constitute a representation or warranty by City concerning the suitability of the proposed facilities and improvements for Tenant’s purposes or that the work called for in the plans and specifications complies with applicable building codes or other applicable laws or industry standards nor shall such approval release Tenant from Tenant’s obligation to supply plans and specifications that conform to applicable codes, other laws and industry standards.

(f) Tenant’s Contractors and Compliance with Conditions. Any approved Alterations shall be done at Tenant’s sole expense in accordance with the Approved Plans (for Tier 2 and Tier 3 Work), only by duly licensed and bonded contractors, and subject to all other conditions that City may reasonably impose.

(g) Access Requirements; Construction Schedule. Without limiting the foregoing, Tenant shall comply with the permit and notice requirements in **Section 2.2** [License;

Tenant's Access to City's Property] above in connection with Tenant's access to the Property for any inspection, construction, maintenance, repair, expansion, or replacement of Tenant's Facilities. At least ten (10) business days before the proposed installation of any Alterations or maintenance or repair operation, Tenant shall submit the proposed construction schedule to City's Access Contact for approval. All work must be performed Monday through Friday between 8:00 a.m. and 4:30 p.m., excluding City holidays. Any work performed at any other time must be approved by City in writing at least two (2) business days prior to the commencement of the work.

(h) Permits. Tenant shall be responsible, at its cost, for obtaining all permits (including any required environmental compliance and permitting documentation) and licenses required in connection with Tenant's Alterations and satisfying any conditions or mitigation measures approved in connection therewith. No part of Tenant's Alterations shall commence until Tenant has first obtained all necessary permits and approvals for Tenant to be legally entitled to construct same. Tenant shall deliver a copy of each such permit, license, and approval promptly upon receipt of same.

(i) Completion; Restoration. Upon completion of the work, all debris shall be removed, and the Premises and any other City property affected by the work shall be restored to their original condition to the SFPUC's satisfaction. Tenant shall contact City's Access Contact (identified in **Section 1** [Basic Lease Information] above) to arrange for an inspection by SFPUC staff upon completion of the work to confirm satisfactory restoration.

(j) Administrative Fee. If the cost of any Tier 3 Work to the Property exceeds Five Thousand Dollars (\$5,000), then Tenant shall pay City an administrative fee equal to Five Hundred Dollars (\$500) in each instance.

(k) Visual Impact or Adverse Effects of Existing Tenant's Facilities. City reserves the right to require changes to or replacements of Tenant's Facilities in the future in order to minimize the visual impact through design or screening, to conform to changes in the local design standards, to address concerns of the local community or neighboring property owners, or to address adverse effects on City's Property, facilities, or resources.

7.2 Title to and Removal of Tenant's Facilities and Alterations.

Ownership and removal of Tenant's Personal Property is addressed in **Section 7.3** [Tenant's Personal Property] below. Any other Tenant's Facilities and Alterations constructed on or affixed to the Premises or License Area by or on behalf of Tenant pursuant to the terms and limitations of **Section 7.1** [Tenant's Alterations] above shall be and remain Tenant's property during the Term unless City elects in writing to accept ownership of same. Prior to the Expiration Date or any earlier termination of this Lease, Tenant shall remove all such Tenant's Facilities and Alterations from the Premises in accordance with the provisions of **Section 26** [Surrender of Premises] below unless City requires, at its sole option and without limiting any of the provisions of **Section 7.1** [Tenant's Alterations] above, as a condition of approval of any such Tenant's Facilities or Alterations, that such Tenant's Facilities or Alterations remain on the Premises or License Area at the expiration or termination of this Lease, or unless, as a condition of such approval, City reserves the right to elect by notice to Tenant before the expiration of the Term to have such Alterations remain on the Premises or License Area and thereafter notifies Tenant that City is exercising such election.

7.3 Tenant's Personal Property.

All furniture, furnishings, and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant (collectively, "**Tenant's Personal Property**") that can be removed without structural or other material damage to the Premises or License Area shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 26** [Surrender of Premises)] below. Tenant may grant to the vendor of the equipment to be installed at and affixed to the Premises a security interest in Tenant's Personal Property on the Premises or hereafter located on the Premises. Tenant shall not grant a security interest that covers any portion of the Premises or the Property. Any security interest granted by Tenant must require the holder to comply with the provisions of **Section 26** [Surrender of Premises] in removing any of Tenant's Personal Property.

7.4 Waiver of Landlord Lien.

City acknowledges that Tenant has entered into or may enter into one or more financing arrangements with third party financing entities (collectively, "**Financing Entity**"), which may include promissory notes and financial and security agreements, for the financing of Tenant's Personal Property ("**Collateral**"). Upon Tenant's reasonable request, City shall execute and deliver any reasonable document required by any Financing Entity, pursuant to which City waives any rights it may have or acquire with respect to Tenant's Personal Property, so long as **(a)** the Financing Entity agrees that it **(i)** will remove, following reasonable notice to City, Tenant's Personal Property from the Premises during the Term or within thirty (30) days after the expiration or sooner termination of the Lease (and if it does not remove Tenant's Personal Property within such time it shall have waived any rights it may have had to Tenant's Personal Property), and **(ii)** will repair any damage caused by the removal of Tenant's Personal Property, and **(b)** Tenant reimburses City for its actual costs in reviewing and preparing any document required under this subsection which amount shall not exceed \$1,000.00. City shall recognize the rights of a Financing Entity who has an interest in any items of Tenant's Personal Property to enter the Premises and remove such property at any time during the Term or within thirty (30) days after the Expiration Date, provided the Financing Entity complies with the foregoing requirements and otherwise complies with restrictions and conditions applicable to Approved Users while present on or about the Property.

8. CITY'S ALTERATIONS OF THE PROPERTY AND CITY'S FACILITIES

At any time, City may make alterations, additions, repairs, deletions, or improvements to all or any part of the Property, City's Facilities, or the common areas of the Property, for any purpose, including compliance with mandatory or voluntary controls or guidelines, subject to the following terms and conditions. In performing any such work, City shall make good faith efforts to give Tenant prior notice of such work and shall make reasonable efforts not to disrupt Tenant's normal use of Tenant's Facilities on the Premises. The making of any such alterations, additions, repairs, deletions, or improvements shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges as provided in this Lease or to perform each of its other covenants under this Lease or constitute or be construed as a constructive or other eviction of Tenant, provided that City does not materially interfere with Tenant's use of the Premises as set forth in **Section 5.1** [Permitted Use] above

9. MAINTENANCE AND REPAIRS

9.1 Tenant's Responsibility for Maintenance and Repair.

From and after the Commencement Date, Tenant assumes full and sole responsibility for the condition, operation, repair, maintenance and management of the License Area (insofar as affected by its use by Tenant, Tenant's Agents, or any Authorized User), the Premises, the Tenant's Facilities, and any Alterations. At its sole expense, Tenant shall repair any damage to the Property, normal wear and tear excepted, caused by Tenant, its Agents or Invitees, or any Authorized User. Without limiting the foregoing, Tenant shall maintain in good condition and repair at its expense any existing fence along or about the boundary of the Premises.

City shall not under any circumstances be responsible for the performance, or any cost (except to the extent caused by City's sole negligence or willful misconduct), of any repairs, changes, or alterations to the Premises or the License Area or utilities and other infrastructure serving the Premises or the License Area. Tenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural (except to City's Facilities as provided above), ordinary as well as extraordinary, foreseen, and unforeseen, that may be necessary to maintain the Premises and License Area, Tenant's Facilities, and Tenant's Alterations at all times in clean, safe, attractive, and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises, License Area, or other parts of City's Property is damaged by any of the activities conducted by Tenant, its Agents or Invitees, or any Authorized User in connection with this Lease, at its sole cost, Tenant shall immediately repair any and all such damage and restore the Premises and License Area or City's property to its previous condition.

9.2 Project Review and Access Requirements.

Tenant shall comply with the Project Review requirements of **Section 7.1** [Alterations] above and the permit and access requirements of **Section 2.2** [License; Tenant's Access to City's Property] above in connection with Tenant's maintenance and repair operations.

9.3 No Right to Repair and Deduct.

Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep all or any portion of the Premises, the License Area, or any adjoining property (including access roads, utilities, and other infrastructure serving the Premises) in good order, condition, or repair, or to abate or reduce any of Tenant's obligations under this Lease on account of all or any part of the Premises or any adjoining property (including access roads, utilities, and other infrastructure serving the Premises or the License Area) being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941, and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises or the License Area and any right of Tenant to make repairs or replacements and deduct the resulting cost from the Rent.

10. LIENS

Tenant shall keep the Premises and the Property (including City's Facilities) free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Tenant or any Authorized User, except for Tenant obligations under the financing arrangements described in **Section 7.4** [Waiver of Landlord Lien]. In the event Tenant shall not, within thirty (30) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided in this Lease and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that City shall deem proper for the protection of City, the Premises, and the Property, from mechanics' and material suppliers' liens. Tenant shall give to City at least fifteen (15) days' prior written notice of commencement of any repair or construction on the Premises except for minor and routine repair and maintenance for which Tenant is responsible under this Lease. Tenant shall not create, permit, or suffer any other encumbrances affecting any portion of the Premises or the Property except as expressly permitted under this Lease or without first obtaining City's written consent, which City may give, condition, or withhold at its sole discretion.

11. UTILITIES AND SERVICES

11.1 Utilities and Services.

Pursuant to San Francisco Administrative Code Section 99.3, all electricity necessary for operations in the Premises or the License Area shall be purchased from SFPUC, at SFPUC's standard rates charged to third parties, unless SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. SFPUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Premises, Tenant shall contact the Interconnection Services Department in the Power Enterprise of the SFPUC. For all other utilities and services furnished to or used by Tenant (including gas, water, sewer, telephone service, trash collection, and janitorial service), Tenant shall make arrangements directly with the utility companies and shall promptly pay for the services and for all deposits and connection, and installation charges. Tenant shall install separate utility meters at the Premises and, when permitted by serving utilities, Tenant shall be responsible directly to the serving utilities for all utilities required for Tenant's use of the Premises.

Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. Any and all utility improvements installed by, for, or on behalf of Tenant shall be deemed Alterations and shall be subject to the provisions of **Section 7** [Alterations]. Tenant shall not: **(a)** connect or use any electrical equipment that exceeds the capacity of the electrical system(s) on the Property or **(b)** connect any apparatus, machine, or device through electrical outlets except in the manner for which such outlets are designed, except for such modifications as may be shown on the Approved Plans and for any other such modifications at Tenant's sole cost as City pre-approves in writing.

During the Term, Tenant shall repair and maintain in good operating condition any and all utility systems and improvements located on or within the Premises or within the License Area and serving the Premises (excluding City's Facilities, except to the extent installed in order to provide electric power to the Premises). City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

If utility services are purchased by City and provided to Tenant by City, Tenant shall pay as Additional Charges the cost of the utility service provided to the Premises and attributable to Tenant's use and a reasonable administrative charge to cover City's costs (together, the "**Utility Charge**"). The administrative charge will be based on the scope of City's services (such as metering, monitoring, reporting, and billing), but in any event will not exceed ten percent (10%) of the cost of the utility service charged to City by the applicable utility. The term "Utility Charge" shall not include sums, if any, payable by Tenant for power provided by SFPUC's Power Enterprise pursuant to the opening paragraph of this **Section 11.1**. If Tenant is required to pay a Utility Charge to City, at least annually during the Term, City (or at City's election, Tenant) shall calculate the actual Utility Charge for the immediately preceding twelve (12) months based on readings from the utility meters at the Property and on the rates currently charged by the applicable utility. Calculation of the actual Utility Charge due shall be made by City. City shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of Rent by reason of City's failure to furnish utilities when such failure is caused by accident, breakage, repairs (including replacements), strikes, lockouts or other labor disturbances or disputes of any character, or for any other causes other than the gross negligence or willful misconduct of City.

11.2 Mandatory or Voluntary Restrictions.

If City provides any utilities pursuant to **Section 11.1** [Utilities and Services] above, and any governmental entity promulgates or revises any statute, ordinance, or building, fire, or other code or imposes mandatory or voluntary controls or guidelines on City or all or any part of the Property, relating to the use or conservation of energy or electricity, or if City is required or elects to make alterations to any part of the Property in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges as required by this Lease, or to perform each of its other covenants pursuant to this Lease or constitute or be construed as a constructive or other eviction of Tenant.

12. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS

12.1 Compliance with Laws.

At its sole expense, Tenant shall maintain the Premises, any Tenant's Facilities, Alterations, and any other Improvements and equipment permitted by this Lease, and conduct Tenant's use and operations on the Property, in strict compliance with all present and future laws, orders, and regulations of federal, state, county, regional, and municipal authorities (collectively, "**Laws**") relating to the Premises or the License Area or their use or occupancy, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include all Laws relating to interference caused by radio frequency signals, health and safety, disabled accessibility, including the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq. (insofar as such Act relates to Tenant's unique use), and Title 24 of the California Code of Regulations, all present and future

Environmental Laws (as defined in **Section 27.1** [Definitions]), and all present and future life safety, fire sprinkler, seismic retrofit, and other building code requirements, except that Tenant shall not be required to make any alterations in order to comply with the Americans with Disabilities Act unless such alterations shall be occasioned, in whole or in part, by Tenant's Facilities or Tenant's Alterations, by Tenant's unique use of the Premises, or by the acts, omissions, or negligence of Tenant, its Agents or Invitees, or any Authorized User. Any work or installations made or performed by or on behalf of Tenant or any person or entity claiming through or under Tenant pursuant to the provisions of this Section shall be made in conformity with and subject to the provisions of **Section 7** [Alterations] above.

Tenant's obligation to comply with all Laws as provided in this Lease is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this **Section 12** shall include the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any of the Tenant's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then-remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Except as expressly provided in this Lease, Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction, or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

Tenant understands and agrees that City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required regulatory approvals from City departments, boards, or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all Laws as provided above. Tenant further understands and agrees that no approval by City for purposes of this Lease shall be deemed to constitute approval by any federal, state, City, or other local regulatory authority with jurisdiction, and nothing in this Lease shall limit Tenant's obligation to obtain all such regulatory approvals and keep them current, at Tenant's sole cost, or limit in any way City's exercise of its police powers.

12.2 Licenses and Approvals.

Tenant represents and warrants that it has acquired all licenses, permits, and other approvals required under all federal, state, and local laws for the operation of Tenant's Facilities on the Premises. Tenant shall maintain all such licenses, permits or other approvals current throughout the Term of this Lease, and all frequencies and equipment used by Tenant shall fall within the frequencies licensed to Tenant by the Federal Communications Commission ("FCC"). Tenant shall provide a copy of all such licenses, permits, and approvals to City. A copy of all

environmental compliance and permitting documentation approving the Communications Site is attached as **Exhibit E**.

12.3 Radiofrequency Radiation and Electromagnetic Fields.

Without limiting **Section 12.1** [Compliance with Laws], Tenant shall comply with all present and future Laws relating to allowable presence of or human exposure to Radiofrequency Radiation (“**RFs**”) or Electromagnetic Fields (“**EMFs**”) on or off the Premises, including all applicable standards adopted by the FCC, whether such RF or EMF presence or exposure results from Tenant’s Facilities alone or from the cumulative effect of Tenant’s Facilities added to all other sources on or near the Property. Without limiting the provisions of Tenant’s indemnity contained in **Section 19** [Tenant’s Indemnity] below, Tenant, on behalf of itself and its successors and assigns, shall Indemnify the Indemnified Parties (defined in **Section 19** [Tenant’s Indemnity] below), and each of them, from and against all Claims incurred in connection with or arising in whole or in part from the presence of or exposure to RFs or EMFs resulting from Tenant’s use of the Premises.

12.4 Compliance with City’s Risk Management Requirements.

Tenant shall not do anything or permit Tenant’s Agents or any Authorized User to do anything in or about the Premises or the License Area that would create any unusual fire risk, and Tenant shall take commercially reasonable steps to protect City from any potential premises liability by reason of any business operation being conducted by Tenant in the Premises. At Tenant’s expense, in connection with the use and occupancy of the Premises and the License Area, Tenant shall comply with all reasonable rules, orders, regulations, or requirements of City’s Risk Manager.

13. SUBORDINATION

This Lease shall be subordinate to any reciprocal easement agreements, ground leases, or underlying leases and the lien of any mortgage or deed of trust (collectively, “**Encumbrance**”), which may now exist or hereafter be executed affecting any of the Property or City’s interest in the Property and all renewals, extensions, modifications, and replacements of such Encumbrance. Notwithstanding the foregoing, City may subordinate any such Encumbrance to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to City’s successor-in-interest, at the option of such successor-in-interest, provided that so long as Tenant is not in default under this Lease, such successor-in-interest shall recognize this Lease and shall not disturb Tenant in its possession of the Premises for any reason other than one that would entitle City to terminate this Lease or otherwise dispossess Tenant of the Premises in accordance with the terms of this Lease. No further instrument shall be required to make the provisions of this Lease operative except that City shall give Tenant written notice of such subordination. Tenant shall execute and deliver, however, upon City’s demand and in the form requested by City, any additional documents evidencing the priority or subordination of this Lease provided such documents contain a non-disturbance and recognition agreement executed by the holder of such Encumbrance.

14. DAMAGE OR DESTRUCTION

The Parties recognize that the Premises are a small portion of a Property used for, among other things, the operation and protection of a municipal watershed. In the event of damage to the Premises or the Property by any cause, City shall have no obligation to repair or rebuild any of the damaged or destroyed improvements or facilities. If, at its sole discretion, City determines to repair or rebuild any damaged improvements or facilities owned by City and used by Tenant, City shall use reasonable efforts to give Tenant written notice of its determination and its good faith estimate of the amount of time to repair or rebuild, within thirty (30) days of the date of such damage or destruction. If such repairs or rebuilding cannot be completed within two hundred ten (210) days after the date of such damage or destruction (“**Repair Period**”), as determined by City, or if City elects not to repair or rebuild as provided above, then, at Tenant’s election, Tenant may terminate this Lease on sixty (60) days’ prior written notice to City. If Tenant elects to terminate this Lease, prior to the effective date of termination, Tenant shall remove from the Property all of Tenant’s Personal Property and any other Tenant’s Facilities and Alterations other than those that City has agreed are to remain part of the Premises or License Area pursuant to **Section 7.2** [Title to and Removal of Tenant’s Facilities and Alterations].

During the period of any repair or rebuilding provided for in this Lease, subject to the notice requirements in **Section 2.2** [License; Tenant’s Access to City’s Property] above, at Tenant’s sole expense, Tenant may bring onto the Property at a location mutually acceptable to Tenant and City, and to operate a mobile wireless communications facility site and telescopic antenna or tower (collectively, “**Temporary Communications System**”) in order to provide for continuous service to Tenant’s customers during such period, provided that neither the placement nor use of such equipment shall interfere with the operations of City or its other tenants on the Property or any repairs or rebuilding that City elects to perform, or damage any City property, or conflict with City’s watershed management plans or policies or applicable Laws. Tenant may maintain such Temporary Communications System on the Property only for so long as is reasonably required to repair and restore Tenant’s Facilities. In no event shall City be required to repair any damage to Tenant’s Personal Property or any Tenant’s Facilities and Tenant shall promptly commence and diligently prosecute such repairs and restoration to completion in accordance with applicable requirements of **Section 2.2** [License; Tenant’s Access to City’s Property] above and **Section 7** [Alterations] above. Notwithstanding the foregoing, Tenant shall not install or operate a generator on the Property without City’s advance written consent, which may be granted, conditioned, or withheld at City’s sole and absolute discretion. At its sole discretion, Tenant may terminate this Lease upon thirty (30) days’ advance written notice if Tenant is unable to obtain City’s consent to operate a generator or is unable to operation of a Temporary Communications System on the Property during any period of repair or rebuilding provided for under this Lease as a result of City’s failure to provide a mutually acceptable location for such equipment.

In the event of any damage or destruction to the Premises or any permitted Alterations, there shall be no abatement in the Base Rent or Additional Charges payable pursuant to this Lease.

The provisions of this **Section 14** are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction, and Tenant and City each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 or 1933.4 of

the California Civil Code or under any similar Laws, now or hereafter in effect to the extent such rights are inconsistent with the provisions of this Lease.

15. CONSTRUCTION PROJECTS

Tenant acknowledges that during the Term, major construction projects could be undertaken on property in the vicinity of the Premises. Tenant is aware that the construction of such projects and the activities associated with such construction will generate certain adverse impacts, which may result in some inconvenience to or disturbance of Tenant. Such impacts may include increased vehicle and truck traffic, traffic delays and re-routing impediments to access, loss of street and public parking, dust, dirt, construction noise, and visual obstructions. Tenant hereby waives any and all claims against SFPUC, City, and their Agents based on such inconvenience or disturbance, including any abatement or reduction of Rent.

16. EMINENT DOMAIN

16.1 Eminent Domain.

If all or any part of the Premises or License Area shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu of condemnation, this Lease shall terminate as to the part so taken as of the date of taking. In the case of a partial taking, Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to City within thirty (30) days after such date; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken shall be of such extent and nature as to materially impair Tenant's use of the balance of the Premises as a Communications Site. In the event of a partial taking of the Premises that does not result in a termination of this Lease, the Base Rent and Additional Charges thereafter to be paid shall be equitably reduced.

If any material part of the Property (including City's Facilities) shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu of condemnation, City may terminate this Lease by written notice to Tenant within thirty (30) days of the date of the taking.

In the event of any taking, City shall be entitled to any resulting award. Tenant shall have no claim against City for the value of any unexpired term of this Lease or otherwise except that Tenant may claim any portion of the award that is specifically allocated to Tenant's relocation expenses or the interruption of or damage to Tenant's business or loss or damage to Tenant's Personal Property.

The foregoing provisions of this Section are intended to govern fully the Parties' rights and obligations in the event of a taking. Tenant and City each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure (partial termination of lease and Court order terminating lease, respectively) or under any similar law, statute, or ordinance now or hereafter in effect.

16.2 Temporary Takings.

Notwithstanding the foregoing, if a taking occurs with respect to all or any portion of the Premises for less than ninety (90) days, this Lease shall remain unaffected thereby, and Tenant shall continue to perform all of the terms, conditions, and covenants of this Lease, except that

Tenant shall be entitled to an abatement in Base Rent to the extent that its use of the Premises as a Communications Site is materially impaired. In the event of any such temporary taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the use or occupancy of the Premises during the Term up to the total Base Rent and Additional Charges owing by Tenant for the period of the taking, and City shall be entitled to receive the balance of any award.

17. ASSIGNMENT AND SUBLETTING; CO-LOCATION

17.1 Restriction on Assignment and Subletting.

Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to the Premises, Tenant's operations conducted on the Premises, any Alterations, or its leasehold estate created by this Lease (each, an "**Assignment**"), or permit any portion of the Premises or any of Tenant's Facilities or Alterations to be occupied by anyone other than itself, or sublet any portion of the Premises or sublicense any of Tenant's rights under this Lease (each, a "**Sublease**"), without City's prior written consent, which City may grant, condition, or withhold at its sole discretion. As used in this Lease, the term "**Transfer**" means an Assignment or Sublease. Notwithstanding anything to the contrary contained in this Lease, in no event shall Tenant have the right to encumber by a mortgage, deed of trust, security agreement, or otherwise, any part of the Premises, the Property or City's interest in any part of the Property. Any Assignment or Sublease, without City's prior written consent, shall be voidable at City's option at its sole and absolute discretion; and the General Manager may terminate this Lease immediately by sending written notice to Tenant.

Tenant further agrees and understands that the intent and purpose of this Lease is to allow for use or uses as provided in the Basic Lease Information, and not for the purpose of creating an investment in property. Therefore, while Tenant may charge to a City-approved assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Tenant, all rental income or other consideration received by Tenant that is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

17.2 Notice of Proposed Transfer.

If Tenant desires to enter into an Assignment or a Sublease, then it shall give written notice (a "**Notice of Proposed Transfer**") to City of its intention to do so. The Notice of Proposed Transfer shall provide in detail the terms and conditions for such proposed Assignment or Sublease and complete information, including financial statements, business history, and references about the Assignee or Sublessee and such other information about the proposed assignee or subtenant (collectively, "**Transferee**") as is reasonably requested by City to make a fully informed decision about consent to Tenant's request.

17.3 City's Response.

City shall make its election to approve or disapprove such Assignment or Sublease within twenty (20) business days after City's receipt of the Notice of Proposed Transfer ("**Response**").

Period”). If City approves the proposed Sublease or Assignment in writing, then Tenant shall be entitled for a period of ninety (90) days following such date to enter into the proposed Assignment or Sublease. Any Rent or other consideration realized by Tenant under any such Assignment or Sublease, however, in excess of the Base Rent and Additional Charges payable pursuant to this Lease (or the amount of Base Rent and Additional Charges proportionate to the portion of the Premises subject to such Sublease) shall be paid to City after Tenant has recovered any reasonable broker’s commissions and the reasonable cost of any improvements that Tenant has actually incurred in connection with such Sublease or Assignment.

Notwithstanding anything to the contrary in this Section, if any monetary or other material Event of Default by Tenant is outstanding at the time of Tenant’s Notice of Proposed Transfer (or if any event shall have occurred that, with the giving of notice or the passage of time or both, would constitute such a default), then City may elect by notice to Tenant to refuse to consent to Tenant’s proposed Transfer and pursue any of its right or remedies under this Lease or at law or in equity.

17.4 Effect of Sublease or Assignment.

No Sublease or Assignment by Tenant nor any consent by City to a Sublease or Assignment nor any Assignment or Sublease by Tenant permitted under this Lease without City’s consent shall relieve Tenant of any obligation on its part under this Lease. Any Sublease or Assignment that is not in compliance with this **Section 17** shall be void and, at City’s option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section.

17.5 Assumption by Transferee.

Each Transferee shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the Rent and for the performance of all of the terms, covenants, conditions, and agreements contained in this Lease on Tenant’s part to be performed. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City evidence satisfactory to City that it has obtained all permits, licenses, or other approvals required to operate as a wireless telecommunications service provider on the Premises, a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Section, including an express waiver of entitlement to any relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City for any and all losses arising out of any relocation assistance or benefits payable to any Transferee. The failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

17.6 Co-location.

(a) **Prohibition on Co-location Without City's Consent.** Co-location of facilities is prohibited except with City's express written approval in accordance with all of the above provisions of this **Section 17**, or as required by City pursuant to this **Section 17.6**. A "**co-located telecommunication facility**" means a telecommunication facility that is placed on or about the Premises and is comprised of one or more antennas, dishes, equipment racks, or cabinets, or similar devices owned or used by more than one public or private entity.

(b) **Co-location Required by City.** Tenant acknowledges that City may require Tenant to co-locate its facilities on the Premises with other facilities or providers or require Tenant to permit other facilities or providers to co-locate on Tenant's facilities. City's land management policies require that proposed new communications facilities be located to minimize the impact to visual resources and wherever possible be co-located with existing facilities.

Tenant shall cooperate and use commercially reasonable efforts to facilitate co-location of future telecommunications facilities upon the Premises; provided, however, that Tenant shall not be under any such obligation if a proposed co-location causes unreasonable interference with Tenant's existing use of the Premises or would exceed the structural capacity of Tenant's Facilities. If no such unreasonable interference or impairment would occur upon installation of a co-locator's equipment as reasonably determined by City, then the proposed co-locator in each instance shall, as a condition precedent to any proposed co-location: (i) execute and deliver a co-location sublicense agreement with Tenant in substantially the form attached as **Exhibit G-1** (each, a "**Co-Location Sublicense**"); (ii) pay all costs arising from or related to the co-location, including any and all costs incurred by Tenant to accommodate such co-location; and (iii) reimburse Tenant a commercially reasonable percentage of the unamortized costs and expenses (including capital expenditures) incurred by Tenant in connection with the development, use, or occupancy of the Premises prior to the co-location.

(c) **Existing Co-Location Sublicense Arrangements.** Tenant represents that it has provided City with (i) a list of all co-location arrangements at the Premises that Tenant agreed to prior to the Commencement Date, and (ii) a copy of all agreements related to such co-location. The list of such existing co-locators, if any, including the full name of the co-locating party is attached as **Exhibit G-2**. City hereby approves the list of co-locating parties (each an "**Approved User**" and collectively, the "**Approved Users**") on **Exhibit G-2** who may operate co-located telecommunication facilities in the License Area; provided, however, that, unless City, at its sole discretion, otherwise consents in writing, within one hundred eighty (180) days of the Commencement Date, all Approved Users who are not currently parties to an existing Co-Location Sublicense with Tenant shall execute and deliver a Co-Location Sublicense agreement with Tenant, a fully executed copy of which shall be promptly supplied to City by Tenant. Upon execution and delivery by an Approved User of such new Co-Location Sublicense, the existing co-location agreement with such Approved User shall immediately terminate and be superseded by such new Co-Location Sublicense. Tenant may not charge any rent, license fee, or use fee to an Approved User but may charge for the actual cost of the utilities used by an Approved User. For the purposes of the foregoing sentence, the "actual costs" of such utilities shall be the actual operational, maintenance, and access expenses required to operate Tenant's Facilities and that benefit an Approved User; and the actual cost of any improvements approved by City and installed by Tenant for the benefit of an Approved User in the License Area.

(d) Future Co-Location Sublicense Agreements. If, at any time during the Term, Tenant desires to allow a person or entity to place a co-located telecommunication facility on the Premises, prior to any such placement or any use or occupancy of any portion of the Premises by any such person or entity, Tenant shall **(i)** cause such person or entity to execute and deliver to Tenant a Co-Location Sublicense and **(ii)** obtain City's written consent, which City may grant, condition, or withhold at its sole discretion, to the proposed use of the Premises by any such person or entity and the proposed Co-Location Sublicense. Any co-located telecommunication facility placed on the Premises and any co-location arrangement, sublease, or license that is not in compliance with this **Section 17(d)** shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any rent, use fees, or other payments by Tenant or City from a proposed co-locating person or entity shall not constitute consent to the proposed use of the Premises by any such person or entity or the proposed Co-Location Sublicense, or a waiver by City of any failure of Tenant or other person or entity to comply with this Section.

17.7 IPM Plan and Form CMD-12B-101.

As a condition to any Assignment, the assignee shall execute Form CMD-12B-101 (as described in **Section 29.23(c)** [Non-Discrimination in Benefits] below with supporting documentation and secure the San Francisco Contract Monitoring Division's written approval of such form or acknowledgment that a waiver or exemption applied. As a condition to any Assignment or Sublease, the assignee or subtenant shall submit an IPM plan in accordance with the requirements of **Section 5.2(i)** [Covenant Against Use of Chemical Herbicides and Pesticides] above or obtain an exemption, through SFPUC. Any transferee must also comply with all other provisions of this Lease, including the insurance provisions.

18. DEFAULT

18.1 Events of Default.

Any of the following shall constitute an "**Event of Default**" by Tenant under this Lease:

(a) any failure to pay any Base Rent or Additional Charges as and when due, provided Tenant shall have a period of ten (10) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any 12-month period, and any such failure by Tenant after Tenant has received two such notices from City in any 12-month period shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) any failure to perform or comply with any other covenant, condition, or representation made under this Lease, provided Tenant shall have a period of thirty (30) days from the date of written notice of such failure from City within which to cure such default under this Lease, or, if such default is not capable of cure within such thirty (30)-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such thirty (30)-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after written notice of default from City;

(c) any vacation or abandonment of the Premises for more than fourteen (14) consecutive days such that the Premises are no longer being used for the purposes set forth in **Section 5.1** [Permitted Use] (City acknowledging that the Premises are to be used as an unoccupied transmission facility and, accordingly, lack of on-site personnel shall not, in and of itself, be deemed to indicate vacation or abandonment);

(d) the appointment of a receiver due to Tenant's insolvency to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days; and

(e) the charging by Tenant of any rent, license fee, or use fee to any Approved User or any other third-party for use of the Property or the License Area.

18.2 Remedies.

Upon the occurrence of an Event of Default by Tenant that is not cured by Tenant within the applicable grace period, if any, specified in **Section 18.1** [Events of Default], City shall have the following rights and remedies in addition to all other rights and remedies available to City at law or in equity:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due, for so long as City does not terminate Tenant's right to possession. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, at any time thereafter, City may elect to terminate this Lease for such previous default. During the continuance of an Event of Default, for so long as City does not terminate Tenant's right to possession of the Premises, City shall not unreasonably withhold its consent to an Assignment or Sublease.

(c) The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

(d) The right to revoke the use by any Approved User or other third-party user of the License Area or Property and the right to collect one hundred percent (100%) of any such rent, license fee, or use fee charged to such Approved User or other third-party user.

(e) City may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse City upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid, or the expense is incurred until City is reimbursed by Tenant. Any amount due City under this subsection shall constitute Rent under this Lease.

18.3 Special Administrative Charges.

Without limiting City's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant (a) constructs or installs any Tenant's Facilities or Alteration without the City's written approval as required by **Section 6** [Tenant's Facilities] above and **Section 7** [Alterations] above, (b) fails to make a repair required by **Section 9** [Maintenance and Repairs] or to clear vegetation as required by **Section 5.2(j)** [Covenant Against Use of Chemical Herbicides and Pesticides] above on a timely basis, (c) enters the Property without complying with the notice and permit requirements of **Section 2.2** [License; Tenant's Access to City's Property] above, (d) fails to provide evidence of the required insurance coverage described in **Section 20** [Insurance] below on a timely basis, or (e) fails to obtain prior City approval of co-location or Transfer pursuant to **Section 17** [Assignment and Subletting; Co-Location] above, then upon written notice from City of such failure or unauthorized action, Tenant shall pay, as an Additional Charge, the respective amount specified in the table below in consideration of City's administrative cost and expense in providing notice or performing inspections. If Tenant fails to remove the unauthorized Alteration and restore the Property, or fails perform the necessary repair or vegetation clearance, or fails to cease the unauthorized access or provide the necessary permit or insurance documents or fails to obtain the required approval or terminate the unauthorized co-location or Transfer, or fails to take other corrective action, if any, specified in City's notice, as applicable, within the time period set forth in such notice and City delivers to Tenant additional written notice requesting such document or evidence of such repair, or performs additional inspections to verify compliance, then Tenant shall pay to City, as an Additional Charge, the respective amount specified in the table below for each additional written notice City delivers to Tenant requesting such corrective action.

<u>Violation</u>	<u>Lease Section</u>	<u>Initial Inspection and/or Notice</u>	<u>Follow-up Inspection and/or Notice</u>
Construction of facilities or Alterations that are not approved by City	6 and 7	\$700.00	\$800.00
Failure to make required repairs or clear vegetation	5.2(j) and 9	\$700.00	\$1,000.00
Violation of requirements regarding access to Premises	2.2	\$1,000.00	\$2,000.00
Failure to obtain/maintain insurance	20	\$600.00	\$700.00
Failure to obtain prior City approval of co-location or Transfer	17	\$2,500.00	\$5,000.00

Such administrative fees shall be due and payable as Additional Charges. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate, as of the Commencement Date, of the administrative cost and expense that City will incur in connection with providing notices or performing inspections as set forth above and that City may reasonably increase such fees from time to time to account for inflation, but not more frequently than every five (5) years. City's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

18.4 City's Right to Cure Tenant's Defaults.

If Tenant defaults in the performance of any of its obligations under this Lease, then, at City's sole option, it may remedy such default for Tenant's account and at Tenant's expense by providing Tenant with three (3) business days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of such default or any of City's rights or remedies, and nothing in this Lease shall imply any duty of City to do any act that Tenant is obligated to perform. Tenant shall pay to City upon demand, as Additional Charges, all costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys' fees, in remedying or attempting to remedy such default. Tenant's obligations under this Section shall survive the termination of this Lease.

19. TENANT'S INDEMNITY

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("**Indemnify**") City, its Agents and Invitees, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including direct and

vicarious liability of every kind (collectively, “**Claims**”), incurred in connection with or arising in whole or in part from: **(a)** injury to or death of a person, including employees of Tenant, Tenant’s Agents, and any of the Approved Users, or loss of or damage to property, occurring on or about the Premises or the Property or arising in connection with the use of the Premises or License Area(s) under this Lease; **(b)** any default by Tenant in the observation or performance of any of the terms, covenants, or conditions of this Lease to be observed or performed on Tenant’s part; **(c)** the use, occupancy, or manner of use or occupancy of the Premises or the License Area by Tenant, its Agents or Invitees, any of the Approved Users, or any person or entity claiming through or under any of them; **(d)** the condition of the Premises or Property or any occurrence on the Premises or the Property from any cause attributable to the events described in clauses (a), (b) or (c) of this Section; or **(e)** any acts, omissions, or negligence of Tenant, its Agents or Invitees, or any Authorized User in, on, or about the Premises or the Property; all regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except to the extent such Claim is caused solely by the willful misconduct or active negligence of the Indemnified Parties. The foregoing Indemnity shall include reasonable fees of attorneys, consultants, and experts and related costs and City’s costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant’s obligations under this Section shall survive the expiration or sooner termination of this Lease.

20. INSURANCE

20.1 Tenant’s Insurance.

(a) At no cost to City, Tenant shall procure and keep in effect at all times during the Term, and shall cause each contractor and subcontractor performing work for Tenant at the Premises or License Areas to procure and keep in effect during the course of such work, insurance as follows:

(i) Commercial general liability insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form all perils property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse, and underground (XCU).

(ii) Worker’s Compensation Insurance in statutory amounts, with employer’s liability coverage not less than One Million Dollars (\$1,000,000) each accident. Regarding workers’ compensation, Tenant waives subrogation which any insurer of Tenant may acquire from Tenant by virtue of the payment of any loss. Tenant shall include in any contract between Tenant and a contractor for work to be performed on the Premises a provision by which the contractor waives subrogation which any insurer of the contractor may acquire from the contractor by virtue of the payment of any workers’ compensation loss. Each workers’

compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Tenant and its Agents related to this Lease or the Premises.

(iii) Business automobile liability insurance with limits not less than Three Million Dollars (\$3,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if Tenant uses automobiles in connection with its use of the Premises.

(iv) If required by City's Risk Manager in connection with construction of any Alterations, "special form" (all risk) builder's risk insurance on a replacement cost basis, with such scope and coverage as the Risk Manager may require.

(b) Environmental Pollution Liability Insurance. Tenant shall procure and maintain throughout the Term, at its expense, pollution legal liability/ environmental remediation/cleanup liability insurance for any and all losses caused by pollution conditions whether sudden, accidental, or gradual, resulting from the use or occupancy of the Premises and the License Area by Tenant, Tenant's Agents, or any Authorized User, or for which Tenant is legally liable, in connection with the use or occupancy of the Premises and the License Area pursuant to or in connection with this Lease, including the construction of any Improvements or Alterations on or about the Premises, whether such construction be by Tenant, Tenant's contractors, or any subcontractors, consultants, or suppliers. As well, Tenant shall cause any contractor performing Alterations, Improvements, or remediation or removal of Hazardous Material on or about the Premises to procure and maintain, at its expense such coverage. Each such policy shall contain minimum liability limits of One Million Dollars (1,000,000) per occurrence for bodily injury and property damage and shall, at a minimum, contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from, or in connection with: **(i)** bodily injury (including death), property damage, and environmental cleanup costs (on-site and off-site); **(ii)** the loss of use of tangible property that has not been physically injured or destroyed; **(iii)** sudden and non-sudden pollution conditions including the discharge, dispersal, release, or escape of Hazardous Material into or upon the Premises, other City property, Tenant's Facilities, any Alterations, the atmosphere, or watercourse or body of water, which results in environmental damages; **(iv)** the use or operation of motor vehicles (whether owned, non-owned, or leased), including transportation of any Hazardous Materials to or from the Premises or License Area, including any interim or temporary storage or transfer sites. Such transportation coverage shall also include loading/unloading of materials; and **(v)** any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the performance of this Lease is delivered; all such disposal locations/facilities, both final and temporary, shall be scheduled to such insurance policy as "Non-Owned Disposal Sites" for coverage under such policy. Coverage under each such policy shall include defense costs, charges and expenses incurred in the investigation, and adjustment of defense claims for such compensatory damages. Each policy's definition of "Covered Operations" or any other such designation of services or operations performed by the contractor must include all construction work or services performed by or on behalf of Tenant, Tenant's Agents, or any Authorized User on or about the Premises.

20.2 General Requirements.

(a) All insurance provided for under this Lease shall be effected under valid enforceable **policies** issued by insurers of recognized responsibility and reasonably approved by City.

(b) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(d) All liability insurance policies required by this Lease shall be endorsed to:

(i) Name as additional insureds the City and County of San Francisco, its commissions, officers, agents, volunteers, and employees;

(ii) Provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease;

(iii) Provide that such insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability;

(iv) Provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and

(v) Afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(e) Each insurance policy required to be maintained by Tenant or its contractors under this **Section 20** shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

(f) All insurance policies required to be maintained by Tenant or its contractors under this **Section 20** shall be endorsed to provide written notice of cancellation for any reason, intended non-renewal or reduction in coverage, to both Tenant and City. Tenant shall provide a copy of any notice of intent to cancel or materially reduce coverage, or cancellation, material reduction, or depletion of its required coverages to City within one business day of Tenant's receipt and shall take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by this **Section 20** from a different insurer meeting the qualifications of this Section. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease

Information or such other address(es) as may be designated by City by notice to Tenant in accordance with **Section 29.1** (Notices).

20.3 Proof of Insurance; Failure to Provide.

On or before the Commencement Date, Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers evidencing the coverages required by this Lease in a form satisfactory to City, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates thereafter at least ten (10) days before the expiration dates of expiring policies. Prior to commencement of any Alterations, Tenant shall cause its contractor to deliver to City certificates of insurance and additional insured policy endorsements from insurers evidencing the coverages required by this Lease in a form satisfactory to City, together with complete copies of the policies promptly upon City's request, and Tenant shall cause its contractors to provide City with certificates thereafter at least ten (10) days before the expiration dates of expiring policies. Tenant and its contractors shall submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any successor program used by City for verification of tenant and contractor insurance coverage. If Tenant or its contractors fail to procure required insurance, or to deliver such policies, certificates or information, at its option, City may procure the same for Tenant's account, and Tenant shall pay City the resulting cost within five (5) business days after delivery to Tenant of invoices reflecting the amounts so paid by City.

20.4 Lapsed Coverage.

Notwithstanding anything to the contrary in this Lease, at its sole and absolute discretion, City may elect to terminate this Lease if Tenant allows any required insurance coverage to lapse by: **(a)** providing Tenant written notice of such lapse and **(b)** providing written notice of termination if Tenant fails to reinstate the lapsed coverage within three (3) business days of City's notice of such default.

20.5 Review of Insurance Requirements.

Tenant and City shall periodically review the limits and types of insurance carried pursuant to **Section 20.1** [Tenant's Insurance] above. If the general commercial practice in the City and County of San Francisco is to carry insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

20.6 No Limitation on Lease Obligations or Liability.

Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's obligations or liability under **Section 19** [Tenant's Indemnity] or **Section 27.3** [Environmental Indemnity], or any of Tenant's other obligations or liabilities under this Lease.

20.7 Tenant's Facilities and Personal Property.

Tenant shall be responsible, at its expense, for separately insuring Tenant's Facilities, Alterations, and Tenant's Personal Property.

20.8 Self Insurance.

Each Party acknowledges that the other Party self-insures against casualty, property damage, and public liability risks. Tenant shall maintain an adequate program of self-insurance for public liability risks during the Term and, so long as Tenant so maintains such reserves, shall not be required to carry any third-party insurance with respect to the Property, the Premises, or otherwise. City shall not be required to carry any third-party insurance with respect to the Property, the Premises, or otherwise.

20.9 Waiver of Subrogation.

Notwithstanding anything to the contrary in this Lease, City and Tenant (each a “**Waiving Party**”) each hereby waive any right of recovery against the other Party for any loss or damage relating to the Property or any operations or contents on the Property, whether or not such loss is caused by the fault or negligence of such other Party, to the extent such loss or damage is covered by third-party insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance held by the Waiving Party or its agents. Each Waiving Party shall obtain a waiver of subrogation rights endorsement from applicable insurance carriers issuing policies relating to the Property; provided, the failure to obtain any such endorsement shall not affect the above waiver.

21. LIMITATION OF CITY’S LIABILITY

21.1 Limitation of City’s Liability.

City shall not be responsible for or liable to Tenant, and Tenant hereby waives all Claims against City and its Agents and releases City and its Agents from all Claims for any injury, loss, or damage to any person or property in or about the Premises or any License Area created under this Lease by or from any cause whatsoever (other than to the extent caused solely by the active negligence or willful misconduct of City and its Agents), including acts or omissions of persons occupying adjoining premises or any part of the Property adjacent to or connected with the Premises; theft; burst, stopped or leaking water, gas, sewer or steam pipes; or gas, fire, oil or electricity in, on or about the Premises or the Property. Nothing in this Lease shall relieve City from liability to the extent caused by the sole active negligence or willful misconduct of City or its Agents.

21.2 Consequential Damages.

Tenant expressly acknowledges and agrees that the Rent payable under this Lease does not take into account any potential liability of City for any consequential or incidental damages including lost profits arising from the disruption to Tenant’s Facilities or Alterations. City would not be willing to enter into this Lease in the absence of a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully releases, waives, and discharges forever any and all claims, demands, rights, and causes of action against City and its Agents for consequential, incidental, or punitive damages (including lost profits) arising out of this Lease, regardless of the cause, and whether or not due to the sole negligence or willful misconduct

of City or its Agents, and covenants not to sue for such damages City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them.

21.3 No Relocation Assistance.

This Lease creates no right in Tenant to receive any relocation assistance or payment for any reason under the Relocation Assistance Act (California Government Code Sections 7260 et seq.), the Uniform Relocation Assistance Act (42 U.S.C. Sections 4602 et seq.) as such acts may be amended or revised or under any existing or future law upon any termination of tenancy except as provided in **Section 16** [Eminent Domain] above.

Tenant fully waives, releases, and relinquishes forever any and all claims, demands, rights, and causes of action that it may have against City under any existing or future laws, for any compensation from City not otherwise provided for in this Lease, upon any termination of the tenancy created by this Lease.

In connection with the releases under **Sections 21.1** (Limitation of City's Liability), **21.2** (Consequential Damages), and **21.3** (No Relocation Assistance), Tenant acknowledges that it is familiar with California Civil Code Section 1542, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Tenant acknowledges that the releases contained in this Lease include all known and unknown, disclosed and undisclosed, anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of California Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained in this Lease shall survive any termination of this Lease.

22. CITY'S ACCESS TO PREMISES

22.1 City's Access to the Premises.

(a) General Access. City reserves for itself and its designated Agents, the right to enter any part of the Premises and License Area at all reasonable times upon not less than twenty-four (24) hours' notice (except in the event of an emergency) for any of the following purposes:

(i) To determine whether the Premises and License Area are in good condition and to inspect the Premises (including soil borings or other investigations or remediations of Hazardous Materials);

(ii) To determine whether Tenant is in compliance with its obligations under this Lease and to cure or attempt to cure any such default in accordance with the provisions of **Section 18.2** [Remedies];

(iii) To serve, post, or keep posted any notices required or allowed under any of the provisions of this Lease;

(iv) To do any maintenance or repairs to the Premises or License Area that City has the right or the obligation, if any, to perform; and

(v) To show it to any prospective purchasers, brokers, Encumbrancers, or officials, or, during the last year of the Term of this Lease, exhibiting the Premises and License Area to prospective tenants or other occupants, and to post any “for sale” or “for lease” signs in connection with the proposed use of the Property after the expiration or termination of the Term.

City acknowledges that Tenant’s cellular equipment is highly sensitive and is subject to federal regulations restricting access to such telecommunication equipment. Accordingly, City shall not enter portions of the Premises containing such equipment (other than in the event of an emergency) unless City has given Tenant at least twenty-four (24) hours’ prior notice. In the event of emergency, City shall use reasonable efforts to notify Tenant prior to such entry and City shall promptly advise Tenant of any such emergency entry promptly thereafter.

(b) **Emergency Access.** In the event of any emergency, as determined by City, at its sole option and without notice (provided that City shall make reasonable efforts to provide Tenant with notice when feasible in light of the exigent circumstances), City may enter the Premises and alter or remove Tenant’s Personal Property on or about the Premises. City may use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from all or any portion of the Premises.

(c) **No Liability.** City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City’s entry onto the Premises, except to the extent of damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents.

(d) **No Abatement.** Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this **Section 22**.

(e) **Minimize Disruption.** City shall use reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant’s use as contemplated by this Lease.

22.2 Pipeline and Utility Installations.

Without limiting **Section 22.1** [City’s Access to the Premises] above, City shall have the right at all times to enter upon the Premises upon at least forty-eight (48) hours’ advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove City’s Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions, or negligence of Tenant, its Agents or Invitees, or any Authorized User. City shall

not be responsible for any temporary loss or disruption of Tenant's or any Authorized User's use of the Premises occasioned by any such facility installation or other activities.

22.3 Roadways.

City and its Agents may enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes of City's Facilities.

23. TENANT'S ESTOPPEL CERTIFICATES

Upon not less than twenty (20) days' written notice from City, Tenant shall execute, acknowledge, and deliver to City or to any party designated by City, a certificate of Tenant stating: **(a)** that Tenant has accepted the Premises (or, if Tenant has not done so, that Tenant has not accepted the Premises and specifying the reasons therefor), **(b)** the Commencement Date and Expiration Date of this Lease, **(c)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), **(d)** whether or not there are then existing any defenses against the enforcement of any of the obligations of Tenant under this Lease (and if so, specifying the same), **(e)** whether or not there are then existing obligations of City under this Lease (and if so specifying the same), and **(f)** the dates, if any, to which the Base Rent and Additional Charges have been paid.

24. RULES AND REGULATIONS

Tenant shall faithfully comply with the rules and regulations attached as **Exhibit F** and any and all reasonable modifications, additions thereto or other reasonable rules, regulations, and instructions, written or oral, that may be established during the Term by City with respect to use of any part of the Property.

25. SECURITY DEPOSIT

Tenant shall pay to City upon execution of this Lease, as security for the faithful performance of all terms, covenants, and conditions of this Lease, a security deposit in the amount designated in the Basic Lease Information. The security deposit may be paid in cash or an irrevocable letter of credit from an issuing bank and in form acceptable to City. City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Property caused by Tenant, its Agents or Invitees, or any Authorized User or any failure of Tenant to pay any Rent or perform any other terms, covenants, or conditions contained in this Lease, without waiving any of City's other rights and remedies under this Lease or at law or in equity and without any obligation. Should City use any portion of the security deposit to cure any default by Tenant under this Lease, Tenant shall replenish the security deposit to the original amount within ten (10) days of City's written notice. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. The amount of the security deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

26. SURRENDER OF PREMISES

26.1 Surrender Plan.

Not less than one hundred twenty (120) days before the Expiration Date, Tenant shall submit to SFPUC for its review and reasonable approval a proposed surrender plan, outlining the steps Tenant intends to take to restore the Premises and License Area to their original condition and surrender the site to City in accordance with this **Section 26**. The surrender plan shall include **(a)** an inventory of all Tenant's Facilities, Alterations, Tenant's Personal Property, and debris on the Premises and License Area; **(b)** the proposed method of removal of all such items; **(c)** a plan and schedule for such removal; **(d)** measures to protect any facilities owned by City or other tenants that may be damaged as a result of Tenant's removal of any Tenant's Facilities, Tenant's Personal Property, or Alterations; **(e)** measures to repair and restore the Premises as a result of removal of any such items; and **(f)** any Tenant's Facilities, Alterations, or Tenant's Personal Property that Tenant requests permission to leave on the Premises or License Area. The surrender plan shall be subject to the written approval of the General Manager at his or her sole and absolute discretion. Within sixty (60) days after receipt of such plan, City will notify Tenant of any modifications or additions to the plan required by City. City reserves the right to require Tenant to attend a Project Review meeting to discuss the proposed surrender plan.

26.2 Surrender.

Upon the Expiration Date or other termination of this Lease, Tenant shall peaceably quit and surrender to City the Premises and License Area in good order and their original condition, normal wear and tear excepted, free of debris and hazards, after having made the last necessary repair required of Tenant under this Section (damage caused by casualty or condemnation excepted). The Premises shall be surrendered free and clear of all liens and encumbrances created or suffered by, through or under Tenant. Tenant shall, immediately before the Expiration Date or other termination of this Lease, remove all of Tenant's Personal Property from the Property and remove any other Tenant's Facilities, including Tenant's conduits, and Alterations from the Property (excepting only those Tenant's Facilities and Alterations that City agrees in writing are to remain part of the Premises or License Area pursuant to **Section 7.2** [Title to and Removal of Tenant's Facilities and Alterations]), and repair any damage resulting from the removal. In connection with any such repair, Tenant shall obtain any and all necessary permits and approvals, including any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal, or restoration work required by this Lease. Tenant's obligations under this Section shall survive the expiration or other termination of this Lease. Any items of Tenant's property which remain in the Premises or the License Area after the expiration or sooner termination of this Lease may, at the option of City, be deemed abandoned and in such case may be disposed of by City in accordance with California Civil Code Sections 1980 *et seq.* or any other manner allowed by law.

If Tenant fails to surrender the Premises or License Area to City on the expiration or sooner termination of the Lease as required by this Section, Tenant shall Indemnify City against all resulting Claims, including Claims incurred by a succeeding tenant resulting from such failure.

26.3 Quitclaim Deed.

Concurrently with the surrender of the Premises as provided above, if requested by City, execute, acknowledge, and deliver to City a quitclaim deed to the Premises and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate under this Lease and to effect such transfer or vesting of title to the Alterations or other improvements or equipment that are to remain part of the Premises as provided in this Lease.

27. HAZARDOUS MATERIALS

27.1 Definitions.

As used in this Lease, the following terms shall have the meanings set forth below:

(a) **“Environmental Laws”** shall mean any federal, state, local, or administrative law, rule, regulation, order, or requirement relating to industrial hygiene, environmental conditions, or Hazardous Materials, whether now in effect or hereafter adopted.

(b) **“Hazardous Material”** shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25316 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any crude-oil fraction, natural gas, or natural gas liquids.

(c) **“Investigate and Remediate”** shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Property or that has been, is being, or threatens to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor, or otherwise control such Hazardous Material.

(d) **“Release”** when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Property, or in, on, under, or about the Property or the environment.

27.2 No Hazardous Material in Premises.

Tenant covenants that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed of, or Released in, on, or about the Premises or any other part of the Property, or transported to or from the Property in violation of Environmental Laws, except that Tenant may use small quantities of Hazardous Materials as needed for routine cleaning and maintenance of Tenant's Facilities that are customarily used for routine cleaning and maintenance of such equipment; necessary quantities of

fuel for an emergency generator if City consents in writing to the use of such a generator, and necessary quantities of pesticides and herbicides in accordance with the requirements of **Section 5.2(i)** [Restrictions on Use of Chemical Herbicides and Pesticides] so long as all such materials are handled and used in compliance with Environmental Laws. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Materials on or about the Premises or the Property.

27.3 Tenant's Environmental Indemnity.

If Tenant breaches any of its obligations contained in **Section 27.2** [No Hazardous Material in Premises] above, or if any act, omission, or negligence of Tenant, any of its Agents or Invitees, or any Authorized User results in any contamination of the Premises or any other part of the Property or in a Release of Hazardous Material from, on, about, in, or beneath any part of the Premises or the Property or the violation of any Environmental Law, then in any such event Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties from and against any and all Claims (including damages for decrease in value of the Premises or the Property, the loss or restriction of the use of rentable or usable space, or of any amenity of the Premises or the Property and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees) arising during or after the Term of this Lease relating to such Release or violation of Environmental Laws; provided, however, Tenant shall not be liable for any Claims to the extent such Release was caused by the sole negligence or willful misconduct of City or its Agents. The foregoing Indemnity includes costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought onto the Premises or the Property by Tenant or any of its Agents or Invitees and to restore the Property to its condition prior to Tenant's introduction of such Hazardous Material or the correction of any violation of Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Without limiting the foregoing, if Tenant or any of its Agents or Invitees cause the Release of any Hazardous Material on, about, in, or beneath the Premises or Property, then in any such event Tenant shall, immediately, at no expense to City, take any and all necessary actions to return the Premises or the Property, as applicable, to the condition existing prior to the Release of any such Hazardous Materials on the Property or otherwise abate the Release in accordance with all Environmental Laws, except to the extent such Release was caused by the sole negligence of City or its Agents. Tenant shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

28. SPECIAL PROVISIONS

28.1 Protection of Tenant Against Interference.

If City grants any right for others to use the Property during the Term and such party causes measurable interference that materially impairs Tenant's proper operation of its then existing, well-maintained, City-approved Communications Site as contemplated by this Lease, City shall reasonably cooperate with Tenant to attempt to resolve the interference issue, subject to pre-existing rights and the provisions of this **Section 28**. If, as a result of such interference, it is necessary to alter City-approved Tenant's Facilities or Tenant's City-approved Alterations located

on the Premises, Tenant shall notify City of such interference, which notice shall include a detailed description of the necessary Alterations and a cost estimate therefor. Upon receipt of such notice, City shall have the right to terminate this Lease upon thirty (30) days' prior written notice to Tenant. If City elects not to terminate this Lease, Tenant may, at its election, either **(a)** make the Alterations described in such notice, in compliance with **Section 7.1** (Tenant's Alterations) of this Lease, or **(b)** terminate this Lease upon thirty (30) days' prior written notice to City. If Tenant elects to make such Alterations, Tenant shall offset the actual, reasonable, and documented cost incurred by Tenant to complete such Alterations against Base Rent as it comes due, up to a maximum amount equal to the lesser of **(i)** the cost estimate contained in Tenant's notice to City described above, or **(ii)** \$5,000. Notwithstanding any other provision in this Lease, in no event shall City be liable to Tenant for any harm to Tenant caused by any interference resulting from the future use of the Property by City or its tenants.

28.2 Protection Against Tenant's Interference.

Tenant shall operate at the Premises in a manner that complies with all noninterference rules of the Federal Communications Commission and other applicable Laws and will not cause interference to any equipment existing on the Property as of the date of installation or modification of Tenant's Facilities provided such existing equipment is being operated in accordance with the applicable license and applicable Laws. Tenant shall reasonably cooperate with other tenants, if any, at the Property to resolve any issues of interference in an equitable fashion and in accordance with applicable Laws and this Section. Tenant will not permit its equipment or use of the Premises as a Communications Site to cause interference with or impairment of City's 911 Public Communications Safety System or Citywide 800 MHz Radio System or other communication or computer equipment used by City or any of its Agents on the Property. If Tenant makes any Alterations, such changes shall not cause interference to any facilities existing on the Property as of the date of such modifications or to any of City's Facilities. Any such interference by Tenant shall be deemed a material breach of this Lease, and Tenant shall, upon notice from City, be responsible for immediately terminating such interference. In the event any such interference does not cease immediately, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, City shall have the right to bring action to enjoin such interference or to terminate this Lease immediately upon notice to Tenant, at City's election.

29. GENERAL PROVISIONS

29.1 Notices.

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person, or by sending it via first class mail or certified mail with a return receipt requested or reliable commercial same-day or next-business-day courier service, return receipt requested, with postage prepaid, to: **(a)** Tenant at Tenant's address set forth in **Section 1** (Basic Lease Information), or at any place where Tenant or any agent, officer or employee of Tenant may be personally served if sent subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises; **(b)** City at City's addresses set forth in the Basic Lease Information; or **(c)** to such other address(es) as either City or Tenant may designate as its new address(es) for such purpose by notice given to the other in accordance with the provisions of this Section. Any correctly addressed notice sent by a method that provides confirmation of delivery or attempted or rejected delivery shall be deemed to have been given or received upon the earliest of confirmed

attempted, rejected, or actual delivery. Neither Party may give official or binding notice by facsimile or email.

29.2 No Implied Waiver.

No failure by either Party to insist upon the strict performance of any obligation of the other under this Lease or to exercise any right, power, or remedy arising out of a breach of any provision of this Lease, irrespective of the length of time for which such failure continues, shall constitute a waiver of such breach. No acceptance by City or any of its Agents of full or partial Base Rent or Additional Charges during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by City or any of its Agents, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant, or condition or operate as a surrender of this Lease. No express written waiver by either Party of any default or the performance of any provision of this Lease shall affect any other default or performance, or cover any other period of time, other than the default, performance, or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision of this Lease by either Party shall not be deemed to be a waiver of a subsequent default or performance. City's consent given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure City's consent in any other or future instance under the terms of this Lease.

29.3 Amendments.

No any term or provisions of this Lease may be changed, waived, discharged, or terminated orally, and no breach of the terms or conditions of this Lease shall be waived, altered, or modified, except by a written instrument signed by both Parties.

29.4 Authority.

If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

29.5 Interpretation of Lease.

The words "**City**" and "**Tenant**" as used in this Lease shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used in this Lease, the term "**Agents**" when used with respect to either Party shall include the agents, employees, officers, contractors, subcontractors and representatives of such Party, and the term "**Invitees**" when used with respect to either Party shall include the clients, customers, invitees, guests, licensees, assignees, or subtenants of such Party. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Lease and shall be interpreted to achieve the intents and purposes of the Parties,

without any presumption against the Party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word “**including**,” “**includes**” or similar words shall not be construed to limit any general term, statement, or other matter in this Lease, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

29.6 City Consents, Approvals, Elections and Options.

Whenever this Lease requires or permits the giving by City or SFPUC of any consent, approval, election, or option, the General Manager of SFPUC, or his or her designee, shall be authorized to provide, make, or exercise such consent, approval, election, or option, except as otherwise provided by applicable law, including City’s Charter, or by SFPUC’s Real Estate Guidelines, as amended or replaced from time to time. Unless otherwise provided in this Lease, whenever City’s or SFPUC’s consent or approval is required to be obtained by Tenant pursuant to this Lease, City or SFPUC may give or withhold such consent or approval at its sole and absolute discretion. No consent, approval, election, or option shall be effective unless given, made, or exercised in writing.

29.7 Successors and Assigns.

Subject to the provisions of this Lease relating to assignment and subletting, the terms, covenants, and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided in this Lease, their personal representatives, successors, and assigns; provided, however, that upon the sale, assignment, or transfer by City (or by any subsequent landlord) of its interest in the Property as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment, or transfer.

29.8 Brokers.

Neither Party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder’s fee in connection with the lease transaction contemplated by this Lease except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the Party through which such broker contracted. If any other broker or finder perfects a claim for a commission or finder’s fee based upon any such contact, dealings, or communication, the Party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other Party from all Claims incurred by the indemnified Party in defending against the same. The provisions of this Section shall survive any expiration or termination of this Lease.

29.9 Severability.

If any provision of this Lease or its application to any person, entity, or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to

persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

29.10 Governing Law.

This Lease shall be governed by and construed and enforced in accordance with the laws of the State of California and City's Charter.

29.11 Entire Agreement.

The exhibits referenced in and attached to this instrument are made a part of this Lease. This instrument contains the entire agreement between the Parties regarding the subject matter of this Lease and all prior written or oral negotiations, understandings, and agreements are merged into this Lease. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior Lease drafts and changes from such drafts) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises, the Property, or this Lease except as expressly set forth in this Lease, and no rights, easements, or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth in this Lease.

29.12 Attorneys' Fees.

If either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting Party or the non-prevailing Party in such dispute, as the case may be, shall pay the prevailing Party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Lease (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of City Attorney. The term "**attorneys' fees**" shall also include all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "**costs**" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

29.13 Holding Over.

For purposes of this Lease, Tenant shall be deemed to "**Hold Over**" or be "**Holding Over**" if after the expiration or sooner termination of this Lease, the Premises and/or License Area continue to be occupied by, under, or on behalf of Tenant or any Transferee claiming under or

through Tenant or by Tenant's Facilities or the facilities of any such Transferee (except any facilities that City has specifically acknowledged in writing may remain on the Premises after Lease expiration or termination). The duration of such Holding Over is referred to in this Lease as the "**Holdover Period.**" Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis with ongoing adjustments in Base Rent on each Adjustment Date as set forth in **Section 4.2** [Adjustments in Base Rent] above or at such other Base Rent as determined by City as part of its consent, and shall otherwise be on the terms and conditions of this Lease so far as applicable (except for those pertaining to the Term and any Extension Options). Any holding over without City's consent shall constitute a default by Tenant and a tenancy at sufferance, at a Base Rent equal to 150% of the Base Rent in effect at the start of the Holdover Period (plus ongoing adjustments on each Adjustment Date as provided in **Section 4.2** [Adjustments in Base Rent]) and entitle City to exercise any or all of its remedies available under this Lease, at law or in equity, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any failure by Tenant to surrender the Premises in accordance with **Section 26** [Surrender of Premises] above shall constitute continuing possession for purposes of this Lease. Tenant acknowledges that the foregoing provisions shall not serve as permission for the Tenant to hold over, nor serve to extend the Term of this Lease.

29.14 Time of Essence.

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

29.15 Cumulative Remedies.

All rights and remedies of either Party set forth in this Lease shall be cumulative, except as may otherwise be provided in this Lease.

29.16 Survival of Indemnities.

Termination of this Lease shall not affect the right of either Party to enforce any and all indemnities and representations and warranties given or made to the other Party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination of this Lease.

29.17 Signs.

Tenant shall not erect or maintain, or permit to be erected or maintained, any signs, notices, or graphics upon or about the Premises that are visible in or from public corridors or other portions of any common areas of the Property or from the exterior of the Premises, without obtaining City's prior written consent and approval, which City may withhold, condition, or grant at its sole discretion; provided, however, that Tenant shall label Tenant's Facilities as required under **Section 5.2(d)** [Covenant to Label Tenant's Facilities] above.

29.18 Relationship of the Parties.

City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither Party shall act as the agent of the other Party in any respect with respect to this Lease or the Property. This Lease is not intended nor, shall it be construed to create any third-party beneficiary rights in any third party, unless otherwise expressly provided.

29.19 Light and Air.

Tenant covenants and agrees that no diminution of light, air, or view by any structure that may hereafter be erected (whether or not by City) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of City to Tenant, or in any other way affect this Lease or Tenant's obligations under this Lease, except as described in **Section 28.1** [Protection of Tenant Against Interference].

29.20 Recording.

Tenant shall not record this Lease nor any memorandum or short form of this Lease in the Official Records of any county of the State of California.

29.21 Non-Liability of City Officials, Employees and Agents.

No elective or appointive board, commission, member, officer, employee, or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to Tenant or its successors and assigns, or for any obligation of City under this Agreement.

29.22 Reserved

29.23 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant shall not discriminate against any employee of, any City employee working with Tenant, or applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subleases and Other Subcontracts. Tenant shall include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of Subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Lease.** As a condition to this Lease, Tenant shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (“CMD”). Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form or acknowledged in writing that a waiver or exemption applied.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth in this Lease. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

29.24 Requiring Health Benefits for Covered Employees.

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Tenant shall keep itself informed of the current requirements of the HCAO.

(h) Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative

amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

29.25 Notification of Prohibition on Contributions.

For the purposes of this Section, a “**City Contractor**” is a party that contracts with, or seeks to contract with, City for the sale or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its execution of this Agreement, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign contribution to **(a)** the City elective officer, **(b)** a candidate for the office held by such individual, or **(c)** a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. Tenant acknowledges that the foregoing restrictions applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Tenant further acknowledges that **(i)** the prohibition on contributions applies to Tenant, each member of Tenants board of directors, Tenant’s chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Tenant, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Tenant, and **(ii)** within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties, and any subcontractor to, the contract. Additionally, Tenant certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to City, and has provided the names of the persons required to be informed to City’s department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

29.26 Reserved

29.27 MacBride Principles – Northern Ireland.

City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

29.28 Conflicts of Interest.

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of (i) San Francisco Charter Sections 15.103; (ii) Article III, Chapter 2, San Francisco Campaign and Governmental Conduct Code; and (iii) California Government Code Sections 87100 et seq. and Sections 1090 et seq., and certifies that it does not know of any facts

that would constitute a violation of said provision, and agrees that if Tenant becomes aware of any such fact during the term of this Lease, Tenant shall immediately notify City.

29.29 Drug-Free Workplace.

Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its employees, agents or assigns shall be deemed a material breach of this Lease.

29.30 Tropical Hardwood and Virgin Redwood Ban.

City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of any Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

29.31 Prohibition of Tobacco Sales and Advertising.

Tenant acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

29.32 Prohibition of Alcoholic Beverage Advertising.

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "**alcoholic beverage**" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

29.33 Sunshine Ordinance; Public Records Law.

Tenant understands and agrees that City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Sections 6250 *et seq.*), apply to this Lease and any and all records, information, and materials submitted to City in connection with this Lease. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with City's Sunshine Ordinance and the State Public Records Law. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded

the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

29.34 Food Waste Reduction Ordinance.

Tenant shall comply fully with and be bound by all of the applicable provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided in Chapter 16, and its implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. Accordingly, Tenant acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City's Facilities and while performing under a City contract or lease and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Lease.

29.35 San Francisco Packaged Water Ordinance.

Tenant shall comply with San Francisco Environmental Code Chapter 24 ("**Chapter 24**"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from City's Department of the Environment. If Tenant violates this requirement, City may exercise all remedies in this Lease and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

29.36 Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions) ("**Chapter 12T**"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the

facts or details of any conviction history, unresolved arrest, or any matter identified in Subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement (“**OLSE**”), available on OLSE’s website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact City’s Real Estate Division for additional information. City’s Real Estate Division may consult with the Director of City’s Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

29.37 Local Hiring Policy for Tenant’s Facilities and Alterations.

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (“**Local Hiring Requirements**”). Improvements and Alterations are subject to the Local Hiring Requirements unless the cost for such work is (a) estimated to be less than \$750,000 per building permit or (b) meets any of the other exemptions in the Local Hiring Requirements. Tenant shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City’s Office of Economic Workforce and Development (“**OEWD**”) to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a “**Covered Project**”).

Tenant shall include and shall require its contractors and all Approved Users to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name City and County of San Francisco as a third-party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor’s, subcontractor’s, or Authorized

User's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

29.38 Tenant's Compliance with City Business and Tax and Regulations Code.

Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Tenant under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

29.39 Contractor Vaccination Requirements.

(a) Licensee acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("**Emergency Declaration**"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("**Contractor Vaccination Policy**"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor under that agreement work in-person with City employees in connection with the work or services performed under the agreement at a facility owned, leased, or controlled by the City. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

(c) Licensee has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this License is or becomes a Contract as defined in the Contractor Vaccination Policy, Licensee agrees that:

(1) Where applicable, Licensee shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and ensure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(2) If Licensee grants Covered Employees an exemption based on medical or religious grounds, Licensee will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("**Exemptions Form**"), which can be found at

<https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

29.40 Cooperative Drafting.

This Lease has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No Party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

29.41 Counterparts.

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE PARTIES ACKNOWLEDGE THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL A RESOLUTION OF CITY’S PUBLIC UTILITIES COMMISSION SHALL HAVE BEEN DULY ADOPTED APPROVING THIS LEASE AND AUTHORIZING APPROPRIATE CITY OFFICERS TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT UPON, AND SUBJECT TO, DUE ADOPTION OF SUCH RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF SUCH RESOLUTION IS NOT ADOPTED BY CITY’S PUBLIC UTILITIES COMMISSION, AT ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH CITY’S CHARTER AND ALL OTHER APPLICABLE LAWS.

SIGNATURES ON FOLLOWING PAGE

City and Tenant have executed this Lease as of the last date written below.

CITY:

TENANT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

COUNTY OF SAN MATEO,
a political subdivision of State of California

By: _____
DENNIS J. HERRERA
General Manager
San Francisco Public Utilities Commission

By: _____

Its: _____

Date: _____

Date: _____

ATTEST:

By: _____

Its: Clerk of the Board

Date: _____

APPROVED BY:

San Francisco Public Utilities Commission
Pursuant to Resolution No. _____
Adopted: _____

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Shari Geller Diamant
Deputy City Attorney

EXHIBIT A

Aerial View of City's Property

Attached



EXHIBIT A

Aerial View of City's Property
Montara Mountain – North Peak
SFPUC Parcel No. 31

SMCO – Montara Mountain – North Peak

-  SFPUC Property Boundary
-  SMCO Facilities
-  GGNRA Tower



San Francisco
Water Power Sewer
Operator of the Hetch Hetchy Regional Water System

EXHIBIT A-1

Depiction of Tenant's Access Route

Attached



EXHIBIT A-1

SMCO – Montara Mountain – North Peak

Depiction of Tenant's Access Route
Montara Mountain – North Peak

-  SMCO Facilities
-  GGNRA Tower
-  SMCO Primary Access Route



EXHIBIT B
Depiction of Premises





EXHIBIT B

Depiction of Premises

Montara Mountain – North Peak

SFPUC Parcel No. 31

SMCO – Montara Mountain – North Peak

— SFPUC Property Boundary (Approx.)

— SMCO Licensed Area



San Francisco
Water Power Sewer
Operator of the Hetch Hetchy Regional Water System

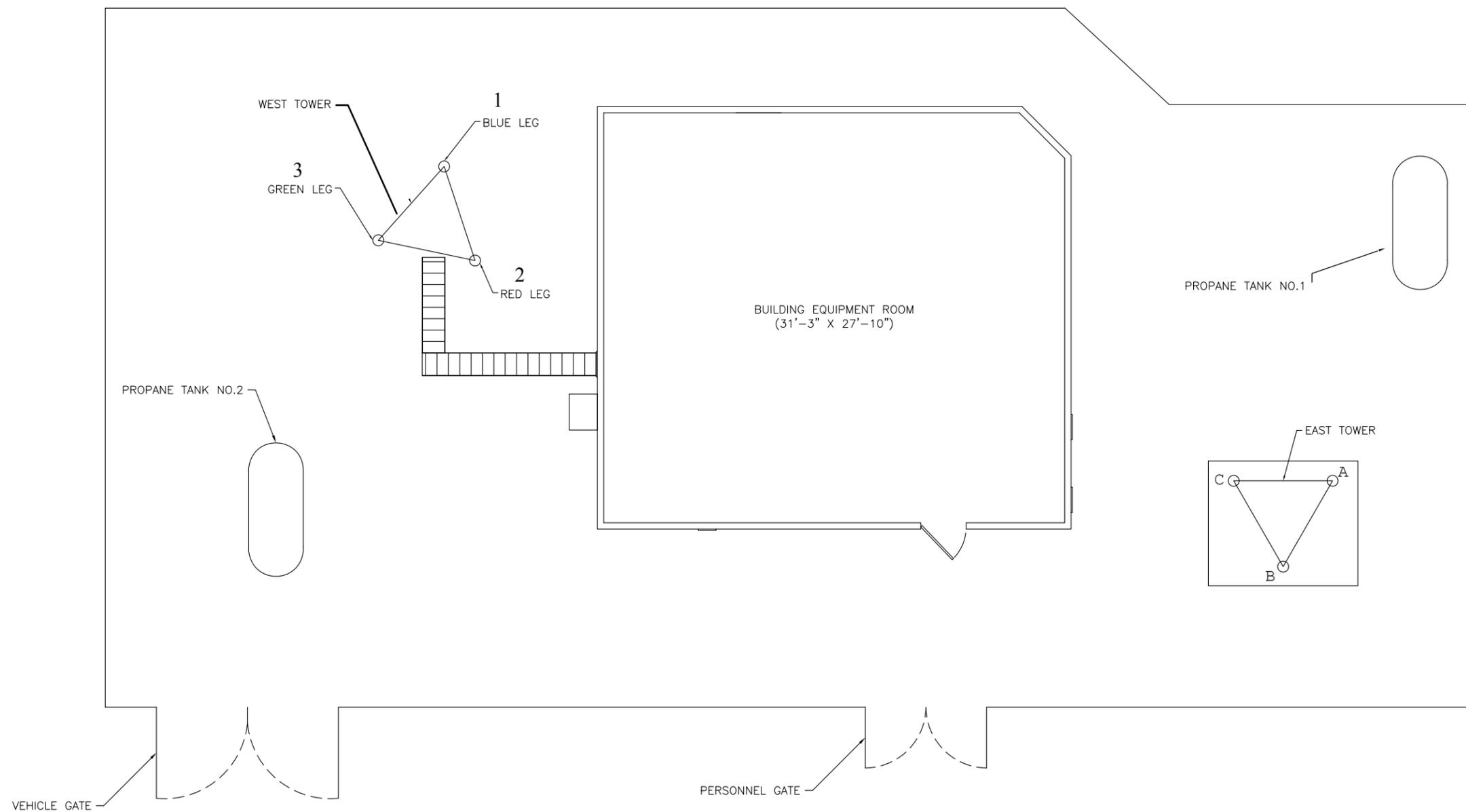
EXHIBIT C

Tenant's Existing Facilities

(As-Built Plans pursuant to Section 6 of the Lease)

Attached

North Peak



 PLOT PLAN

North Peak

NOTES:

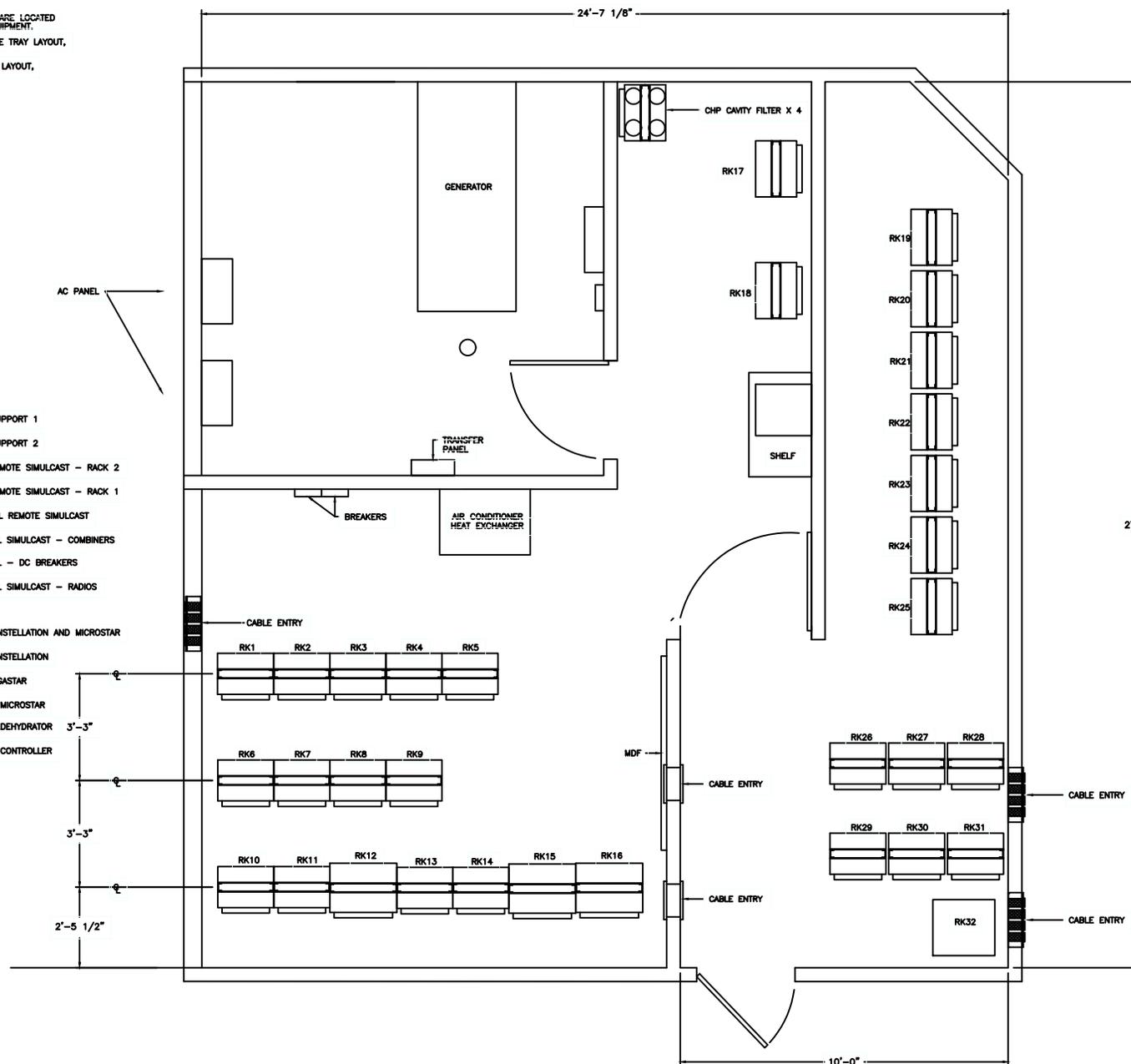
- EQUIPMENT RACK NUMBERS ARE LOCATED ON THE FRONT SIDE OF EQUIPMENT.
- FOR EQUIPMENT ROOM, CABLE TRAY LAYOUT, SEE DWG. NO. NPR-101.
- FOR EQUIPMENT RACK FACE LAYOUT, SEE DWG. NO. NPR-200.

RACK DESIGNATIONS

- RK1 SMC - RADIO RACK - SUPPORT 1
SEE DWG. NO. (TBD)
- RK2 SMC - RADIO RACK - SUPPORT 2
SEE DWG. NO. (TBD)
- RK3 SMC - 700 TRUNKING REMOTE SIMULCAST - RACK 2
SEE DWG. NO. (TBD)
- RK4 SMC - 700 TRUNKING REMOTE SIMULCAST - RACK 1
SEE DWG. NO. (TBD)
- RK5 SMC - 800 CONVENTIONAL REMOTE SIMULCAST
SEE DWG. NO. (TBD)
- RK6 SMC - TAC CONVENTIONAL SIMULCAST - COMBINERS
SEE DWG. NO. (TBD)
- RK7 SMC - TAC CONVENTIONAL - DC BREAKERS
SEE DWG. NO. (TBD)
- RK8 SMC - TAC CONVENTIONAL SIMULCAST - RADIOS
SEE DWG. NO. (TBD)
- RK9 SHARED RADIOS
SEE DWG. NO. (TBD)
- RK10 SMC - MICROWAVE - CONSTELLATION AND MICROSTAR
SEE DWG. NO. (TBD)
- RK11 SMC - MICROWAVE - CONSTELLATION
SEE DWG. NO. (TBD)
- RK12 SMC - MICROWAVE - MEGASTAR
SEE DWG. NO. (TBD)
- RK13 SMC - MICROWAVE - MICROSTAR
SEE DWG. NO. (TBD)
- RK14 DAYWEB - MICROWAVE - DEHYDRATOR
SEE DWG. NO. (TBD)
- RK15 SMC - BATTERY RACK - CONTROLLER
SEE DWG. NO. (TBD)
- RK16 SMC - BATTERY RACK
SEE DWG. NO. (TBD)

RACK DESIGNATIONS

- RK17 CHP - RACK 1
SEE DWG. NO. (TBD)
- RK18 CHP - RACK 2
SEE DWG. NO. (TBD)
- RK19 PACIFICA PD / SMC COUNTY FIRE
SEE DWG. NO. (TBD)
- RK20 CALTRANS
SEE DWG. NO. (TBD)
- RK21 STATE PARKS
SEE DWG. NO. (TBD)
- RK22 FISH AND GAME
SEE DWG. NO. (TBD)
- RK23 CALFIRE
SEE DWG. NO. (TBD)
- RK24 SANTRANS
SEE DWG. NO. (TBD)
- RK25 (EMPTY)
SEE DWG. NO. (TBD)
- RK26 NATIONAL PARKS SERVICE - SYSTEM - RADIOS
SEE DWG. NO. (TBD)
- RK27 NATIONAL PARKS SERVICE - SYSTEM - COMBINER AND DUPLEXER
SEE DWG. NO. (TBD)
- RK28 NATIONAL PARKS SERVICE - SYSTEM - MICROWAVE - CONSTELLATION
SEE DWG. NO. (TBD)
- RK29 WIRE #1 MASTER B - relocate to RK5
SEE DWG. NO. (TBD)
- RK30 (EMPTY)
SEE DWG. NO. (TBD)
- RK31 (EMPTY)
SEE DWG. NO. (TBD)
- RK32 NATIONAL PARKS SERVICE - UPS - EATON
SEE DWG. NO. (TBD)



EQUIPMENT ROOM EQUIPMENT LAYOUT - FLOOR PLAN

North Peak
East Tower
Face A-C

700 RX

TAC

TAC

700 TX

Hostel
Sam

Pise

San
Bruno
Nike

Pigeon Point

HOJ
UASI

Pise

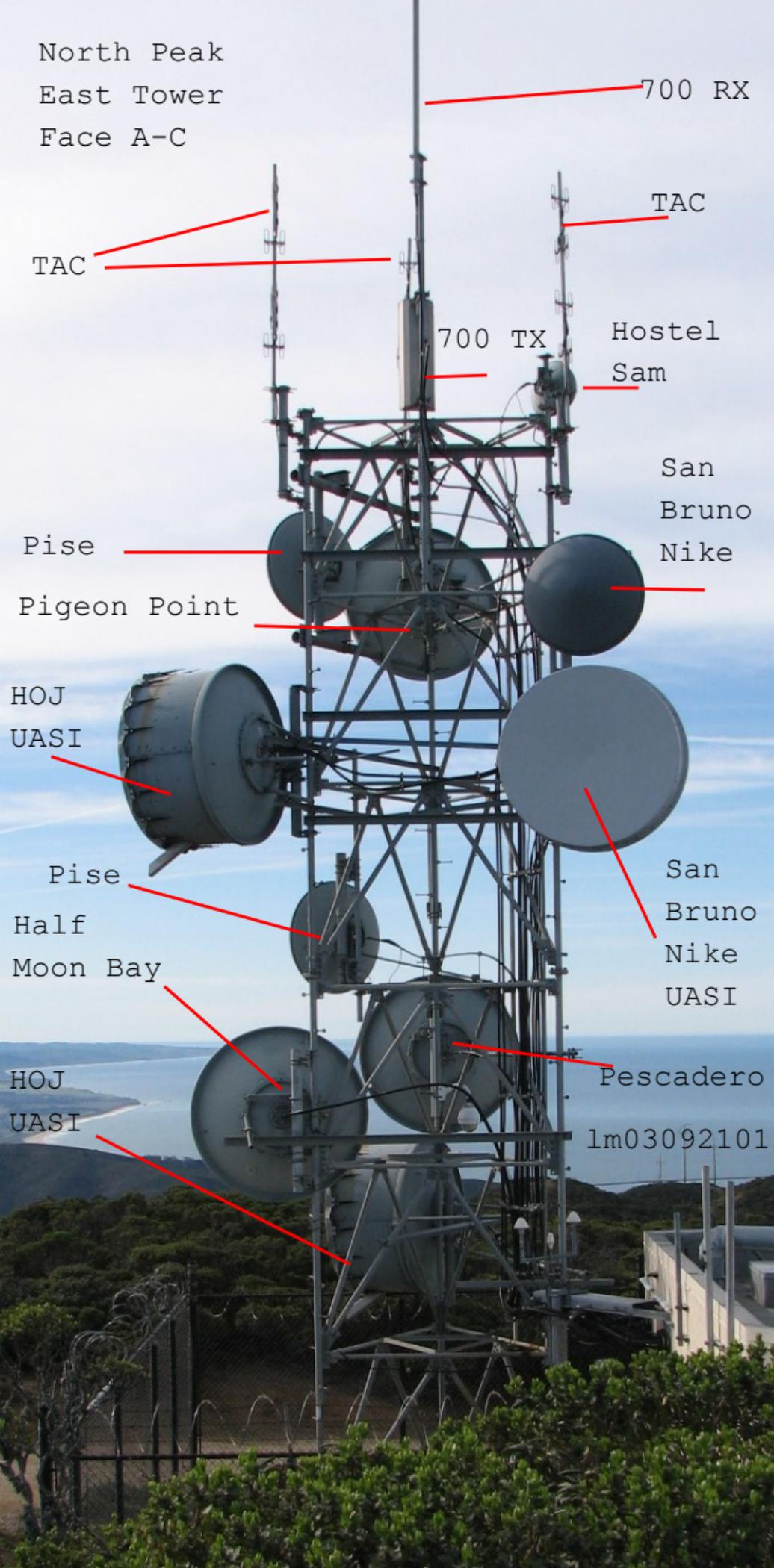
San
Bruno
Nike
UASI

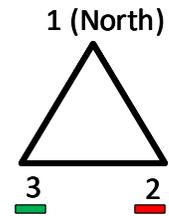
Half
Moon Bay

HOJ
UASI

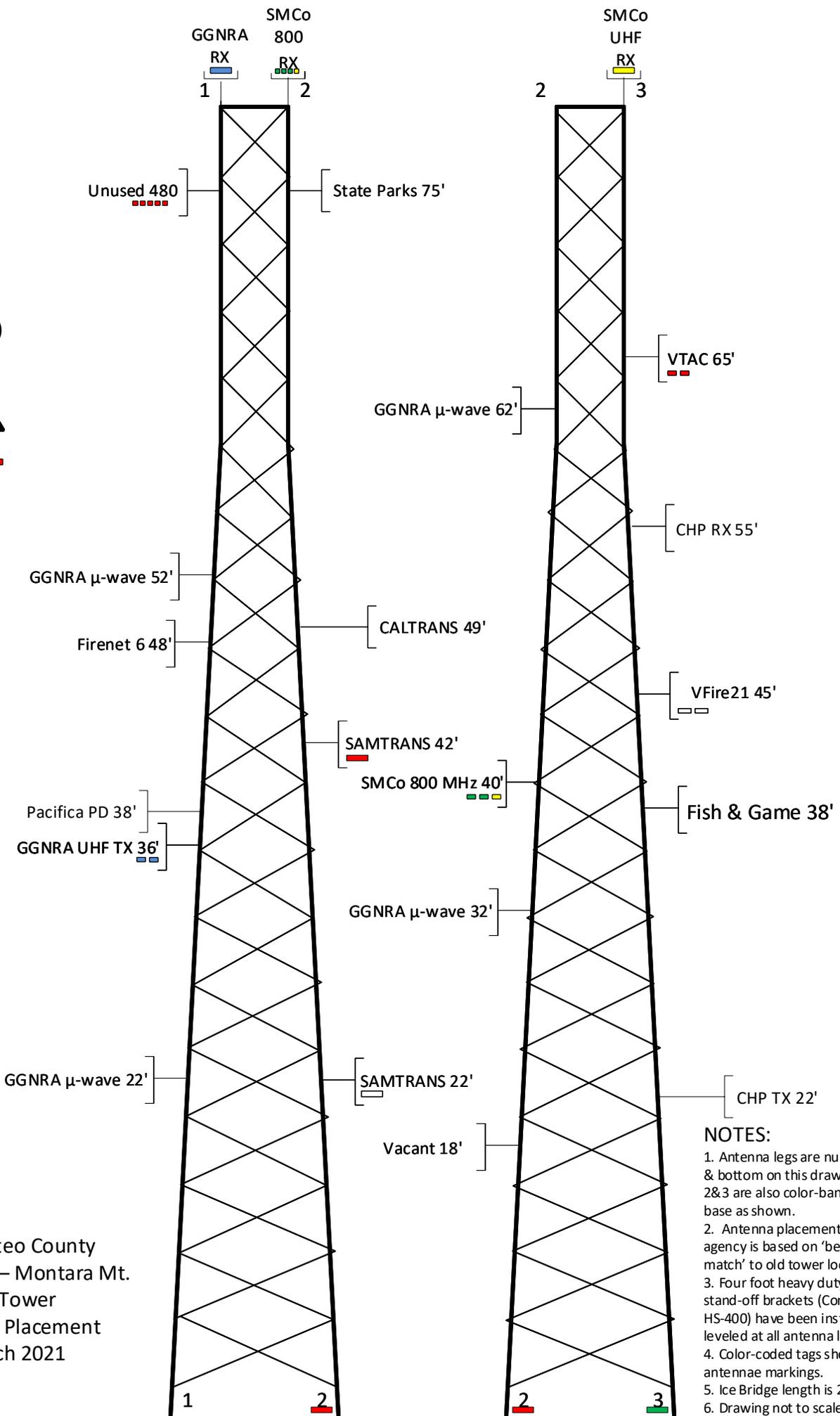
Pescadero

1m03092101





San Mateo County
North Peak – Montara Mt.
80' Tower
Antenna Placement
March 2021



NOTES:

1. Antenna legs are numbered top & bottom on this drawing - legs 2&3 are also color-banded near base as shown.
2. Antenna placement for each agency is based on 'best possible match' to old tower locations.
3. Four foot heavy duty galvanized stand-off brackets (CommScope HS-400) have been installed and leveled at all antenna locations.
4. Color-coded tags show installed antennae markings.
5. Ice Bridge length is 20 ft+/-
6. Drawing not to scale

EXHIBIT D

Confirmation of Commencement Date

Attached

EXHIBIT E

Environmental Compliance and Permitting Documentation

Attached



National Park Service
U.S. Department of the Interior

Golden Gate
National Recreation Area

Fort Mason, Bldg. 201
San Francisco, CA 94123

415 561-2841 phone
415 441-6538 fax

Memorandum

To: Project NEPA file
Through: Brian O'Neill, General Superintendent
From: Steve Ortega, Environmental Compliance Specialist
Subject: Catagorical Exclusion Approval for Replacement of Deficient Radio System (PEPC 12904)

Introduction: This memo, with attachments, documents and completes the environmental compliance requirements for Replacement of the Deficient GGNRA Radio System.

Compliance Determination: This project is consistent with the Golden Gate National Recreation Area General Management Plan, General Management Plan Amendment for the Presidio, and the National Telecommunications and Information Agency (NTIA) mandate for federal radio system sharing.

This project is a number of actions that have been determined to result in no measurable adverse environmental effects (see Attachment A - Environmental Screening Form/Analysis). It is therefore categorically excluded from further National Environmental Policy Act analysis under Categorical Exclusion D.O. 12, Section 3.4, A (8) *Replacement in kind of minor structures and facilities with little or no change in location, capacity, or appearance* and, 3.4, A (13) *Upgrading or adding new overhead utility facilities on existing poles, or on replacement poles that do not change existing pole line configurations.*

Additional supporting information for this determination can be found in the following attachments:

- Attachment A – Project Description/ Environmental Screening Analysis/ Environmental Screening Form
- Attachment B – Site Plan/Photo Simulations/Tower Specifications
- Attachment C – Supporting Letter from San Mateo OES
- Attachment D – Radio Frequency (RF) Emissions Calculations, Presidio Hill and Black Mountain
- Attachment E – Letter of Concurrence from the State Historic Preservation Officer
- Attachment F – Presidio Hill Radio Towers Summary
- Attachment G – Biological Survey, Black Mountain
- Attachment H – Geotechnical Reconnaissance and Recommendations
- Attachment I – Value Analysis Table

Decision: On the basis of the environmental impact information in the compliance file, with which I am familiar, I am categorically excluding the described project from further NEPA analysis. No exceptional circumstances or conditions in Section 3-6 of Director's Order 12 apply, and the action is fully described in Section 3.4


Brian O'Neill
General Superintendent

2-12-09
Date

Original: Environmental Compliance Office Project File
cc: Presidio Trust, Compliance Manager
San Mateo County, Deputy Director, Planning and Building Division
San Francisco Public Utility Commission, Natural Resource and Real Estate Services Divisions
Midpeninsula Regional Open Space District, Real Property Department
City of Palo Alto, Planning and Community Environment Department

EXPERIENCE YOUR AMERICA

The National Park Service cares for special places saved by the American people so that all may experience our heritage.



United States Department of the Interior

NATIONAL PARK SERVICE
Golden Gate National Recreation Area
Fort Mason, San Francisco, California 94123

IN REPLY REFER TO:

L30 (GOGA-SUPT)

APR 13 2009

Mr. Mark Delaplaine
Manager
Energy, Ocean Resources and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94114

Dear *Mark* Mr. Delaplaine:

In accordance with the Federal Coastal Zone Management Act of 1972 as amended, Section 307c (1), the National Park Service (NPS) has determined that the construction of a new radio communications tower on the north peak of Montara Mountain, part of an overall upgrade of Golden Gate National Recreation Area's (GGNRA) communications system, will not affect the coastal zone and therefore, does not require a consistency determination.

The proposal to replace the existing, inadequate public safety radio system at GGNRA with a new system, utilizing six communication sites around the Bay Area, is consistent with the Golden Gate National Recreation Area General Management Plan, General Management Plan Amendment for the Presidio, and the National Telecommunications and Information Agency (NTIA) mandate for federal radio system sharing. The NPS conducted an environmental review of this project, and has categorically excluded the described project from further NEPA analysis. No exceptional circumstances or conditions in Section 3-6 of Director's Order 12 apply, and the action is fully described in Section 3.4. The environmental review included consideration of the potential for impacts on the Coastal Zone.

One site of this project is within the Coastal Zone. The NPS proposes to construct an 80' tower in an existing communications site managed by San Mateo County on the north peak of Montara Mountain. This will replace the existing, 80 foot, forty year old San Mateo County tower; the county would then move all antennas to the new NPS tower. This is one of four tower sites where new towers will be built for this project; the other sites are Mt. Tamalpais in Marin County, Presidio Hill in San Francisco, and Black Mountain in Santa Clara County. All of these sites are pre-existing communications sites. Montara Mountain is the only tower site within the Coastal Zone; the other sites are not in, nor do they affect, the Coastal Zone.

Visual Resources

The site at the North Peak of Montara Mountain is subject to San Mateo's Local Coastal Program. As such, three sections of the Visual Resources Component are applicable to the proposed tower construction at Montara Mountain.

- Section 8.7 prohibits ridgeline development, unless there is no other developable building site on the parcel, and that any development on a ridgeline must be limited to 18 feet in height from the natural or finished grade.
- Section 8.18 requires that development be as unobtrusive as possible and not detract from the natural, open space or visual qualities of the area. The section further requires that the colors of exterior materials shall harmonize with the predominant earth and vegetative colors of the site, that materials and colors shall absorb light and minimize reflection and that exterior lighting shall be limited to the minimum necessary for safety.
- Section 8.20 requires that new structures must relate in size and scale to adjacent buildings and landforms.

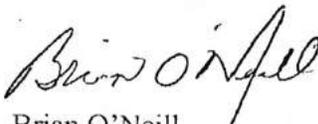
The North Peak radio site proposed for the NPS tower is a pre-existing communications site; San Mateo County received a permit to establish the site from the San Francisco Public Utilities Commission in 1963. There are currently two towers belonging to San Mateo County on the site; one 40' tall and one 80' tall. The proposed 80' NPS tower would replace the existing 80' San Mateo County tower. San Mateo County antennas would be moved to the new NPS tower, and San Mateo County would remove its 80' tower.

Natural Resources

The towers that would be constructed for this project are all less than 199' tall, within existing communications sites, not supported by guy wires and not lit. These design criteria are consistent with the U.S. Fish and Wildlife 2000 guidelines for communications tower siting, construction and operation in order to minimize the impacts of new towers on migratory birds.

The NPS has determined that the construction of a new tower at the North Peak of Montara Mountain would not affect the visual or natural resources of the Coastal Zone in San Mateo County. If you need additional information, or if you have any questions, please contact Shirwin Smith (415-561-4947) or Shirwin_Smith@nps.gov

Sincerely,



Brian O'Neill
General Superintendent

Enclosures

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-3200



May 4, 2009

Shirwin Smith
National Park Service
Golden Gate National Recreation Area
Fort Mason, Building 201
San Francisco, CA 94123

Re: **ND-019-09**, National Park Service/Golden Gate National Recreation Area
Antenna relocation, Montara Mountain, San Mateo County

Dear Ms. Smith:

The Commission staff has reviewed the above-referenced negative determination for the construction of a new radio communications tower on the north peak of Montara Mountain. The tower would be 80 ft. high, replacing a nearby existing 80 ft. high tower (which would be removed). The existing antennas would be relocated to the new tower. San Mateo County manages the existing communications site, and the County intends to relocate its antennas to the new tower. GGNRA expansions of its land management areas in recent years has necessitated the increased radio coverage.

The project site is already developed with an existing 40 ft. high tower. No grading or new road improvements would be needed. The visual impact of the new tower would be similar to that of the existing tower. The project would not affect sensitive habitat, water quality, or archaeological resources.

The Commission staff **agrees** with your conclusion that the proposed project will not adversely affect coastal resources. We therefore **concur** with your negative determination made pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations. (This letter is also intended to cover authorization for the County to relocate its antennas to the new tower.) Please contact Mark Delaplaine at (415) 904-5289 if you have any questions regarding this matter.

Sincerely,


(fpm)
PETER M. DOUGLAS
Executive Director

cc: North Central Coast District Office
San Mateo County ✓

GOLDEN GATE NATIONAL RECREATION AREA

Project to Replace Deficient Radio System

Materials for public hearing

- Location maps
- Site plan
- Floor plan
- Photo simulations

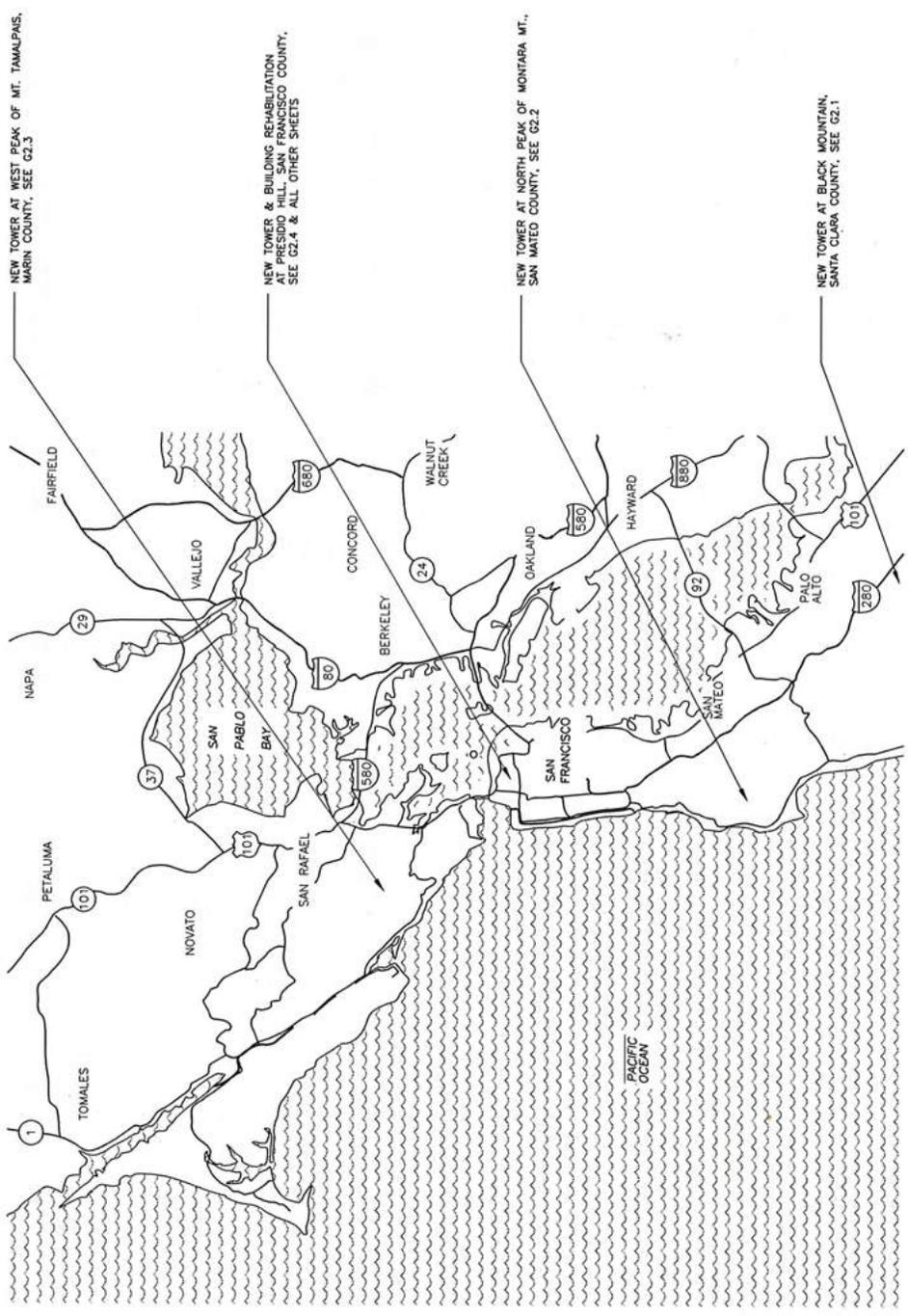
Montara Mountain Radio Site

San Mateo County, California

National Park Service
U. S. Department of the Interior

Golden Gate National Recreation Area





1 LOCATION MAP
G2.0
NO SCALE



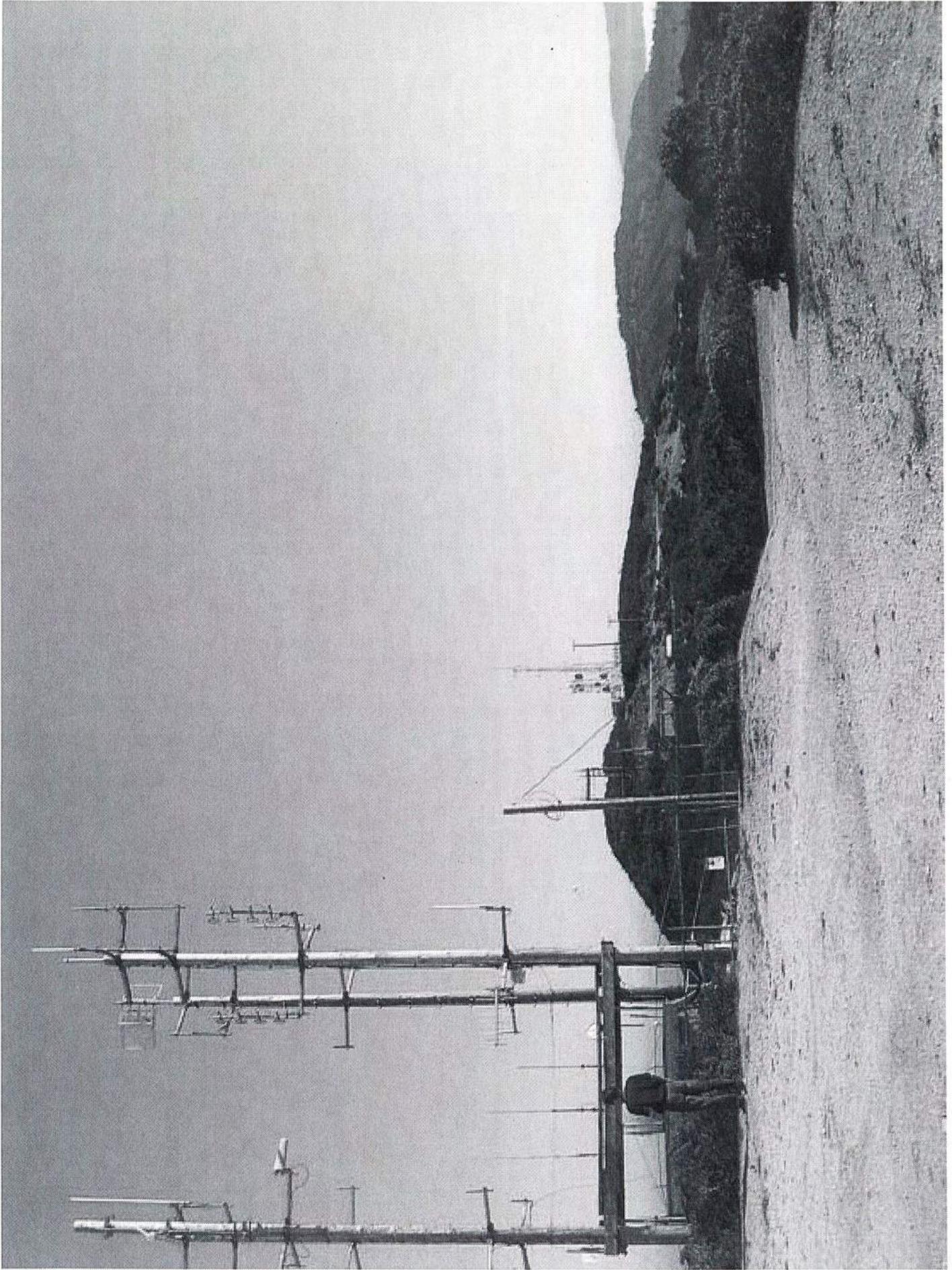
DESIGNED BY: D. CADOW (6089)	DATE:
TECH. REVIEW: J. MAHONEY	DATE:
G2.0	
SUB SHEET NO.	
TITLE OF SHEET LOCATION MAP	
DRAWING NO. 641	
PROJECT NO. 41138A	
SHEET NO. 65433	
SHEET OF	

GOLDEN GATE NATIONAL RECREATION AREA

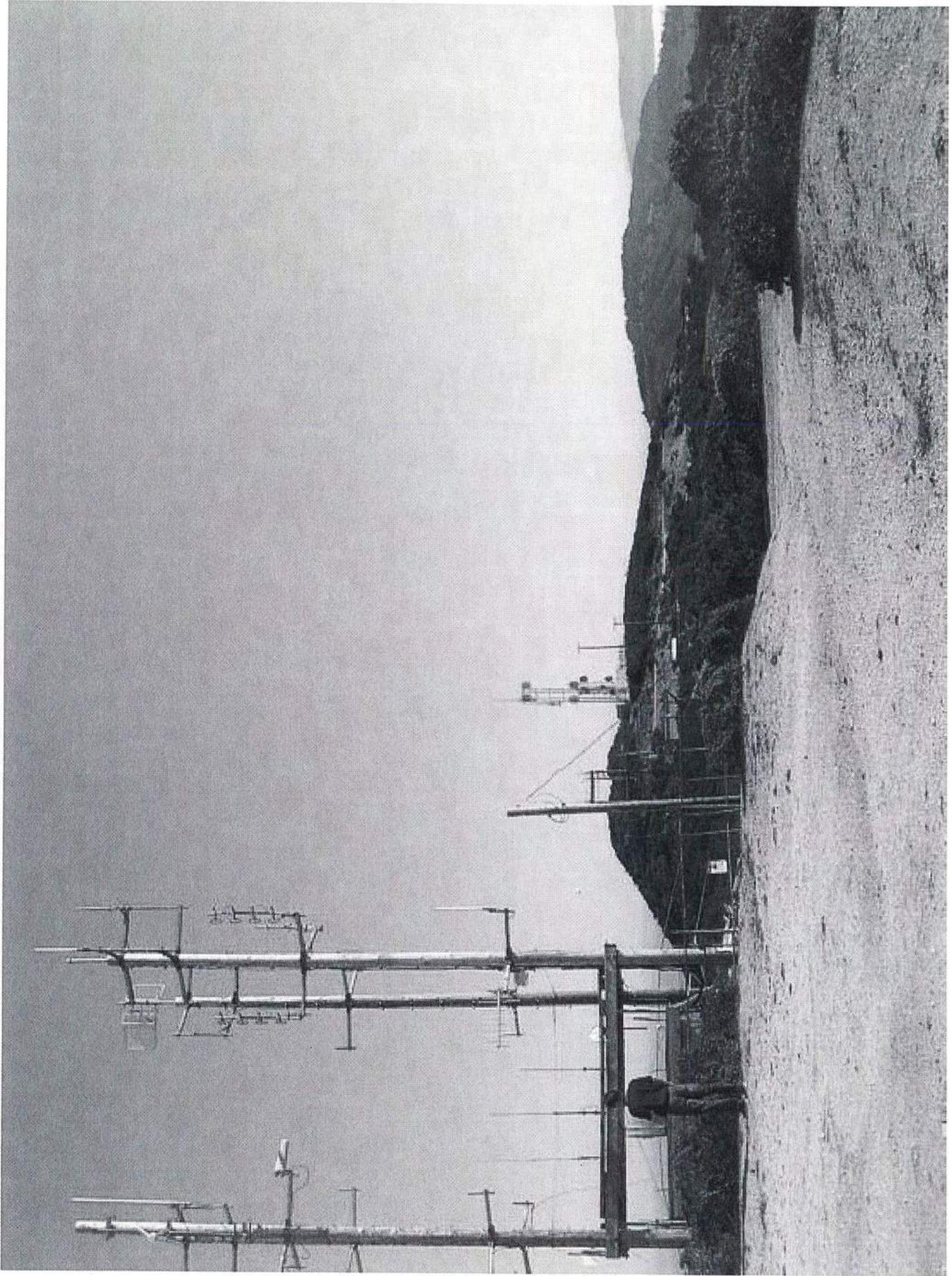
MONTARA MOUNTAIN TOWER SIMULATION

From Northwest of Site

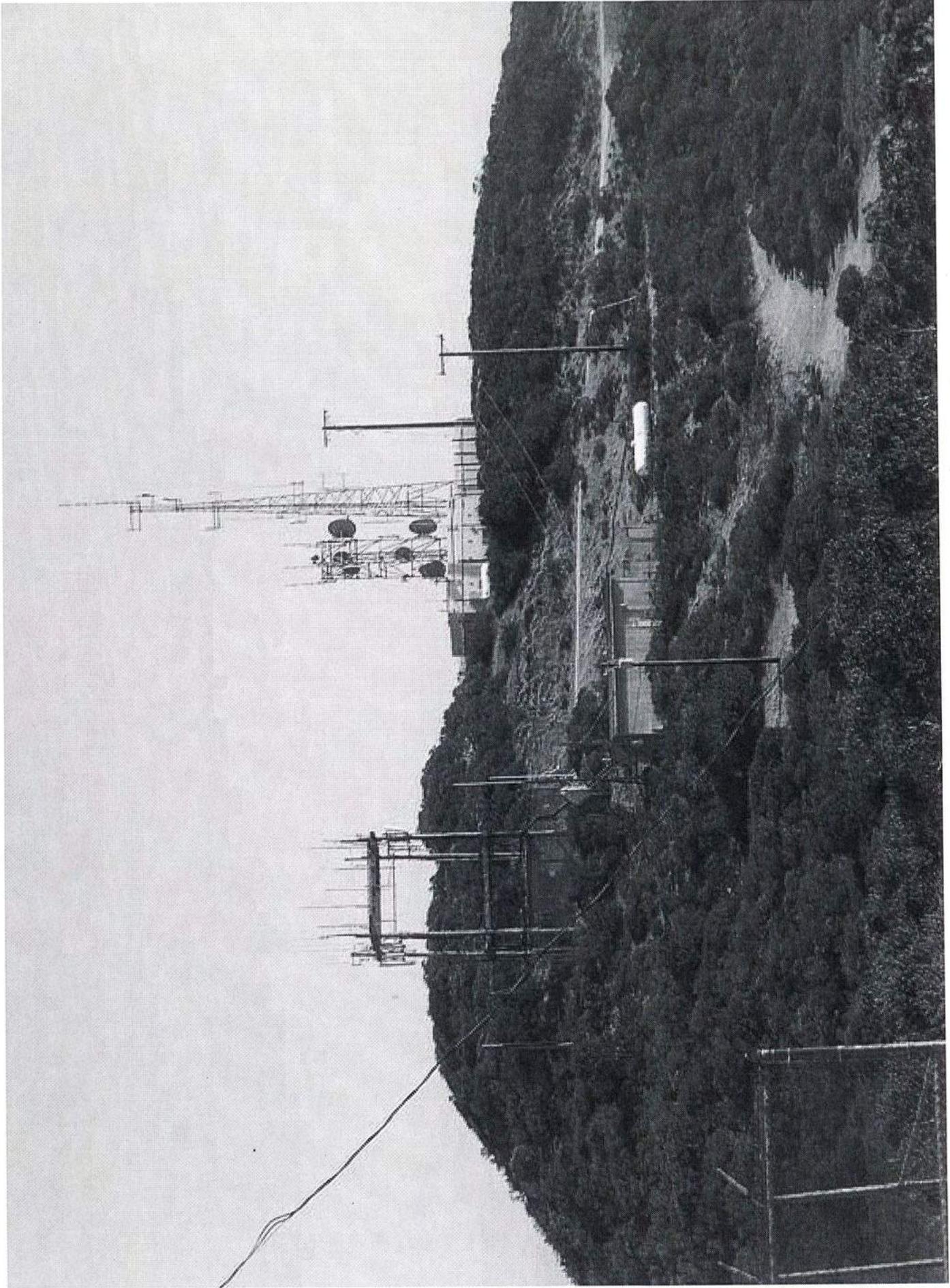
January 27, 2009



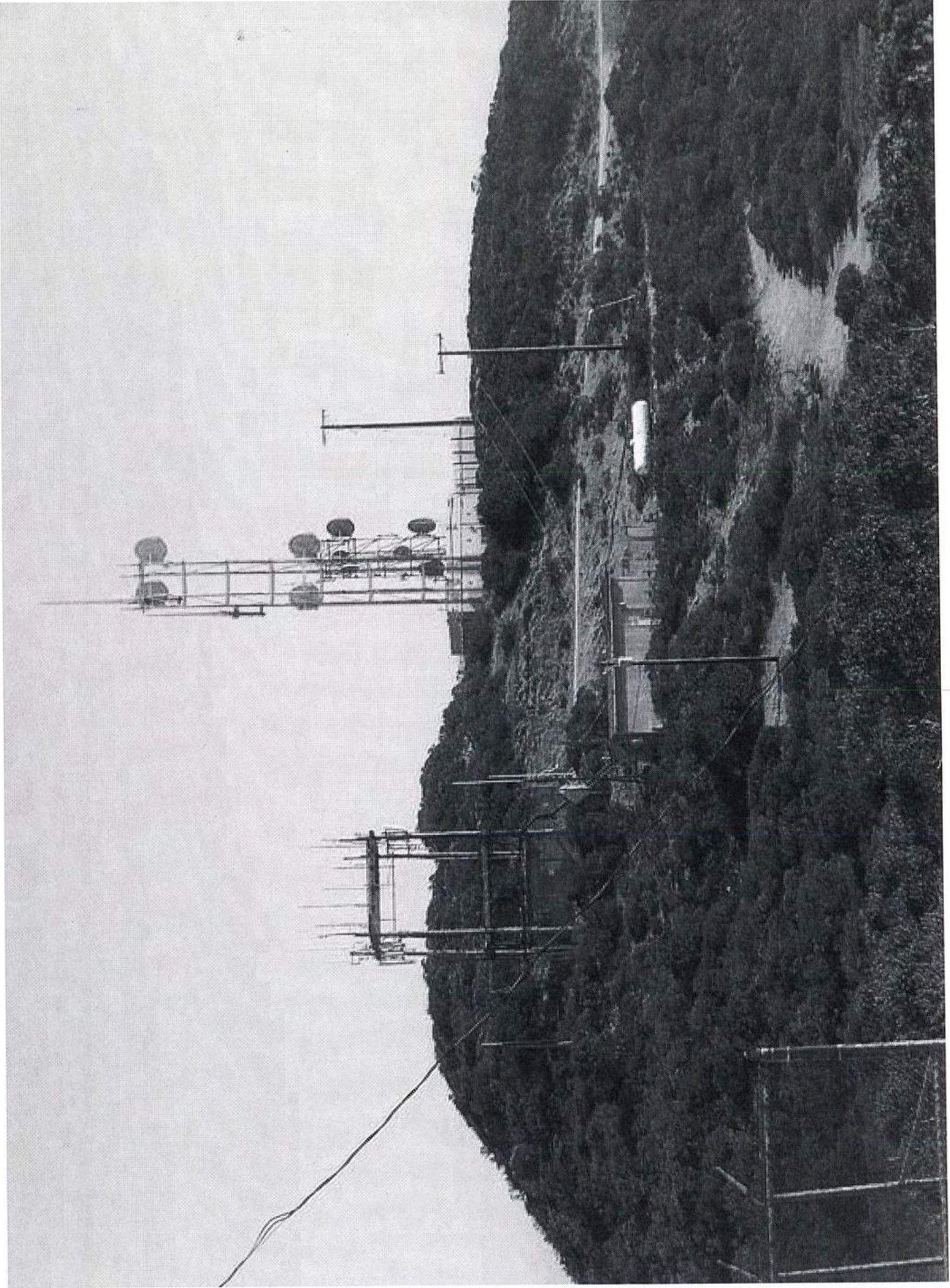
Northwest of Site - Existing - Normal View



Northwest of Site - New Tower - Normal View



Northwest of Site - Existing - Zoom View



Northwest of Site - New Tower - Zoom View

EXHIBIT F

Rules and Regulations

1. City reserves the right to refuse access to any persons City in good faith judges to be a threat to the safety, reputation, or property of the Property and/or its occupants.
2. Tenant shall not make, suffer, or permit litter on the Property except in appropriate receptacles for that purpose.
3. For security purposes, Tenant shall not place its own locks or bolts on any City gate or door or alter any SFPUC gate, fence, or door. Tenant may obtain a gate key from the SFPUC Watershed Manager's Office. The SFPUC will charge a minimum key replacement fee of Two Hundred Fifty Dollars (\$250). The SFPUC reserves the right to increase the key replacement fee from time to time.
4. Tenant shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any lost keys.
5. Significant freight and equipment shall be moved into or out of the Property only with City's knowledge and consent, and subject to such reasonable limitations, techniques and timing, as City may designate. Tenant shall be responsible for any damage to the Property arising from any such activity.
6. Tenant must avoid fire hazards and take prudent fire prevention measures, including the following:
 - (a) All Tenant-operated vehicles entering City property must carry a fully charged and operable ABC-rated fire extinguisher.
 - (b) Tenant must maintain a fully charged and operable ABC-rated fire extinguisher on the Premises at all times.
 - (c) Except for Premises located on a City building rooftop:
 - (i) City may require Tenant to maintain a water buffalo or other large water storage (i.e., 2500 gallons) during significant Tenant operations on the Property.
 - (ii) Tenant must maintain the Defensible Space, as defined in **Section 5.2(j)** [Vegetation Management; Defensible Space] of the Lease, at all times, in accordance with **Section 5.2(j)**.
 - (d) Tenant must construct all tenant fences of fire-resistant materials.
 - (e) Tenant shall comply with all safety, fire protection, and evacuation regulations established by City or any applicable governmental agency.

7. Tenant shall be responsible for seeing that all its subtenants, employees, agents, and invitees comply with these rules and regulations.
8. Tenant assumes all risks from theft or vandalism to the Property and agrees to keep the Property locked as may be required.
9. At any time, City may waive any one of these rules or regulations, and/or as to any particular tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or its subsequent application to such tenant.
10. At any time, City reserves the right to modify these rules or make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Property and its occupants. City shall provide Tenant with copies of any new and/or modified rules or regulations prior to their effective date. Tenant shall abide by these and such other rules and regulations.

EXHIBIT G-1

Form of Co-Location Sublicense

MONTARA MOUNTAIN – NORTH PEAK
COMMUNICATIONS SITE LICENSE

This LICENSE (the “**License**”) is dated for reference purposes as of _____, 2022, and is by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California (“**County**” or “**Licensor**”), and _____, a [_____] (“**Licensee**”). County and Licensee sometimes collectively are referred to in this License as the “**Parties**” or singularly as a “**Party**.”

RECITALS

A. The City and County of San Francisco, a municipal corporation (“**City**” or “**Landlord**”), acting by and through its Public Utilities Commission (“**SFPUC**”), owns a portion of Assessor’s Parcel No. 093-030-050 located in City’s Peninsula Watershed and more commonly known as Montara Mountain – North Peak, in unincorporated San Mateo County, California, including all appurtenances and improvements erected or placed on such parcel (“**Property**”). The Property is described in and/or shown on Exhibit A to the Lease (defined in Recital B below) and is under the jurisdiction of City’s SFPUC. The Lease is attached as Exhibit 1 to this License.

B. City, as landlord, and County, as tenant, entered into that certain Communications Site Lease (SFPUC L_____), dated as of _____ (as amended or modified, the “**Lease**”), for the lease of an approximately 40,000 square foot portion of the Property (also known as SFPUC Parcel No. 31) (“**Premises**”). The Premises is more particularly described on Exhibit B to the Lease. Exhibit B is incorporated into this License by this reference.

C. County uses the Premises for the installation, maintenance, repair, replacement, and operation of a communications site for the transmission and reception of radio communication signals.

D. Licensee engages in communications operations and desires to use and license a portion of the Premises from County for communications activities consistent with the Permitted Use described in the Lease.

E. County and Licensee now desire to enter into this License on the terms and conditions set forth more particularly below.

F. Capitalized terms used but not defined in this License shall have the respective meanings given in the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Licensee agree as follows:

AGREEMENT

1. License and Term

1.1. License and Use. County hereby confers upon Licensee a revocable, personal, non-exclusive privilege to enter upon the Property and use a portion of the Premises consisting of approximately _____ square feet as shown on the attached **Exhibit 2** (the "**License Area**") for the limited purpose and subject to the terms, conditions, and restrictions set forth below. This License gives Licensee a license only and, notwithstanding anything to the contrary in this License, this License does not constitute a grant of any ownership, leasehold, easement, or other property interest or estate whatsoever in the License Area or the Premises, or any portion of the Property.

1.2. Term. The term of this License ("**Term**") shall commence on _____, 2022 ("**Commencement Date**"), and shall automatically end on the earliest to occur of the following: **(i)** ninety (90) days after written notice to terminate by either Party to the other Party pursuant to Section 9 of this License; **(ii)** eight (8) years after the Commencement Date ("**Expiration Date**"); or **(iii)** the expiration or termination of the Lease.

1.3. No Right of Renewal. This License shall automatically terminate without any residual rights of renewal at the end of the Term, or sooner as set forth in Section 9 below and Section 1.2 above.

1.4. Permitted Use. Licensee shall use the License Area only for the installation, construction, removal, replacement, maintenance, and operation of a wireless communication site utilizing the existing and the proposed equipment as shown on the attached **Exhibit 5** ("**Equipment**").

Licensee acknowledges that, subject to Section 3.5 (Equipment Conflict) but otherwise without affecting the rights and obligations of the Parties under this License, County may, in its sole discretion, grant to other operators the right to install and use similar facilities in the Premises.

1.5. Limits on Use of License Area and Other City Property.

(a) Limited to Use of License Area. Licensee acknowledges that the privilege given under this License is limited strictly to the License Area and the Premises and grants Licensee no rights to cross over or otherwise use any adjoining or other lands of City except as expressly provided in this License.

(b) County Use and SFPUC Access. Licensee's rights and activities under this License are subordinate at all times to the SFPUC's existing and future use of the License Area for utility facilities, or any other purpose.

(c) Entry by Licensee.

(i) Licensee shall give ten (10) days prior written notice to County prior to the commencement of Licensee's installation and construction of its Permitted Improvements (defined in Section 3.3 (Permitted Improvements and Equipment) below). Thereafter, Licensee has the right to enter the License Area at any time without prior notice being given to County for the installation, construction, maintenance, operation, modification, or addition of Licensee's existing communications facilities.

(ii) Licensee agrees to coordinate all entry to the License Area through the County's Radio Services Division in the County's Information Services Department at (650) 363-4442 during normal business hours, or after-hours through the County's Public Safety Dispatch at (650) 363-4915.

(d) Entry By County.

(i) Non-Emergency Entry. County reserves the right to enter the License Area at any and all reasonable times to inspect the same, supply any services to be provided by County to Licensee under this License, to show the License Area to any prospective purchasers or licensees, to post notices of non-responsibility, and to alter, improve, repair, or restore the License Area as County may deem necessary or desirable, without abatement of permit fee, so long as County does not unreasonably interfere with Licensee's operations. For each of the above purposes, County shall at all times have and retain a key with which to unlock all of the gates and/or doors in, upon, and about the License Area, excluding Licensee's vaults, cabinets, safes, and files. County's right to enter the License Area is subject to: **(1)** County having given not less than twenty-four (24) hours prior notice to Licensee, and **(2)** an employee or agent of Licensee being present during each and any entry to the License Area.

(ii) Emergency Entry. Notwithstanding the provisions of Section 1.5(d)(i) above, in the event of an emergency, County shall have the right to use any and all means that County deems proper to gain entry to the License Area without liability to County except for any failure to exercise due care for Licensee's property. Any entry to the License Area obtained by County by any such means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the License Area, or an eviction of Licensee from the License Area or any portion thereof.

2. Fees and Expenses

2.1. No License Fee. County shall not charge any rent, permit fee, license fee, or use fee to Licensee.

2.2. Reimbursement For County's Operational Expenses.

(a) **Reimbursement Payment.** County may charge Licensee for the actual pro rata cost of the utilities used by Licensee. For the purposes of the foregoing sentence, the "actual cost" of such utilities shall be the actual operational, maintenance, and access expenses required to operate the County's communications facility on the Premises and that benefit Licensee; and the actual cost of any improvements approved by City and installed by County for the benefit of Licensee on the Premises. All payments for such costs ("**Reimbursement Payment**") shall be delivered to County at the following address, or such other address as County shall designate in writing to Licensee:

Information Services Department
Accounts Receivable (Ref. No. ____)
455 County Center, 3rd Floor
Redwood City, CA 94063

(b) **Prorated Reimbursement Payment.** The Reimbursement Payment and all other fees and charges for any period during the Term of this License which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of that calendar month. The Reimbursement Payment and all sums payable under this License must be paid in lawful money of the United States of America.

2.3. Payment Terms and Late Fees.

(a) **Payment Terms.** Licensee shall pay the Reimbursement Payment as provided in Section 2.2 above.

(b) **Late Fees.** If any sum due from Licensee shall not be received by County within thirty (30) days after such amount shall be due, County may charge a late charge of Fifty Dollars (\$50) and interest at a rate of five percent (5%) accruing monthly on the balance from the time incurred until fully paid. Acceptance of such late charge by County neither constitutes a waiver of Licensee's default with respect to such overdue amount, nor prevents County from exercising any of the other rights and remedies available to County.

3. Operation and Maintenance of License Area

3.1. County Responsibilities. County shall supply both commercial power and emergency power for operation of the Equipment on the same basis as County uses for County's equipment. In lieu of rent, Licensee shall reimburse County for Licensee's pro-rata share of power and utilities pursuant to Section 2.2, (Reimbursement for Operational Expenses).

3.2. Licensee's Responsibilities.

(a) **Maintenance.** Licensee shall maintain the License Area in good conditions and repair, and shall take care to prevent waste or damage to the License Area or the Premises. Licensee shall care for the License Area by properly overseeing all operations and by maintaining the License Area and surrounding areas in good condition, order and repair, free from unsightly accumulations of waste or odors, trash, debris, weeds, unused equipment, and fire hazards. Licensee shall comply with any written policies County or City may adopt and deliver to Licensee regarding the use of the Property and the Premises, and shall bear the costs of repairing any damage caused by Licensee's failure to follow such policies.

(b) **Hazardous Materials.** Licensee shall comply with all Lease provisions, including, without limitation, the provisions contained in Section 23 of the Lease, and all policies as County and City may establish in their respective discretion concerning the introduction, use, storage, generation, or disposal of Hazardous Materials on the License Area or the Premises.

3.3. Permitted Improvements and Equipment. Licensee shall have the right to make and maintain improvements to the License Area ("**Permitted Improvements**") in accordance with the Site Plan/Construction Drawings attached as Exhibit 4 and install the Equipment described in Exhibit 5.

(a) Licensee shall obtain all necessary governmental approvals and permits prior to commencing any improvements or modifications, and shall provide County with ten (10) days written notice prior to the start of construction. All contractors and subcontractors of Licensee for work performed at the License Area shall be duly licensed by the State of California, and all work shall be performed in a good, safe, and workmanlike manner.

(b) Prior to the installation of the Equipment, Licensee must obtain any and all licenses required in order to operate the License Area for the intended use. Copies of such license(s) shall be provided by Licensee to County upon receipt by Licensee.

(c) County enters this License solely in its proprietary capacity as owner of the Premises and not in any capacity as a zoning, land-use, or building/planning authority. Nothing in this License shall be construed as approval or issuance of a use permit, building permit, or any other approval as may be required by and issued by the San Mateo County Department of Planning and Building and/or any other applicable government agency.

3.4. Alterations and Additions.

(a) **Definitions.** The term "**Improvements**" means any buildings, structures, fixtures and other improvements, including signs, roads, trails, grading, driveways, parking areas, utility infrastructure, plantings and hardscape. The term "**Alterations**" includes any additional Improvements, Equipment or facilities.

(b) Prior to any exchange or replacement of Equipment, Licensee shall provide thirty (30) days written notice to County. Such notice shall include plans, specifications, and information sufficient to verify the exchange or replacement qualifies as similar equipment of substantially the same (or smaller) size and weight. In the event County consents to the making of any Alterations, or Improvements to the License Area and/or the Premises by Licensee, the same shall be made by Licensee at Licensee's sole expense.

(c) **Tier 1 Work.** For Alterations to Licensee's equipment within County's equipment shed, including like-for-like modifications or the addition of equipment within County's equipment shed ("**Tier 1 Work**"), Licensee shall provide City ten (10) days prior written notice. City approval shall not be required for Tier 1 Work. Licensee shall provide thirty (30) days written notice to County. Such notice shall include plans, specifications, and information sufficient to verify the exchange or replacement qualifies as similar equipment of substantially the same (or smaller) size and weight. In the event County consents to the making of any alterations, additions, or improvements to the License Area and/or the Premises by Licensee, the same shall be made by Licensee at Licensee's sole expense.

(d) **Tier 2 Work.** If Licensee engages in any work or alterations to Licensee's equipment on a tower that constitutes like-for-like exchanges or modifications to Licensee's tower equipment, or if Licensee replaces existing equipment outdoors within the fence enclosure ("**Tier 2 Work**"), Licensee shall provide City and County with sixty (60) days' prior written notice and a request for consent. City and County shall respond to Licensee's request in writing within ten (10) business days. Licensee shall comply with the requirements of **Section 7.1(e)**. City and County may not unreasonably withhold their approval.

(e) **Tier 3 Work.**

1. Any Improvements, Alterations or work not considered Tier 1 or Tier 2 Work, including the addition of antennas or equipment on a tower or the addition of equipment or Improvements outdoors within the fence enclosure, is "**Tier 3 Work,**" and requires City's and County's prior written consent and shall be conducted in accordance with City-approved and County approved plans and specifications ("**Approved Plans**"). City's approval may be withheld at City's sole discretion or may be conditioned on, among other things, an increase in Base Rent for proposed additional Tenant's Facilities (as defined in the Lease). County's approval may be withheld at County's sole discretion.

2. **Project Review Process for Tier 3 Work; Required Studies and Analyses.** Licensee shall submit a project review application to City and County at least one hundred twenty (120) days before the expected commencement of any proposed Tier 3 Work and shall undergo the SFPUC's and the County's project review processes ("**Project Review**"). City and County shall respond to Licensee's request in writing within ten (10) business days, detailing Licensee's next steps for Project Review. After Licensee successfully completes the Project Review process for Tier 3 Work one or more times, the SFPUC's Watershed Manager or the Watershed Manager's designee may waive the Project

Review meeting requirement (but not the Project Review application requirement) in subsequent similar cases. In conducting any construction, maintenance, repair, expansion or replacement, Licensee shall comply with all conditions and measures imposed by the SFPUC and the County. City and County reserves the right to require a structural review analysis, including engineering specifications and calculations for roof (if applicable) and structure weight and wind loading, stamped and signed by a California licensed professional engineer for Tier 3 Work. City and County reserves the right to require a viewshed study to be conducted at Licensee's expense, to ensure that the proposed Tier 3 Work is sited and designed to avoid or minimize potential impairment of the land's scenic values.

(f) **Consent.** Where appropriate in City's judgment, City will require that Tenant minimize the visual impact of proposed Tier 2 or Tier 3 Work through design, screening and siting. For example, City may require that the Tier 2 or Tier 3 Work blends with and/or complements the color, design and/or character of the surrounding context, whether natural backdrop, building or existing facility. In no event shall City's approval of Licensee's plans and specifications be deemed to constitute a representation or warranty by City concerning the suitability of the proposed facilities and improvements for Licensee's purposes or that the work called for in the plans and specifications complies with applicable building codes or other applicable laws or industry standards nor shall such approval release Licensee from Licensee's obligation to supply plans and specifications that conform to applicable codes, other laws and industry standards.

3.5. Equipment Conflict. Licensee agrees to use equipment of a type and frequency that will not cause interference with communications equipment currently under the operation and control of County or any other communications provider under an existing permit or agreement with County as of the effective date of this License. If the County's communication equipment involves public safety communications and if the Equipment causes any interference to public safety communications, the Equipment will be immediately taken out of service without exception by Licensee. If the Equipment interferes with the County's public safety communications, the determination to take out of service the Equipment shall be at the County's sole discretion, except as provided below:

(a) Licensee will not cause radio frequency and/or electrical interference to the existing equipment of County or to any other occupant, permittee, or any other user ("**Existing User**") of the Premises whose equipment was located at the Premises upon the earlier of: (i) the effective date of this License; or (ii) the date Licensee installs its Equipment, provided that the equipment used by any Existing User or County is operating within the technical parameters specified by its manufacturers and as defined by the Federal Communications Commission. Upon written notice from County to Licensee of such interference, Licensee will take all reasonable steps to correct such interference in a timely manner. If such interference cannot be corrected within five (5) business days from receipt of County's notice, Licensee will cease using its Equipment, except for testing, until such time as Licensee corrects the

interference to County's satisfaction. In the event Licensee cannot correct the interference, Licensee will have the option to terminate this License without further liability hereunder, upon (30) days written notice to County and Licensee shall remove its Equipment in a timely manner and at Licensee's sole cost and expense.

(b) After the date of this License, County will not grant a permit to any other party for use of the Premises or modify any existing agreement for use of the Premises, or change its use of the Premises or permit an Existing User of the Premises to make any changes to its use of the Premises, if such use would in any way materially adversely affect or interfere with the operation of the Equipment. If another occupant, tenant, permittee or other user, or an Existing User of the Premises makes such a change and causes uncorrected radio frequency and/or electrical interference with the Equipment, County will require the party causing such interference to either correct such interference or stop using the equipment that is causing the interference. If after thirty (30) days such interference has not been completely corrected to Licensee's reasonable satisfaction, Licensee will have the option to terminate this License.

(c) Licensee shall not, subsequent to its initial installation of the Equipment, make any modification to the Equipment or the use thereof during the Term that will cause radio frequency and/or electrical interference to the equipment of County then in operation, nor to that of any other occupant, tenant, permittee, or other user of the Premises. Any such user in operation at the time of such modification or change in use shall be considered an Existing User as set forth in Section 3.5(a) above, and the provisions of that Section shall apply.

3.6. Personal Property. Licensee may not store personal property on the License Area or the Premises except personal property used for normal communications operations. Licensee shall be solely responsible for the security of any personal property on the License Area or the Premises. Neither City nor County shall be liable for any claims arising from the theft, loss, or damage of personal property left or stored on the License Area or the Premises. Upon termination of this License, Licensee shall remove Licensee's personal property. If Licensee leaves any personal property in violation of this Section, County shall have the rights described in Section 9.3 (Breach) below.

3.7. Liens. Licensee shall not incur, create, or assume any lien on any portion of the License Area or the Premises (including any mechanic's or material supplier's liens). Licensee shall keep the License Area and Premises free and clear of any and all liens arising out of any work performed or materials furnished to the License Area or the Premises, and out of any other obligations Licensee may incur.

4. Compliance

4.1. Compliance With Lease

(a) **Subordinate to Lease.** This License is and shall remain in every manner subject and subordinate to the terms and provisions of the Lease.

Any expiration or termination of the Lease shall cause an automatic termination of this License without the need for any further action on the part of County or City. Licensee shall not do, or omit to do, any act that could cause a breach or default under the terms of the Lease. Licensee shall comply with the covenants regarding use of the Premises set forth in Section 7.2 of the Lease, and with City's special provisions contained in Section 24 of the Lease, including without limitation, Nondiscrimination in City Contracts (Section 24.22), Health Benefits for Covered Employees (Section 24.23), Notification of Limitations on Contributions (Section 24.24), Conflicts of Interest (Section 24.27), Tropical Hardwood and Virgin Redwood Ban (Section 24.29), Tobacco Product Advertising Prohibition (Section 24.30), Supervision of Minors (Section 24.32), Food Service Waste Reduction (Section 24.26), and Preservative-Treated Wood Containing Arsenic (Section 24.38).

(b) City Not Licensee's Landlord; No Responsibility or Liability. Notwithstanding any other provisions of this License, Licensee acknowledges and agrees that City is not Licensee's landlord, and City shall have no responsibility or liability for any acts or omissions of County with respect to this License, the License Area, or the Premises. City would not be willing to consent to this License without the above agreement and the releases and waivers contained in this License. Licensee acknowledges that it has received a copy of the Lease.

4.2. Compliance With Laws. Licensee shall promptly, and at its sole cost and expense, comply with all present and future laws, orders, and regulations of federal, state, county, regional, and municipal authorities (collectively, "**Laws**") applicable to Licensee's use and operation of the License Area or the Premises, including all environmental, labor, and employment and occupational safety laws.

4.3. Inspection. County may enter the License Area at all reasonable times to inspect the License Area, and for the purpose of taking any other actions County believes are appropriate to protect County's interests in the License Area. The presence of County's or City's representatives on or near the License Area shall not limit or affect in any way Licensee's obligations under this License. This Section does not and should not impose any duty on County or City to inspect the License Area, report to Licensee the results of any inspection, or assume any liability of any kind arising from inspecting or not inspecting the License Area.

4.4. Taxes. County shall pay all real property taxes, if any, levied against the Premises. Licensee shall have sole responsibility for all taxes and payments required by any federal, state, or local tax authority in connection with Licensee's improvements and operations and the License Area. Licensee is solely responsible for paying all personal property taxes or assessments levied on Licensee's personal property on the License Area and all taxes that result from income and profits from Licensee's operations on the License Area. Licensee recognizes and understands in executing this License that its interest in the License Area created in this License may be subject to a "Possessory Interest Tax" that the County Assessor may impose on such interest, and any such tax would be the liability of and be paid solely by Licensee. Licensee agrees to pay promptly

when due, any Possessory Interest Tax imposed on its interest in the License Area and/or Premises.

5. Insurance

(a) At all times during the Term, Licensee shall pay for and keep in effect Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage. Licensee's policy shall: **(a)** name as additional insureds County and the City and County of San Francisco and its officers, agents and employees, and **(b)** state that such policy is primary insurance that applies separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limit of liability. Such policy shall provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose in whole or in part during the policy period.

(b) Licensee shall deliver to County **(a)** on or before the Commencement Date, a certificate of insurance and additional-insured policy endorsements in a form satisfactory to County, evidencing the coverages required by this License, and **(b)** promptly after County's request, a complete copy of the policy. Licensee shall provide County with certificates or policies thereafter at least ten (10) days before the expiration dates of expiring policies.

(c) If Licensee is a public agency, County acknowledges and agrees that Licensee may be permissively self-insured as authorized by the State of California. County shall accept Licensee's self-insured status as satisfying all insurance requirements hereof provided that Licensee attests in writing that Licensee is self-insured (and/or covered by supplemental excess liability coverage) for any general, automobile and/or professional liability losses up to \$1,000,000 per occurrence, and for statutory limits for workers' compensation insurance.

5.1. County's Self Insurance. Licensee acknowledges that County self-insures against casualty, property damage and public liability risks and agrees that County may at its sole election, but shall not be required under this License to, carry any third-party insurance with respect to the License Area or the Premises.

5.2. Waiver of Subrogation. Notwithstanding anything to the contrary contained in this License, County, in the event the County does not self-insure, and Licensee (each a "**Waiving Party**") each hereby waives any right of recovery against the other Party for any loss or damage sustained by such other Party with respect to the Premises or the License Area or any portion thereof, or the contents of the same or any operation in this License, whether or not such loss is caused by the fault or negligence of such other Party, to the extent **(i)** such loss or damage is actually recovered from valid and collectible insurance covering the Waiving Party, and **(ii)** the Waiving Party's insurance carrier agrees to its written waiver of right to recover such loss or damage.

6. As Is Nature of License Area

6.1. As-Is Condition.

(a) **As-Is.** Licensee acknowledges and agrees that the License Area is being licensed in, and the License Area is in, its "AS IS WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws.

(b) **No Representations.** Licensee acknowledges that neither County, nor City, nor any of their respective Agents has made any representations or warranties, express or implied, concerning any aspect of the Premises or the License Area, and that any such representation or warranty is hereby disclaimed. County makes no representations or promises as to the productivity or fitness of the Premises or the License Area for Licensee's operations on the License Area or the Premises. Licensee acknowledges that it has made its own independent business evaluation in deciding to enter into this License.

6.2. No Duty to Repair or Maintain License Area. County and City shall have no duty whatsoever for any repair or maintenance of the License Area.

6.3. No Assignment. This License is personal to Licensee and shall not be assigned, conveyed, or otherwise transferred by Licensee under any circumstances. Any attempt to assign, convey, or otherwise transfer this License shall be null and void and cause the immediate termination and revocation of this License.

7. Waiver of Claims

7.1. Waiver of Claims. Licensee covenants and agrees that neither County nor City shall be responsible for or liable to Licensee, to the fullest extent allowed by Law, and Licensee hereby waives all claims and rights against County, City, and their respective employees, agents, and contractors and releases such parties from any and all Losses (defined in Section 8.1 (Indemnification) below), including, but not limited to, (i) incidental and consequential damages relating to any injury, accident or death of any person, or loss or damage to any property, in or about the License Area, the Premises, or any other City property, from any cause whatsoever, known or unknown; (ii) flood, fire, or explosion; (iii) theft or other criminal or tortious act of third parties including other licensees; (iv) interruption of any public utility or service; (v) leaking, issuing, or flowing into any part of the License Area or the Premises, by natural occurrence or otherwise, of any substance; or (vi) the expiration or termination of the Lease. In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her,

would have materially affected his or her settlement with the debtor or released party.

Licensee acknowledges that the releases contained in this License include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee realizes and acknowledges that it has agreed upon this License in light of this realization and, being fully aware of this situation, nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained in this License shall survive any termination of this License.

7.2. No Relocation Assistance. Licensee acknowledges that it shall not be a displaced person at the time this License is terminated or expires by its own terms, and Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, under any present or future Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.). Without limiting Licensee's obligations under Section 8, Licensee shall Indemnify (as defined in Section 8) City and the other Indemnified Parties (as defined in Section 8) for any and all Losses arising out of any relocation assistance or benefits payable to Licensee.

8. Indemnification

8.1. Indemnification. Licensee, on behalf of itself and its successors and assigns, shall indemnify, protect, defend, and hold harmless forever (the "**Indemnity**") County and City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, including, without limitation, City's Public Utilities Commission, and all of its and their respective directors, commissioners, employees, agents, and contractors, and their respective heirs, legal representatives, volunteers, successors and assigns, and each of them (the "**Indemnified Parties**") from and against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits, judgments, and awards ("**Losses**") incurred in connection with or arising directly or indirectly, in whole or in part, out of this License or any breach by Licensee of this License, or the entry upon, or use or occupancy of the License Area, the Premises, or any other City property by Licensee or its officers, directors, employees, agents, contractors, suppliers, customers, invitees, or guests, including, without limitation, the introduction, use, storage, generation, or disposal of Hazardous Materials, by Licensee in or on the License Area or the Premises, except to the extent resulting from the gross negligence or willful misconduct of the party seeking to be indemnified. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs, and the costs of investigating any Loss. For clarity, it is understood that Licensee's indemnification obligation to County and its related Indemnified Parties includes

any claims by City against County arising from a breach of the Lease or this License by Licensee or otherwise arising from Licensee's use and occupancy of the License Area and the Premises.

8.2. Acknowledgement. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend County, City, and the other Indemnified Parties from any claim that actually or potentially falls within this indemnity provision, even if such allegation is or may be groundless, fraudulent, or false, and that such obligation arises at the time such claim is tendered to Licensee by County or City and continues at all times thereafter. Licensee's obligations under this Section shall survive the expiration or earlier termination of this License.

9. Termination, Default, and Remedies

9.1. Termination by Licensee. Licensee shall have the right to terminate this License at any time by giving written notice to County. Such termination shall be effective ninety (90) days after delivery to County of such notice. Termination by Licensee shall not entitle Licensee to withhold or obtain a refund of license fees or other sums due under this License, or to obtain any compensation or damages from County or City.

9.2. Termination by County. Notwithstanding any other provision of this License or any course of performance under this License, County may at its sole option terminate this License at any time by giving written notice to Licensee for the following reasons:

- (a) If the Equipment causes interference with County's communication equipment located on the Premises and the Equipment cannot be corrected, or
- (b) If County determines that the Premises or any portion thereof, including the License Area, has a more appropriate use including, but not limited to, any County or City use; or
- (c) If Licensee remains in default under Section 9.3 (Breach) of this License after the applicable cure periods.

Such termination shall be effective ninety (90) days after delivery of such notice, and at such time Licensee shall immediately surrender the License Area in the condition required hereunder. Termination by County shall be without liability or obligation to pay consideration to Licensee, including without limitation, any obligation to return to Licensee any part of the License Fee or other fees.

If County terminates this License under the provisions of the above Section 9.2(b), County shall use commercially reasonable efforts in assisting Licensee in identifying a "Replacement Location" on the Premises. In the event an adequate Replacement Location can be identified, County and Licensee shall execute an amendment to this License modifying the description of the License

Area and development and use conditions as necessary and appropriate, and this License shall remain in full force and effect. Licensee shall pay all relocation costs incidental to such substitution of the License Area. In the event that an adequate Replacement Location cannot be located, Licensee shall have the right to terminate this License upon at least ninety (90) days prior written notice to County, and this License will terminate on the same terms and conditions as if it had expired at the end of the Term.

Upon termination as provided for under the terms of this Section 9.2, neither Party will owe the other Party any further obligation under the terms of this License, except as may otherwise be specifically provided in this License and except for Licensee's responsibility to remove all of Licensee's communications equipment from the License Area and restore the License Area to its original condition, as near as practicable, save and except normal wear and tear and acts beyond Licensee's control.

9.3. Breach. If Licensee fails to perform or comply with any provision of this License when such performance or compliance is required by the terms of this License, such failure shall constitute a breach of this License. County may provide Licensee with written notice of such breach. If Licensee fails to cure the breach within thirty (30) days after receipt of such notice, provided that if it is not feasible to cure such default within such 30-day period, Licensee shall have a reasonable period to complete such cure if Licensee promptly undertakes action to cure such default within such 30-day period and thereafter diligently pursues the same to completion within sixty (60) days after the receipt of notice of default from County. County shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Licensee during such 12-month period shall constitute an Event of Default hereunder. County may terminate this License upon delivery of notice of uncured breach to Licensee. County shall in its sole discretion determine whether the breach has been cured. Nevertheless, in the event of any breach by Licensee, County shall have all the rights and remedies available to it at law or in equity.

9.4. Termination of Lease. As provided by Section 4.1 (Compliance with Lease) above, this License shall terminate automatically without need for action by County or Licensee upon the expiration or termination of the Lease.

9.5. Surrender. Licensee shall surrender the License Area in good condition, order and repair, free from hazards and clear of all debris, immediately upon the expiration or termination of this License. At such time, Licensee shall remove all of its property from the License Area or the Premises permitted under this License, and shall repair, at its cost, any damage to the License Area or the Premises caused by such removal. Licensee's obligations under this Section shall survive any termination of this License.

9.6. Remedies. All of County's rights, powers, and remedies under this License are cumulative and not alternative and shall be in addition to all rights, powers, and remedies given to County at law or in equity. The exercise of any one

or more of these rights or remedies shall not impair County's right to exercise any other right or remedy. **NEITHER COUNTY NOR CITY SHALL BE LIABLE TO LICENSEE FOR ANY DIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR INDIRECT DAMAGES ARISING OUT OF OR OTHERWISE RELATED TO THIS LICENSE (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF REVENUE, LOSS OF PROFIT, OR LOSS OF USE) EVEN IF COUNTY OR CITY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES.** Licensee under no circumstances shall be entitled, directly or indirectly, to any form of compensation or indemnity from County or City, or to obtain an injunction, specific performance, or other equitable remedy as consequence of this License for any reason.

10. Authorized Representative of the County of San Mateo. The County Manager, or the designee of the County Manager, shall be the only authorized agent of the County of San Mateo for purposes of giving any notices (including, but not limited to, termination under the terms hereof), enforcing any provision, or exercising any rights, options, privileges, or obligations of the County of San Mateo under this License. This License shall not be valid or have legal effect unless executed by the President of the Board of Supervisors of the County of San Mateo pursuant to a Resolution adopted in accordance with the California Government Code, or by the County Manager or designee under authority granted pursuant to a Resolution adopted in accordance with the California Government Code.

11. Notices. All notices or demands are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

County: County of San Mateo
County Manager's Office
Real Premises Division
555 County Center, 4th Floor
Redwood City, CA 94063
Phone: (650) 363-4047

With a copy to: County of San Mateo
Information Services Dept.
455 County Center, 3rd Floor
Redwood City, CA 94063
Attn: Communications Manager
Phone: (650) 599-1069

Licensee: _____

The address to which any notice or demand may be given to either Party may be changed by thirty (30) day prior written notice.

12. San Mateo County No-Smoking Ordinance. Licensee is aware that on April 18, 2006, the County of San Mateo modified its Ordinance Code, adopting Section 4.96.040, which prohibits smoking in all County facilities whether owned or leased. Licensee understands that such Ordinance authorizes County to enforce the provisions contained in this License and Licensee agrees to enforce the provisions of such ordinance on the License Area.

13. 13. Non-Discrimination

(a) Licensee shall comply with any applicable provisions of Section 504 of the federal Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) No person shall, on the grounds of race, color, religion, ancestry, sex, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this License.

(c) Licensee shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this License. Licensee's equal employment policies shall be made available to County upon request.

(d) With respect to the provision of employee benefits, Licensee shall comply with the County Ordinance that prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

14. General Provisions

14.1. Disclosure Requirements. Licensee understands and agrees that City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Government Code Section 6250 et seq.) apply to this License and to any and all records, information, and materials submitted to City in connection with this License. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with City's Sunshine Ordinance and the State Public Records Law. Licensee hereby authorizes City to disclose any records, information, and materials submitted to City in connection with this License.

14.2. Modifications to License Agreement. Due to the unique nature of each communications operation, County and Licensee may agree to additional terms in respect of such operations. Any such additional terms are subject to City's approval and shall be consistent with the Lease and set forth in a separate addendum, which shall be attached to this License and become a part of this

License. All modifications to this License, whether under this Section or otherwise, shall be in writing and state that the writing is an amendment to this License, approved by City, and subject to the provisions of the Lease.

14.3. Severability. The invalidation of any provision of this License, or of its application to any Party, by judgment or court order, shall not affect any other provision of this License or its application to any other Party or circumstance, and the remaining portions of this License shall continue in full force and effect, unless enforcement of this License as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this License.

14.4. Captions. Captions to the sections of this License are included for convenience only and are not intended and shall not be deemed to modify or explain any of the terms of this License.

14.5. No Presumption Against Drafter. This License shall be construed without regard to any presumption or rule requiring construction against the Party drafting the License.

14.6. Relationship. Licensee and County are and shall remain independent commercial contracting Parties. County and Licensee are not running a business together. The arrangements contemplated by this License are not intended to and shall not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither Licensee nor County have the power or authority to bind or obligate the other to a third party or commitment in any manner.

14.7. Consent. Whenever under this License the consent or approval of either Party is required or a determination must be made by either Party, no such consent or approval shall be unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

14.8. Binding on All Successors. This License is binding upon and shall inure to the benefit of the permitted successors and assigns (as approved in advance in writing by City) of County and Licensee.

14.9. Governing Law. This License shall be governed by, and in all respects construed in accordance with, the laws of the State of California.

14.10. Third Party Beneficiary. County and Licensee acknowledge and agree that City is a third party beneficiary under this License and as such has the power to enforce the terms of this License; provided however, that Licensee and County acknowledge and agree that City has no responsibilities or obligation to any Party by reason of this License, except as provided by this Section. Except as specifically provided in this Section, this License is for the exclusive benefit of County and Licensee and not for the benefit of any third party including, without limitation, any employee, family member, contractor, or customer of Licensee.

14.11. Venue. Licensee agrees that the venue for any civil action filed concerning Licensee's obligations under the terms of this License and the Lease shall be the Superior Court for San Mateo County.

14.12. Counterparts. This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

14.13. Recitals and Exhibits. The Recitals set forth above and the exhibits referenced in and attached to this License are incorporated into this License.

14.14. Other City License Provisions. The provisions set forth in attached **Exhibit 3** (City License Provisions) are incorporated into and made a part of the License as of the Effective Date.

14.15. Entire Agreement. The Parties intend that this License, its Exhibits, and the Lease shall be the final expression of their agreement with respect to the subject matter of this License and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. Should there be any ambiguity or conflict between this License and any policy issued by County, this License shall control. For convenience, this License expressly identifies various provisions of the Lease with which Licensee must comply. Such identification in no way qualifies or limits Licensee's obligations to comply with provisions of the Lease not so expressly identified.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, County and Licensee have executed and delivered this License as of the date first above written.

COUNTY:

COUNTY OF SAN MATEO

LICENSEE:

_____,
a _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBITS:

Exhibit 1: Communications Site Lease (includes Depiction of Premises attached as Exhibit B to the Lease

Exhibit 2: License Area

Exhibit 3: City License Provisions

Exhibit 4: Permitted Improvements

Exhibit 5: Licensee's Equipment

EXHIBIT 1

**Communications Site Lease
(includes Depiction of Premises
attached as Exhibit B to the Lease)**

EXHIBIT 2

License Area

(See attached.)

EXHIBIT 3

City License Provisions

A. Notification of Limitations on Contributions

By its execution of this License, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Licensee further acknowledges that the prohibition on contributions applies to each entity constituting Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Licensee; any subcontractor listed in the contract with City; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensee shall provide City with the names of each person, entity, or committee described above.

B. Bottled Drinking Water

Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided in that statute, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated by reference and made a part of the License as though fully set forth.

C. Prohibition of Tobacco Sales and Advertising

Licensee acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

D. Prohibition of Alcoholic Beverage Advertising

Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this Section, "alcoholic beverage" shall be

defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

E. Food Service Waste Reduction

Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided in that statute, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated in the License by reference and made a part of the License as though fully set forth in this License. This provision is a material term of the License. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Licensee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

F. Criminal History in Hiring and Employment Decisions

Unless exempt, and subject to Section 24.32 of the Lease, Licensee agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the Premises.

Licensee shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

Licensee shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Subsection

(c) above. Licensee shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

Licensee shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee at the Premises, which the Licensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

Licensee shall post the notice prepared by the Office of Labor Standards Enforcement (“OLSE”), available on OLSE’s website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

Licensee understands and agree that upon any failure to comply with the requirements of Chapter 12T, City may pursue any rights or remedies available under Chapter 12T or the Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of the Lease.

If Licensee has any questions about the applicability of Chapter 12T, it may contact the City’s Real Estate Division for additional information. City’s Real Estate Division may consult with the Director of the City’s Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

G. Contractor Vaccination Requirements

Licensee acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“Emergency Declaration”), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

A Contract as defined in the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreement that does not involve the City paying or receiving funds.

Licensee has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this License is (or becomes) a Contract as defined in the Contractor Vaccination Policy, Licensee agrees that:

(1) Licensee shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and ensure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(2) If Licensee grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to "Exemptions" to download the form).

EXHIBIT 4

Permitted Improvements

EXHIBIT 5

Licensee's Equipment

(See attached.)

EXHIBIT G-2

List of Existing Co-Location Parties

(“Approved Users”)

Pacifica Police Department

California Department of Fish and Wildlife

California Department of Transportation (Caltrans)

Cal Fire

California Highway Patrol

California Department of State Parks and Recreation

U.S. National Parks Service (Golden Gate National Recreation Area)

SamTrans (San Mateo County Transit District)

Woodside Fire Protection District

EXHIBIT H

Copy of California Public Utilities Commission General Order No. 95

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M338/K730/338730245.pdf>

EXHIBIT I

SFPUC Montara Mountain – North Peak: Antenna List

Attached

Montara Mountain SFPUC Antenna List

QTY	Description	Part Number
1	TX OMNI Antenna Corporate Collinear 6DBD 7	DSCC80706
2	TX Antenna Clamp 60-115MM	DSUC114
1	RX OMNI Antenna Corporate Collinear 6DBD 7	DSCC80706
2	TX Antenna Clamp 60-115MM	DSUC114
1	Dish Antenna 18 GHZ 0.6m (2FT), valuline, HPLP, Remote mount dish (STD: White), 17.7-19.7 GHz, Radom (STD: Gray), UPR220, Dual Polarity.	AND-VHLPX2-18-3WH



19700 Janelia Farm Boulevard, Ashburn, VA 20147
Phone 703-726-5500 • Fax 703-726-5600
www.comsearch.com

January 28, 2021

Re: City & County of San Francisco PUC
Job Number: 210128COMSFB01
SAWYER RIDGE - MONTARA MTN, CA.
18.0 GHz DIGITAL MICROWAVE SYSTEM
Prior Coordination Notification/Major Change(s)
Previous Job Number(s): 190520COMSFB02
Coordinate, Grnd Elev, & Centerline Changes

Dear Frequency Coordinator:

COMSEARCH has completed an interference analysis for the system described in the attached documentation. Our analysis indicates that the proposed system meets industry accepted interference criteria with your system.

In accordance with FCC Rule Part 101.103(d), we are providing you with the technical parameters of the proposed system for your review. For easy reference, we have underlined all changes to previously coordinated paths and included their previous PCN date. Please include the job number referenced above in your response. We will assume that you concur with our findings if we receive no objections to this proposal by March 4, 2021.

If you have any questions, or require additional information, please contact me at (571) 246-3097.

Sincerely,

COMSEARCH

Franco R. Benedict
Coordinator
fbenedic@comsearch.com

Enclosure(s)



19700 Janelia Farm Boulevard, Ashburn, VA 20147
Phone 703-726-5500 • Fax 703-726-5600
www.comsearch.com

User: Franco R. Benedict
PDF's: SAWMON
Job Number: 210128COMSFB01
Date/Time: January 28, 2021 8:12 AM

Path Warnings Document

*This document provides important information regarding FCC restrictions that may apply to the system you are planning. **This list is intended as an informational guideline and is not guaranteed to encompass all possible licensing issues that may arise.** In some instances the restrictions are minor, but in other instances there may be a significant impact upon your system implementation. Comsearch recommends that you review this document carefully and consult with your Comsearch Engineering contact if you have any questions or concerns.*

1) SAWYER RIDGE - MONTARA MTN City & County of San Francisco PUC

18.0 GHz

There were no site warnings detected.

