

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.6**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Adopt the updated “Policy for Placement of Wireless Facilities on SFMTA Owned and Managed Real Estate Assets” setting out application and review processes and fees and approve a Form Communication Site Lease Agreement for placement of wireless facilities on SFMTA owned and managed Parking Garages.

**SUMMARY:**

- Telecommunication companies wish to install wireless telecommunication antennae and equipment on SFMTA assets, including parking garages and poles that support overhead lines.
- The SFMTA has existing agreements for antenna and equipment installations on parking garages, most of which are at the end of their terms and need to be amended or re-negotiated. The SFMTA and the industry will benefit from the adoption of a standardized form lease agreement to establish transparency and parity.
- On July 15, 2014, the SFMTA Board adopted the policy that establishes contract requirements and review procedures and standards governing the installation of telecommunications equipment on SFMTA assets.
- The SFMTA staff negotiated with telecommunications industry representatives over the past two years to develop a Form Communication Site Lease agreement (“FLA”) for installation of telecommunication antenna and equipment on SFMTA owned and managed Parking Garages (“Parking Garages”). The policy is updated to incorporate those changes.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Policy for Placement of Wireless Facilities on SFMTA Owned and Managed Real Estate Assets
3. Form Communication Site Lease Agreements

**APPROVALS:**

**DATE**

DIRECTOR Smile R

December 29, 2015

SECRETARY \_\_\_\_\_

December 29, 2015

**ASSIGNED SFMTAB CALENDAR DATE:** January 5, 2016

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### **PURPOSE**

Adopt the updated “Policy for Placement of Wireless Facilities on SFMTA Owned and Managed Real Estate Assets” setting out application and review processes and fees and approve a FLA for placement of wireless facilities on SFMTA owned and managed Parking Garages, allowing Lessees to install antennae and equipment in Parking Garages.

### **GOAL**

This item will assist the SFMTA in meeting the following goal and objectives:

Goal 3: Improve the environment and quality of life in San Francisco:

Objective 3.3: Allocate capital resources effectively; and

Objective 3.5: Reduce capital and operating structural deficits.

### **DESCRIPTION**

The SFMTA has an extensive real estate portfolio of facilities and poles located throughout San Francisco, including 20 Parking Garages. The SFMTA currently has 13 existing leases with telecommunication companies, such as AT&T, Verizon, Sprint, and T-Mobile in the Parking Garages. Each lease has different provisions, different terms and different rates. The SFMTA was approached by telecommunications companies that desire to install new macro cell antennas and equipment on the Parking Garages. Six of those 13 leases have expired and are on month-to-month holdover agreements. The terms and conditions of those old leases are not uniform and lack the contractual language to create parity and transparency across the leases and to adequately protect SFMTA and Parking Authority’s assets and operations.

Over the last two years, SFMTA has engaged in an extensive outreach process with the wireless companies over the terms of a new form lease agreement, which has been revised significantly from the original document based on the input from telecommunication companies. The proposed FLA establishes uniform contract terms and conditions. A uniform FLA will ensure agreements with wireless companies are consistent and transparent. In addition, the FLA protects the SFMTA’s proprietary interests in its Parking Garages through a strengthened design review process and allows the SFMTA to require a Lessee to remove any antennae and equipment that interfere with the SFMTA’s transit operations and other SFMTA needs.

A telecommunications company that desires to install wireless antennae and equipment on Parking Garages will be required to execute a lease, which will be substantially the same as the FLA attached to this report. The only variance from the FLA may be in the insurance provisions, which will be subject to approval of the City's Risk Manager.

### ***Rents***

The SFMTA receives revenues from leasing its Parking Garages for wireless antenna and equipment. In the current agreements, the rent is based on a complicated table based on

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equipment type, planning and structural engineering requirements for installation and varies in term length and annual increase. In the FLA, the rent calculation methodology was simplified significantly to square footage and number of antennas to make administration easier and more transparent.

Under the FLA, Lessees will pay a base rent of \$50,000 per year for up to three antennas, plus \$65 per square foot for the macro cell equipment area. Rent will be increased by \$10,000 per year for each additional antenna installed. In addition, the rent is subject to an annual increase of 3%. The term of the lease is 5 years with an option to extend for additional 4.5 years.

In 2014, an extensive market rate research was conducted to ensure the proposed rent in the FLA was aligned to market rates. Several entities, such as the Port of San Francisco, and other private companies were contacted to understand their rate structure. Based on the information received, it was clear that the previously negotiated telecommunication lease agreements were below market rate. Therefore, the market rate analysis and a recent agreement for wireless equipment at the San Francisco General Hospital (SFGH) were used as the benchmark to create the proposed fee schedule included in the FLA.

Telecommunication Company	Lease Term	Sq. Ft.	# of Antennas	Current Annual Rent
Company at SFGH	5 years	190	6	\$73,200
Company at Port of SF	4 years	255	6	\$68,400

The rent schedule in the FLA includes three antennas in the base rent, but the rent increases per antenna if a Lessee determines the location is desirable and seeks to install additional antennas to increase its service. The number of antennas a telecommunication company installs will determine the desirability of a particular location. This schedule will reduce the rent for Lessees who install at less desirable locations and increase the rent for Lessees who install at more desirable locations. Therefore, certain wireless companies will be asked to pay more for a certain location than they do currently, while others will pay less – see table below.

Telecommunication Company	Lease Term	Sq. Ft.	# of Antennas	Current Annual Rent	Proposed Annual Rent
Company A	15 years (Expired)	185	3	\$89,412	\$62,025
Company B	20 years (Expired)	214	8	\$51,134	\$113,910
Company C	25 years (Active)	230	10	\$69,600	No change

In summary, the rates proposed in the FLA are supported by the market review and create parity and transparency across all agreements and support best practices.

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### ***Installation Process***

Prior to the execution of a FLA, a potential Lessee will submit the proposed antennas and equipment installation at a specified site to SFMTA staff. If the concept is acceptable, the potential Lessee will be provided a letter indicating such and requiring the lessee to consult with San Francisco Planning Department as to the aesthetics of the proposed installation and whether the installation is appropriate to the Parking Garage's surroundings. If the Planning Department supports the scope of work, SFMTA will move forward with the negotiations of a FLA. The SFMTA will review Lessee's plans and specifications in detail to ensure the antennas and equipment will not exceed the normal load-bearing capacity of the floors and roof of the Garage. The Lessee must obtain all permits and approvals necessary prior to any construction or equipment installation at the site.

### ***Revised Policy Document***

On July 15, 2014, the SFMTA Board of Directors adopted the "Policy for Placement of Wireless Facilities on SFMTA Owned and Managed Real Estate Assets" ("Policy"). The Policy establishes the application and fees requirements, and the review process for the installation of antennae and equipment on SFMTA assets, including Parking Garages and poles. The Policy was adopted when the FLA was still in development. Since its adoption, the FLA has had additional changes, such as the fee schedule, after further discussions with telecommunications industry representatives. The Policy has been updated to incorporate those changes.

## **PUBLIC OUTREACH**

Pursuant to Section 10 of the SFMTA Board of Directors' Rules of Order, advertisements are required to be placed in the City's official newspaper to provide notice that the Board of Directors will hold a public hearing on January 5, 2016 to consider this Resolution. The advertisement ran in the San Francisco Examiner for a five-day period beginning on December 14, 2015. SFMTA staff has worked with telecommunications industry representatives over the last two years on the development of the FLA, which has been revised to reflect their input to the extent feasible. As the new fee schedule in the FLA will increase some rents compared to the original lease, certain members of the telecommunication industry representatives continue to have concerns about the proposed fee schedule.

## **ALTERNATIVES CONSIDERED**

The alternative would be to maintain the existing process of negotiating each agreement separately and allowing Lessees to propose alternative business terms, which does not support best practices. The existing process results in inconsistent business terms, lack of uniformity in terms and conditions, lack of transparency and parity.

## **FUNDING IMPACT**

Adoption of the proposed Policy and FLA does not have a direct funding impact on the SFMTA.

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However, the leases executed as a result of the adoption of the Policy and FLA will likely result in additional revenues. There are six agreements with an expired term. If the six Lessees agree to sign the FLA with existing antenna and equipment in leased space, the SFMTA will receive increased revenue of \$43,420 annually, or approximately \$412,490 over the 9.5 years term of those agreements.

**ENVIRONMENTAL REVIEW**

The SFMTA's approval of the proposed Policy and FLA authorizes SFMTA staff to enter into lease agreements involving the placement of wireless equipment on facilities under SFMTA control and is subject to the California Environment Quality Act (CEQA). Under the authority granted by the Planning Department, SFMTA staff determined on December 7, 2015 that the FLA is not a project for environmental review pursuant to Title 14 of the California Code of Regulations, Section 15060(c) (2) [CEQA Guidelines], because the approval of the FLA will not result in a direct or reasonably foreseeable indirect physical change in the environment. The placement of wireless equipment on facilities will be considered a project under CEQA Guidelines Section 15378 and each installation proposal is subject to review under CEQA. The SFMTA's determination is on file with the Secretary to the SFMTA Board of Directors.

The proposed action is the Approval Action as defined by the S.F. Administrative Code Chapter 31.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney has reviewed this report. No other approval is required.

**RECOMMENDATION**

Staff recommends that the Board of Directors adopt the updated "Policy for Placement of Wireless Facilities on SFMTA Owned and Managed Real Estate Assets" setting out application and review processes and fees and approve a form Communication Site Lease agreement for placement of wireless facilities on SFMTA owned and managed Parking Garages.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The SFMTA has extensive real estate assets located throughout San Francisco, including parking garages, maintenance facilities, and support poles for overhead traction power lines; and,

WHEREAS, Telecommunication companies requested authority to place wireless antennae and equipment on SFMTA parking garages to meet rising public demand for better wireless telephone and data services; and,

WHEREAS, On July 15, 2014, the SFMTA Board approved the Policy for Placement of Wireless Facilities on SFMTA Owned and/or Managed Real Estate Assets (Policy) that provides procedures and fees for the installation of telecommunication antenna and equipment on SFMTA owned and/or managed parking garages (Parking Garages); and,

WHEREAS, The SFMTA has existing agreements for antenna and equipment installations on Parking Garages, and six of the existing lease agreements are at the end of their terms and need to be amended or re-negotiated; and,

WHEREAS, The SFMTA staff negotiated with representatives of wireless telecommunication companies and developed a form Communication Site Lease agreement (FLA) that establishes uniform contract terms and conditions, and contains contractual language that protects SFMTA and Parking Authority to manage their real estate assets; and,

WHEREAS, Adoption of the Policy and FLA is not a project subject to the California Environmental Quality Act (CEQA) Guidelines as defined under Title 14 of the California Code of Regulations, Section 15060(c) (2), Section 15060(c) (2), and the proposed action is an Approval Action as defined by the S. F. Administrative Code Chapter 31; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors adopts the updated Policy for Placement of Wireless Facilities on SFMTA Owned and/or Managed Real Estate Assets which establishes the application and fees requirements and the review process for the installation of telecommunication antennae and equipment on SFMTA real estate assets, including Parking Garages and poles, and, be it further

RESOLVED, That the SFMTA Board of Directors approves the form Communication Site Lease agreement for the installation of telecommunication antennae and equipment on SFMTA owned and/or managed Parking Garages.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting January 5, 2016.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

Policy for Placement of Wireless Facilities on  
SFMTA Owned and Managed Real Estate Assets

**1. Purpose:**

The purpose of this Policy is to set forth a SFMTA policy for placement of wireless telecommunication infrastructure on SFMTA owned and/or managed real estate assets, including parking garages (“Parking Garages) and support poles (“Poles”) for overhead traction power lines, thereby supporting Section 8A of the City Charter.

**2. Scope:**

This Policy applies to all telecommunications entities which seek to place wireless telecommunication infrastructure on SFMTA owned and/or managed real estate assets and other properties. Emergency response is exempted from this policy.

**3. Responsibilities:**

The Strategic Real Estate Section of SFMTA’s Finance and Information Technology Division will manage all documents relating to the placement of wireless telecommunication infrastructure on SFMTA owned and/or managed real estate assets and will coordinate with applicable SFMTA divisions and City departments on the review and processing of the transactions.

As applicable, each SFMTA division will be responsible for reviewing and processing applications, drawings, agreements, permits, construction and payments relating to the wireless telecommunication infrastructure. SFMTA, exercising its authority as property owner or manager of the Parking Garages and Poles, will consult with the San Francisco Department of City Planning for design review of all installations.

**4. Policy:**

SFMTA has an extensive portfolio of owned and/or managed real estate assets and other properties located throughout San Francisco, and as a result, private telecommunication companies have from time to time sought to place wireless telecommunication infrastructure on these assets. SFMTA supports the expansion of wireless telecommunication services for its customers and desires to maximize the economic value of its real estate assets through leased/licensed revenue arrangements, so long as this is balanced against SFMTA’s own operational and use needs. Therefore, this policy sets forth the guidelines by which SFMTA will consider proposals for placement of wireless telecommunication infrastructure on SFMTA owned or managed real estate assets.

4.1. Application and Processing Fee. An applicant shall submit an application and non-refundable fee to the SFMTA for review, coordination and processing of the wireless telecommunication infrastructure proposal. The fee will also apply to any requests for: (i) major amendments to existing agreements, (ii) co-locations including sublicensing, (iii) consent to assignment of the lease or license, and (iv) changes or upgrades to existing wireless telecommunication infrastructure. The fee is currently \$2,500; With an additional \$2,000 fee for projects that require SFMTA Board of Directors’ and San Francisco Board of Supervisors’ approval, and may be adjusted periodically by the SFMTA Director of Transportation.

4.2. Agreement/s. A fully executed agreement and/or amended agreement between SFMTA and the Lessee/Licensee shall be required prior to any placement or change of any

wireless telecommunication equipment on any SFMTA owned and/or managed Parking Garages or Poles. SFMTA Board of Directors' approval will be required for all form Communication Site Lease agreement ("FLA") and Master License agreement ("MLA") proposing terms or changes to the agreement different from what the SFMTA Board and, with respect to the MLA, the San Francisco Board of Supervisors have already approved. SFMTA staff will consult with Lessee/Licensee on required approval processes for each individual submittal. The agreement will include, at minimum, provisions for the following:

- a). Standardized FLA/MLA. The basic form of agreement for Parking Garage installation will proceed with a FLA, and poles installation will proceed with a MLA, as amended from time to time by SFMTA. Pole installation will also require a Pole License per individual pole installation, subject to the review process described below.
  - b). Term. The term of an individual agreement may vary and will be based upon SFMTA staff's assessment of the specific real estate asset. In no event may an agreement, including options to extend, exceed 9.5 years without SFMTA Board and Board of Supervisors' approval.
  - c). Co-Location. Co-location on SFMTA Parking Garages requires SFMTA's written consent. Co-location on SFMTA Poles should be limited to one Licensee per pole for aesthetic purposes.
  - d). Interference. No wireless telecommunication infrastructure may interfere with City's own telecommunication systems or operational uses, or with any emergency response, regardless of when the SFMTA, City or emergency response installations occur.
  - e). Relocation. The agreement will contain a provision for relocating wireless telecommunication infrastructure at the applicant's sole cost if deemed necessary for SFMTA's use or needs. The agreement will also contain a waiver of federal and state relocation benefits by the applicant.
  - f). Termination. SFMTA shall have the right to terminate an agreement if deemed necessary for SFMTA's use or needs, subject to the terms included in the FLA/MLA. The intent behind this termination, while broad and sweeping, is to provide the Agency with the ability to terminate the FLA/MLA for redevelopment, sale or some other unforeseen circumstance other than re-negotiation of commercial terms relative to rates or term.
  - g). Insurance. All Lessees/Licensees must carry insurance that meets or exceeds the requirements set out in SFMTA's FLA/MLA. Individual Lessee/Licensee deviations to the specific coverage requirements may be evaluated by the City's Risk Manager and Strategic Real Estate as needed.
- 4.3. Review Process. This section describes the review process for a typical Parking Garage or Pole installation proposal. Proposals that involve unique circumstances may require additional review timeline as needed, subject to reasonable discretion of SFMTA staff.
- a). Parking Garages antenna/equipment.
    1. Potential Lessee contacts SFMTA with request to consider a given site and an explanation of the conceptual scope of work they would be performing. If



necessary, SFMTA staff meets on-site to assess the practicality of Lessee's request. If the department agrees in principle, then;

2. The Lessee is provided with a letter or email from SFMTA directing them to contact the Planning Department for a "Project Review Meeting." All Planning Department required applications and fees apply (see Section 6(g) of the Planning Department Schedule of Application Fees).
3. Once conceptual Planning support is received, a Lessee desiring to move forward with the negotiation of an agreement must provide SFMTA with a complete submittal packet (NOT individual submittals) including all of the following:
  - a) A photo of any and all proposed equipment
  - b) A detailed set of drawings showing current and future equipment. Any equipment being added should be clearly identified and depicted in red.
  - c) A licensed Structural Engineer's written opinion and calculations concerning any loads on floor slabs or walls and detailed installation instructions concerning coring, fastening and how water intrusion will be prevented. One original wet stamped plan set is required.
  - d) If Lessee requests changes to the FLA, submit a redlined copy of any proposed changes along with a synopsis of why those changes are being requested.
4. SFMTA staff will route plans to requisite SFMTA departments to conduct necessary internal review. The Lessee is solely responsible for the structural integrity of all installations.
5. SFMTA staff will, upon receipt of a complete set of plans, review the proposed Lessee's submission, and any proposed changes, and respond to the Lessee within 45 business days. Staff will provide the required approval path to Lessee at this time.
6. Once all terms and language within the FLA are agreed upon, SFMTA staff will forward signature copies of the FLA for execution by the Lessee and return to SFMTA's Strategic Real Estate.
7. If FLA terms require SFMTA Board of Directors' or San Francisco Board of Supervisors' approval, SFMTA staff will prepare the necessary briefing letter and resolution for public hearing and consideration. SFMTA Board meetings generally require a 30 day lead time for required review and public noticing.
8. If the SFMTA Board approves the resolution, a Board of Supervisors (BOS) resolution will be prepared and submitted for consideration at the next upcoming BOS meeting. Timelines for BOS approval vary from 30 to 60 days. Staff will work with Lessee to navigate this process as efficiently as practicable.
9. Once all required approvals are received, the FLA will be forwarded to the Director of Transportation for final execution. Upon SFMTA's final signature of the FLA and SFMTA's receipt of all required documentation, including insurance and security deposit, Lessee will receive authorization to enter into the premises to either establish the site or make changes per the approved FLA.

- b). Pole mounted antenna/equipment

1. Proposed Licensee files initial application with SFMTA for MLA of pole-mounted equipment and antennas accepting the form agreement. SFMTA Board approval is required for approval of any changes to the form agreement. Initial application must include number of poles on which installation is proposed and general Pole locations.
2. SFMTA staff reviews the proposed Licensee's submission and any proposed changes to the MLA, and respond to the Licensee within 30 business days.
3. If Licensee agrees to form agreement, and SFMTA staff review is complete, SFMTA will sign the MLA within 15 business days. Business days spent awaiting signature by Licensee does not count toward this term.
4. If changes are proposed, once terms are set by Licensee and staff, SFMTA staff will calendar the MLA for the next available SFMTA Board of Directors' and San Francisco Board of Supervisors' agenda. SFMTA Board of Directors' and Board of Supervisors' meetings generally require 60 days lead time for required review and public noticing.
5. Once MLA is executed, Licensee may prepare individual Pole License submittals.

4.4. Permits and Approvals. Lessee/Licensee must obtain all the necessary permits and approvals before the installation of approved work.

- a). SFMTA owned or managed Parking Garages. For equipment on an SFMTA owned or managed Parking Garages, the approved plans are in Exhibit C of the agreement.
- b). SFMTA Pole License. For equipment on SFMTA's Poles, the applicant must first receive a Pole License for each proposed installation. Each Pole License requires a separate application and fee.
  1. Once Master License agreement is approved, Licensee must submit an individual Pole License application, and pay a Pole license fee of \$250 per pole, to SFMTA. Complete License application packages must include the following for each proposed installation: 1) precise pole location and photos of poles, 2) proposed antenna and equipment design (with existing and proposed renderings), and 3) mounting details and engineering specifications. Pole Installation License applications should be grouped no less than 10 poles per submission.
  2. SFMTA staff will route plans to requisite SFMTA departments to determine structural feasibility of proposed installation and whether the installation will interfere with transit or traffic control operations. SFMTA Strategic Real Estate will facilitate all communication between Licensee and SFMTA operational staff.
  3. Once SFMTA internal review is complete, Licensee will receive notice of SFMTA internal approval. At this point, SFMTA staff will route the plans to the Planning Department for aesthetic review.
  4. Design review consultation by the Planning Department, as an exercise of SFMTA's proprietary authority of its poles, is required before a Pole License can be approved. Design review is focused on the 3 major categories:
    - i. Pole Type—Does the proposed design complement the proposed pole? Is the pole in a historic district or of special design that calls for enhanced integration of the equipment?

- ii. Location—How close is the installation to residential windows? Are there signage/signals that will hide the installation? Does the equipment emit noise or light, and if so, is it a nuisance to nearby uses?
    - iii. Equipment Design—Is the proposed equipment compact and integrated into the pole, to the extent feasible? Is it unsightly and likely to garner complaints from neighbors? What steps have been taken to minimize the visual impact of the equipment?
  - 5. Once Planning review consultation is complete, Planning will provide SFMTA with its design conclusions. SFMTA will approve Pole License only following receipt and review of Planning design conclusions and complete review and approval by SFMTA staff.
- b). Personal Wireless Service Facility Site Permit (DPW). For wireless telecommunication infrastructure located in the public right-of-way, a permit must also be received from the San Francisco Department of Public Works (DPW). For those applications that would be routed to Planning under Public Works Code Article 25, the Planning Department will be requested to confirm that review on the proposed Site Permit was conducted at the SFMTA Pole License phase. All other implementation of Article 25 is to remain as is, as managed by DPW.
- 4.5. Compensation. SFMTA will receive fair and reasonable compensation for use of its real estate assets that it either owns or manages on behalf of other City departments and the Parking Authority of the City and County of San Francisco, based on comparable market rates for similar facilities and markets. For Parking Garages FLA, lease rental payments for most proposed installations will be structured according to the Communication Site Lease and the corresponding Rate Schedule included therein (Exhibit “E”). For Poles MLA, license rental payment for pole mounted installations will be structured according to Section 4 Rent; Additional Charges of the agreement. SFMTA reserves the right to modify lease and license rent in the form agreement from time to time.
- 4.6. Accommodation for SFMTA Uses. Where practicable, SFMTA may require that new wireless telecommunication infrastructure be designed and constructed to accommodate joint use by SFMTA. This includes aboveground and underground uses as determined by applicable SFMTA staff. In addition, from time to time SFMTA may require removal or replacement of poles, or modification of real property, occupied by telecommunications infrastructure. SFMTA reserves the right to replace or remove poles or modify facilities subject to the terms of an executed FLA or MLA.
- 4.7. Construction. During construction, Lessee/Licensee must abide by all City and County of San Francisco standard construction measures, including construction hours, waste management, noise abatement, etc. Lessee/Licensee must pay all parking meter rates due for vehicle parking, or submit to SFMTA for a construction parking permit. SFMTA will not void any citations received during telecommunication installations.

## **5.0 Enforcement:**

SFMTA may enforce this policy by any means available to SFMTA in its proprietary capacity. Furthermore, the SFMTA Board of Directors may adopt enforcement measures for this policy as needed.

COMMUNICATIONS SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

\_\_\_\_\_  
as Tenant

For the lease of

a Site at \_\_\_\_\_  
San Francisco, California

\_\_\_\_\_, 20\_\_

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**COMMUNICATIONS SITE LEASE**

THIS COMMUNICATIONS SITE LEASE (this "Lease") dated for reference purposes only as of \_\_\_\_\_, 20\_\_\_\_, is made between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Municipal Transportation Agency ("City," "SFMTA" or "Landlord"), and \_\_\_\_\_ ("Tenant").

City and Tenant hereby covenant and agree as follows:

**1. BASIC LEASE INFORMATION**

The following is a summary of basic lease information (the "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: \_\_\_\_\_, 20\_\_

Landlord: CITY AND COUNTY OF SAN FRANCISCO,  
Acting by and through its Municipal  
Transportation Agency

Tenant: \_\_\_\_\_

Building (Section 3.1): \_\_\_\_\_Garage,  
located at \_\_\_\_\_,  
San Francisco, California

Premises (Section 3.1): The portions of the Building consisting of  
(1) [approximately(\_\_\_\_\_) square feet of  
space in the\_\_\_\_floor of the Building in which  
Tenant's communications facilities is to be  
installed (shown on Exhibit A, Sheet ), and  
(2) certain space on the \_\_\_\_\_ located on the  
roof of the Building on which mobile/wireless  
antennas are to be mounted (as shown on  
Exhibit A, Sheet ). In connection with the lease  
of the Premises and for the term of the Lease,  
Tenant shall have a nonexclusive license for the  
placement and use of wiring and conduit as  
shown on the Approved Plans (as defined  
below)]. The Building is under the jurisdiction of  
the SFMTA.

Term (Section 4.2): Estimated commencement date:  
\_\_\_\_\_, 20\_\_

Expiration date:  
Fifth anniversary of the Commencement Date

Extension Option (Section 28.1): As further described in Section 28.1, Tenant shall  
have an option to extend this Lease for an

additional fifty-four (54) months upon no less than nine (9) months prior written notice to SFMTA.

Base Rent (Section 5 .1): Annual Base Rent: \$\_\_\_\_\_

Monthly payments: \$\_\_\_\_\_

Adjustment Dates (Section 5.2): Annually on January 1 of each year, beginning January 1, 20 .

Use (Section 6.1): Tenant shall only use the Premises for the transmission and reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities as one of Tenant's communications sites (a "Communications Site"). Tenant shall not use the Premises for any other purposes without the written consent of Landlord.

Tenant's Equipment (Section 7): The following equipment and improvements that Tenant has the right to install at the Building pursuant to this Lease, which installation shall be done at Tenant's sole cost:

\_\_\_\_\_ (collectively, "Tenant's Equipment")

Utilities and Services (Section 12.1): [All utilities and services necessary for use of the Communications Site to be provided by Tenant at its sole cost; City has no responsibility for any utilities or services to the Premises or the common area unless Tenant requires access to existing utilities for future equipment installations permitted under this Lease, in which case City agrees to provide such access.]

[City shall furnish utilities related to Tenant's use of the Premises. Tenant shall pay the Utility Fee for the provision of such utilities.]

Security Deposit (Section 25): \$50,000.00. Security Deposit may be paid in the form of cash, bond or non-revocable letter of credit.

Notice Address of Landlord (Section 29.1): San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, Eighth Floor  
San Francisco, California 94103  
Attn: Senior Manager, Strategic Real Estate  
Re: [Identify Project/Property]  
Fax No.: (415) 701-4743

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Re: [Identify Project/Property]  
Fax No.: \_\_\_\_\_

and to:

Office of the City Attorney  
City and County of San Francisco  
1390 Market Street, 7th Flr.  
San Francisco, CA 94102  
Attn: Transportation Team  
Re: [Identify Project/Property] Fax  
No.: (415) 554-4755  
[            ]

Key Contact for Landlord:

Telephone No.: (415) 701-\_\_\_\_\_

Notice Address for Tenant  
(Section 28.1):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax No.: \_\_\_\_\_

Key Contact for Tenant:

Telephone No.: \_\_\_\_\_

Alternate Contact for Tenant

Telephone No.: \_\_\_\_\_

Other Noteworthy Provisions

Tenant has the right to terminate this Lease if it loses its permits to operate a Communications Site at the Premises in spite of its reasonable efforts to maintain such permits (Section 28.2).

**2. CO-LOCATION OF TELECOMMUNICATIONS FACILITIES**

**2.1. Prohibition on Co-location Without Landlord's Consent**

Co-location of facilities is prohibited except with the express written approval of City, which approval shall not be unreasonably withheld, delayed or conditioned. A "co-located telecommunication facility" means a telecommunication facility comprised of one or more antennas, dishes, or similar devices owned or used by more than one public or private entity that is not controlled by or under common control with Tenant. The meaning of "control" in the foregoing sentence shall be as set forth in Section 17.6.

**2.2. Required Co-location**

Notwithstanding the foregoing, Tenant is on notice that Landlord may require Tenant to co-locate its facilities on the Premises, defined below in Section 3.1, with other facilities or providers or require Tenant to permit other facilities or providers to co-locate on Tenant's 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 interference with Tenant's existing use of the Premises. If no such interference would occur upon installation of a co-locator's equipment as reasonably determined by Landlord, 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 agreement prepared in commercially reasonable form by the proposed co-locator; (ii) pay all costs arising from or related to the co-location, including but not limited to any and all costs incurred by Tenant to accommodate such co-location; and (iii) reimburse Tenant a commercially reasonable percentage of 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.

### **3. PREMISES; AS IS LEASE**

#### **3.1. Lease Premises; Tenant Cable License**

Subject to the terms, covenants and conditions set forth in this Lease, City leases to Tenant and Tenant leases from City those premises specified in the Basic Lease Information and shown on the plans attached hereto as Exhibit A (the "Premises"). Tenant shall have access to the Premises and portions of the common areas of the Building as provided in Section 22.1 (Tenant's Access to Premises).

In connection with its use of the Premises as a Communications Site and for the Term of this Lease, City grants Tenant a nonexclusive license for the placement and use of Tenant's utility and fiber cabling, wires, pipes, and conduits reasonably necessary to connect Tenant's Equipment (collectively, the "Tenant Cables") across the areas shown on the Approved Plans (as defined Section 7.1 (Tenant Improvement Work)). Such license shall be irrevocable, but shall terminate upon any termination of this Lease. City, in its sole discretion, may relocate such license area upon one hundred eighty (180) days prior written notice to Tenant. Except as otherwise expressly permitted in this Lease, all Tenant Cables that connect Tenant's Equipment located in different sites within the Building shall pass through existing openings in the Building's walls, floors, ceilings, or parking decks, unless Tenant reasonably determines that such existing openings are not usable. In such event, Tenant shall obtain Landlord's prior written consent to make any new penetrations through the Building walls, floors, ceilings, or parking decks for any Tenant Cables, which consent will not be unreasonably withheld, conditioned or delayed. As used herein, "Property" means the Premises, Building and real property upon which the Building is located and all other improvements and appurtenances to such land.

To request Landlord's consent to new penetrations, Tenant shall deliver such request to Landlord in writing, together with any information reasonably requested by Landlord to analyze whether such proposed penetrations would negatively impact the Building's safety or structural integrity (a "Request Notice"). Such Landlord-requested information may include an analysis of the impact of the proposed penetrations, prepared by a California-licensed structural engineer with reasonable experience in analyzing such issues. If the cost of making any such new penetrations is more than Five Thousand Dollars (\$5,000), Tenant shall pay Landlord the administrative fee described in Section 8.1. If the cost of making any such new penetrations is Five Thousand Dollars (\$5,000) or less, at Landlord's election, Tenant shall pay Landlord a reasonable administrative review fee before Landlord is required to review such new penetration request. Such administrative review fee shall be based on Landlord's estimated costs in reviewing the proposed penetrations. Landlord shall notify Tenant in writing if Landlord will charge such an administrative review fee and the amount of such fee within forty-five (45) days of receiving Tenant's Request Notice. Tenant shall have the right to withdraw its Request Notice at any time; provided, however, that if Tenant withdraws such Request Notice after delivering the administrative review fee or a Section 8.1 administrative fee, Landlord shall have no obligation to reimburse such fee to Tenant.

### **3.2. As Is Lease**

TENANT EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS, WITH ALL FAULTS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES, INCLUDING, WITHOUT LIMITATION, ZONING ORDINANCES AND REGULATIONS GOVERNING THE USE, OCCUPANCY OR POSSESSION OF THE PREMISES OR LICENSED AREAS. TENANT REPRESENTS AND WARRANTS TO LANDLORD THAT TENANT HAS CONDUCTED A REASONABLY DILIGENT INVESTIGATION, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S CHOOSING, OF THE CONDITION OF THE PREMISES AND OF THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE, AND TENANT IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION. TENANT FURTHER REPRESENTS AND WARRANTS THAT ITS INTENDED USE OF THE PREMISES IS THE USE DESCRIBED IN THE BASIC LEASE INFORMATION. TENANT AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PHYSICAL, STRUCTURAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES OR LICENSED AREAS FOR THE CONDUCT OF TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FOR PURPOSES OF CALIFORNIA CIVIL CODE SECTION 1938, TO THE EXTENT APPLICABLE TO THIS PERMIT, THE BUILDING HAS NOT BEEN INSPECTED BY A CERTIFIED ACCESS SPECIALIST.

## **4. TERM**

### **4.1. Term of Lease**

The Premises are leased for a term (the "Term") of five (5) years, commencing and terminating as set forth below. The Term of this Lease shall end on the Expiration Date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the terms hereof. No delay in the commencement of this Lease beyond the Estimated Commencement Date specified in the Basic Lease Information shall serve to extend the Initial Term beyond the Expiration Date. [Tenant shall have the right to extend the Term for one (1) Extended Term of fifty-four (54) months as provided in Section 28.1(a) (Option to Extend Term). As used below, the "Term" shall include the initial term of five (5) years, and the Extended Term, if Tenant duly exercises its Extension Option with respect to such Extended Term pursuant to this Lease.]

Notwithstanding anything to the contrary herein, SFMTA shall have the right at any time during the Term to terminate this Lease under this Section when the Premises are needed in connection with an SFMTA project, service or program, or in the event of the sale or development of the Structure. SFMTA may exercise this right without any liability or expense, upon one hundred eighty (180) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 180-day period.

### **4.2. Confirmation of Commencement Date and Expiration Date**

The Term of this Lease shall be effective upon [the approval of the Board of Directors of the Municipal Transportation Agency and the City's Board of Supervisors and] full execution by the parties, and the earlier to occur of (i) the first day of the first month following Tenant's notice to Landlord in writing that Tenant has obtained all permits and approvals necessary for Tenant to be legally entitled to construct a facility for providing communication services at the Premises, or (ii) the Estimated Commencement Date specified in the Basic Lease Information (the "Commencement Date"). The Term shall terminate on the Expiration Date unless earlier terminated pursuant to the terms hereof [or extended as provided in Section 28.1]. Promptly

following the Commencement Date, if the Commencement Date occurs on a date other than the Estimated Commencement Date specified in the Basic Lease Information, Tenant shall deliver to City a notice in substantially the form attached hereto as Exhibit B identifying the Commencement Date determined in accordance with the provisions hereof, and City shall execute and return such notice to Tenant. However, the parties' failure to execute or deliver such notice shall not affect the commencement of the Term.

#### **4.3. Delay in Lease Commencement**

If Tenant does not obtain all necessary permits and approvals necessary for Tenant to be legally entitled to construct and/or install the facility for providing mobile/wireless communication services at the Premises within one hundred eighty (180) days from the Estimated 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 one hundred twenty (120)-day period, and neither party shall have any further rights or obligations hereunder.

### **5. RENT; ADDITIONAL CHARGES**

#### **5.1. 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 as the same may be increased pursuant to Section 5.2 (Adjustments in Base Rent) (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, by good check to the City and County of San Francisco at the address for the Director of Parking specified in the Basic Lease Information, 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 Expiration Date occurs 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.

#### **5.2. Adjustments in Base Rent**

On each date specified in the Basic Lease Information for the adjustment of Base Rent (an "Adjustment Date") during the Term, the Base Rent payable by Tenant under Section 5.1 (Base Rent) above shall be increased by an amount equal to three percent (3%) of the Base Rent in effect immediately prior to the Adjustment Date.

#### **5.3. Additional Charges**

Tenant shall promptly pay to City any [and all Utility Charges under Section 12.1 (Utilities and Services), and] other amounts, if any, required under any other provision of this Lease, as additional rent (herein called "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.

#### **5.4. Late Charges**

If Tenant fails to pay any Rent within ten (10) days after the same is due and payable, such unpaid amounts will be subject to a late payment charge equal to ten percent (10%) of the unpaid amounts 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 will be incurred by City as a result of any such failure by Tenant, the actual costs thereof 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 shall be paid to City together with such unpaid amounts.

#### **5.5. Default Interest**

Any Rent, if not paid within ten (10) days following the due date, 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. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest 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.

## **6. USE**

### **6.1. Permitted Use**

Tenant shall use the Premises during the Term of this Lease solely for such uses as are specified in the Basic Lease Information and for no other use. Tenant shall not interfere with the use and operation of the Building as a parking garage.

### **6.2. No Illegal Uses, Nuisances or Advertising**

Without limiting the foregoing, Tenant shall not use or occupy any of the Premises, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy, or hazardous use. Tenant shall take all precautions to eliminate any nuisances or hazards in connection with its activities within the Premises. Tenant shall not advertise in any manner in areas outside the Premises or on or about the Building; provided, however that Tenant may (i) place one identification plate on each antenna and base station equipment component that comprises Tenant's Equipment, which plate shall be no larger than two (2) inches by two (2) inches and shall be reasonably approved in advance by City, in order to identify Tenant's Equipment as belonging to Tenant, and (ii) install all signage required by federal, state and local laws, rules and regulations, codes and ordinances.

## **7. INSTALLATION OF TENANT IMPROVEMENTS**

### **7.1. Tenant Improvement Work**

Following the Commencement Date, Tenant shall commence to install Tenant's Equipment and other improvements on the Premises in accordance with the plans and specifications dated \_\_\_\_\_, prepared by \_\_\_\_\_, Tenant's architect or engineer, which have been approved by City (such work is called the "Tenant Improvement Work" or "Tenant Improvements" and such plans and specifications are called the "Approved Plans"). A copy of the Approved Plans is attached hereto as Exhibit C. The Approved Plans may be altered, subject to the prior written and reasonable approval of City, if required in order for Tenant to obtain any permits or approvals necessary for construction of the Tenant Improvements. Tenant shall be responsible, at its cost, for performing the Tenant Improvement Work in accordance with the Approved Plans and otherwise in compliance with the standards contained in Section 8.1 (Tenant's Alterations). Tenant shall further be responsible, at its cost, for obtaining all permits and licenses required in connection with the Tenant Improvements and satisfy any conditions or mitigation measures approved in connection therewith. No Tenant Improvement Work shall commence until Tenant has first obtained all necessary permits and approvals for Tenant to be legally entitled to construct the Tenant Improvements and has provided a copy of those permits and approvals to the SFMTA.

Tenant shall not: (i) alter, replace, modify, or add to any of Tenant's Equipment, or (ii) make a request to City's Planning Department for any zoning, design and environmental approvals needed from City, in its regulatory capacity, for such proposed modifications ("Planning Department Approvals"), without City's prior written consent, which may be withheld or conditioned in City's sole discretion. Tenant acknowledges that City's approval of any proposed modification of the Tenant Equipment requested by Tenant pursuant to this Lease may be conditioned on, among other requirements, changes to improve the design or reduce the impact of the proposed modifications to the surrounding environment, and shall be conditioned on written evidence that City's Planning Department has granted the Planning Department Approvals for such proposed modification. If Tenant wishes to make any exchange or



replacement of Tenant's Equipment within the Premises that requires City's written consent, City shall have the right to condition its approval of such requested exchange or replacement on an increase in the Base Rent, in accordance with the Equipment Schedule attached hereto as Exhibit E and incorporated herein by this reference. Tenant acknowledges that City shall have the sole discretion in deciding whether to approve any proposed addition to the Tenant's Equipment within the Premises or any proposed exchange or replacement of the Tenant's Equipment that would result in any expansion of the Premises, including the right to condition such approval on an increase in Base Rent. Notwithstanding the foregoing, Tenant may perform any maintenance, repairs, like-for-like exchanges or similar replacements of Tenant's Equipment and may make modifications within the interior of any of Tenant's Equipment without prior approval of City so long as the like-for-like exchanges or similar replacements of Tenant's Equipment do not pose any greater danger to the Building than the Tenant's Equipment to be so exchanged or replaced, will comply with Section 12.3 (Floor Load), and Tenant obtains all regulatory approvals required for such exchanges, replacement, or modifications.

### **7.2. Air-conditioning and Fire Suppression**

Tenant shall have the right (but not the obligation) to install and maintain at its own cost and expense a self-contained air-conditioning system and fire protection system on the Premises, as shown on the Approved Plans. Installation of such systems, which shall not connect to any of the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Building (collectively, "Building Systems"), shall be in compliance with Section 7.1 (Tenant Improvement Work) and Section 8.1 (Tenant's Alterations).

### **7.3. Certification of Tenant Equipment**

Tenant shall deliver to SFMTA a notice substantially in the form attached hereto as Exhibit G certifying that Tenant has not altered, replaced, modified or made any additions to Tenant's Equipment without SFMTA's prior written consent ("Certification of Tenant Equipment"). Tenant's Certification of Equipment shall be delivered to SFMTA annually on the Commencement Date, beginning on the first anniversary of the Commencement Date.

## **8. ALTERATIONS**

### **8.1. Tenant's Alterations**

Tenant shall not make or permit any alterations to the Building or any of the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Building (collectively, "Building Systems"), except with City's prior written consent in each instance which may be withheld in City's sole discretion. All Alterations shall be done at Tenant's sole expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics, and subject to all other conditions which City may reasonably impose. If the cost of any Alterations to the Building (excluding any shown on the Approved Plans) is in excess of Five Thousand Dollars (\$5,000), then Tenant shall pay City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. "Hard costs" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees.

### **8.2. Title to and Removal of Tenant's Equipment**

Title to the Tenant Improvements, all permitted improvements or equipment installed at and affixed to the Premises by Tenant and all of Tenant's personal property (collectively, "Tenant's Property") shall remain the property of Tenant; provided, however, that any structural improvements to the Building made by Tenant shall become City's property and remain on the Premises. City hereby acknowledges that Tenant may grant to the vendor of the equipment to be installed at and affixed to the Premises a security interest in all equipment and fixtures owned by Tenant now or hereafter located at or on the Premises; provided no such security interest shall cover any portion of the Premises or the Building or City's property in, on or about the Building

and further provided that any removal of such equipment or fixtures by the holder of any such security interest must be in compliance with the provisions of Section 26 (Surrender of Premises). Tenant may at any time, including any time it vacates the Premises (excluding the structural improvements referenced above), remove all of Tenant's Property from the Premises, subject to the provisions of Section 26 (Surrender of Premises). Notwithstanding anything to the contrary in this Lease, City can elect at any time prior to the Expiration Date or within thirty (30) days after termination of this Lease to require Tenant to remove on the Expiration Date or any earlier termination of this Lease in accordance with Section 26 (Surrender of Premises) at Tenant's sole expense, all or part of any structural improvements to the Premises or the common areas of the Building made by City or Tenant, which were made in order to provide sufficient support for Tenant's equipment, and any antenna or tower supports, foundations, or base plates.

### **8.3. Taxes on Tenant's Property**

At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Property and shall deliver reasonably satisfactory evidence of such payment to City promptly upon request.

## **9. CITY'S ALTERATIONS OF THE BUILDING AND BUILDING SYSTEMS**

City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to all or any part of the Building, the Building Systems or the common areas of the Building, 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 Equipment in 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 reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that Tenant can still operate the Premises as a Communications Site without disruption, interference or impairment. During the period of any such alterations by City which materially impair Tenant's use of the Premises as a Communications Site, Tenant shall have the right, at no additional charge, to bring into the Building and operate a portable generator and mobile Communications Site and telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage and Destruction).

## **10. REPAIRS AND MAINTENANCE**

### **10.1. City's Repairs**

City shall not be responsible for any maintenance of any portion of the Building, except that City agrees (i) to correct any immediately life-threatening or hazardous condition that affects any portion of the Building necessary for Tenant's use of the Premises as a Communications Site, so long as such condition is not the result of damage or destruction discussed in Section 15 (Damage or Destruction), the acts, omissions or negligence of Tenant or its Agents, such repair is not otherwise the responsibility of Tenant under Section 10.2 (Tenant's Repairs), and such condition is not disclosed to Tenant under any provision of this Lease or would not have otherwise been discovered by Tenant through a reasonably diligent inspection of the Premises prior to the reference date hereof, and (ii) to repair any condition caused by City or its tenants of the Building other than Tenant, which condition materially affects any portion of the Building necessary for Tenant's use of the Premises as a Communications Site and is not caused by damage or destruction discussed in Section 15 (Damage or Destruction). Upon becoming aware of any such condition, Tenant shall give the City written notice of the need for any repair for which the City is responsible under the preceding sentence; provided, however, that Tenant's agreement to provide written notice shall in no event be interpreted as an assumption of liability for such life-threatening or hazardous conditions unless Tenant would otherwise be responsible for such conditions hereunder. In the event that the costs of making the corrections or repairs described in Subsections (i) or (ii) above exceed Twenty-Five Thousand Dollars (\$25,000.00),

City may elect to terminate this Lease within thirty (30) days of the condition requiring correction or repair in lieu of making such corrections or repairs, provided however, that Tenant may elect to pay the portion of such costs in excess of Twenty-Five Thousand Dollars (\$25,000.00) necessary in order to make such correction or repairs, in which case City will proceed with the correction or repair.

## **10.2. Tenant's Repairs**

Tenant shall maintain all parts of its Premises at its sole expense, including without limitation, the floors, electrical wiring, fixtures and equipment, in good repair and working order and in a clean, safe and sanitary condition. Tenant shall repair all damage to the Building to the extent such damage results from any Tenant Alterations, Tenant's use of the Premises, or Tenant's entry on the Building pursuant to this Lease. Tenant shall make all repairs and replacements: **(a)** at Tenant's expense and at such time and, when required hereunder, in such manner as reasonably approved by City, **(b)** by duly licensed and bonded contractors or mechanics, **(c)** in a manner and using equipment and materials which will not interfere with or impair City's operations, use or occupation of the Building or the Building Systems, and **(d)** in accordance with any Building Rules and Regulations (as defined in Section 24 (Rules and Regulations)) and all applicable laws, rules and regulations of governmental authorities having jurisdiction over the Premises.

Tenant hereby waives any right it may have to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code (Lessor to make dwelling-house fit for its purpose, and Repairs by lessee, respectively) or under any similar law, statute or ordinance now or hereafter in effect.

## **11. LIENS**

Tenant shall keep the Premises and the Building free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. 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 herein 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, but not limited to, 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, without limitation, 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 Building, from mechanics' and material supplier's liens. Tenant shall give to City at least ten (10) 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 hereunder. Tenant shall not create, permit or suffer any other encumbrances affecting any portion of the Premises or the Building except as expressly permitted under this Lease or without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

## **12. UTILITIES AND SERVICES**

### **12.1. Utilities and Services**

Tenant shall furnish, at its cost, any and all utilities or services necessary or appropriate for Tenant's use and enjoyment of the Premises. 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 agrees to promptly pay for all such metered utilities. Tenant shall not: **(a)** connect or use any electrical equipment that exceeds the capacity of the Building electrical system; 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 are reasonably approved in writing in advance by City.

*[Use the following instead of language above if City to provide Utilities]*

City hereby agrees to furnish [*describe utilities*] related to Tenant's use of the Premises. Tenant shall promptly pay to City the amount of Three Hundred and No/100 Dollars (\$300.00) per month for Tenant's utility usage ("Utility Fee"). The Utility Fee shall be an Additional Charge and shall be payable to City at the same place and in the same manner as the Base Rent is payable. Tenant shall not: (a) connect or use any electrical equipment that exceeds the capacity of the Building electrical system; 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 are reasonably approved in writing in advance by City.

On each Adjustment Date, the Utility Fee payable by Tenant pursuant to this section shall be adjusted by an increase of three percent (3%) of the Utility Fee paid immediately prior to the Adjustment Date.

## **12.2. Mandatory or Voluntary Restrictions**

In the event City provides any utilities pursuant to Section 12.1 (Utilities and Services), 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 the Building or any part thereof, relating to the use or conservation of energy or electricity, or in the event City is required or elects to make alterations to any part of the Building 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 reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that Tenant can still operate the Premises as a Communications Site. During the period of any such alterations by City which materially impair Tenant's use of the Premises as a Communications Site, Tenant shall have the right, at no additional charge, to bring into the Building and operate a portable generator and mobile Communications Site and telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage and Destruction).

## **12.3. Floor Load**

Without the prior written consent of City, which City may give or refuse in City's sole discretion, Tenant shall not place or install in the Premises any machine, equipment, structure or other improvement the weight of which shall exceed the normal loadbearing capacity of the floors or roof of the Building, except as may be shown in the Approved Plans. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant at its sole expense shall reinforce the floor or roof of the Premises in the area of such placement or installation, pursuant to plans and specifications reasonably approved by City and otherwise in compliance with Section 8.1 (Tenant's Alterations), to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

## **13. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS**

### **13.1. Compliance with Laws**

Tenant, at Tenant's expense, shall promptly maintain the Premises, any Tenant Improvements and Tenant's Alterations and any other improvements and equipment of Tenant permitted hereunder, and Tenant's use and operations thereon, in strict compliance with all applicable present and future laws, orders and regulations of federal, state, county and municipal authorities (collectively, "Laws") relating to the Premises or the use or occupancy thereof, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include,

without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 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. 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 10.2 (Tenant's Repairs). In making any application to City's Planning Department for the Communications Site, Tenant agrees to act as both "Applicant" and "Project Sponsor." A copy of all conditional use permits authorizing use of the Premises are attached hereto as Exhibit D.

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any of the Tenant Improvements or any of 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 hereof, 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 hereunder, 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 herein, 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 acknowledges 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.

### **13.2. Licenses and Approvals**

Tenant shall obtain and maintain all licenses, permits, and other approvals required under all federal, state, and local laws for the operation of Tenant's Equipment on the Premises. Tenant shall maintain all such licenses, permits or other approvals throughout the Term of this Lease.

### **13.3. Radiofrequency Radiation and Electromagnetic Fields**

Without limiting Section 13.1 above, Tenant shall comply with all present and future laws, orders and regulations of federal, state, county and municipal authorities relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off the Premises, including without limitation, all applicable standards adopted by the Federal Communications Commission ("FCC"), whether such RF or EMF presence or exposure results from Tenant's equipment alone or from the cumulative effect of Tenant's equipment added to all other sources in the Building. City shall not agree to allow any third party entering into an occupancy or use agreement after the Commencement Date to cause an increase in RF or EMF levels in the Building such that the cumulative levels exceed allowable levels. If the cumulative effect of City's use of the Building taken together with Tenant's use hereunder and other tenant(s) whose use predated the

Commencement Date exceeds such standards, Tenant shall have the right to terminate this Lease without penalty upon ninety (90) days' prior written notice to City.

#### **13.4. Compliance with City's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Premises which would create any unusual fire risk, and 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. Tenant, at Tenant's expense, shall comply with all reasonable rules, orders, regulations or requirements of City's Risk Manager.

#### **14. 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 Building, the real property upon which the Building is located or City's interest therein and all renewals, extensions, modifications, and replacements of such Encumbrance. Notwithstanding the foregoing, City shall have the right to subordinate any such Encumbrances 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 the successor-in-interest to City, at the option of such successor-in-interest to City, provided that so long as Tenant is not in default hereunder beyond any cure, grace or notice period, 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 hereof. No further instrument shall be required to make the provisions hereof operative except that City shall give Tenant written notice of such subordination. Tenant agrees, however, to execute and deliver, upon demand by City and in the form reasonably 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.

#### **15. DAMAGE OR DESTRUCTION**

The parties recognize that the Premises are a small portion of a building used as, among other things, a parking garage. In the event of damage to the Premises or the Building by any cause, City shall have no obligation to rebuild or repair. If City, in City's sole and absolute discretion, determines to repair or rebuild, City shall 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, or if City elects not to repair or rebuild as provided above, then Tenant shall have the right, at its election, to terminate this Lease upon sixty (60) days prior written notice to City.

During the period of any repair or rebuilding provided for hereunder, Tenant shall have the right, at its sole expense, to bring onto the Building in a location mutually acceptable to Tenant and City and to operate a portable generator and mobile Communications Site and telescopic antennae or tower in order to provide for continuous service to Tenant's customers during such period. Neither the placement nor use of such generator or equipment shall interfere with City's operations or business in the Building or, if City has elected to repair or rebuild the Premises or the Building as provided above, with such repair or reconstruction.

The parties hereto understand and agree that the provisions of this Section 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 the provisions of Section 1932, subdivision 2, and Section 1933, subdivision 4, of the Civil Code of California (When hirer may terminate the hiring) or under any similar law, statute or ordinance now or hereafter in effect.

#### **16. EMINENT DOMAIN**

## **16.1. Eminent Domain**

If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, 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 which 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 Building shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, City shall have the right to 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 award which may be paid or made in connection therewith. 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 allocable to Tenant's relocation expenses or the interruption of or damage to Tenant's business or loss or damage to Tenant's Property.

The parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the parties 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. During the period of any such alterations by City which materially impair Tenant's use of the Premises as a Communications Site, Tenant shall have the right, at no additional charge, to bring into the Building and operate a portable generator and mobile Communications Site and telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage and Destruction).

## **17. ASSIGNMENT AND SUBLETTING**

### **17.1. Restriction on Assignment and Subletting**

Except as specifically provided herein, Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, or other transfer of any controlling interest in Tenant), 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 or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without City's prior written consent. City's consent shall not be unreasonably withheld in each instance, as provided herein below and subject to the exception for certain permitted transfers as provided in Section 17.6 (Permitted Assignment). 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 Building or City's interest therein.

### **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 thirty (30) business days after City's receipt of the Notice of Proposed Transfer (the "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. However, any Rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Base Rent and Additional Charges payable hereunder (or the amount thereof 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 hereunder at the time of Tenant's Notice of Proposed Transfer (or if any event shall have occurred which 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 hereunder or at law or in equity.

### **17.4. Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant nor any consent by City thereto nor any Assignment or Sublease by Tenant permitted hereunder 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 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 Base Rent and Additional Charges, and for the performance of all of the terms, covenants, conditions and agreements herein contained 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 (or other document reasonably satisfactory to the City in the event of an assignment permitted under Section 17.6 (Permitted 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. However, 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. Except for a permitted assignment to a general partner or affiliate of Tenant as provided in Section 17.6, 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, without limitation, 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. Permitted Assignment**

City agrees that Tenant shall be permitted to enter into an Assignment of this Lease or Sublease of the Premises, without City's prior consent but with notice to City as provided below, to any entity which directly or indirectly controls, is controlled by or is under the common control with, Tenant, and has a net worth of at least Ten Million Dollars (\$10,000,000.00), will use the Premises in the same manner as Tenant under this Lease and holds all licenses, permits, and other approvals necessary to lawfully operate a Communications Site on the Premises. As used above, the term "control" shall mean (a) as to a corporation, the ownership of stock having the right to exercise more than fifty percent (50%) of the total combined voting power of all classes of stock of the controlled corporation, issued and outstanding, and (b) as to partnerships and other forms of business associations, ownership of more than fifty percent (50%) of the beneficial interest and voting control of such association. Tenant shall use its best efforts to provide City with notice in advance of any such permitted Assignment and in any event shall provide City with written notice no later than ten (10) days after the effective date of such permitted Assignment.

### **18. DEFAULT**

#### **18.1. Events of Default**

Any of the following shall constitute an event of default by Tenant hereunder:

(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 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 calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure except for a three (3)-day notice to pay or quit as required by law;

(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 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 thirty (30) consecutive days such that the Premises are no longer being used for the purposes set forth in Section 6.1 (Permitted Use); City acknowledges 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; and

(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.

## 18.2. Remedies

Upon the occurrence of an event of default by Tenant which 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, but not limited to, 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. If City exercises its right under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. 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, City may at any time thereafter elect to terminate this Lease for such previous default.

(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.

## 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, without limitation, 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, without limitation, employees of Tenant, or loss of or damage to property, occurring on or about the Premises or License Areas or arising in connection with the use of the Premises or License Areas under this Lease, including the presence of or exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs"); (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 or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises or any occurrence on the Premises 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, in, on or about the Premises or the Building; 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 by the willful misconduct or active negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, 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 termination of the Lease.

## **20. INSURANCE**

### **20.1. Tenant's Insurance**

(a) Tenant shall procure and keep in effect at all times during the Term, at Tenant's cost, insurance in the following amounts and coverages:

(i) Commercial General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, and Two Million Dollars (\$2,000,000) general aggregate including contractual liability, personal and advertising injury, products and completed operations.

(ii) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness.

(iii) Commercial Automobile Liability Insurance with limit not less than One Million Dollars (\$1,000,000) each accident combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.

(iv) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year following written notification to SFMTA if Tenant is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.

(b) Commercial General Liability and Commercial Automobile Liability Insurance policies shall provide the following:

(i) Include as additional insured the City and County of San Francisco, its officers, agents and employees.

(ii) 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, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(c) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information.

**(d)** Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the term hereof 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.

**(e)** 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.

**(f)** Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter promptly upon City's request.

**(g)** Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 19 (Tenant's Indemnity), or any other provision of this Lease.

**(h)** Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease if Tenant allows any required insurance coverage to lapse by: (1) providing Tenant written notice of such lapse; and (2) immediately providing written notice of termination if Tenant fails to reinstate the lapsed coverage within three (3) days of City's notice of such default.

**(i)** Self Insurance

**(i)** Notwithstanding the foregoing, Tenant shall have the right to self-insure the coverage required above in Sections 20.1(a)(i) and (iii) including the right to self-insure its obligation to include City as an additional insured for such coverages, provided that: (i) Tenant's parent company is [fill-in as appropriate]; (ii) an independent third party administrator manage all claims covered by the self-insurance program; (iii) Tenant or [parent] maintains sufficient capital reserves to fully secure losses, as certified annually by Ernst & Young or any successor auditing company; (iv) Tenant maintains a net worth of at least Seventy-Five Million Dollars (\$75,000,000) at all times during the Term that Tenant is self-insuring any of the coverages listed above; and (v) Tenant acknowledges its continuing defense obligations under Section 19 and complies with Laws including the timely making of all necessary government filings. The coverage afforded to City under a self-insurance program shall be substantively similar to the coverage contained in Insurance Services Office policy form CG 00 01 or its equivalent.

**(ii)** [As of the Commencement Date, Tenant hereby represents and warrants to the SFMTA that it is not self-insuring the coverages required above in 20.1(a)(i) and/or 20.1(a)(iii). At all times during the Term that Tenant elects to self-insure any or all of the listed coverages, then Tenant must maintain a new worth of at least Seventy-Five Million Dollars (\$75,000,000) ("Net Worth Threshold"). When Tenant is self-insuring any of such coverage, the Tenant shall deliver a Certificate of Self-Insurance. Following the City's receipt of Tenant's Certificate of Self-Insurance, the City shall have the right, in the City's sole discretion, to require Tenant to deliver to City a separate written certification on the form, attached as Exhibit F, that Tenant maintains the Net Worth Threshold as of the date of Tenant's latest unaudited reports. City shall provide written notice to Tenant requesting such certification, which request must be accompanied with (1) a copy of Section 20.1 of the Lease, (2) a copy of the form attached as Exhibit F, and (3) the then current name of SFMTA's Strategic Real Estate Manager (collectively, "the Required Net Worth Threshold Certification Request Documents") to enable

Tenant to address the certification letter to the person identified by the SFMTA at that time as the SFMTA's Strategic Real Estate Manager. Within thirty (30) days of receipt of the City's written notice accompanied with the Required Net Worth Threshold Certification Request Documents, Tenant shall provide the certification to the City in the form attached hereto as Exhibit F, signed by an authorized representative of Tenant or [Tenant's parent]. In the event Tenant is unable or unwilling to provide certification to the City in the manner required herein that Tenant meets the Net Worthy Threshold, then Tenant shall not have the right to self-insure any of the coverages required above until such time as Tenant provides the required certification of Tenant's Net Worth Threshold, the City shall have the right, in City's sole discretion, to require re-certification of Tenant's Net Worth Threshold through delivery to Tenant of a further written notice from the City to Tenant accompanied with the Required Net Worth Threshold Certification Request Documents.]

## **20.2. Tenant's Property**

Tenant shall be responsible, at its expense, for separately insuring Tenant's Property.

## **20.3. City's Self Insurance**

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks. City agrees to maintain an adequate program of self-insurance for public liability risks during the Term and shall not be required to carry any third party insurance with respect to the Building, the Premises or otherwise.

## **20.4. Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, City and Tenant 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 Building or the Premises or any portion thereof or the contents of the same or any operation therein, 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 insurance obtained by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Building or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

## **21. LIMITATION OF CITY'S LIABILITY**

### **21.1. Limitation on 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 by the active negligence or willful misconduct of City and its Agents), including, without limitation, acts or omissions of persons occupying adjoining premises or any part of the Building 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 Building.

### **21.2. Consequential Damages**

Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising from the disruption to Tenant Improvements. 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 for consequential and incidental damages (including without limitation, lost profits) arising out of this Lease, including , without limitation, any interference with uses conducted by Tenant pursuant to this Lease, regardless of the cause, and whether or not due to the active or passive 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 Section 7260 et seq.), the Uniform Relocation Assistance Act (42 U.S.C. Section 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) hereof.

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

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant acknowledges that the releases contained herein 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 Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

## **22. ACCESS TO PREMISES**

### **22.1. Tenant's Access to the Premises**

City hereby grants to Tenant during the Term of this Lease and for the limited purposes and subject to the terms and conditions set forth below, a nonexclusive license in and over the following common areas of the Building to the Premises: areas providing physical access by personnel and equipment including ramps, loading docks, walkways, staircases, and ladders; and the roof of the elevator room on which Tenant's Equipment is installed as shown on Exhibit A. Use of such common areas shall be subject to City's rights under Section 9 (City's Alterations of Building and Building Systems). The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's Equipment located within the Premises or the common areas of the Building, including any necessary electrical and telephone conduits, in accordance with the use permitted under this Lease.

Such rights shall include the right of ingress and egress through the Building for access to or from the Premises or any Tenant Cables, provided that Tenant shall provide City with at least twenty-four (24) hours' prior written notice of any such access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In

the event of an emergency, Tenant shall have the right to enter the Premises (or the Building with respect to accessing any Tenant Cables) provided it makes good faith efforts if possible to notify City, or City's designated person, in advance of such entry.

The foregoing license is irrevocable until this Lease expires or sooner terminates as provided herein.

## **22.2. City's Access to the Premises**

City and its designated Agents shall have the right to enter the Premises at all reasonable times upon not less than forty-eight (48) hours advance notice (except in the event of an emergency) for any of the following purposes:

- (a) To determine whether the Premises are in good condition and to inspect the Premises;
- (b) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any default in accordance with the provisions of Section 18.2 (Remedies) hereof;
- (c) To serve, post or keep posted any notices required or allowed under any provisions of this Lease or required under any applicable Law;
- (d) To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and
- (e) To show the Premises to any prospective purchasers, brokers, encumbrancers or officials, or, during the last year of the Term of this Lease, to exhibit the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

## **22.3. Emergency Access**

In the event of any emergency, as determined by City, City may, 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) enter the Premises and alter or remove Tenant's Property on or about the Premises. City shall have the right to 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 any eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

## **22.4. 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 damage resulting directly and exclusively from the active negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees. During any City access to the Premises pursuant to this Section 22 (Access to Premises), City will not unreasonably (i) interfere with the Tenant's Equipment in any way; (ii) move or remove the Tenant's Equipment; (iii) disconnect the power or any other utilities or services serving the Tenant's Equipment; or (iv) make any repairs to the Tenant's Equipment. As soon as reasonably possible following any such action by City, City must notify Tenant orally and followed promptly by written notice, that City entered the Premises and describe the action taken by City at the Premises in default of its obligations under the foregoing sentence.

## **22.5. No Abatement**

Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section 22.

## **22.6. Minimize Disruption**

City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section 22 in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

## **23. ESTOPPEL CERTIFICATES**

Tenant, at any time and from time to time upon not less than twenty (20) days' and after receipt of written notice from City, 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), (f) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (g) any other information relating to delivery, acceptance, and condition of the Premises, and the condition of Tenant's Equipment, that may be reasonably required by any such persons.

## **24. RULES AND REGULATIONS**

Tenant shall faithfully comply with any and all reasonable written rules, regulations and instructions, which may be established during the Term by City with respect to use of any part of the Building.

## **25. SECURITY DEPOSIT**

Upon execution of this Lease, Tenant shall deposit with City the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit"), in cash, to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Premises caused by Tenant, its Agents or Invitees, or any then uncured event of default of Tenant related to the performance of any other terms, covenants or conditions contained herein (including, but not limited to, the payment of Rent or other sum due hereunder when due), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. Prior to City's use of the Security Deposit, City shall give Tenant written notice of City's intention to use the Security Deposit and the date and amount of such intended use, together with reasonable written documentation of the loss, damage or expense for which City seeks reimbursement from the Security Deposit. Tenant waives the provisions of Section 1950.7 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect and agrees that Landlord may retain any portion of Security Deposit reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents or Invitees. Without limiting the foregoing, Tenant understands and agrees that Landlord may apply some or all of the Security Deposit to the payment of future Rent following a then uncured Tenant default.



Should City use any portion of the Security Deposit to cure any uncured event of default by Tenant hereunder, Tenant shall immediately replenish the Security Deposit to the original amount within thirty (30) days following receipt of 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 the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease. Provided Tenant is not in default under the Lease, City will return any remaining portion of the Security Deposit within the applicable period required under California law following the expiration or earlier termination of this Lease.

## **26. SURRENDER OF PREMISES**

Upon the Expiration Date or other termination of this Lease, Tenant shall peaceably quit and surrender to City the Premises in good order and condition, normal wear and tear excepted, free of debris and hazards, after having made the last necessary repair required by Tenant under this Section (and damage caused by casualty or condemnation excepted). The Premises shall be surrendered free and clear of all liens and encumbrances caused by Tenant. Tenant shall, before the Expiration Date or other termination of this Lease, remove all of Tenant's Property and repair any damage resulting from the removal; provided, however, that City shall have the right to require Tenant to leave all or a portion of the Tenant Cables in place if City notifies Tenant of its exercise of such right in writing prior to the Expiration Date or other termination of this Lease. Tenant's removal and repair work pursuant to this Section shall be performed (a) at Tenant's expense and at such time and, when required hereunder, in such manner as reasonably approved by City, (b) by duly licensed and bonded contractors or mechanics, (c) in a manner and using equipment and materials which will not interfere with or impair City's operations, use or occupation of the Building or the Building Systems, and (d) in accordance with any Building Rules and Regulations and all applicable Laws. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Property which shall remain in the Premises after the Expiration Date 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 Civil Code Section 1980 et seq. or any other manner allowed by law.

Concurrently with the surrender of the Premises as provided above, Tenant agrees, if requested by City, to 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 hereunder and to effect such transfer or vesting of title to the Tenant Improvements or other improvements or equipment which are to remain part of the Premises as provided herein.

## **27. HAZARDOUS MATERIALS**

### **27.1. Definitions**

As used herein, 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, without limitation, 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. Section 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 fraction thereof, 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 Premises, the Building and the real property upon which the Building is located and all other improvements and appurtenances to such real property (collectively, 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 Building, or in, on, under or about the Property or the environment.

### **27.2. Hazardous Materials in Premises**

Tenant covenants and agrees 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, including backup batteries, as needed for backup power and routine cleaning and maintenance of Tenant's Equipment which are customarily used for backup power and routine cleaning and maintenance of such equipment and so long as all such materials are handled and used in compliance with Environmental Laws. Tenant shall immediately notify Landlord if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material on or about the Premises or the Property.

### **27.3. Tenant's Environmental Indemnity**

If Tenant breaches any of its obligations contained in this Section, or if any act, omission or negligence of Tenant or any of its Agents or Invitees 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, its Agents and Invitees, and their respective successors and assigns, and each of them, from and against any and all Claims (including, without limitation, 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 active negligence or willful misconduct of City or its Agents. The foregoing Indemnity includes, without limitation, 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 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. 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 active 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. [Extension Option**

#### **(a) Option to Extend Term**

Subject to City's rights under Sections 28.3 (City's Right to Terminate) and 28.4 (City's Protection Against Interference), City grants to Tenant one (1) option to extend the Term of this Lease (the "Extension Option"), for an additional fifty-four (54) months (the "Extended Term"). Tenant shall exercise such Extension Option by providing City with written notice not less than six (6) months prior to the expiration of the Term. Any such notice by Tenant shall be irrevocable by Tenant except as provided in Section 28.1(b) (Base Rent and Other Terms). If any material event of default by Tenant is outstanding hereunder either on the date which is six (6) months prior to the expiration of the immediately prior term or at any time prior to the first day of the Extended Term (or if any event has occurred which with the giving of notice or the passage of time or both would constitute a material event of default and such event has not been cured prior to the earlier of expiration of any applicable cure period under this Lease or the expiration of the immediately prior term), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option (and any subsequent Extension Options) shall be null and void.

#### **(b) Base Rent and Other Terms]**

If Tenant elects to exercise the Extension Option, then the lease for the Extended Term as outlined herein shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, and the Base Rent hereunder shall be adjusted to equal a three percent (3%) increase of the Base Rent paid immediately prior to the commencement of the Extended Term and adjusted in accordance with Section 5.2 (Adjustments in Base Rent).

### **28.2. Tenant's Right to Terminate**

It is understood and agreed that Tenant's ability to use the Premises is contingent upon its obtaining all of the certificates, permits and other such approvals (collectively, the "Governmental Approvals") that may be required by any federal, state or local authorities as well as a satisfactory building structural analysis which will permit Tenant use of the Premises as set forth above. In the event Tenant loses its permits necessary to operate the Communications Site due to reasons other than its failure to comply with the conditions of the permit and in spite of reasonable efforts by Tenant to maintain its permits, or if Tenant is unable to occupy and utilize the Premises or the Tenant's Equipment due to an action of the FCC, including without limitation, a take back of channels or change in frequencies, then Tenant may terminate this Lease with ninety (90) days' prior written notice to City. The parties do not intend that Tenant's right to terminate be used to allow Tenant to relocate to a better site or to reduce the total number of communications sites operated by Tenant and/or any of its affiliates for the area served by the Communications Site at the Premises.

### **28.3. Intentionally Left Blank**

### **28.4. City's Protection Against Interference**

So long as Tenant is not in default hereunder, after the Commencement Date City shall not grant a lease for the Building if such use would materially adversely interfere with Tenant's normal operation of the Communications Site. Any such future lease of the Building to a third party that permits the installation of communication equipment shall be conditioned upon such tenant not causing measurable interference which materially impairs Tenant's ability to utilize the Premises for its intended purpose.

### **28.5. Tenant's Protection Against Interference**

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 or tenants on the Property. Tenant will not use the Premises or the Tenant's Equipment located on the Premises in any way which interferes with any existing use of the Building prior to this Lease or any future use of the Building by City or its successors except as specifically set forth in Section 28.4 (City's Protection Against Interference) (including, without limitation, City's use of the Building as a parking garage with related radio, telephone and other communications transmission and reception), and such interference shall be deemed a material breach of this Lease by Tenant, which shall, upon receipt of written notice from City, be responsible for terminating such interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, Tenant agrees to immediately cease operations until such time as the radio frequency interference is eliminated (provided, however, Tenant may conduct intermittent testing of the Equipment to determine whether the interference has been resolved). City shall also have the right to bring action to enjoin such interference or to terminate this Lease immediately upon notice, at City's election. If any change in the nature of City's use of the Building during the Term results in measurable interference which materially impairs Tenant's normal operation of its equipment located on the Premises and, as a result of such interference, it is necessary to alter the Tenant Improvements or Tenant's other equipment 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 (i) make the Alterations described in such notice, in compliance with Section 8.1 (Tenant's Alterations) of this Lease, or (ii) terminate this Lease upon thirty (30) days' prior written notice to City. If Tenant elects to make such Alterations, Tenant shall offset the actual, 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 (a) the cost estimate contained in Tenant's notice to City described above or (b) Ten Thousand Dollars (\$10,000).

### **28.6. Consideration of Criminal History in Hiring and Employment Decisions**

(a) Tenant agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Tenant is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Tenant's operations to the extent those operations are in furtherance of the performance of this Lease, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Lease.

(c) Tenant shall incorporate by reference in all contracts in furtherance of the performance of this Lease the provisions of Chapter 12T, and shall require all contractors party to such contracts to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(d) Tenant 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.

(e) Tenant 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 28.6(d), above. Tenant 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.

(f) Tenant shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Lease, that Tenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Tenant shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Tenant's control at which work is being done or will be done in furtherance of the performance of this Lease. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Tenant understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, 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.

## **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, by sending it first class mail or certified mail with a return receipt requested or overnight courier service, return receipt requested, with postage prepaid, to:

(a) Tenant at Tenant's address set forth in the 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; or (b) Landlord at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section. All notices hereunder shall be deemed to have been given or received five (5) days after the date when it shall have been deposited with the U.S. Post Office if sent by first class or certified mail, or the next business day following deposit with an overnight courier service, or upon the date personal delivery is made. Neither party may give official or binding notice by facsimile.

### **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 thereof, irrespective of the length of time for which such failure continues, shall constitute a waiver of such breach. No acceptance by any Agent of City 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 any Agent of City, 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 hereof 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 hereof by either party shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

### **29.3. Amendments**

Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated orally, and no breach thereof shall be waived, altered or modified, except by a written instrument signed by both parties hereto.

### **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 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 covenants and warranties.

### **29.5. Interpretation of Lease**

The words "City" or "Landlord" and "Tenant" as used herein 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 herein, 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 and such captions 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 herein. 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. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Parking or his or her designee unless otherwise provided in this Lease, by City's Charter or City Ordinance.

#### **29.6. Successors and Assigns**

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 herein, their personal representatives and successors and assigns; provided, however, that upon the sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Building 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.

#### **29.7. Brokers**

If either 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 this Lease, then any 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. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication in connection with the lease contemplated herein, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

#### **29.8. Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, 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 to each provision of this Lease shall be valid and be enforced to the full 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.

#### **29.9. Governing Law**

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

#### **29.10. Entire Agreement**

This instrument, including the exhibits hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. 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 drafts hereof and changes therefrom) 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 Building or this Lease except as expressly set forth herein, and

no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

#### **29.11. Attorneys' Fee**

In the event that 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 hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the 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 the City Attorney. The term "attorneys' fees" shall also include, without limitation, 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.

#### **29.12. Holding Over**

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 for a period of one (1) year at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, and shall otherwise be on the terms and conditions herein specified 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 entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Base Rent and Additional Charges from Tenant.

#### **29.13. 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.

#### **29.14. Cumulative Remedies**

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

#### **29.15. 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 hereof.

#### **29.16. Signs**

Except for signs required by federal, state or local laws, rules, regulations, codes or ordinances, Tenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the



Premises, without obtaining the prior written consent and approval of City, which City may withhold or grant in its sole discretion.

### **29.17. 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 hereunder, except as described in Section 28.4 (City's Protection Against Interference).

### **29.18. Recording**

Tenant agrees that it shall not record this Lease nor any memorandum or short form hereof in the Official Records of the City and County of San Francisco.

### **29.19. Taxes, Assessments, Licenses, Permit Fees and Liens**

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(c) San Francisco Administrative Code Sections 23.6-1 and 23.6-2 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction; and that Tenant report certain information relating to any assignment of or sublease under this lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

### **29.20. Non-Liability of City Officials, Employees and Agents**

No elective or appointive board, commission, member, officer, employee or 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 which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease.

### **29.21. Wages and Working Conditions**

With respect to the construction of the Tenant Improvement Work and any Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall include in any contract for construction of such Tenant Improvements and Alterations a requirement that

all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of such Tenant Improvement Work or any Alterations to the Premises.

## **29.22. Non-Discrimination in City Contracts and Benefits Ordinance**

### **(a) Covenant Not to Discriminate**

In the performance of this Lease, Tenant agrees not to 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.

Tenant further acknowledges that the Americans with Disabilities Act requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Subject to Section 13.1 (Compliance with Laws) hereof, Tenant acknowledges its obligation to comply with such Act and any other federal, state or local disability rights legislation. Tenant warrants that it will fulfill that obligation. Tenant also warrants that it will not discriminate against disabled persons in the provision of services, benefits or activities.

### **(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 the 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) HRC Form**

As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed

and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

**(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 Lease as though fully set forth herein. 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 but not limited to 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.

**29.23. 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 herein 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, the 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 the City in accordance with any reporting standards promulgated by the 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.

#### **29.24. MacBride Principles - Northern Ireland**

The City and County of San Francisco 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. The City and County of San Francisco 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 the City and County of San Francisco concerning doing business in Northern Ireland.

#### **29.25. 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.

#### **29.26. Tropical Hardwood and Virgin Redwood Ban**

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood

or virgin redwood wood product except as expressly provided by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

### **29.27. Pesticide Prohibition**

Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to SFMTA an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

Nothing herein shall prevent Tenant, through the SFMTA, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

### **29.28. Prohibition of Tobacco Sales and Advertising**

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

### **29.29. 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, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

### **29.30. Preservative-Treated Wood Containing Arsenic**

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater

immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

### **29.31. Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease, Tenant shall immediately notify the City.

### **29.32. Notification of Limitations on Contributions**

Through its execution of this Lease, Tenant 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 the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant 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 \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the names of each person, entity or committee described above.

### **29.33. Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. 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. 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.

### **29.35. Effective Date**

This Lease shall become effective on the date upon which the parties hereto have duly executed this Lease.

### **29.36. 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.

[BALANCE OF PAGE LEFT INTENTIONALLY BLANK]

City and Tenant have executed this Lease as of the date first written above

<b>CITY</b>	<b>TENANT</b>
<p>By _____ EDWARD D. REISKIN Director of Transportation San Francisco Municipal Transportation Agency</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Stephanie Stuart Deputy City Attorney</p>	<p>By _____ Its _____</p>



EXHIBIT A  
PLANS

EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

[Date]

\_\_\_\_\_  
Senior Manager, Strategic Real Estate  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, Eighth Floor  
San Francisco, CA 94103

RE: Acknowledgment of Commencement Date and Expiration Date, Lease Between  
\_\_\_\_\_  
(Tenant), and the CITY AND COUNTY OF  
SAN FRANCISCO, by and through its Municipal Transportation Agency (Landlord), for  
Communications Site premises located at \_\_\_\_\_, San Francisco

Dear M. \_\_\_\_\_:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined  
in Section 3.2 of the Lease) is \_\_\_\_\_, 20 .

Please acknowledge your acceptance of this letter by signing and returning a copy of this  
letter.

Very truly yours,

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted and Agreed:

By: \_\_\_\_\_  
Senior Manager, Strategic Real Estate

Dated: \_\_\_\_\_

EXHIBIT C

APPROVED TENANT'S PLANS AND SPECIFICATIONS

EXHIBIT D  
CONDITIONAL USE PERMIT

EXHIBIT E

COMMUNICATION SITE EQUIPMENT FEE SCHEDULE  
EFFECTIVE JANUARY 1<sup>st</sup>, 2016

<b>Description</b>	<b>Annually</b>	<b>Annual Increase</b>
Minimum base rent up to 3 antennas, plus	\$50,000	3%
Rent per square foot for equipment areas	\$65.	3%
Additional Rent per antenna in excess of 3	\$10,000	3%

EXHIBIT F

FORM SELF-INSURANCE CERTIFICATION LETTER RE: NET WORTH THRESHOLD

\_\_\_\_\_, 2\_\_

San Francisco Municipal Transportation Agency  
Attention: \_\_\_\_\_ [Name of Director to be Provided by SFMTA & Inserted]  
1 South Van Ness Avenue, Eighth Floor  
San Francisco, California 94103

Re: \_\_\_\_\_ Telecommunications Site Lease (“Lease”)  
**Certification of Tenant’s Net Worth Threshold Pursuant to Section 20.1(i) of the Lease**

Dear \_\_\_\_\_:

We are aware that [insert legal name of carrier/parent company] (“Tenant”) is required to certify to the City in accordance with Section 20.1(i) of the Lease that Tenant has a net worth of Seventy-Five Million Dollars (\$75,000,000) (“Net Worth Threshold”) to continue to have the right to self-insure coverages under subsections 20.1(a)(i) and 20.1(a)(iii) of the Lease.

We confirm that we monitor the financial condition and operations of Tenant, and that we provide the resources to enable Tenant to conduct its business in the normal course, and to perform its obligations, such as the above-mentioned Lease. Based on the latest unaudited reports, Tenant meets the Net Worth Threshold Test as of [date of last unaudited report].

This letter is not a guarantee of the obligations of Tenant, nor may any person other than the addressee be entitled to rely on our representations herein.

Sincerely,

\_\_\_\_\_(Name)

\_\_\_\_\_(Title)

[company name]

EXHIBIT G

FORM TENANT EQUIPMENT AND PREMISES CERTIFICATION LETTER

\_\_\_\_\_. 2\_\_

San Francisco Municipal Transportation Agency  
Attn: Senior Manager, Strategic Real Estate  
1 South Van Ness Avenue, Eighth Floor  
San Francisco, CA 94102

RE: Certification of Tenant Equipment and Premises as set forth in the Lease between  
\_\_\_\_\_(Tenant) and the San Francisco Municipal Transportation  
Agency (SFMTA) for Communications

Dear \_\_\_\_\_:

Pursuant to Section 7.3 of the above-referenced Lease, Tenant hereby certifies that it has not altered, replaced, modified or made any additions to Tenant's Equipment without SFMTA's prior written consent.

Sincerely,

\_\_\_\_\_(Name)

\_\_\_\_\_(Title)

COMMUNICATIONS SITE LEASE

between

PARKING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

\_\_\_\_\_ ,  
as Tenant

For the lease of

a Site at \_\_\_\_\_  
San Francisco, California

\_\_\_\_\_ 1, 20\_\_



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COMMUNICATIONS SITE LEASE

THIS COMMUNICATIONS SITE LEASE (this "Lease") dated for reference purposes only as of \_\_\_\_\_ 1, 20\_\_\_\_, is made between the PARKING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic, ("Authority" or "Landlord"), and \_\_\_\_\_ a \_\_\_\_\_ corporation ("Tenant").

Authority and Tenant hereby covenant and agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "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: \_\_\_\_\_ 1, 20\_\_

Landlord: PARKING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO

Tenant:

Building (Section 3.1): [ \_\_\_\_\_ ] Garage, Building located at \_\_\_\_\_, San Francisco, California

Premises (Section 3.1): The portions of the Building consisting of (1) [approximately( )square feet of space in the \_\_\_\_\_ floor of the Building in which Tenant's communications facilities is to be installed (shown on Exhibit A, Sheet \_\_\_\_\_), and (2) certain space on the located on the roof of the Building on which \_\_\_\_\_( ) mobile/wireless antennas are to be mounted (as shown on Exhibit A, Sheet \_\_\_\_\_). In connection with the lease of the Premises and for the term of the Lease, Tenant shall have a nonexclusive license for the placement and use of wiring and conduit as shown on the Approved Plans (as defined in below]. The Building is owned by the Parking Authority of the City and County of San Francisco.

Term (Section 4.2): Estimated commencement date: \_\_\_\_\_ 1, 20\_\_

Expiration date: Fifth anniversary of the Commencement Date

[Extension Option (Section 28.1)]: As further described in Section 28.1, Tenant shall have an option to extend this Lease for an additional fifty-four (54) months upon no less than nine (9) months prior written notice to Authority.

Base Rent (Section 5.1): Annual Base Rent: \$

Monthly payments: \$

Adjustment Dates (Section 5.2): Annually on January 1 of each year, beginning January 1, 201\_.

Use (Section 6.1): Tenant shall only use the Premises for the transmission and reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities as one of Tenant's communications sites (a "Communications Site"). Tenant shall not use the Premises for any other purposes without the written consent of Landlord.

Tenant's Equipment (Section 7): The following equipment and improvements that Tenant has the right to install at the Building pursuant to this Lease, which installation shall be done at Tenant's sole cost: \_\_\_\_\_ (collectively, "Tenant's Equipment").

Utilities and Services (Section 12.1): [All utilities and services necessary for use of the Communications Site to be provided by Tenant at its sole cost; Authority has no responsibility for any utilities or services to the Premises or the common area unless Tenant requires access to existing utilities for future equipment installations permitted under this Lease, in which case Authority agrees to provide such access.]

[Authority shall furnish utilities related to Tenant's use of the Premises. Tenant shall pay the Utility Fee for the provision of such utilities.]

Security Deposit (Section 25): \$50,000.00. Security Deposit may be paid in the form of cash, bond or non-revocable letter of credit.

Notice Address of Landlord (Section 29.1): The Parking Authority of the City and County of San Francisco  
1 South Van Ness Avenue, Eighth Floor  
San Francisco, CA 94103  
Attn: Senior Manager, Strategic Real Estate

Re: [*Identify Project/Property*]

Fax No.: (415) 701-4743

with a copy to:

Office of the City Attorney  
City and County of San Francisco  
1390 Market Street, 7th Flr  
San Francisco, CA 94102

Attn: Transportation Team  
Re: [Identify Project/Property]

Key Contact for Landlord:

Telephone No.: (415) 701-[ ]

Notice Address for Tenant [ ]  
(Section 28.1): [ ]

[ ]

[ ]

With a mandatory copy to: [ ]

Key Contact for Tenant: [ ]

Telephone No.: [ ]

Alternate Contact for Tenant [ ]

Telephone No.: [ ]

Other Noteworthy Provisions: Tenant has the right to terminate this Lease if it loses its permits to operate a Communications Site at the Premises in spite of its reasonable efforts to maintain such permits (Section 28.2).

## 2. CO-LOCATION OF TELECOMMUNICATIONS FACILITIES

### 2.1. Prohibition on Co-location Without Landlord's Consent

Co-location of facilities is prohibited except with the express written approval of Landlord, which approval shall not be unreasonably withheld, delayed or conditioned. A "co-located telecommunication facility" means a telecommunication facility comprised of one or more antennas, dishes, or similar devices owned or used by more than one public or private entity that is not controlled by or under common control with Tenant. The meaning of "control" in the foregoing sentence shall be as set forth in Section 17.6.

### 2.2. Required Co-location

Notwithstanding the foregoing, Tenant is on notice that Landlord may require Tenant to co-locate its facilities on the Premises, defined below in Section 3.1, with other facilities or providers or require Tenant to permit other facilities or providers to co-locate on Tenant's 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 interference with Tenant's existing use of the Premises. If no such interference would occur upon installation of a co-locator's equipment as reasonably determined by Landlord, 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 agreement prepared in commercially reasonable form by the proposed co-locator; (ii) pay all costs arising from or related to the co-location, including but not limited to any and all costs incurred by Tenant to accommodate such co-location; and (iii) reimburse Tenant a



commercially reasonable percentage of 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.

### **3. PREMISES; AS IS LEASE**

#### **3.1. Lease Premises; Tenant Cable License**

Subject to the terms, covenants and conditions set forth in this Lease, Authority leases to Tenant and Tenant leases from Authority those premises specified in the Basic Lease Information and shown on the plans attached hereto as Exhibit A (the "Premises"). Tenant shall have access to the Premises and portions of the common areas of the Building as provided in Section 22.1 (Tenant's Access to Premises).

In connection with its use of the Premises as a Communications Site and for the Term of this Lease, Authority grants Tenant a nonexclusive license for the placement and use of Tenant's utility and fiber cabling, wires, pipes, and conduits reasonably necessary to connect Tenant's Equipment (collectively, the "Tenant Cables") across the areas shown on the Approved Plans (as defined in Section 7.1 (Tenant Improvement Work)). Such license shall be irrevocable, but shall terminate upon any termination of this Lease. Authority, in its sole discretion, may relocate such license area upon one hundred eighty (180) days prior written notice to Tenant. Except as otherwise expressly permitted in this Lease, all Tenant Cables that connect Tenant's Equipment located in different sites within the Building shall pass through existing openings in the Building's walls, floors, ceilings or parking decks, unless Tenant reasonably determines that such existing openings are not usable. In such event, Tenant shall obtain Landlord's prior written consent to make any new penetrations through the Building walls, floors, ceilings or parking decks for any Tenant Cables, which consent will not be unreasonably withheld, conditioned or delayed. As used herein, "Property" means the Premises, Building and real property upon which the Building is located and all other improvements and appurtenances to such land.

To request Landlord's consent to new penetrations, Tenant shall deliver such request to Landlord in writing, together with any information reasonably requested by Landlord to analyze whether such proposed penetrations would negatively impact the Building's safety or structural integrity (a "Request Notice"). Such Landlord-requested information may include an analysis of the impact of the proposed penetrations, prepared by a California-licensed structural engineer with reasonable experience in analyzing such issues. If the cost of making any such new penetrations is more than Five Thousand Dollars (\$5,000), Tenant shall pay Landlord the administrative fee described in Section 8.1. If the cost of making any such new penetrations is Five Thousand Dollars (\$5,000) or less, at Landlord's election, Tenant shall pay Landlord a reasonable administrative review fee before Landlord is required to review such new penetration request. Such administrative review fee shall be based on Landlord's estimated costs in reviewing the proposed penetrations. Landlord shall notify Tenant in writing if Landlord will charge such an administrative review fee and the amount of such fee within forty-five (45) days of receiving Tenant's Request Notice. Tenant shall have the right to withdraw its Request Notice at any time; provided, however, that if Tenant withdraws such Request Notice after delivering the administrative review fee or a Section 8.1 administrative fee, Landlord shall have no obligation to reimburse such fee to Tenant.

#### **3.2. As Is Lease**

TENANT EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS, WITH ALL FAULTS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES, INCLUDING, WITHOUT LIMITATION, ZONING ORDINANCES AND REGULATIONS GOVERNING THE USE, OCCUPANCY OR POSSESSION OF THE

PREMISES OR LICENSED AREAS. TENANT REPRESENTS AND WARRANTS TO LANDLORD THAT TENANT HAS CONDUCTED A REASONABLY DILIGENT INVESTIGATION, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S CHOOSING, OF THE CONDITION OF THE PREMISES AND OF THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE, AND TENANT IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION. TENANT FURTHER REPRESENTS AND WARRANTS THAT ITS INTENDED USE OF THE PREMISES IS THE USE DESCRIBED IN THE BASIC LEASE INFORMATION. TENANT AGREES THAT NEITHER AUTHORITY NOR ANY OF ITS AGENTS HAVE MADE, AND AUTHORITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PHYSICAL, STRUCTURAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES OR LICENSED AREAS FOR THE CONDUCT OF TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FOR PURPOSES OF CALIFORNIA CIVIL CODE SECTION 1938, TO THE EXTENT APPLICABLE TO THIS PERMIT, THE BUILDING HAS NOT BEEN INSPECTED BY A CERTIFIED ACCESS SPECIALIST.

#### **4. TERM**

##### **4.1. Term of Lease**

The Premises are leased for a term (the "Term") of five (5) years, commencing and terminating as set forth below. The Term of this Lease shall end on the Expiration Date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the terms hereof. No delay in the commencement of this Lease beyond the Estimated Commencement Date specified in the Basic Lease Information shall serve to extend the Initial Term beyond the Expiration Date. [Tenant shall have the right to extend the Term for one (1) Extended Term of fifty-four (54) months as provided in Section 28.1(a) (Option to Extend Term).] As used below, the "Term" shall include the initial term of five (5) years, [and the Extended Term if Tenant duly exercises its Extension Option with respect to such Extended Term pursuant to this Lease.]

Notwithstanding anything to the contrary herein, Parking Authority shall have the right at any time during the Term to terminate this Lease under this Section when the Premises are needed in connection with a Parking Authority project, service or program, or in the event of the sale or development of the Structure. Parking Authority may exercise this right without any liability or expense, upon one hundred eighty (180) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 180-day period.

##### **4.2. Confirmation of Commencement Date and Expiration Date**

The Term of this Lease shall be effective upon the full execution by the parties and the earlier to occur of (i) the first day of the first month following Tenant's notice to Landlord in writing that Tenant has obtained all permits and approvals necessary for Tenant to be legally entitled to construct a facility for providing communication services at the Premises, or (ii) the Estimated Commencement Date specified in the Basic Lease Information (the "Commencement Date"). The Term shall terminate on the Expiration Date unless earlier terminated pursuant to the terms hereof [ or extended as provided in Section 28.1]. Promptly following the Commencement Date, if the Commencement Date occurs on a date other than the Estimated Commencement Date specified in the Basic Lease Information, Tenant shall deliver to Authority a notice in substantially the form attached hereto as Exhibit B identifying the Commencement Date determined in accordance with the provisions hereof, and Authority shall execute and return

such notice to Tenant. However, the parties' failure to execute or deliver such notice shall not affect the commencement of the Term.

#### **4.3. Delay in Lease Commencement**

If Tenant does not obtain all necessary permits and approvals necessary for Tenant to be legally entitled to construct and/or install the facility for providing mobile/wireless communication services at the Premises within one hundred eighty (180) days from the Estimated Commencement Date, then either Authority or Tenant may terminate this Lease by written notice to the other party given within ten (10) days after such one hundred twenty (120)-day period, and neither party shall have any further rights or obligations hereunder.

### **5. RENT; ADDITIONAL CHARGES**

#### **5.1. Base Rent**

Beginning on the Commencement Date, Tenant shall pay to Authority during the Term the annual Base Rent specified in the Basic Lease Information as the same may be increased pursuant to Section 5.2 (Adjustments in Base Rent) (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, by good check to the Parking Authority of the City and County of San Francisco at the address for the Director of Parking specified in the Basic Lease Information, or such other place as Authority 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 Expiration Date occurs 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.

#### **5.2. Adjustments in Base Rent**

On each date specified in the Basic Lease Information for the adjustment of Base Rent (an "Adjustment Date") during the Term, the Base Rent payable by Tenant under Section 5.1 (Base Rent) above shall be increased by an amount equal to three percent (3%) of the Base Rent in effect immediately prior to the Adjustment Date.

#### **5.3. Additional Charges**

Tenant shall promptly pay to Authority any [and all Utility Charges under Section 12.1 (Utilities and Services), and] other amounts, if any, required under any other provision of this Lease, as additional rent (herein called "Additional Charges"). Such Additional Charges shall be payable to Authority at the same place and in the same manner as the Base Rent is payable. Authority 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.

#### **5.4. Late Charges**

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

## **5.5. Default Interest**

Any Rent, if not paid within ten (10) days following the due date, 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. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest 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.

## **6. USE**

### **6.1. Permitted Use**

Tenant shall use the Premises during the Term of this Lease solely for such uses as are specified in the Basic Lease Information and for no other use. Tenant shall not interfere with the use and operation of the Building as a parking garage.

### **6.2. No Illegal Uses, Nuisances or Advertising**

Without limiting the foregoing, Tenant shall not use or occupy any of the Premises, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy, or hazardous use. Tenant shall take all precautions to eliminate any nuisances or hazards in connection with its activities within the Premises. Tenant shall not advertise in any manner in areas outside the Premises or on or about the Building; provided, however that Tenant may (i) place one identification plate on each antenna and base station equipment component that comprises Tenant's Equipment, which plate shall be no larger than two (2) inches by two (2) inches and shall be reasonably approved in advance by Authority, in order to identify Tenant's Equipment as belonging to Tenant, and (ii) install all signage required by federal, state and local laws, rules and regulations, codes and ordinances.

## **7. INSTALLATION OF TENANT IMPROVEMENTS**

### **7.1. Tenant Improvement Work**

Following the Commencement Date, Tenant shall commence to install Tenant's Equipment and other improvements on the Premises in accordance with the plans and specifications dated \_\_\_\_\_, prepared by \_\_\_\_\_, Tenant's architect or engineer which have been approved by Authority (such work is called the "Tenant Improvement Work" or "Tenant Improvements" and such plans and specifications are called the "Approved Plans"). A copy of the Approved Plans is attached hereto as Exhibit C. The Approved Plans may be altered, subject to the prior written and reasonable approval of Authority, if required in order for Tenant to obtain any permits or approvals necessary for construction of the Tenant Improvements. Tenant shall be responsible, at its cost, for performing the Tenant Improvement Work in accordance with the Approved Plans and otherwise in compliance with the standards contained in Section 8.1 (Tenant's Alterations). Tenant shall further be responsible, at its cost, for obtaining all permits and licenses required in connection with the Tenant Improvements and satisfy any conditions or mitigation measures approved in connection therewith. No Tenant Improvement Work shall commence until Tenant has first obtained all necessary permits and approvals for Tenant to be legally entitled to construct the Tenant Improvements and has provided a copy of those permits and approvals to SFMTA.

Tenant shall not: (i) alter, replace, modify, or add to any of Tenant's Equipment, or (ii) make a request to City's Planning Department for any zoning, design and environmental approvals needed from City, in its regulatory capacity, for such proposed modifications

("Planning Department Approvals"), without Authority's prior written consent, which may be withheld or conditioned in Authority's sole discretion. Tenant acknowledges that Authority's approval of any proposed modification of the Tenant Equipment requested by Tenant pursuant to this Lease may be conditioned on, among other requirements, changes to improve the design or reduce the impact of the proposed modifications to the surrounding environment, and shall be conditioned on written evidence that City's Planning Department has granted the Planning Department Approvals for such proposed modification. If Tenant wishes to make any exchange or replacement of Tenant's Equipment within the Premises that requires Authority's written consent, Authority shall have the right to condition its approval of such requested exchange or replacement on and increase in the Base Rent, in accordance with the Equipment Schedule attached hereto as Exhibit E and incorporated herein by this reference. Tenant acknowledges that Authority shall have the sole discretion in deciding whether to approve any proposed addition to the Tenant's Equipment within the Premises or any proposed exchange or replacement of the Tenant's Equipment that would result in any expansion of the Premises, including the right to condition such approval on an increase in Base Rent. Notwithstanding the foregoing, Tenant may perform any maintenance, repairs, like-for-like exchanges or similar replacements of Tenant's Equipment and may make modifications within the interior of any of Tenant's Equipment without prior approval of Authority so long as the like-for-like exchanges or similar replacements of Tenant's Equipment do not pose any greater danger to the Building than the Tenant's Equipment to be so exchanged or replaced, will comply with Section 12.3 (Floor Load), and Tenant obtains all regulatory approvals required for such exchanges, replacement, or modifications.

## **7.2. Air-conditioning and Fire Suppression**

Tenant shall have the right (but not the obligation) to install and maintain at its own cost and expense a self-contained air-conditioning system and fire protection system on the Premises, as shown on the Approved Plans. Installation of such systems, which shall not connect to any of the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Building (collectively, "Building Systems"), shall be in compliance with Section 7.1 (Tenant Improvement Work) and Section 8.1 (Tenant's Alterations).

## **7.3. Certification of Tenant Equipment**

Tenant shall deliver to Parking Authority notice substantially in the form attached hereto as Exhibit G certifying that Tenant has not altered, replaced, modified or made any additions to Tenant's Equipment without Parking Authority's prior written consent ("Certification of Tenant Equipment"). Tenant's Certification of Equipment shall be delivered to Parking Authority annually on the anniversary of the Commencement Date, beginning on the first anniversary of the Commencement Date.

# **8. ALTERATIONS**

## **8.1. Tenant's Alterations**

Tenant shall not make or permit any alterations to the Building or any of the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Building (collectively, "Building Systems"), except with Authority's prior written consent in each instance which may be withheld in Authority's sole discretion. All Alterations shall be done at Tenant's sole expense in accordance with plans and specifications approved by Authority, only by duly licensed and bonded contractors or mechanics, and subject to all other conditions which Authority may reasonably impose. If the cost of any Alterations to the Building (excluding any shown on the Approved Plans) is in excess of Five Thousand Dollars (\$5,000), then Tenant shall pay Authority an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. "Hard

costs" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees.

### **8.2. Title to and Removal of Tenant's Equipment**

Title to the Tenant Improvements, all permitted improvements or equipment installed at and affixed to the Premises by Tenant and all of Tenant's personal property (collectively, "Tenant's Property") shall remain the property of Tenant; provided, however, that any structural improvements to the Building made by Tenant with Authority's consent shall become Authority's property and remain on the Premises. Authority hereby acknowledges that Tenant may grant to the vendor of the equipment to be installed at and affixed to the Premises a security interest in all equipment and fixtures owned by Tenant now or hereafter located at or on the Premises; provided no such security interest shall cover any portion of the Premises or the Building or Authority's property in, on or about the Building and further provided that any removal of such equipment or fixtures by the holder of any such security interest must be in compliance with the provisions of Section 26 (Surrender of Premises). Tenant may at any time, including any time it vacates the Premises (excluding the structural improvements referenced above), remove all of Tenant's Property from the Premises, subject to the provisions of Section 26 (Surrender of Premises). Notwithstanding anything to the contrary in this Lease, Authority can elect at any time prior to the Expiration Date or within thirty (30) days after termination of this Lease to require Tenant to remove on the Expiration Date or any earlier termination of this Lease in accordance with Section 26 (Surrender of Premises) at Tenant's sole expense, all or part of any structural improvements to the Premises or the common areas of the Building made by Authority or Tenant, which were made in order to provide sufficient support for Tenant's equipment, and any antenna or tower supports, foundations, or base plates.

### **8.3. Taxes on Tenant's Property**

At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Property and shall deliver reasonably satisfactory evidence of such payment to Authority promptly upon request.

## **9. AUTHORITY'S ALTERATIONS OF THE BUILDING AND BUILDING SYSTEMS**

Authority reserves the right at any time to make alterations, additions, repairs, deletions or improvements to all or any part of the Building, the Building Systems or the common areas of the Building, for any purpose including compliance with mandatory or voluntary controls or guidelines, subject to the following terms and conditions. In performing any such work, Authority 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 Equipment in 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 reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that Tenant can still operate the Premises as a Communications Site without disruption, interference or impairment. During the period of any such alterations by Authority which materially impair Tenant's use of the Premises as a Communications Site, Tenant shall have the right at no additional charge to bring into the Building and operate a portable generator and mobile Communications Site and telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage and Destruction).

## **10. REPAIRS AND MAINTENANCE**

## **10.1. Authority's Repairs**

Authority shall not be responsible for any maintenance of any portion of the Building, except that Authority agrees (i) to correct any immediately life-threatening or hazardous condition that affects any portion of the Building necessary for Tenant's use of the Premises as a Communications Site, so long as such condition is not the result of damage or destruction discussed in Section 15 (Damage or Destruction), the acts, omissions or negligence of Tenant or its Agents, such repair is not otherwise the responsibility of Tenant under Section 10.2 (Tenant's Repairs), and such condition is not disclosed to Tenant under any provision of this Lease or would not have otherwise been discovered by Tenant through a reasonably diligent inspection of the Premises prior to the reference date hereof, and (ii) to repair any condition caused by Authority or its tenants of the Building other than Tenant, which condition materially affects any portion of the Building necessary for Tenant's use of the Premises as a Communications Site and is not caused by damage or destruction discussed in Section 15 (Damage or Destruction). Upon becoming aware of any such condition, Tenant shall give the Authority written notice of the need for any repair for which the Authority is responsible under the preceding sentence; provided, however, that Tenant's agreement to provide written notice shall in no event be interpreted as an assumption of liability for such life-threatening or hazardous conditions unless Tenant would otherwise be responsible for such conditions hereunder. In the event that the costs of making the corrections or repairs described in Subsections (i) or (ii) above exceed Twenty-Five Thousand Dollars (\$25,000.00), Authority may elect to terminate this Lease within thirty (30) days of the condition requiring correction or repair in lieu of making such corrections or repairs, provided however, that Tenant may elect to pay the portion of such costs in excess of Twenty-Five Thousand Dollars (\$25,000.00) necessary in order to make such correction or repairs, in which case Authority will proceed with the correction or repair.

## **10.2. Tenant's Repairs**

Tenant shall maintain all parts of its Premises at its sole expense, including without limitation, the floors, electrical wiring, fixtures and equipment, in good repair and working order and in a clean, safe and sanitary condition. Tenant shall repair all damage to the Building to the extent such damage results from any Tenant Alterations, Tenant's use of the Premises, or Tenant's entry on the Building pursuant to this Lease. Tenant shall make all repairs and replacements: (a) at Tenant's expense and at such time and, when required hereunder, in such manner as reasonably approved by Authority, (b) by duly licensed and bonded contractors or mechanics, (c) in a manner and using equipment and materials which will not interfere with or impair Authority's operations, use or occupation of the Building or the Building Systems, and (d) in accordance with any Building Rules and Regulations (as defined in Section 24 (Rules and Regulations)) and all applicable laws, rules and regulations of governmental authorities having jurisdiction over the Premises.

Tenant hereby waives any right it may have to make repairs at Authority's expense under Sections 1941 and 1942 of the California Civil Code (Lessor to make dwelling-house fit for its purpose, and Repairs by lessee, respectively) or under any similar law, statute or ordinance now or hereafter in effect.

## **11. LIENS**

Tenant shall keep the Premises and the Building free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. 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, Authority shall have in addition to all other remedies provided herein 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, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Authority and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Authority by Tenant upon demand. Authority shall have the right at all times to post

and keep posted on the Premises any notices permitted or required by law or that Authority shall deem proper for the protection of Authority, the Premises, and the Building, from mechanics' and material supplier's liens. Tenant shall give to Authority at least ten (10) 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 hereunder. Tenant shall not create, permit or suffer any other encumbrances affecting any portion of the Premises or the Building except as expressly permitted under this Lease or without first obtaining the written consent of Authority, which Authority may give or withhold in its sole discretion.

## **12. UTILITIES AND SERVICES**

### **12.1. Utilities and Services**

Tenant shall furnish, at its cost, any and all utilities or services necessary or appropriate for Tenant's use and enjoyment of the Premises. 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 agrees to promptly pay for all such metered utilities. Tenant shall not: (a) connect or use any electrical equipment that exceeds the capacity of the Building electrical system; 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 are reasonably approved in writing in advance by Authority.

*[Use the following instead of language above if Authority to provide Utilities]*

[Authority hereby agrees to furnish *[describe utilities]* related to Tenant's use of the Premises. Tenant shall promptly pay to Authority the amount of Three Hundred and No/100 Dollars (\$300.00) per month for Tenant's utility usage ("Utility Fee"). The Utility Fee shall be an Additional Charge and shall be payable to Authority at the same place and in the same manner as the Base Rent is payable. Tenant shall not: (a) connect or use any electrical equipment that exceeds the capacity of the Building electrical system; 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 are reasonably approved in writing in advance by Authority.

On each Adjustment Date, the Utility Fee payable by Tenant pursuant to this section shall be adjusted by an increase of three percent (3%) of the Utility Fee paid immediately prior to the Adjustment Date.]

### **12.2. Mandatory or Voluntary Restrictions**

In the event Authority provides any utilities pursuant to Section 12.1 (Utilities and Services), 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 Authority or the Building or any part thereof, relating to the use or conservation of energy or electricity, or in the event Authority is required or elects to make alterations to any part of the Building 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 reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that Tenant can still operate the Premises as a Communications Site. During the period of any such alterations by City which materially impair Tenant's use of the Premises as a Communications Site, Tenant shall have the right, at no additional charge, to bring into the Building and operate a portable generator and mobile Communications Site and



telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage and Destruction).

### **12.3. Floor Load**

Without the prior written consent of Authority, which Authority may give or refuse in Authority's sole discretion, Tenant shall not place or install in the Premises any machine, equipment, structure or other improvement the weight of which shall exceed the normal loadbearing capacity of the floors or roof of the Building, except as may be shown in the Approved Plans. If Authority consents to the placement or installation of any such machine or equipment in the Premises, Tenant at its sole expense shall reinforce the floor or roof of the Premises in the area of such placement or installation, pursuant to plans and specifications reasonably approved by Authority and otherwise in compliance with Section 8.1 (Tenant's Alterations), to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

## **13. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS**

### **13.1. Compliance with Laws**

Tenant, at Tenant's expense, shall promptly maintain the Premises, any Tenant Improvements and Tenant's Alterations and any other improvements and equipment of Tenant permitted hereunder, and Tenant's use and operations thereon, in strict compliance with all applicable present and future laws, orders and regulations of federal, state, county and municipal authorities (collectively, "Laws") relating to the Premises or the use or occupancy thereof, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 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. 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 10.2 (Tenant's Repairs). In making any application to the San Francisco Planning Department for the Communications Site, Tenant agrees to act as both "Applicant" and "Project Sponsor." A copy of all conditional use permits authorizing use of the Premises are attached hereto as Exhibit D.

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any of the Tenant Improvements or any of 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 hereof, the relative benefit of the repairs to Tenant or Authority, 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 hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Authority. Except as expressly provided herein, 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 Authority to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

Tenant acknowledges and agrees that Authority 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 departments, boards or commissions of the City and County of San Francisco ("City") having jurisdiction over the Premises. By entering into this Lease, Authority 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.

### **13.2. Licenses and Approvals**

Tenant shall obtain and maintain all licenses, permits, and other approvals required under all federal, state, and local laws for the operation of Tenant's Equipment on the Premises. Tenant shall maintain all such licenses, permits or other approvals throughout the Term of this Lease.

### **13.3. Radiofrequency Radiation and Electromagnetic Fields**

Without limiting Section 13.1 above, Tenant shall comply with all present and future laws, orders and regulations of federal, state, county and municipal authorities relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off the Premises, including without limitation, all applicable standards adopted by the Federal Communications Commission ("FCC"), whether such RF or EMF presence or exposure results from Tenant's equipment alone or from the cumulative effect of Tenant's equipment added to all other sources in the Building. Authority shall not agree to allow any third party entering into an occupancy or use agreement after the Commencement Date to cause an increase in RF or EMF levels in the Building such that the cumulative levels exceed allowable levels. If the cumulative effect of Authority's use of the Building taken together with Tenant's use hereunder and other tenant(s) whose use predated the Commencement Date exceeds such standards, Tenant shall have the right to terminate this Lease without penalty upon ninety (90) days' prior written notice to Authority.

### **13.4. Compliance with City's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Premises which would create any unusual fire risk, and shall take commercially reasonable steps to protect Authority from any potential premises liability by reason of any business operation being conducted by Tenant in the Premises. Tenant, at Tenant's expense, shall comply with all reasonable rules, orders, regulations or requirements of City's Risk Manager.

## **14. 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 Building, the real property upon which the Building is located or Authority's interest therein and all renewals, extensions, modifications, and replacements of such Encumbrance. Notwithstanding the foregoing, Authority shall have the right to subordinate any such Encumbrances 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 the successor-in-interest to Authority, provided that so long as Tenant is not in default hereunder beyond any cure, grace or notice period, 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 Authority to terminate this Lease or otherwise dispossess Tenant of the Premises in accordance with the terms hereof. No further instrument shall be required to make the provisions hereof operative except that Authority shall give Tenant written notice of such subordination. Tenant agrees, however, to execute and deliver, upon demand by Authority and in the form reasonably requested by Authority, 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.

## **15. DAMAGE OR DESTRUCTION**

The parties recognize that the Premises are a small portion of a building used as, among other things, a parking garage. In the event of damage to the Premises or the Building by any cause, Authority shall have no obligation to rebuild or repair. If Authority, in Authority's sole and absolute discretion, determines to repair or rebuild, Authority shall 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, or if Authority elects not to repair or rebuild as provided above, then Tenant shall have the right, at its election, to terminate this Lease upon sixty (60) days prior written notice to Authority.

During the period of any repair or rebuilding provided for hereunder, Tenant shall have the right, at its sole expense, to bring onto the Building in a location mutually acceptable to Tenant and Authority and to operate a portable generator and mobile Communications Site and telescopic antennae or tower in order to provide for continuous service to Tenant's customers during such period. Neither the placement nor use of such generator or equipment shall interfere with Authority's operations or business in the Building or, if Authority has elected to repair or rebuild the Premises or the Building as provided above, with such repair or reconstruction.

The parties hereto understand and agree that the provisions of this Section are intended to govern fully the rights and obligations of the parties in the event of damage or destruction, and Tenant and Authority each hereby waives and releases the provisions of Section 1932, subdivision 2, and Section 1933, subdivision 4, of the Civil Code of California (When hirer may terminate the hiring) or under any similar law, statute or ordinance now or hereafter in effect.

## **16. EMINENT DOMAIN**

### **16.1. Eminent Domain**

If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, 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 Authority 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 which 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 Building shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, Authority shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the date of the taking.

In the event of any taking, Authority shall be entitled to any award which may be paid or made in connection therewith. Tenant shall have no claim against Authority 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 allocable to Tenant's relocation expenses or the interruption of or damage to Tenant's business or loss or damage to Tenant's Property.

The parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the parties in the event of a taking. Tenant and Authority 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 Authority shall be entitled to receive the balance of any award. During the period of any such alterations by Authority which materially impair Tenant's use of the Premises as a Communications Site, Tenant shall have the right, at no additional charge, to bring into the Building and operate a portable generator and mobile Communications Site and telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage and Destruction).

## **17. ASSIGNMENT AND SUBLETTING**

### **17.1. Restriction on Assignment and Subletting**

Except as specifically provided herein, Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, or other transfer of any controlling interest in Tenant), 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 or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without Authority's prior written consent. Authority's consent shall not be unreasonably withheld in each instance, as provided herein below and subject to the exception for certain permitted transfers as provided in Section 17.6 (Permitted Assignment). 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 Building or Authority's interest therein.

### **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 Authority 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 Authority to make a fully informed decision about consent to Tenant's request.

### **17.3. Authority's Response**

Authority shall make its election to approve or disapprove such Assignment or Sublease within thirty (30) business days after Authority's receipt of the Notice of Proposed Transfer (the "Response Period"). If Authority 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. However, any Rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Base Rent and Additional Charges payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease) shall be paid to Authority 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 hereunder at the time of Tenant's Notice of Proposed Transfer (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then Authority may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies hereunder or at law or in equity.

#### **17.4. Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant nor any consent by Authority thereto nor any Assignment or Sublease by Tenant permitted hereunder without Authority'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 shall be void and, at Authority's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base Rent or other payments by Authority from a proposed Transferee shall not constitute consent to such Sublease or Assignment by Authority or a recognition of any Transferee, or a waiver by Authority 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 Base Rent and Additional Charges, and for the performance of all of the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed. No Assignment shall be binding on Authority unless Tenant or Transferee shall deliver to Authority evidence satisfactory to Authority 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 (or other document reasonably satisfactory to the Authority in the event of an assignment permitted under Section 17.6 (Permitted Assignment)) and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in substance and form to Authority, and consistent with the requirements of this Section. However, 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. Except for a permitted assignment to a general partner or affiliate of Tenant as provided in Section 17.6, Tenant shall reimburse Authority on demand for any reasonable costs that may be incurred by Authority in connection with any proposed Sublease or Assignment, including, without limitation, 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. Permitted Assignment**

Authority agrees that Tenant shall be permitted to enter into an Assignment of this Lease or Sublease of the Premises, without Authority's prior consent but with notice to Authority as provided below, to any entity which directly or indirectly controls, is controlled by or is under the common control with, Tenant, and has a net worth of at least Ten Million Dollars (\$10,000,000.00), will use the Premises in the same manner as Tenant under this Lease and holds all licenses, permits, and other approvals necessary to lawfully operate a Communications Site on the Premises. As used above, the term "control" shall mean (a) as to a corporation, the ownership of stock having the right to exercise more than fifty percent (50%) of the total combined voting power of all classes of stock of the controlled corporation, issued and outstanding, and (b) as to partnerships and other forms of business associations, ownership of more than fifty percent (50%) of the beneficial interest and voting control of such association. Tenant shall use its best efforts to provide Authority with notice in advance of any such

permitted Assignment and in any event shall provide Authority with written notice no later than ten (10) days after the effective date of such permitted Assignment.

## **18. DEFAULT**

### **18.1. Events of Default**

Any of the following shall constitute an event of default by Tenant hereunder:

(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 from Authority within which to cure any default in the payment of Rent; provided, however, that Authority shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from Authority shall constitute a default by Tenant hereunder without any requirement on the part of Authority to give Tenant notice of such failure except for a three (3)-day notice to pay or quit as required by law;

(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 from Authority 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 its receipt of written notice of default from Authority;

(c) any vacation or abandonment of the Premises for more than thirty (30) consecutive days such that the Premises are no longer being used for the purposes set forth in Section 6.1 (Permitted Use); Authority acknowledges 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; and

(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.

### **18.2. Remedies**

Upon the occurrence of an event of default by Tenant which is not cured by Tenant within the applicable grace period, if any, specified in Section 18.1 (Events of Default), Authority shall have the following rights and remedies in addition to all other rights and remedies available to Authority at law or in equity:

(a) the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, 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 Authority 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 Authority 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 Authority's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession. If Authority exercises its right under California Civil Code Section 1951.4, Authority may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as Authority in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to Authority of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by Authority and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by Authority pursuant to this Subsection shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, Authority may at any time thereafter elect to terminate this Lease for such previous default.

(c) the right to have a receiver appointed for Tenant upon application by Authority 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 Authority pursuant to this Lease.

## **19. TENANT'S INDEMNITY**

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") Authority, its Agents and Invitees, and its 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, without limitation, 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, without limitation, employees of Tenant, or loss of or damage to property, occurring on or about the Premises or License Areas or arising in connection with the use of the Premises or License Areas under this Lease, including the presence or exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs"); (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 or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises or any occurrence on the Premises 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, in, on or about the Premises or the Building; 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 by the willful misconduct or active negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority 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 Authority and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of the Lease.

## **20. INSURANCE**

## **20.1. Tenant's Insurance**

**(a)** Tenant shall procure and keep in effect at all times during the Term, at Tenant's cost, insurance in the following amounts and coverages:

**(i)** Commercial General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, and Two Million Dollars (\$2,000,000) general aggregate including contractual liability, personal and advertising injury, products and completed operations.

**(ii)** Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness.

**(iii)** Commercial Automobile Liability Insurance with limit not less than One Million Dollars (\$1,000,000) each accident combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.

**(iv)** Business Interruption Insurance insuring that the Rent will be paid to Authority for a period of at least one (1) year following written notification to the Landlord if Tenant is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.

**(b)** Commercial General Liability and Commercial Automobile Liability Insurance and policies shall provide the following:

**(i)** Include as additional insured the Parking Authority of the City and County of San Francisco, its officers, agents and employees.

**(ii)** 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, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

**(c)** All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and Authority. Notice to Authority shall be mailed to the address(es) for Authority set forth in the Basic Lease Information.

**(d)** Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the term hereof 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.

**(e)** 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.

**(f)** Tenant shall deliver to Authority certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to Authority, evidencing the coverages



required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Authority's request, and Tenant shall provide Authority with certificates or policies thereafter promptly upon Authority's request.

(g) Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 19 (Tenant's Indemnity), or any other provision of this Lease.

(h) Notwithstanding anything to the contrary in this Lease, Authority may elect, in Authority's sole and absolute discretion, to terminate this Lease if Tenant allows any required insurance coverage to lapse by: (1) providing Tenant written notice of such lapse; and (2) immediately providing written notice of termination if Tenant fails to reinstate the lapsed coverage within three (3) days of Authority's notice of such default.

(i) Self Insurance

(i) Notwithstanding the foregoing, Tenant shall have the right to self-insure the coverage required above in Sections 20.1(a)(i) and (iii) including the right to self-insure its obligation to include Parking Authority as an additional insured for such coverages, provided that: (i) Tenant's parent company is [fill-in as appropriate]; (ii) an independent third party administrator manage all claims covered by the self-insurance program; (iii) Tenant or [parent] maintains sufficient capital reserves to fully secure losses, as certified annually by Ernst & Young or any successor auditing company; (iv) Tenant maintains a net worth of at least Seventy-Five Million Dollars (\$75,000,000) at all times during the Term that Tenant is self-insuring any of the coverages listed above; and (v) Tenant acknowledges its continuing defense obligations under Section 19 and complies with Laws including the timely making of all necessary government filings. The coverage afforded to Parking Authority under a self-insurance program shall be substantively similar to the coverage contained in Insurance Services Office policy form CG 00 01 or its equivalent.

(ii) [As of the Commencement Date, Tenant hereby represents and warrants to the Parking Authority that it is not self-insuring the coverages required above in 20.1(a)(i) and/or 20.1(a)(iii). At all times during the Term that Tenant elects to self-insure any or all of the listed coverages, then Tenant must maintain a new worth of at least Seventy-Five Million Dollars (\$75,000,000) ("Net Worth Threshold"). When Tenant is self-insuring any of such coverage, the Tenant shall deliver a Certificate of Self-Insurance. Following the Parking Authority's receipt of Tenant's Certificate of Self-Insurance, the Parking Authority shall have the right, in the Parking Authority's sole discretion, to require Tenant to deliver to Parking Authority a separate written certification on the form, attached as Exhibit F, that Tenant maintains the Net Worth Threshold as of the date of Tenant's latest unaudited reports. Parking Authority shall provide written notice to Tenant requesting such certification, which request must be accompanied with (1) a copy of Section 20.1 of the Lease, (2) a copy of the form attached as Exhibit F, and (3) the then current name of SFMTA's Strategic Real Estate Manager (collectively, "the Required Net Worth Threshold Certification Request Documents") to enable Tenant to address the certification letter to the person identified by the Parking Authority at that time as the SFMTA's Strategic Real Estate Manager. Within thirty (30) days of receipt of the Parking Authority's written notice accompanied with the Required Net Worth Threshold Certification Request Documents, Tenant shall provide the certification to the Parking Authority in the form attached hereto as Exhibit F, signed by an authorized representative of Tenant or [Tenant's parent]. In the event Tenant is unable or unwilling to provide certification to the Parking Authority in the manner required herein that Tenant meets the Net Worthy Threshold, then Tenant shall not have the right to self-insure any of the coverages required above until such time as Tenant provides the required certification of Tenant's Net Worth Threshold, the Parking Authority shall have the right, in Parking Authority's sole discretion, to require re-certification of Tenant's Net Worth Threshold through delivery to Tenant of a further written notice from the

Parking Authority to Tenant accompanied with the Required Net Worth Threshold Certification Request Documents.]

### **20.2. Tenant's Property**

Tenant shall be responsible, at its expense, for separately insuring Tenant's Property.

### **20.3. Authority's Self Insurance**

Tenant acknowledges that Authority self-insures against casualty, property damage and public liability risks. Authority agrees to maintain an adequate program of self-insurance for public liability risks during the Term and shall not be required to carry any third party insurance with respect to the Building, the Premises or otherwise.

### **20.4. Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, Authority and Tenant 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 Building or the Premises or any portion thereof or the contents of the same or any operation therein, 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 insurance obtained by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its third party insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Building or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

## **21. LIMITATION OF AUTHORITY'S LIABILITY**

### **21.1. Limitation on Authority's Liability**

Authority shall not be responsible for or liable to Tenant, and Tenant hereby waives all Claims against Authority and its Agents and releases Authority 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 by the active negligence or willful misconduct of Authority and its Agents), including, without limitation, acts or omissions of persons occupying adjoining premises or any part of the Building 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 Building.

### **21.2. Consequential Damages**

Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of Authority for any consequential or incidental damages including, but not limited to, lost profits arising from the disruption to Tenant Improvements. Authority 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 Authority 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 Authority for consequential and incidental damages (including without limitation, lost profits) arising out of this Lease, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease, regardless of the cause, and whether or not due to the active or passive negligence or willful misconduct of Authority or its Agents, and covenants not to sue for such damages Authority, 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 Section 7260 et seq.), the Uniform Relocation Assistance Act (42 U.S.C. Section 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) hereof.

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

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant acknowledges that the releases contained herein 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 Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

## **22. ACCESS TO PREMISES**

### **22.1. Tenant's Access to the Premises**

Authority hereby grants to Tenant during the Term of this Lease and for the limited purposes and subject to the terms and conditions set forth below, a nonexclusive license in and over the following common areas of the Building to the Premises: areas providing physical access by personnel and equipment including ramps, loading docks, walkways, staircases, and ladders; and the roof of the elevator room on which Tenant's Equipment is installed as shown on Exhibit A. Use of such common areas shall be subject to Authority's rights under Section 9 (Authority's Alterations of Building and Building Systems). The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's Equipment located within the Premises or the common areas of the Building, including any necessary electrical and telephone conduits, in accordance with the use permitted under this Lease.

Such rights shall include the right of ingress and egress through the Building for access to or from the Premises or any Tenant Cables, provided that Tenant shall provide Authority with at least twenty-four (24) hours' prior written notice of any such access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the Premises (or the Building with respect to accessing any Tenant Cables) provided it makes good faith efforts if possible to notify Authority, or Authority's designated person, in advance of such entry.

The foregoing license is irrevocable until this Lease expires or sooner terminates as provided herein.

## **22.2. Authority's Access to the Premises**

Authority and its designated Agents shall have the right to enter the Premises at all reasonable times upon not less than forty-eight (48) hours advance notice (except in the event of an emergency) for any of the following purposes:

- (a) To determine whether the Premises are in good condition and to inspect the Premises;
- (b) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any default in accordance with the provisions of Section 18.2 (Remedies) hereof;
- (c) To serve, post or keep posted any notices required or allowed under any provisions of this Lease or required under any applicable Law;
- (d) To do any maintenance or repairs to the Premises that Authority has the right or the obligation, if any, to perform hereunder; and
- (e) To show the Premises to any prospective purchasers, brokers, encumbrancers or officials, or, during the last year of the Term of this Lease, to exhibit the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

## **22.3. Emergency Access**

In the event of any emergency, as determined by Authority, Authority may, at its sole option and without notice (provided that Authority shall make reasonable efforts to provide Tenant with notice when feasible in light of the exigent circumstances) enter the Premises and alter or remove Tenant's Property on or about the Premises. Authority shall have the right to use any and all means Authority considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Authority 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 any eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

## **22.4. No Liability**

Authority 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 Authority's entry onto the Premises, except damage resulting directly and exclusively from the active negligence or willful misconduct of Authority or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees. During any Authority access to the Premises pursuant to this Section 22 (Access to Premises), Authority will not unreasonably (i) interfere with the Tenant's Equipment in any way; (ii) move or remove the Tenant's Equipment; (iii) disconnect the power or any other utilities or services serving the Tenant's Equipment; or (iv) make any repairs to the Tenant's Equipment. As soon as reasonably possible following any such action by Authority, Authority must notify Tenant orally and followed promptly by written notice, that Authority entered the Premises and describe the action taken by Authority at the Premises in default of its obligations under the foregoing sentence.

## **22.5. No Abatement**

Tenant shall not be entitled to any abatement in Rent if Authority exercises any rights reserved in this Section 22.

## **22.6. Minimize Disruption**

Authority shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section 22 in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

## **23. ESTOPPEL CERTIFICATES**

Tenant, at any time and from time to time upon not less than twenty (20) days' and after receipt of written notice from Authority, shall execute, acknowledge and deliver to Authority or to any party designated by Authority, 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 Authority under this Lease (and if so specifying the same), (f) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (g) any other information relating to delivery, acceptance, and condition of the Premises, and the condition of Tenant's Equipment, that may be reasonably required by any such persons.

## **24. RULES AND REGULATIONS**

Tenant shall faithfully comply with any and all reasonable written rules, regulations and instructions which may be established during the Term by Authority with respect to use of any part of the Building.

## **25. SECURITY DEPOSIT**

Upon execution of this Lease, Tenant shall deposit with Authority the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit"), in cash, to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that Authority may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Premises caused by Tenant, its Agents or Invitees, or any then uncured event of default of Tenant related to the performance of any other terms, covenants or conditions contained herein (including, but not limited to, the payment of Rent or other sum due hereunder when due), without waiving any of Authority's other rights and remedies hereunder or at law or in equity and without any obligation. Prior to Authority's use of the Security Deposit, Authority shall give Tenant written notice of Authority's intention to use the Security Deposit and the date and amount of such intended use, together with reasonable written documentation of the loss, damage or expense for which Authority seeks reimbursement from the Security Deposit. Tenant waives the provisions of Section 1950.7 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect and agrees that Landlord may retain any portion of Security Deposit reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents or Invitees. Without limiting the foregoing, Tenant understands and agrees that Landlord may apply some or all of the Security Deposit to the payment of future Rent following a then uncured Tenant default.

Should Authority use any portion of the Security Deposit to cure any uncured event of default by Tenant hereunder, Tenant shall immediately replenish the Security Deposit to the original amount within thirty (30) days following receipt of written notice. Authority's obligations with respect to the Security Deposit are solely that of debtor and not trustee. Authority shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

Provided Tenant is not in default under the Lease, Authority will return any remaining portion of the Security Deposit within the applicable period required under California law following the expiration or earlier termination of this Lease.

## **26. SURRENDER OF PREMISES**

Upon the Expiration Date or other termination of this Lease, Tenant shall peaceably quit and surrender to Authority the Premises in good order and condition, normal wear and tear excepted, free of debris and hazards, after having made the last necessary repair required by Tenant under this Section (and damage caused by casualty or condemnation excepted). The Premises shall be surrendered free and clear of all liens and encumbrances caused by Tenant. Tenant shall, before the Expiration Date or other termination of this Lease, remove all of Tenant's Property and repair any damage resulting from the removal; provided, however, that Authority shall have the right to require Tenant to leave all or a portion of the Tenant Cables in place if Authority notifies Tenant of its exercise of such right in writing prior to the Expiration Date or other termination of this Lease. Tenant's removal and repair work pursuant to this Section shall be performed (a) at Tenant's expense and at such time and, when required hereunder, in such manner as reasonably approved by Authority, (b) by duly licensed and bonded contractors or mechanics, (c) in a manner and using equipment and materials which will not interfere with or impair Authority's operations, use or occupation of the Building or the Building Systems, and (d) in accordance with any Building Rules and Regulations and all applicable Laws. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Property which shall remain in the Premises after the Expiration Date of this Lease may, at the option of Authority, be deemed abandoned and in such case may be disposed of by Authority in accordance with Civil Code Section 1980 et seq. or any other manner allowed by law.

Concurrently with the surrender of the Premises as provided above, Tenant agrees, if requested by Authority, to execute, acknowledge and deliver to Authority a quitclaim deed to the Premises and any other instrument reasonably requested by Authority to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Tenant Improvements or other improvements or equipment which are to remain part of the Premises as provided herein.

## **27. HAZARDOUS MATERIALS**

### **27.1. Definitions**

As used herein, 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, without limitation, 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. Section 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 fraction thereof, 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 Premises, the Building and the real property upon which the Building is located and all other improvements and appurtenances to such real property (collectively, 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 Building, or in, on, under or about the Property or the environment.

### **27.2. Hazardous Materials in Premises**

Tenant covenants and agrees 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, including backup batteries, as needed for backup power and routine cleaning and maintenance of Tenant's Equipment which are customarily used for backup power and routine cleaning and maintenance of such equipment and so long as all such materials are handled and used in compliance with Environmental Laws. Tenant shall immediately notify Landlord if and when Tenant learns or has reason to believe there has been any **Release** of Hazardous Material on or about the Premises or the Property.

### **27.3. Tenant's Environmental Indemnity**

If Tenant breaches any of its obligations contained in this Section, or if any act, omission or negligence of Tenant or any of its Agents or Invitees 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 Authority, its Agents and Invitees, and their respective successors and assigns, and each of them, from and against any and all Claims (including, without limitation, 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 active negligence or willful misconduct of Authority or its Agents. The foregoing Indemnity includes, without limitation, 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 Authority 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 Authority 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 Authority, 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 active negligence of Authority or its Agents. Tenant shall afford Authority 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. [Extension Option]**

#### **(a) Option to Extend Term**

Subject to Authority's rights under Sections 28.3 (Authority's Right to Terminate) and 28.4 (Authority's Protection Against Interference), Authority grants to Tenant one (1) option to extend the Term of this Lease (the "Extension Option"), for an additional fifty-four (54) months (the "Extended Term"). Tenant shall exercise such Extension Option by providing City with written notice not less than six (6) months prior to the expiration of the Term. Any such notice by Tenant shall be irrevocable by Tenant except as provided in Section 28.1(b) (Base Rent and Other Terms). If any material event of default by Tenant is outstanding hereunder either on the date which is six (6) months prior to the expiration of the immediately prior term or at any time prior to the first day of the Extended Term (or if any event has occurred which with the giving of notice or the passage of time or both would constitute a material event of default and such event has not been cured prior to the earlier of expiration of any applicable cure period under this Lease or the expiration of the immediately prior term), then Authority may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option (and any subsequent Extension Option) shall be null and void.

#### **(b) Base Rent and Other Terms**

If Tenant elects to exercise the Extension Option, then the lease for the Extended Term as outlined herein shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease and the Base Rent hereunder shall be adjusted to equal a three percent (3%) increase of the Base Rent paid immediately prior to the commencement of the Extended Term and adjusted in accordance with Section 5.2 (Adjustments in Base Rent).

### **28.2. Tenant's Right to Terminate**

It is understood and agreed that Tenant's ability to use the Premises is contingent upon its obtaining all of the certificates, permits and other such approvals (collectively, the "Governmental Approvals") that may be required by any federal, state or local authorities as well as a satisfactory building structural analysis which will permit Tenant use of the Premises as set forth above. In the event Tenant loses its permits necessary to operate the Communications Site due to reasons other than its failure to comply with the conditions of the permit and in spite of reasonable efforts by Tenant to maintain its permits, or if Tenant is unable to occupy and utilize the Premises or the Tenant's Equipment due to an action of the FCC, including without limitation, a take back of channels or change in frequencies, then Tenant may terminate this Lease with ninety (90) days' prior written notice to Authority. The parties do not intend that Tenant's right to terminate be used to allow Tenant to relocate to a better site or to reduce the total number of communications sites operated by Tenant and/or any of its affiliates for the area served by the Communications Site at the Premises.

### **28.3. Intentionally Left Blank**

### **28.4. Authority's Protection Against Interference**

So long as Tenant is not in default hereunder, after the Commencement Date Authority shall not grant a lease for the Building if such use would materially adversely interfere with Tenant's normal operation of the Communications Site. Any such future lease of the Building to a third party that permits the installation of communication equipment shall be conditioned upon



such tenant not causing measurable interference which materially impairs Tenant's ability to utilize the Premises for its intended purpose.

### **28.5. Tenant's Protection Against Interference**

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 or tenants on the Property. Tenant will not use the Premises or the Tenant's Equipment located on the Premises in any way which interferes with any existing use of the Building prior to this Lease or any future use of the Building by Authority or its successors except as specifically set forth in Section 28.4 (Authority's Protection Against Interference) (including, without limitation, Authority's use of the Building as a parking garage with related radio, telephone and other communications transmission and reception), and such interference shall be deemed a material breach of this Lease by Tenant, which shall, upon notice from Authority, be responsible for terminating such interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, Tenant agrees to immediately cease operations until such time as the radio frequency interference is eliminated (provided, however, Tenant may conduct intermittent testing of the Equipment to determine whether the interference has been resolved). Authority shall have the right to bring action to enjoin such interference or to terminate this Lease immediately upon notice, at Authority's election. If any change in the nature of Authority's use of the Building during the Term results in measurable interference which materially impairs Tenant's normal operation of its equipment located on the Premises and, as a result of such interference, it is necessary to alter the Tenant Improvements or Tenant's other equipment located on the Premises, Tenant shall notify Authority of such interference, which notice shall include a detailed description of the necessary Alterations and a cost estimate therefor. Upon receipt of such notice, Authority shall have the right to terminate this Lease upon thirty (30) days' prior written notice to Tenant. If Authority elects not to terminate this Lease, Tenant may, at its election, either (i) make the Alterations described in such notice, in compliance with Section 8.1 (Tenant's Alterations) of this Lease, or (ii) terminate this Lease upon thirty (30) days' prior written notice to Authority. If Tenant elects to make such Alterations, Tenant shall offset the actual, 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 (a) the cost estimate contained in Tenant's notice to Authority described above or (b) Ten Thousand Dollars (\$10,000).

### **28.6. Consideration of Criminal History in Hiring and Employment Decisions**

(a) Tenant agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Tenant is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Tenant's operations to the extent those operations are in furtherance of the performance of this Lease, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Lease.

(c) Tenant shall incorporate by reference in all contracts in furtherance of the performance of this Lease the provisions of Chapter 12T, and shall require all contractors party to such contracts to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(d) Tenant 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.

(e) Tenant 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 28.6(d), above. Tenant 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.

(f) Tenant shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Lease, that Tenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Tenant shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Tenant's control at which work is being done or will be done in furtherance of the performance of this Lease. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Tenant understands and agrees that if it fails to comply with the requirements of Chapter 12T, the Authority shall have the right to pursue any rights or remedies available under Chapter 12T, 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.

## **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, by sending it first class mail or certified mail with a return receipt requested or overnight courier service, return receipt requested, with postage prepaid, to:

(a) Tenant at Tenant's address set forth in the 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; or (b) Landlord at Authority's address set forth in the Basic Lease Information; or (c) to such other address as either Authority or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section. All notices hereunder shall be deemed to have been given or received five (5) days after the date when it shall have been deposited with the U.S. Post Office if sent by first class or certified mail, or the next business day following deposit with an overnight courier service, or upon the date personal delivery is made. Neither party may give official or binding notice by facsimile.

## **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 thereof, irrespective of the length of time for which such failure continues, shall constitute a waiver of such breach. No acceptance by any Agent of Authority 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 any Agent of Authority, shall constitute a waiver of such breach or of Authority'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 hereof 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 hereof by either party shall not be deemed to be a waiver of a subsequent default or performance. The consent of Authority given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of Authority in any other or future instance under the terms of this Lease.

## **29.3. Amendments**

Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated orally, and no breach thereof shall be waived, altered or modified, except by a written instrument signed by both parties hereto.

## **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 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 Authority's request, Tenant shall provide Authority with evidence reasonably satisfactory to Authority confirming the foregoing covenants and warranties.

## **29.5. Interpretation of Lease**

The words "Authority" or "Landlord" and "Tenant" as used herein 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 herein, 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 and such captions 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 herein. 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. All approvals, consents or other determinations permitted or required by Authority hereunder shall be made by or through Authority's Director of Parking or his or her designee unless otherwise provided in this Lease.

## **29.6. Successors and Assigns**

The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Authority and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon the sale, assignment or

transfer by Authority named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, Authority (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

#### **29.7. Brokers**

If either 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 this Lease, then any 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. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication in connection with the lease contemplated herein, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

#### **29.8. Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, 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 to each provision of this Lease shall be valid and be enforced to the full 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.

#### **29.9. Governing Law**

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

#### **29.10. Entire Agreement**

This instrument, including the exhibits hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. 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 drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither Authority nor Authority's Agents have made any representations or warranties with respect to the Premises, the Building or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

#### **29.11. Attorneys' Fee**

In the event that either Authority 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 hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the Authority (for services provided by the 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 the City Attorney. The term "attorneys' fees" shall also include, without limitation, 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.

#### **29.12. Holding Over**

Any holding over after the expiration of the Term with the express consent of Authority shall be construed to automatically extend the Term of this Lease for a period of one (1) year at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any holding over without Authority's consent shall constitute a default by Tenant and entitle Authority to exercise any or all of its remedies as provided herein, notwithstanding that Authority may elect to accept one or more payments of Base Rent and Additional Charges from Tenant.

#### **29.13. 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.

#### **29.14. Cumulative Remedies**

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

#### **29.15. 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 hereof.

#### **29.16. Signs**

Except for signs required by federal, state or local laws, rules, regulations, codes or ordinances, Tenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without obtaining the prior written consent and approval of Authority, which Authority may withhold or grant in its sole discretion.

#### **29.17. 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 Authority) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of Authority to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder, except as described in Section 28.4 (Authority's Protection Against Interference).

### **29.18. Recording**

Tenant agrees that it shall not record this Lease nor any memorandum or short form hereof in the Official Records of the City and County of San Francisco.

### **29.19. Taxes, Assessments, Licenses, Permit Fees and Liens**

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(c) San Francisco Administrative Code Sections 23.6-1 and 23.6-2 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction; and that Tenant report certain information relating to any assignment of or sublease under this lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the Authority to enable the Authority to comply with this requirement.

### **29.20. Non-Liability of Authority Officials, Employees and Agents**

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

### **29.21. Wages and Working Conditions**

With respect to the construction of the Tenant Improvement Work and any Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall include in any contract for construction of such Tenant Improvements and Alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to Authority upon request, certified payroll reports with respect to all persons performing labor in the construction of such Tenant Improvement Work or any Alterations to the Premises.

### **29.22. Non-Discrimination in Authority Contracts and Benefits Ordinance**

#### **(a) Covenant Not to Discriminate**

In the performance of this Lease, Tenant agrees not to discriminate against any employee of, any Authority 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.

Tenant further acknowledges that the Americans with Disabilities Act requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Subject to Section 13.1 (Compliance with Laws) hereof, Tenant acknowledges its obligation to comply with such Act and any other federal, state or local disability rights legislation. Tenant warrants that it will fulfill that obligation. Tenant also warrants that it will not discriminate against disabled persons in the provision of services, benefits or activities.

**(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 Authority, or where the work is being performed for the Authority 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) HRC Form**

As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

**(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 Authority property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. 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 but not limited to 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.

### **29.23. 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 herein 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. Authority shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving Authority'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, Authority 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 Authority.

(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 Authority when it enters into such a Subcontract and shall certify to Authority 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, Authority may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that Authority 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 Authority 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 the Authority in accordance with any reporting standards promulgated by the Authority under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

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

(j) Authority may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with Authority 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 Authority 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.

#### **29.24. MacBride Principles - Northern Ireland**

The City and County of San Francisco 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. The City and County of San Francisco 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 the City and County of San Francisco concerning doing business in Northern Ireland.

#### **29.25. 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 Authority 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.

#### **29.26. Tropical Hardwood and Virgin Redwood Ban**

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly provided by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

#### **29.27. Pesticide Prohibition**

Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to Authority an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone

number, an individual to act as the Tenant's primary IPM contact person with the Authority. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

Nothing herein shall prevent Tenant, through the Director of Parking, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

#### **29.28. Prohibition of Tobacco Sales and Advertising**

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

#### **29.29. 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, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

#### **29.30. Preservative-Treated Wood Containing Arsenic**

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the City's Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **29.31. Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease, Tenant shall immediately notify the Authority.

### **29.32. Notification of Limitations on Contributions**

Through its execution of this Lease, Tenant 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 the City whenever such transaction would require approval by a City elective officer or the board on which that Authority elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant 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 \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to Authority the names of each person, entity or committee described above.

### **29.33. Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Authority and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. 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. 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.

### **29.35. Effective Date**

This Lease shall become effective on the date upon which the parties hereto have duly executed this Lease.

### **29.36. 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.

[BALANCE OF PAGE LEFT INTENTIONALLY BLANK]

Authority and Tenant have executed this Lease as of the date first written above.

TENANT:

By: \_\_\_\_\_

Its: \_\_\_\_\_

AUTHORITY:

PARKING AUTHORITY OF THE CITY AND  
COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_

Edward D. Reiskin  
Director of Transportation,  
San Francisco Municipal Transportation  
Agency

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_

Stephanie Stuart  
Deputy City Attorney

APPROVED BY:

San Francisco Municipal Transportation  
Agency  
Board of Directors  
Resolution No:

\_\_\_\_\_  
Adopted:

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

EXHIBIT A  
PLANS

EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

[Date]

Senior Manager, Strategic Real Estate  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, Eighth Floor  
San Francisco, CA 94103

RE: Acknowledgment of Commencement Date and Expiration Date, Lease Between  
\_\_\_\_\_ (Tenant), and the PARKING AUTHORITY OF THE  
CITY AND COUNTY OF SAN FRANCISCO, for Communications Site premises  
located at \_\_\_\_\_, San Francisco

Dear M\_\_\_\_\_:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 20\_\_.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Agreed:

By: \_\_\_\_\_  
Senior Manager,  
SFMTA Strategic Real Estate

Dated: \_\_\_\_\_

EXHIBIT C

APPROVED TENANT'S PLANS AND SPECIFICATIONS

EXHIBIT D

CONDITIONAL USE PERMIT



EXHIBIT E

COMMUNICATION SITE EQUIPMENT FEE SCHEDULE  
EFFECTIVE JANUARY 1<sup>ST</sup>, 2016

<b>Description</b>	<b>Annually</b>	<b>Annual Increase</b>
Minimum base rent up to 3 antennas, plus	\$50,000	3%
Rent per square foot for equipment areas	\$65.	3%
Additional Rent per antenna in excess of 3	\$10,000	3%

EXHIBIT F

FORM SELF-INSURANCE CERTIFICATION LETTER RE: NET WORTH THRESHOLD

\_\_\_\_\_, 2\_\_

Parking Authority of the City and County of San Francisco  
Attention: \_\_\_\_\_ [Name of Director to be Provided by SFMTA & Inserted]  
1 South Van Ness Avenue, Eighth Floor  
San Francisco, California 94103

Re: \_\_\_\_\_ Telecommunications Site Lease (“Lease”)  
Certification of Tenant’s Net Worth Threshold Pursuant to Section 20.1(i) of the Lease

Dear \_\_\_\_\_:

We are aware that [insert legal name of carrier/parent company] (“Tenant”) is required to certify to the Parking Authority in accordance with Section 20.1(i) of the Lease that Tenant has a net worth of Seventy-Five Million Dollars (\$75,000,000) (“Net Worth Threshold”) to continue to have the right to self-insure coverages under subsections 20.1(a)(i) and 20.1(a)(iii) of the Lease.

We confirm that we monitor the financial condition and operations of Tenant, and that we provide the resources to enable Tenant to conduct its business in the normal course, and to perform its obligations, such as the above-mentioned Lease. Based on the latest unaudited reports, Tenant meets the Net Worth Threshold Test as of [date of last unaudited report].

This letter is not a guarantee of the obligations of Tenant, nor may any person other than the addressee be entitled to rely on our representations herein.

Sincerely,

\_\_\_\_\_(Name)

\_\_\_\_\_(Title)

[company name]

EXHIBIT G

FORM TENANT EQUIPMENT AND PREMISES CERTIFICATION LETTER

\_\_\_\_\_, 2\_\_

Parking Authority of the City and County of San Francisco  
Attn: Senior Manager, SFMTA Strategic Real Estate  
1 South Van Ness Avenue, Eighth  
Floor San Francisco, CA 94102

RE: Certification of Tenant Equipment and Premises as set forth in the Lease between  
\_\_\_\_\_ (Tenant) and the San Francisco Municipal Transportation Agency  
(SFMTA) for Communications

Dear \_\_\_\_\_:

Pursuant to Section 7.3 of the above-referenced Lease, Tenant hereby certifies that it has not altered, replaced, modified or made any additions to Tenant's Equipment without SFMTA's prior written consent.

Sincerely,

\_\_\_\_\_(Name)

\_\_\_\_\_(Title)