

RIGHT OF ENTRY PERMIT

Agency: Department of Parks and Recreation

Project: San Bruno Mountain SP, Telecom Tower

This Right of Entry Permit (Permit) is made and entered into this 1st day of January, 2016, between the State of California, acting by and through its Department of Parks and Recreation, hereinafter called State, and the City and County of San Francisco, hereinafter called Permittee; State and Permittee may hereinafter be referred to as a Party, or collectively the Parties.

RECITALS

- **Whereas**, the State owns, the State Park known as San Bruno Mountain State Park (SBMSP), in the County of San Mateo, State of California; and
- **Whereas**, Permittee has applied to State for permission to access San Bruno State Park for purposes of continuing Permittee's operation of a 40-foot public services telecommunications tower (the Project); and
- **Whereas**, the State desires to accommodate Permittee's application for permission to continue its activities at SBMSP for purposes of the Project.

TERMS AND CONDITIONS

Now therefore, the State by this Permit hereby grants to the Permittee permission to enter upon State's property, conditioned upon the agreement of the Parties that this Permit does not create or vest in Permittee any interest in the real property herein described or depicted, that the Permit is revocable and non-transferable, and that the Permit is further subject to the following terms and conditions:

- 1. Project Description:** By this Permit, the State hereby grants to the Permittee and its agents and contractors permission to enter onto those lands depicted and/or described on Exhibit "A" (the Property), attached hereto and herein incorporated by this reference, solely for the purpose of operating and maintaining its existing telecommunication facility. This Permit also covers existing utilities and equipment necessary for the functioning of the telecommunications facility. The telecommunications facility shall be limited to non-commercial governmental use only. Permittee may continue existing sublicenses to other public agencies for non-commercial governmental use. This permit does not authorize replacement or significant modification of Permittee's existing facility at SBMSP.
- 2. Permit Subject to Laws and Regulatory Agency Permits:** This Permit is expressly conditioned upon Permittee's obtaining any and all regulatory permits or approvals required by the relevant regulatory agencies for the Project and Permittee's use of the Property, and upon Permittee's compliance with all applicable municipal, state and federal laws, rules and regulations, including all State Park regulations. Permittee shall, at Permittee's sole cost and expense, comply with the Project Description.

Prior to commencement of any discretionary act, Permittee shall obtain all such legally required permits or approvals and submit to the State full and complete copies of all permits and approvals, including documentation related to or referenced in such permits and approvals, along with the corresponding agency contact and telephone numbers, and related California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) documentation as applicable.

- 3. Term of Permit:** This Permit shall only be for the period beginning on January 1, 2016, and ending on June 30, 2016, or earlier if the Parties execute a lease for the telecommunications facility. This Permit may be reasonably extended by written mutual agreement of the Parties.
- 4. Consideration:** Permittee agrees to pay State the sum of \$4,688.84 and No/100 Dollars PER MONTH, as consideration for the rights granted by this Permit. Payment is due by the 10th of each month of the term.

5. **Permit Subject to Existing Claims:** This Permit is subject to existing contracts, permits, licenses, encumbrances and claims which may affect the Property.
6. **Waiver of Claims and Indemnity:** Permittee waives all claims against State, its officers, agents and/or employees, for loss, injury, death or damage caused by, arising out of, or in any way connected with the condition or use of the Property, the issuance, exercise, use or implementation of this Permit, and/or the rights herein granted. Permittee further agrees to protect, save, hold harmless, indemnify and defend State, its officers, agents and/or employees from any and all loss, damage, claims, demands, costs and liability which may be suffered or incurred by State, its officers, agents and/or employees resulting from Permittee's use of the Property and/or the Project for which this Permit is granted, except those arising out of the sole active negligence or willful misconduct of State. Permittee will further cause such indemnification and waiver of claims in favor of State to be inserted in each contract that Permittee executes for the provision of services in connection with the Project for which this Permit is granted.

State agrees to protect, save, hold harmless, indemnify and defend Permittee, its officers, agents and/or employees from any and all loss, damage, claims, demands, costs and liability which may be suffered or incurred by Permittee, its officers, agents and/or employees resulting from State's use of the Property and/or the Project for which this Permit is granted, except for those arising out of the negligence or willful misconduct of Permittee.

7. **Contractors:** Permittee shall incorporate the terms, conditions and requirements contained herein when contracting out all or any portion of the work permitted hereunder. Permittee shall be responsible for ensuring contractor/subcontractor compliance with the terms and conditions contained herein. Failure of Permittee's contractors to abide by State's terms and conditions shall constitute default by Permittee (see DEFAULT paragraph below) allowing State to terminate this Permit and seek all legal remedies.
8. **Insurance Requirements:** Permittee is self-insured.
9. **Reservation of Rights:** State reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with Permittee's rights herein.
10. **Access Limits and Conditions:** Access to the Property shall be limited to the access designated by State. Access shall be limited to existing roadway.
11. **Notice of Work:** Any required notices to State shall be sent to San Mateo County, the operator of SBMSP and the Bay Area District of the of the California Department of Parks and Recreation.

STATE:
 District Superintendent
 Bay Area District
 845 Casa Grande RD
 Petaluma CA 94954-5804

PERMITTEE'S CONTACT:
 Public Safety Communications Manager
 1011 Turk Street
 San Francisco, CA 94102-3192

SAN MATEO COUNTY:
 Director
 San Mateo County Parks Department
 455 County Center, 4th Floor
 Redwood City, CA 94063-1646

12. **Limits of Work:** In no event shall this Permit authorize work in excess or contrary to the terms and conditions of any regulatory agency permit or approval. Under no circumstances, whether or not authorized by any regulatory agency, other permit or any person or entity other than State, shall work exceed that which is authorized by this Permit.
13. **Public Safety:** Permittee shall take, and shall cause its contractors or subcontractors to take, any and all commercially reasonable steps to protect the public from harm in connection with the Project or implementation of this Permit.
14. **Restoration of Property:** If Permittee makes any changes to the property, Permittee shall restore, and repair the Property to pre-change condition, in consultation with, and to the satisfaction of, the State Environmental Scientist within one (1) year of said change.
15. **Right to Halt Work:** The State reserves the right to halt work at any time, with prior notice to Permittee, in the event the State reasonably determines that any provision contained herein has been violated, or in the event that cessation of work is necessary to prevent, avoid, mitigate or

remediate any threat to the health and safety of the public or state park personnel, or to the natural or cultural resources of the state park.

- 16. Use Restrictions:** The use of the Property by Permittee, including its guests, invitees, employees, contractors and agents, shall be restricted to the daytime hours between sunrise and sunset on a day-by-day basis, unless necessitated by emergency or otherwise approved in advance in writing by State. No person shall access or occupy the Property overnight, unless necessitated by emergency.

Activities on the Property shall be conducted only in a manner which will not interfere with the orderly operation of the state park. Permittee shall not engage in any disorderly conduct and shall not maintain, possess, store or allow any contraband on the Property. Contraband includes, but is not limited to: any illegal alcoholic beverages, drugs, firearms, explosives and weapons, and the like.

Roads and trails where motorized vehicles are normally prohibited may be used for vehicle access by Permittee, its employees, agents or contractors for patrol, maintenance or repair purposes only, and only to the extent specified by State, and shall be otherwise subject to all other conditions and/or restrictions of this Permit and any applicable laws, state park regulations and state park policies.

Permittee shall not use or allow the Property to be used, either in whole or in part, for any purpose other than as set forth in this Permit, without the prior written consent of the State.

- 17. State's Right to Enter:** At all times during the term of this Permit and any extension thereof, there shall be and is hereby expressly reserved to State and to any of its agencies, contractors, agents, employees, representatives, invitees or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Property to survey, inspect, or perform any other lawful State purposes, to the extent such access does not interfere with Permittee's uses.

Permittee shall not interfere with State's right to enter and State shall not interfere with Permittee's right to use the Property as contemplated by this Permit.

- 19. Protection of Property:** Permittee shall protect the Property, including all improvements and all natural and cultural features thereon, at all times at Permittee's sole cost and expense, in so far as the Property is affected by Permittee's use, and Permittee shall strictly adhere to the following restrictions:
- (a) Permittee shall not place or dump garbage, trash or refuse anywhere upon or within the Property, except in self-contained trash receptacles that are maintained to State's satisfaction by Permittee.
 - (b) Permittee shall not commit or create, or suffer to be committed or created, any waste, hazardous condition or nuisance in, on, under, above or adjacent to the Property.
 - (c) Permittee shall not cut, prune or remove any vegetation upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
 - (d) Permittee shall not disturb, move or remove any rocks or boulders upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
 - (e) Permittee shall not grade or regrade, or alter in any way, the ground surface of the Property, except as herein permitted, or subsequently approved in writing by the District Superintendent.
 - (f) Permittee shall not bait, poison, trap, hunt, pursue, catch, kill or engage in any other activity which results in the taking, maiming or injury of wildlife upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.
 - (g) Permittee shall not use, create, store, possess or dispose of hazardous substances (as defined in the California Hazardous Substances Act) on the Property except as herein permitted, or subsequently approved in writing by the District Superintendent.
 - (h) Permittee shall exercise due diligence to protect the Property against damage or destruction by fire, vandalism and any other causes.
 - (i) If human remains are discovered during the Project, work will be immediately suspended at that specific location and the District Superintendent or designee shall be notified by Permittee. The specific protocol, guidelines and channels of communication outlined by the

California Native American Heritage Commission (NAHC), and/or contained in Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.9 et seq., will be followed. Those statutes will guide the potential Native American involvement in the event of discovery of human remains.

21. **Default:** In the event of a default or breach by either party, the nondefaulting party shall give the other party written notice of default, and a reasonable opportunity to cure the default (which shall, in any event, be not less than 30 days). If the default has not been cured during the cure period, the nondefaulting party shall have all rights and remedies available at law or in equity, including the following:
 - (a) Immediately terminate this Permit upon giving written notice to Permittee, whereupon Permittee shall immediately surrender possession of the Property to State and remove all of Permittee's equipment and other personal property from the Property. In such event, State shall be entitled to recover from Permittee all actual and reasonable damages incurred or suffered by State by reason of Permittee's default, including, but not limited to Any amount necessary to compensate the nondefaulting party for all the detriment proximately caused by the default, including, but not limited to, compensation for the cost of restoration, repair and revegetation of the Property, if required.
22. **Recovery of Legal Fees:** In any action brought to enforce or interpret any provisions of this Permit or to restrain the breach of any agreement contained herein, or for the recovery of possession of the Property, or to protect any rights given to the State against Permittee, and in any actions or proceedings under Title 11 of the United States Code, the prevailing party in such action on trial or appeal, shall pay to the other party such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.
23. **Voluntary Execution and Independence of Counsel:** By their respective signatures below, each Party hereto affirms that they have read and understood this Permit and have received independent counsel and advice from their attorneys with respect to the advisability of executing this Permit.
24. **Reliance on Investigations:** Permittee declares that it has made such investigation of the facts pertaining to this Permit, the Property and all the matters pertaining thereto as it deems necessary, and on that basis accepts the terms and conditions contained in this Permit. Permittee acknowledges that State has made, and makes, no representations or warranties as to the condition of the Property, and Permittee expressly agrees to accept the Property in its as-is condition for use as herein permitted.
25. **Entire Agreement:** The Parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Permit contains the entire agreement of the Parties, and that the terms of this agreement are contractual and not a mere recital.
26. **Warranty of Authority:** The undersigned represents that they have the authority to, and do, bind the person or entity on whose behalf and for whom they are signing this Permit and the attendant documents provided for herein, and this Permit and said additional documents are, accordingly, binding on said person or entity.
27. **Assignment:** This Permit shall not be assigned, mortgaged, hypothecated, or transferred by Permittee, whether voluntarily or involuntarily or by operation of law, nor shall Permittee let, sublet or grant any license or permit with respect to the use and occupancy of the Property or any portion thereof, without the prior written consent of State. Permittee may continue to sublicense tower space to the City of Daly City for non-commercial governmental use.
28. **Choice of Law:** This Permit will be governed and construed by the laws of the State of California.

STATE OF CALIFORNIA
Department of Parks and Recreation

CITY AND COUNTY OF SAN FRANCISCO

By: *Danita Rodriguez*
Name: Danita Rodriguez
Title: District Superintendent

By: *Anne Kronenberg*
Name: Anne Kronenberg
Title: CEO
Address: 1011 TULAC ST.
Phone: 558-3866
Executive Director

CITY AND COUNTY OF SAN FRANCISCO

By: 
Name: John Updike
Title: Director of Property
Dept: GSA – Real Property Division
Address: 25 Van Ness Ave, #400, SF
Phone: 415.554.9860

APPROVED AS TO FORM.

CITY AND COUNTY OF SAN FRANCISCO


By: 
Name: Charles Sullivan
Title: Deputy City Attorney
Dept: Office of City Attorney Dennis Herrera
Address: 1 Dr. Carlton B. Goodlett Pl., City Hall, Rm 234
Phone: 415.554.4735

EXHIBIT A

