

LEASE

between

C&E HAAS DEVELOPMENT COMPANY, LLC
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,
as Tenant

For the lease of
1 Bayview Park Road
San Francisco, California

February 3, 2017

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LIST OF EXHIBITS

- EXHIBIT A-1 – Depiction of Real Property, Building, and Tower
- EXHIBIT A-2 – Space Plans for Premises and License Area
- EXHIBIT B – Notice of Commencement Date
- EXHIBIT C – Initial List of Equipment
- EXHIBIT D – Rules and Regulations
- EXHIBIT E – Standards for Security Service
- EXHIBIT F – Form of Subordination and Non-Disturbance Agreement
- EXHIBIT G – Permitted Stored Materials
- EXHIBIT H – City Equipment Frequencies
- EXHIBIT I – Form of Memorandum of Lease

LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of February 3, 2017, is by and between C&E HAAS DEVELOPMENT COMPANY, LLC, a California limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant").

Landlord and City hereby 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 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:	February 3,2017
Landlord:	C&E Haas Development Company, LLC
Tenant:	City and County of San Francisco
Real Property:	Real property commonly known as 1 Bayview Park Road, San Francisco, California (Assessor's Block 4991, Lot 1C) ("Real Property")
Building and Tower (<u>Section 2.1</u>):	The building ("Building") and transmission tower ("Tower") located on the Real Property, as further depicted on the attached Exhibit A-1 .
Premises (<u>Section 2.1</u>):	(i) A room (approximately 7' by 12') on the lower level of the Building, (ii) a non-exclusive portion of the Building roof for the placement of two 24-inch microwave dishes and two GPS antennas and two YAGI antennas (iii) a portion of the northeastern exterior corner of the Building (approximately 5' by 5') for the placement of a condensing unit, and (iv) the area on the Tower at an elevation of 70' and 90' (the "Tower Locations") for the placement of four radio antennas, all as further depicted on the attached Exhibit A-2
As Is Condition (Section 2.2)	The Premises is being leased in their "As Is" condition
License Area (<u>Section 2.3</u>):	During the term of the Lease, City shall have a nonexclusive license to place and use wiring, fiber, panels, cables, lines, conduits, and similar connective items (collectively, the "City Wiring") through the Building and

Tower, and over the Real Property, as shown on the attached **Exhibit A-2** ("License Area")

Term (Section 3): Approximately 10 years

Estimated commencement date:
April 1, 2017
Expiration date: March 31, 2027

Extension Options (Section 3.4): 3 additional terms of 5 years each, exercisable by City by notice to Landlord given not less than 365 days in advance

Base Rent (Section 4.1): Initial Annual Base Rent: \$91,800
Initial monthly payments: \$7,650.00

Initial Fee (Section 4.2): City shall pay an initial fee of \$25,000 upon Lease Commencement

Adjustment Dates (Section 4.3): Each anniversary of the Commencement Date Base Rent shall be adjusted by 3%

Equipment (Section 6): All equipment and improvements shall be installed by City at the Property under this Lease, including, but not limited to, the equipment described in the attached **Exhibit C**

Use (Section 5.1): The installation, use, maintenance, repair, and operation of the Equipment, including the transmission and reception of radio communication signals on various frequencies for public safety and transportation purposes (a "Public Communication System")

Landlord Improvements (Section 6): Prior to the Commencement Date, Landlord to install the demising wall and door as shown on Exhibit A-2 and install one 150A, 240V circuit with separate and direct PG&E metering for the Premises, at City's cost up to \$15,000.

Utilities (Section 9.1): City to pay directly for electrical usage at the Premises, as measured by the PG&E meter installed to measure such use.

Services (Section 9.2): Landlord to provide, at its sole cost, the security services described in **Exhibit E**

Notice Address of Landlord (Section 23.1): C&E Haas Development Company, LLC
10533 Esquire Place
Cupertino, CA 95014
Fax No.: (408) 720-0387

Key Contact for Landlord: Charles Haas

Landlord Contact Telephone No.: (408) 859-2293

Notice Address for Tenant (Section 23.1): Department of Technology
1 South Van Ness Ave, 2nd floor
San Francisco, CA 94103
Re: Bayview Tower
Fax No.: (415) _____

with a copy to Department of Emergency Management
1011 Turk
San Francisco, CA 94102
Re: Bayview Tower
Fax No.: (415) 558-3841

with a copy to: City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Re: Bayview Park Radio Tower Lease
Fax No.: (415) 552-9216

and to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Special Projects Team
Deputy City Attorney
Re: Bayview Park Radio Tower Lease
Fax No.: (415) 554-4755

Key Contact for Tenant: Michelle Geddes

Tenant Contact Telephone No.: (415) 558-3825

Alternate Contact for Tenant: Jay Horrisberger

Alternate Contact Telephone No.: (415) 588-3805

Brokers (Section 23.8): None

2. PREMISES

2.1 Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the Room, the Generator Pad, and the Tower Locations, as shown on the space plans attached hereto as **Exhibit A-2** (the "Premises"). The Premises contain the rentable area specified in the Basic Lease Information. The Building, land upon which the Building is located

and all other improvements on or appurtenances to such land are referred to collectively as the "Property."

2.2 As Is Condition

CITY ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. CITY REPRESENTS AND WARRANTS TO LANDLORD THAT CITY HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF CITY'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR CITY'S INTENDED USE INCLUDING BUT NOT LIMITED TO (I) PHYSICAL CONDITION, (II) COMPLIANCE WITH ALL LAWS INCLUDING THE AMERICANS WITH DISABILITIES ACT, (III) POTENTIAL ASBESTOS AND OTHER HAZARDOUS MATERIALS IN AND OR ABOUT THE PROPERTY AND (IV) THE PROPERTY'S EXISTING BROADCAST FREQUENCIES. CITY HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR CITY'S BUSINESS AND INTENDED USE. CITY ACKNOWLEDGES AND AGREES AND LANDLORD HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR CITY'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.

CITY FURTHER UNDERSTANDS AND AGREES THAT IT IS CITY'S OBLIGATION, AT NO COST TO THE LANDLORD, TO CAUSE THE PREMISES, ITS PATH OF TRAVEL THERETO, AND CITY'S USES OF THE PREMISES AND THE PROPERTY TO BE CONDUCTED IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. SECTION 12101 ET SEQ. AND ANY OTHER APPLICABLE DISABILITY ACCESS LAWS.

CITY FURTHER UNDERSTANDS AND AGREES THAT IT IS CITY'S OBLIGATION, AT NO COST TO THE LANDLORD, TO CAUSE ANY CONSTRUCTION WORK PERFORMED BY OR FOR CITY TO THE PREMISES OR THE PROPERTY AND CITY'S USE OF THE PREMISES TO BE CONDUCTED IN COMPLIANCE WITH ALL ENVIRONMENTAL LAWS.

CITY FURTHER AGREES TO COMPLY, AT NO COST TO THE LANDLORD, WITH ALL APPLICABLE PRESENT OR FUTURE LAWS, ORDINANCE, RESOLUTION, REGULATION, REQUIREMENT, PROCLAMATION, ORDER OR DECREE OF ANY MUNICIPAL, COUNTY, STATE OR FEDERAL GOVERNMENT OR OTHER GOVERNMENTAL OR REGULATORY AUTHORITY RELATING TO THE PREMISES OR THE CITY'S USE THEREOF, WHETHER IN EFFECT AT THE TIME OF THE EXECUTION OF THIS LEASE OR ADOPTED AT ANY TIME THEREAFTER AND WHETHER OR NOT WITHIN THE PRESENT CONTEMPLATION OF THE PARTIES.

NOTHING IN THIS LEASE SHALL BE TO THE CONTRARY OF THE ABOVE.

2.3 Common Areas; License Area

City shall have the non-exclusive right to use, together with other tenants at the Property, the lobbies, corridors, elevators, stairways and other public areas of the Building, the Tower, and the remainder of the Property (collectively, the "Common Areas"), the non-exclusive right of access to and from the Room by the main entrances to the Building and the Property, and the non-exclusive right of access to and from the remainder of the Premises and the License Area by the main entrances to the Property. Landlord shall ensure that City has unobstructed access over the Building area depicted on **Exhibit A-2** at all times. During the term of the Lease, City shall have a nonexclusive license to place and use the City Wiring over the License Area in order to connect, and provide coolant and electricity to, the Equipment.

Nothing written herein shall limit the right of Landlord to lease or license space on its Property to other communications users in any service regulated by the Federal Communications, so long as any new lessees, sub-lessees or licensees agree to be governed by the FCC's so-called "Newcomer Policy", first stated in *Midnight Sun Broadcasting Co.*, 11 FCC 1119 (1947).

2.4 Disability Access

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

3. TERM

3.1 Term of Lease

The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Estimated Commencement Date"), or such later date as (i) Landlord shall have delivered the Premises to City with the Landlord Improvements (as defined below) having been substantially completed by Landlord and accepted by City pursuant to Section 6.1 (Landlord's Improvements), (ii) Magnum Towers, Inc. confirms that City's Draft Construction Documents (as defined in Section 6.2) for the installation and design of the Equipment to be placed on the Tower will not negatively affect the structural integrity of the Tower, and (iii) City's Mayor and Board of Supervisors shall have approved the transaction contemplated by this Lease, in their respective sole and absolute discretion, as further provided in this Lease. The Term of this Lease shall end on the date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease, provided that City shall have the right to extend the Term pursuant to Section 3.4 (Extension Options), below. The word "Term" as used herein shall refer to the initial ten (10) years of the Term ("Initial Term") and any Extended Terms for which City exercises an Extension Option as provided below.

Notwithstanding anything to the contrary herein, City shall have the right at any time to cancel this Lease prior to the first (1st) anniversary of the Commencement Date, without any penalty, fee or other liability, by giving Landlord not less than sixty (60) days prior written notice of such termination.

3.2 Commencement Date and Expiration Date

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." If the Commencement

Date occurs on a date other than the Estimated Commencement Date, then promptly thereafter Landlord shall deliver to City a notice substantially in the form of **Exhibit B** attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

3.3 Delay in Delivery of Possession

Landlord shall use its best efforts to deliver possession of the Premises with all of the Landlord Improvements substantially completed and accepted by City's Director of Property pursuant to Section 6.1 (Landlord's Improvements) on or before the Estimated Commencement Date. However, if Landlord is unable to deliver possession of the Premises as provided above, then, subject to the provisions of this Section below, the validity of this Lease shall not be affected by such inability to deliver possession except that City's obligations to pay Base Rent or any other charges shall not commence until such time as Landlord has delivered the Premises as required under this Lease. If the Term commences later or earlier than the Estimated Commencement Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions under this Lease. If Landlord is unable to deliver possession of the Premises to City as required hereunder within one hundred eighty (180) days after the Estimated Commencement Date, then City may, at its option, terminate this Lease, without any further liability under this Lease, upon written notice to Landlord.

3.4 Extension Options

City shall have the right to extend the Initial Term (the "Extension Options") for the additional terms specified in the Basic Lease Information (the "Extended Terms"). Such Extension Options shall be on all of the terms and conditions contained in this Lease. City may exercise an Extension Option, if at all, by giving written notice to Landlord no later than three hundred sixty-five (365) days prior to expiration of the Term to be extended; provided, however, if City is in material default under this Lease on the date of giving such notice and fails to cure such default as provided in this Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Landlord acknowledges and agrees that City's notice of its exercise of an Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within ninety (90) days after the date such notice of exercise is given. If such a resolution is not timely enacted with respect to an Extension Option, City's notice of its exercise of such Extension Option shall be automatically rescinded on the ninety-first (91st) day after the date such notice of exercise was given.

4. RENT

4.1 Base Rent

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (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, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. 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 monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month.

4.2 Initial Fee

City shall pay within thirty (30) days of the Commencement Date the sum of twenty five thousand dollars (\$25,000).

4.3 Adjustments in Base Rent

On each anniversary of the Commencement Date (each, an "Adjustment Date"), including during any Extended Term, the Base Rent payable under Section 4.1 for the following twelve month period shall be adjusted to equal one hundred three percent (103%) of the Base Rent for the lease year preceding such Adjustment Date.

4.4 Additional Charges

City shall pay to Landlord any charges or other amounts required under this Lease as additional rent ("Additional Charges"). All such Additional Charges shall be payable to Landlord at the place where the Base Rent is payable. Landlord 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. The Base Rent and Additional Charges are sometimes collectively referred to below as "Rent."

4.5 Review Costs of Magnum Towers, Inc.

City shall reimburse Landlord up to \$2,100.00 ("Initial Review Fee") for Landlord's actual and commercially reasonable costs in having Magnum Towers, Inc., Landlord's tower structure consultant, review, prior to the Effective Date, whether the Equipment for the Tower proposed by City would negatively affect the structural integrity of the Tower. City shall deliver the Initial Review Fee to Landlord within twenty (20) business days of the later date of receiving satisfactory written evidence of Landlord's payment thereof, together with any supporting documentation reasonably requested by City, and the Effective Date.

City shall reimburse Landlord for its actual and commercially reasonable costs in having Magnum Towers, Inc. review the Draft Construction Documents (as defined in Section 6.2) to determine whether any Equipment to be placed on the Tower pursuant to such Draft Construction Documents would negatively affect the structural integrity of the Tower ("Final Review Fee"). City shall deliver the Final Review Fee to Landlord within twenty (20) business days of receiving satisfactory written evidence of Landlord's payment thereof, together with any supporting documentation reasonably requested by City.

5. USE

5.1 Permitted Use

City may use the Premises for the installation, use, maintenance, repair, and operation of the Equipment, including the operation of a Public Communication System, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

5.2 Observance of Rules and Regulations

City shall observe Landlord's reasonable rules and regulations for the Property subject to the provisions of this Lease. City acknowledges and agrees to the current Building rules and regulations attached hereto as **Exhibit D** (the "Rules and Regulations"). Landlord may make reasonable additions or modifications thereto, which shall be binding upon City within a reasonable implementation period upon Landlord's delivery to City of a copy thereof, provided

that such additions or modifications shall not reduce Landlord's obligations hereunder nor interfere with City's operations at the Premises, and such additions or modifications must be applicable to the other Property tenants, not conflict with the provisions of this Lease, not materially increase the burdens or obligations upon City, not impose a charge upon City for services which this Lease expressly states are to be provided to City at no charge, and not materially adversely affect the conduct of any operations in the Premises which City is permitted to conduct pursuant to Section 5.1 hereof. Landlord shall administer the Rules and Regulations in a fair and nondiscriminatory manner and use reasonable efforts to cause other Property tenants to comply with them. City shall be entitled upon request to any waiver or special dispensation granted by Landlord to any other tenant in the Property with respect to the Rules and Regulations, and Landlord shall notify City of any such waiver or special dispensation.

5.3 Access

Landlord acknowledges that City intends to operate the Equipment for public safety purposes, and shall provide City with access to (i) the Premises twenty-four (24) hours per day, seven (7) days per week, and (ii) the Equipment located on any other portion of the Property twenty-four (24) hours per day, seven (7) days per week during any power outages or required emergency maintenance affecting any portion of the Property, and between the hours of 8:00 am and 5:00 pm when there is no such power outage and for routine maintenance. Notwithstanding anything to the contrary in the foregoing sentence, Landlord may, after consultation with the City's Administrator, interrupt City's access to the Property in the event of an immediate threat of such portion of the Property being rendered unsafe for human occupancy. If City's use of any of the Premises or access thereto or the Property is interrupted as a result of such portion of the Property being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for two (2) business days and impairs City's ability to carry on its operations at the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its operations at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to carry on its operations at the Premises, then City shall have the right, without limiting any of its other rights under this Lease to terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

6. INITIAL IMPROVEMENTS

6.1 Landlord's Improvements

Prior to the Commencement Date, Landlord, through its general contractor approved by City, shall (i) install a demising wall with door as shown on Exhibit A-2, and (ii) install one 150A, 240V circuit with separate and direct PG&E metering for the Premises ("City Circuit") in the Room location depicted for the City Circuit on the attached **Exhibit A-2**. Such work and installations are referred to collectively as the "Landlord Work" and "Landlord Improvements" in compliance with the conditions set forth in this Section. The Landlord Work shall include any hazardous materials remediation work that Landlord must perform in removing the Existing Generator, to the extent such remediation work is required by a regulatory agency with jurisdiction over such matter.

(a) Plans and Permits

Prior to installing the City Circuit, Landlord shall obtain City's prior written consent to the pricing, specifications, and installation method for the City Circuit, which consent shall not be unreasonably withheld by City. Landlord shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections ("Approvals") necessary for the proper performance and completion of the Landlord Work, and shall provide copies to City promptly following receipt thereof. Landlord shall be responsible for arranging for all inspections required by all regulatory entities with jurisdiction over the performance of the Landlord Work.

(b) Construction

Immediately upon City's approval of the specifications and installation methods for the City Circuit and Landlord's procurement of all necessary Approvals for the Landlord Work, Landlord shall commence and complete the Landlord Work in a good, professional, and cost-efficient manner in accordance with sound building practice. Landlord shall comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on the Landlord Work. Without limiting the foregoing, construction of the Landlord Improvements shall comply with all applicable disabled access laws, including, without limitation, the most stringent requirements of the Americans With Disabilities Act of 1990, Title 24 of the California Code of Regulations (or its successor) and City's requirements for program accessibility. Landlord shall pay prevailing wages in connection with the Landlord Work as further provided in Section 23.24 (Prevailing Wages) and Section 23.37 (Consideration of Criminal History in Hiring and Employment Decisions), below, and shall not use tropical hardwood wood products, or virgin redwood wood products as further provided in Section 23.26 (Tropical Hardwood and Virgin Redwood Ban), below.

(c) Construction Schedule; Substantial Completion

Landlord shall keep City apprised on a regular basis of the status of plan preparation, Approval issuance and the progress of construction for the Landlord Work. From time to time during the design and performance of the Landlord Work, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the performance of the Landlord Work. Landlord or its representative may accompany City during any such inspection. When performance progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which the Landlord Work will be substantially completed in accordance with this Section. Landlord shall revise such notice of the approximate substantial completion date as appropriate from time to time and shall immediately notify City when the Landlord Work is in fact substantially completed and the Premises are ready for occupancy by City. On such date or other mutually agreeable date as soon as practicable thereafter, City and its authorized representatives shall have the right to accompany Landlord or its architect on an inspection of the Premises.

The Landlord Work shall be deemed to be "substantially completed" for purposes of this Lease when the Landlord Improvements shall have been sufficiently completed in accordance with the approved specifications and installation plans so that City can occupy the Premises and conduct its operations for its intended uses and City, through its Director of Property, shall have approved the Landlord Improvements. City may, at its option, approve the Landlord Improvements even though there may remain minor details that would not interfere with City's use. Landlord shall diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after acceptance of the Premises, or as soon thereafter as practicable, a written punchlist consisting of any items that have not been finished in accordance with this Section. Landlord shall promptly

complete all defective or incomplete items identified in such punchlist, and shall in any event complete all items within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter the Landlord's responsibility hereunder to complete all Landlord Work in accordance with this Section, nor constitute any waiver of any latent defects.

No approval by City or any of its Agents of the pricing, specifications, installation, or completion of the Landlord Work for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

(d) Costs

Landlord shall perform the Landlord Work at its cost; provided, however, that City shall reimburse Landlord up to \$15,000 for its commercially reasonable costs in procuring and installing the City Circuit. City shall reimburse Landlord for such costs within twenty (20) business days of receiving satisfactory written evidence of Landlord's payment of such costs, together with any supporting documentation reasonably requested by City.

6.2 City Improvements

City shall have the right to install the Equipment at the Premises and the City Wiring over the Property at its sole cost and in compliance with the conditions set forth in this Section. Such work and installations are referred to as the "City Work" and "City Improvements" in compliance with the conditions set forth in this Section.

(a) Plans and Permits

Before installing the City Improvements, City shall obtain Landlord's prior written consent to the plans, specifications and working drawings therefor, which consent shall not be unreasonably withheld, conditioned, or delayed. City agrees that it shall be reasonable for Landlord to withhold its approval of any plans, specifications and working drawings for any City Work to be performed on the Tower if Magnum Towers, Inc. determines that such Work, as reflected in such plans, specifications and working drawings, would negatively affect the structural integrity of the Tower. If Landlord disapproves such final working drawings and specifications, or any portion thereof, then Landlord shall promptly notify City thereof and of the revisions that Landlord reasonably requires in order to obtain Landlord's approval. As soon as reasonably possible thereafter, City shall submit to Landlord final plans, specifications and working drawings incorporating the revisions reasonably required by Landlord. Such revisions shall be subject to Landlord's approval, which shall not be unreasonably withheld or delayed. The final plans, specifications and working drawings for the City Improvements approved by Landlord shall be referred to as the "Draft Construction Documents." Following Landlord's approval of the draft Construction Documents, Landlord shall promptly submit the Draft Construction Documents applicable to any City Work on the Tower to Magnum Tower, Inc. and request its determination whether such City Work, as reflected on the submitted Draft Construction Documents, would negatively affect the integrity of the Tower. City shall make any changes to the submitted Draft Construction Documents acceptable to City and reasonably required by Magnum Tower, Inc. to prevent any negative impact on the integrity of the Tower. The Draft Construction Documents, as may be modified pursuant to the foregoing sentence, shall be referred to as the "Final Construction Documents". If Magnum Tower, Inc. does not reasonably require any revisions to the Draft Construction Documents to protect the Tower integrity, the Draft Construction Documents shall be deemed to be the "Final Construction Documents".

City shall secure and pay for any Approvals necessary for the proper performance and completion of the City Work shown on the Final Construction Documents. City shall be

responsible for arranging for all inspections required by all regulatory entities with jurisdiction over the City Work.

(b) Construction

City shall cause the City Work to be completed in a good and professional manner in accordance with sound building practice. All wires installed at the Property as part of the City Work shall be clearly and uniquely tagged. City shall comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on construction of the City Improvements. Without limiting the foregoing, construction of the City Improvements shall comply with all applicable disabled access laws, including, without limitation, the most stringent requirements of the Americans With Disabilities Act of 1990, Title 24 of the California Code of Regulations (or its successor).

If City's performance of the City Work to be performed on the Tower reasonably requires the temporary shutdown and transfer of any existing radio broadcast antenna on the Tower to a temporary tower, Landlord shall use its best efforts to persuade the licensee of each FCC regulated radio station using the communications site and/or owner and/or user of such antenna to perform and coordinate such temporary shutdown and transfer at its cost.

(c) Construction Schedule

City shall keep Landlord apprised on a regular basis of the status of plan preparation, permit issuance and the progress of construction. From time to time during the construction of the City Improvements, Landlord shall have the right upon reasonable advance oral or written notice to City to enter the Premises at reasonable times to inspect such construction, provided such inspections do not unreasonably interfere with such construction. City or its representative may accompany Landlord during any such inspection.

6.3 Construction of Improvements that Disturb or Remove Exterior Paint

Under this Section, (i) paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 34 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings, and (ii) lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

(a) Landlord Work

Landlord, on behalf of itself and its successors, assigns and agents, shall comply with all applicable requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when performing any work of improvement or alteration at the Property that disturbs or removes exterior or interior lead-based or presumed lead-based paint. Landlord and its Agents shall give to City three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 34 of the San Francisco Building Code does not constitute notification to City as Tenant under this Lease and similarly that notice under this Lease does not constitute notice under Chapter 34 of the San Francisco Building Code. Further, Landlord and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods:

(a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Landlord covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards.

(b) City Work

City, on behalf of itself and its successors, assigns and agents, shall comply with all applicable requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when performing any work of improvement or alteration at the Property pursuant to this Lease that disturbs or removes exterior or interior lead-based or presumed lead-based paint. City and its Agents shall give to Landlord three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint by City at the Property pursuant to this Lease. Further, City and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint at the Premises pursuant to this Lease, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a HEPA filter local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. City covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures under this Lease that are designed to reduce or eliminate lead hazards.

7. ALTERATIONS

7.1 Alterations by City

City shall not make or permit any alterations, installations, additions or improvements that are not part of the City Work (collectively, "Alterations") to the Property without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. City acknowledges and agrees that it would be reasonable for Landlord to withhold its approval to any proposed Alterations that, in the opinion of Magnum Tower, Inc. or any other qualified tower structural consultant retained by Landlord, would negatively affect the structural integrity of the Tower. However, the (i) installation of furnishings, fixtures, equipment, or decorative improvements in the Room or on the Generator Pad, (ii) supplementation of the City Wiring with similar connective items, (iii) replacement of any of the items of Equipment with updated items that essentially perform the same functions, and (iv) repainting and recarpeting of the Room shall not constitute Alterations requiring Landlord's consent to the extent they do not negatively affect the Building Systems or structural integrity of the Building or Tower or increase the size of the License Area. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined below). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies City in writing, at the time Landlord approves such Alterations, that they must be removed at the Expiration Date.

7.2 Title to Improvements

Except for City's Personal Property (as defined in the next Section), all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date or during the Term shall be and remain Landlord's property. City may not remove such property unless Landlord consents thereto.

7.3 City's Personal Property

All Equipment and any other furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed at the Property by or for the account of City and that can be removed without structural damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall have the right to remove or leave City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it **(i)** will remove such City's Personal Property from the Premises within thirty (30) days after the Expiration Date (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and **(ii)** will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within thirty (30) days after the Expiration Date.

7.4 Alteration by Landlord

Landlord shall use its best efforts to minimize interference with or disruption to City's use and occupancy of the Premises and City's use the License Area pursuant to this Lease during any alterations, installations, additions or improvements to the Building or the remainder of the Property, including without limitation any leasehold improvement work for other tenants in the Building or the remainder of the Property. Landlord shall promptly remedy any such interference or disruption upon receiving City's notice thereof.

8. REPAIRS AND MAINTENANCE

8.1 Landlord's Repairs

Landlord shall repair and maintain the Property at its sole cost and in top operating condition, including, but not limited to, the Building (including without limitation the exterior, interior and structural portions of the Building, the roof, foundation, walls, flooring, and subflooring), electrical, security and other electrical and communications systems of the Building (collectively, the "Building Systems"), the Common Areas, the Tower (including, without limitation, the structural integrity of the Tower), the fencing, drainage, alarm system, exterior lighting, and the Generator Pad. Without limiting the foregoing, Landlord shall maintain all parts of the Property in a clean, safe and attractive manner, shall provide exterior graffiti removal with reasonable frequency, and shall not permit any other tenants of the Property to disturb or interfere with City's use of the Premises or the License Area or permit to be done in or about the Property anything that is illegal, is dangerous to persons or property or constitutes a nuisance.

8.2 City's Repairs

Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Landlord Improvements, and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain at its cost the interior portions of the Room and shall keep the Room, Generator Pad, and Equipment in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall make any such required repairs and replacements that Landlord specifies in writing **(i)** at City's cost, **(ii)** by contractors or mechanics selected by City and reasonably approved by Landlord, **(iii)** so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, **(iv)** in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and **(v)** in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those portions of the Property that are necessary to maintain or repair the City Wiring.

If City's repair, supplementation or replacement of any Equipment installed on the Tower by or for City pursuant to this Lease reasonably requires the temporary shutdown and transfer of any existing radio broadcast antenna on the Tower to a temporary tower, Landlord shall cause the owner and/or user of such antenna to perform and coordinate such temporary shutdown and transfer at its cost.

8.3 Liens

City shall keep the Property free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Property any notices permitted or required by law or that are needed for the protection of Landlord, the Premises or any remaining portion of the Property, from mechanics' and material suppliers' liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Property.

9. UTILITIES, SERVICES AND TAXES

9.1 Utilities

Landlord shall arrange for a 150 amp panel with a direct PG&E meter to the Premises. City shall pay PG&E directly for electricity provided to the Premises.

9.2 Services

(a) Landlord shall provide at its cost security for the Property in accordance with the specifications contained in **Exhibit E** attached hereto. Landlord shall have no liability to City if Landlord security fails to provide such security.

(b) City reserves the right to request that Landlord, at City's cost, perform lease related services or incur additional expenses not covered under this Lease that the City may require from time to time, as requested by City's Real Estate Division. If Landlord agrees to perform such services, which agreement shall not be unreasonably withheld or delayed, City shall reimburse Landlord for such expenses, at rates agreed-upon in advance. Landlord shall deliver an invoice, with reasonable backup documentation, of the costs incurred by Landlord for additional services or expenses, and City shall deliver payment of such amount when making the

next monthly payment of Base Rent. Landlord acknowledges to provide any such services in compliance with the requirements of Section 23.24 and Section 23.37, if applicable.

9.3 Conservation

Landlord may establish reasonable measures to conserve energy and water, including automatic light shut off after hours and efficient lighting forms, so long as these measures do not unreasonably interfere with City's use of the Premises.

9.4 Disruption in Essential Utilities or Services

In the event of any failure, stoppage or interruption of any utilities or services to be furnished by Landlord hereunder, Landlord shall immediately notify City of such failure, stoppage or interruption, diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. In the event Landlord is unable to supply any of the Building's electrical, security, and alarm essential services serving the Premises (collectively, "Essential Services") and such inability of Landlord impairs City's ability to carry on its operations at the Premises for a period of one (1) or more business days if such failure is in the reasonable control of Landlord or a period of five (5) or more consecutive business days if such failure is not within the reasonable control of Landlord, then the Rent shall be abated based on the extent such inability of Landlord impairs City's ability to carry on its operations at the Premises, or, alternatively at City's election, City shall have the option to provide such services and offset the reasonable cost thereof against the Rent next due under this Lease. Such abatement, or right to provide the services and offset against Rent, shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs City's ability to carry on its operations at the Premises. Landlord shall use its best efforts to restore disrupted Essential Services as soon as possible. However, if such failure to provide any Essential Services continues for any reason for thirty (30) days and such failure interferes with City's ability to carry on its operations at the Premises, then City may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Lease upon written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that the Essential Services will be restored within sixty (60) days of the date City's use was interrupted, and the Essential Services are actually restored within such 60-day period. City shall not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City is due solely to the acts, omissions or negligence of City and its Agents.

9.5 Taxes

Landlord shall pay, at its sole cost, all taxes, assessments and charges levied upon or with respect to any portion of the Property, including, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other real property taxes.

10. COMPLIANCE WITH LAWS; PREMISES CONDITION

10.1 Premises Condition and Landlord's Compliance with Laws; Indemnity

Landlord represents and warrants to City, and covenants with City, as follows: (a) it has good and marketable title to the Property; (b) neither the Building nor the Tower is an unreinforced masonry building.

10.2 City's Compliance with Laws; Indemnity

City shall use the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to Section 7 hereof and such modifications are not otherwise Landlord's responsibility under this Lease. City shall be responsible for complying with any requirement of the Disabilities Laws. Without limiting Section 16.1 (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

10.3 City's Compliance with Insurance Requirements

City shall not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located therein, **(b)** result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, **(c)** cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or **(d)** subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any operation being conducted by City at the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with City's normal operations at the Premises.

11. SUBORDINATION

(a) Without the necessity of any additional document being executed by City for the purpose of effecting a subordination, and subject to subsection (b) below, this Lease shall be subject and subordinate at all times to the following (each an "Encumbrance"): **(a)** any reciprocal easement agreements, ground leases or other underlying leases that exists prior to the Effective Date and affects Landlord's interest in the Property, or any portion thereof, and **(b)** the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that exists prior to the Effective Date, in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, at Landlord's request, City agrees to conditionally subordinate this Lease to an Encumbrance created after the Effective Date if the holder of the Encumbrance enters into a subordination and nondisturbance agreement with City in the form attached hereto as **Exhibit F**.

(b) In the event any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and address of the successor landlord. City's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

12. DAMAGE AND DESTRUCTION

If the Premises, the Building, the Tower or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay (and if Landlord is then carrying insurance on the Landlord Improvements or if City at its sole option makes funds available to Landlord, Landlord shall also repair the Landlord Improvements), provided that such repairs can be made under applicable laws within sixty (60) days after Landlord obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with City's operations at the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's operations at the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, in the event the Tower or Premises are damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

If at any time during the last six (6) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder, Landlord or City may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Landlord may terminate this Lease only if it would take more than thirty (30) days to repair such damage.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. EMINENT DOMAIN

13.1 Definitions

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

13.2 General

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

13.3 Total Taking; Automatic Termination

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

13.4 Partial Taking; Election to Terminate

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises, (ii) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (iii) City elects to terminate.

(b) In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Building taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

13.5 Termination of Lease; Rent and Award

Upon termination of this Lease in its entirety pursuant to Section 13.3, or pursuant to an election under Section 13.4 above, then: (a) City's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) Landlord shall be entitled to the entire Award in connection therewith, except that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's operations or damage to City's Personal Property.

13.6 Partial Taking; Continuation of Lease

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's operations or damage to City's Personal Property.

13.7 Temporary Taking

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City for the period of the Taking.

14. ASSIGNMENT AND SUBLETTING

Except as provided in this Section below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed. City shall have the right from time to time, upon notice to but without the consent of Landlord, to transfer this Lease or use and occupancy of all or any of the Premises to any department, commission, vendor, contractor or agency of the City and County of San Francisco for uses permitted under this Lease.

If City assigns its interest in this Lease or subleases any portion of the Premises, the rent or other consideration realized by City under such assignment or sublease in excess of the Rent payable for the period of such assignment or sublease (or the amount thereof proportionate to the portion of the Premises subject to such sublease or assignment). City shall deliver monthly statements of the excess rent, if any, it receives for such assignment or sublease and shall pay Landlord fifty percent (50%) of any such excess rent after City recovers any reasonable brokers' commissions, attorneys' fees, and the reasonable cost of any improvements that City incurs in connection with the sublease or assignment from such excess rent. Payment of Landlord's share of any excess rent delivered to City pursuant to a sublease or assignment shall be made on a monthly basis and delivered to Landlord with the Base Rent due for such month.

15. DEFAULT; REMEDIES

15.1 Events of Default by City

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

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City or any Adjustment Date, City shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

(b) City's abandons the Premises (within the meaning of California Civil Code Section 1951.3); or

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

15.2 Landlord's Remedies

Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(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 City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City 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 Landlord 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 Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

15.3 Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, cure such default at Landlord's expense if such default continues after ten (10) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such ten (10)-day period, such ten (10)-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes

with City's ability to carry on its operations at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to carry on its operations at the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such sixty (60)-day period. City's rights hereunder and under Section 3.3 (Delay in Delivery of Possession), Section 5.3 (Interference with Access), and Section 9.4 (Disruption in Essential Services), shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

16. INDEMNITIES

16.1 City's Indemnity

City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

16.2 Landlord's Indemnity

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, (b) any failure of the City Generator in providing electricity to the Property during a power outage, or from any power surges caused by the operation of the City Generator during a power outage, or (c) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

17. INSURANCE

17.1 City's Self-Insurance

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, except for damage caused solely by Landlord or its Agents.

17.2 Landlord's Insurance

At all times during the Term, Landlord shall keep the Building and Tower (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by City, provide to City a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to, reduction of coverage or otherwise subject to modification except after thirty (30) days prior written notice to City. Landlord hereby waives any rights against City for loss or damage to the Premises or any other part of the Property, to the extent covered by Landlord's property insurance.

In addition, Landlord, at no cost to City, shall procure and keep in effect at all times during the Term insurance as follows: **(a)** Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU); and **(b)** if Landlord has employees Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required to be maintained by Landlord hereunder shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Landlord.

17.3 Waiver of Subrogation

Notwithstanding anything to the contrary contained herein, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord 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 City, to the extent such loss or damage is covered by insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering Landlord. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises; provided, Landlord's failure to do so shall not affect the above waiver.

18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of **(a)** inspecting the Premises, **(b)** supplying any service to be provided by Landlord hereunder, **(c)** showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, **(d)** posting notices of non-responsibility, and **(e)** altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with.

19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: **(a)** the Commencement Date and Expiration Date of this Lease, **(b)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), **(c)** that there are no defaults under this Lease (or if so, specifying the same), and **(d)** the date to which Rent has been paid.

20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Within ten (10) days after the Expiration Date, City shall remove from the Property all of City's Personal Property and any Alterations City desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 (Alterations by City), above. City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. Notwithstanding anything to the contrary in this Lease, City shall not be required to demolish or remove from the Premises any of the Landlord Improvements or to remove any or all of City's Personal Property. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

21. HAZARDOUS MATERIALS

21.1 Definitions

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

(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 Material, 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 deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health 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; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "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.

21.2 Landlord's Representations and Covenants

Landlord represents and warrants to City that, to the best of Landlord's knowledge but without the obligation to investigate, the following statements are true and correct and will be

true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board).

21.3 Landlord's Environmental Indemnity

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section, or (b) in connection with any presence or Release of Hazardous Material in the Building or on, under or about the Property, unless City or its Agents caused such Release.

21.4 City's Covenants; Annual Inventory

Except as otherwise set forth in this Section, neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws, provided that City may use such substances in such limited amounts as are customarily used for the operation of equipment similar to the Equipment, so long as such use is in compliance with all applicable Environmental Laws. Such substances shall include, without limitation, the items described on the attached **Exhibit G**. On each January 15th during the Term, City shall deliver a written summary of the Hazardous Materials stored at the Premises as of such date.

21.5 City's Environmental Indemnity

If City breaches its obligations contained in the preceding Section 21.4, or if City or its Agents cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then City shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy.

22. INTERFERENCE

22.1 City's Protection Against Transmission Interference

Landlord acknowledges that City intends to operate the Premises and use the Equipment to, in part, operate the Public Communication System, and Landlord shall not use, nor allow any party to use, the Property or install any equipment at any time between the full execution of this Lease and the expiration or earlier termination of the Term that would interfere with the Public Communication System. Landlord's obligations under the foregoing sentence includes preventing any modification to any use or equipment of a Property tenant at the Property existing prior to the execution of this Lease, if such modification would materially adversely interfere with City's operation of the Equipment for a Public Communication System. The parties agree that they will be guided by the FCC's so-called "Newcomer Policy" first enunciated in *Midnight Sun Broadcasting Co.*, 11 FCC 1119 (1947) Any future grant of use of the Property to a third party that permits the installation of equipment or operations at the Property shall be conditioned upon such party not causing any interference which impairs City's ability to utilize the Premises and Equipment for their intended purposes. The frequencies that the Equipment will use are listed on the attached **Exhibit H**.

Any interference with the operation of the Equipment as a Public Communication System by another party's operations that commence, or by any equipment installed, after the full execution of this Lease shall be deemed a material breach of this Lease by Landlord, which shall, upon 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, City shall have the right to bring action to enjoin such interference or to terminate this Lease immediately upon notice, at City's election.

22.2 Landlord's Protection Against Transmission Interference

City will not permit the Equipment or use of the Premises for the transmission and reception of radio communication signals on various frequencies to cause interference with any frequencies used by equipment located at the Property prior to the full execution of this Lease, which are as follows: KSFB 1260AM, KEST 1450AM, KRZZ 93.3FM, KREV 92.7FM, San Francisco MTA Radios at 769.60625 – 774.64375MHz, 799.60625 – 804.64375MHz, 854.11250 – 859.51250, and 809.11250 – 814.51250MHz..

23. GENERAL PROVISIONS

23.1 Notices

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at Tenant's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) such other address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

23.2 No Implied Waiver

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. No express written waiver 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 shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

23.3 Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach

shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1 of this Lease, and (e) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of City's Board of Supervisors.

23.4 Authority

Landlord represents and warrants to City that the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject.

23.5 Parties and Their Agents; Approvals

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to City shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of City. All approvals, consents or other determinations permitted or required by City under this Lease, including but not limited to the exercise of any option granted to City, shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter.

23.6 Interpretation of Lease

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

23.7 Successors and Assigns

Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord

and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

23.8 Brokers

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

23.9 Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable 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.

23.10 Governing Law

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

23.11 Entire Agreement

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. 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.

23.12 Attorneys' Fees

In the event that either Landlord or City 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.

23.13 Holding Over

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

23.14 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.

23.15 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.

23.16 Survival of Indemnities

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the 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 the indemnitor by the indemnitee and continues at all times thereafter.

23.17 Signs

City may erect or post signs on or about the Premises subject to Landlord's prior approval. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed.

23.18 Quiet Enjoyment and Title

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

23.19 Bankruptcy

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

23.20 Transfer of Landlord's Interest

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

23.21 Non-Liability of City Officials, Employees and Agents

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

23.22 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. Landlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

23.23 Controller's Certification of Funds

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

23.24 Prevailing Wages for Landlord Improvements

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Landlord agrees to require its Contractors and Subcontractors performing (i) labor in the construction of a "public work" as defined in California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Landlord agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Landlord shall include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Landlord's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

23.25 Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subcontracts

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all 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 subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits

Landlord 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) CMD Form

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "CMD"). Landlord hereby represents that prior to execution of the Lease: **(a)** Landlord executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and **(b)** the CMD 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 property to City are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Landlord 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, Landlord 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 Landlord and/or deducted from any payments due Landlord.

23.26 Tropical Hardwood and Virgin Redwood Ban

(a) Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Landlord Improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

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

(c) In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in an amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

23.27 Bicycle Parking Facilities

Article 1.5, Section 155.3 of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle parking at City-leased buildings at no cost to Landlord. During the Term, City shall have the right to install and maintain, at its sole cost, all Class 1 Bicycle Parking Spaces (as defined in the Planning Code) and all Class 2 Bicycle Parking Spaces (as defined in the Planning Code) in the Property locations required under the Planning Code, if applicable.

23.28 Resource-Efficient City Buildings

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

23.29 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.

23.30 Effective Date

The date on which this Lease shall become effective (the "Effective Date") is the date on which (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt legislation approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed by the parties hereto.

23.31 Certification by Landlord

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Landlord or any of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

23.32 Memorandum of Lease

On the Effective Date, Landlord and City shall execute the memorandum of lease in the form attached hereto as **Exhibit I** (the "Memorandum of Lease"), and Landlord shall cause the

Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter.

23.33 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.

23.34 Conflicts of Interest

Through its execution of this Lease, Landlord 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 Landlord becomes aware of any such fact during the Term of this Lease, Landlord shall immediately notify City.

23.35 Notification of Limitations on Contributions

Through its execution of this Lease, Landlord 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, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord 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. Landlord further acknowledges that the prohibition on contributions applies to each Landlord; each member of Landlord's board of directors, and Landlord's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the name of each person, entity or committee described above.

23.36 Preservative-Treated Wood Containing Arsenic

Landlord 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. Landlord 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 Landlord 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.

23.37 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.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED LEGISLATION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

LANDLORD: C&E HAAS DEVELOPMENT COMPANY, LLC,
a California limited liability company

By: _____
Name: Charles J. Haas
Its: President

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike
Director of Property

Recommended:

Department of Technology

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan , Deputy City Attorney

EXHIBIT A-1

DEPICTION OF REAL PROPERTY, BUILDING, AND TOWER

CONSISTING OF 2 PAGES

[see attached]

EXHIBIT A-2

SPACE PLANS FOR PREMISES AND LICENSE AREA

CONSISTING OF 3 PAGES

[see attached]

EXHIBIT B

NOTICE OF COMMENCEMENT DATE

[Date]

Mr. John Updike
Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102

RE: Acknowledgement of Commencement Date, Lease Between _____
(Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises
known as _____ located at _____

Dear Mr. Updike:

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: _____
John Updike
Director of Property

Dated: _____

EXHIBIT C

INITIAL LIST OF EQUIPMENT

In the locations as shown on Exhibit A-2

1. Conduits, panels, and equipment necessary to connect City's Emergency Generator to the Premises
2. Conduits, panels, and equipment necessary to connect the PG&E pole located on the Real Property (as further depicted on Exhibit A-1) to the Premises
3. Four (4) radio antennas and conduits, panels, and equipment necessary to connect them to the other Equipment
4. Two (2) 24" diameter microwave dish and conduits, panels, and equipment necessary to connect it to the other Equipment
5. Two (2) 16" high GPS antennas and conduits, panels, and equipment necessary to connect them to the other Equipment
6. Two (2) YAGI antennas and conduits, panels and equipment.
7. At City's election, equipment to upgrade or replace the Tower and Building grounding systems
8. Ice bridge, condensing unit, and refrigerant lines

EXHIBIT D

BUILDING RULES AND REGULATIONS

The following Building Rules and Regulations have been adopted by the Landlord for the care, protection and benefit of the Premises and the Building and for the general comfort and welfare of all tenants.

1. Sidewalks, halls, passages, exits, entrances, and stairways shall not be obstructed by tenants or used by them for any purpose other than for ingress and egress from their respective premises.
2. Landlord reserves the right to refuse access to any persons Landlord in good faith judges to be a threat to the safety, reputation, or property of the Building and/or its occupants.
3. Tenant shall not make or permit any noise or odors that annoy or interfere with other tenants or persons having business within the Building.
4. Tenant shall remove litter and trash from its premises.
5. Tenant shall not alter any lock or install new or additional locks or bolts to the Premises without giving a copy of the key to the landlord.
6. Tenant shall not employ any service or contractor for services or work to be performed on the Tower, except as approved by Landlord. No tenant or its employees or invitees shall go upon the roof of the Building except as expressly provided in such tenant's lease.
7. Tenant shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
8. No smoking in Building or on the Property.
9. Landlord reserves the right to waive any one of these rules or regulations, and/or as to any particular tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such tenant.
10. Each tenant shall see that all doors are securely locked and building alarm is set when it leaves the Building. Each tenant shall lock the Building and perimeter fence when leaving the Property.
11. Landlord reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Building and its occupants. Landlord shall provide Tenant with copies of any new and/or modified rules or regulations prior to the effective date thereof. Tenant agrees to abide by these and such other rules and regulations.

Parking Rules

1. Unless otherwise instructed, every person using the parking areas is required to park and lock his own vehicle. Landlord will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking areas.
2. No overnight parking.

EXHIBIT E

STANDARDS FOR SECURITY SERVICES

Landlord at Landlord's sole cost shall provide and maintain, in top condition, the following minimum security for the Property:

- 1) An active "ADT" type alarm system for all doors and other building openings. Landlord, at Landlord's option, may periodically change the security code. Landlord, at City's request, shall change such code. Security code is to be promptly provided to City upon programming or reprogramming the alarm system.
- 2) Security Cameras: At least one digital/IP Video recording camera on the Building first floor hallway and at least one additional digital/IP video recording camera on the Building basement hallway with onsite recording equipment. Video recording to be kept by Landlord for a minimum of 30 days. A copy of the Video files, for review and investigation purposes, shall be available to City upon request at no cost to the City. Landlord's equipment shall also be available for hook up to City's network for City's remote access to live video from such cameras.
- 3) Motion sensed exterior lighting appropriately covering (without dead spots) all four sides of the Building and a single fixture inside the gate for the Tower
- 4) Perimeter fencing around the Real Property with barbed wire and a gate with combination padlock
- 5) Perimeter fencing around the Building with barbed wire and a gate with combination padlock
- 6) Perimeter fencing around the Tower with barbed wire and a gate with combination padlock

Any other Premises security shall be City's sole responsibility.

EXHIBIT F

FORM OF SUBORDINATION AND NON-DISTURBANCE AGREEMENT

(6 pages)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

(Space above this line reserved for Recorder's use only)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), dated as of _____, 20__, is by and among C&E HAAS DEVELOPMENT COMPANY, LLC, a California limited liability company ("Owner"), _____, a _____ ("Lender"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

RECITALS

A. Owner is the owner of that certain parcel of real property situated in the City and County of San Francisco, State of California, as more particularly described in Exhibit A hereto (the "Property").

B. Owner and City are parties to a Lease dated September 1, 2014 (the "Lease") for the Premises (as defined in the Lease), which are located on the Property.

C. Lender made a loan to Owner in the principal sum of _____ (the "Loan"), which is evidenced by a Promissory Note from Owner to Lender dated _____ (the "Note").

D. The Note is secured, in part, by that certain Deed of Trust for the benefit of Lender, dated _____, and recorded on _____ in the Official Records of the City and County of San Francisco, as Instrument No. _____ (the "Deed of Trust").

E. As a condition to making the Loan, Lender requires the execution and delivery of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and after good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subordination of Lease. The Deed of Trust, and all supplements, amendments, modifications, renewals, replacements or extensions thereto, shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the Lease, to the leasehold estate created thereby, and to all rights and privileges of City thereunder. The Lease, and the leasehold estate created thereby, together with all rights and privileges of City thereunder, are hereby unconditionally subjected and made subordinate to, the lien or charge of the Deed of

Trust in favor of Lender. Nothing herein contained shall be deemed or construed as limiting or restricting the enforcement by Lender of any of the terms, covenants, provisions or remedies of the Deed of Trust.

Notwithstanding anything to the contrary contained in this Agreement: (a) the subordination contained herein shall apply only with respect to (i) all indebtedness evidenced by the Note in the original principal amount, including all accrued but unpaid interest thereon, and (ii) all future amounts advanced by the Lender (including advances for the payment of real estate taxes and assessments and insurance premiums relating to the Property), and all costs, fees, and expenses including attorneys' fees and costs hereafter incurred by the Lender, under and pursuant to the Loan documents in enforcing any and all of its rights and remedies under the Loan or preserving or protecting the security for the Loan (such amounts, costs, fees and expenses are referred to collectively as the "Loan Advances"); and (b) this Agreement shall not be deemed to apply with respect to (i) a future loan or loans (excluding the Loan and all Loan Advances), which future loan or loans (excluding the Loan and all Loan Advances) represent new loans to Owner evidenced by a separate note or other instrument, and (ii) future modifications to the Note that increase the original principal face amount of the Note, provided that no Loan Advances shall be deemed to constitute such a modification.

2. Non-Disturbance During or Prior to Foreclosure. If there is any foreclosure, trustee's sale, or other proceeding to enforce the Deed of Trust during the term of the Lease and City is in material default under the Lease beyond any cure period provided for under the Lease at such time, (a) City shall not be named or joined in any foreclosure, trustee's sale or other proceeding to enforce the Deed of Trust unless such joinder is required by law in order to perfect such foreclosure, trustee's sale or other proceeding, (b) enforcement of the Deed of Trust shall not terminate the Lease, or disturb or interfere with City's quiet and peaceable possession and use of the Premises or City's rights and privileges thereunder, and (c) the leasehold estate granted by the Lease shall not be affected or disturbed in any manner by any foreclosure, trustee's sale or other proceeding instituted or action taken under or in connection with the Deed of Trust, or if Lender takes possession of the Premises pursuant to any provision of the Deed of Trust or otherwise and the Lease shall remain in full force and effect as a direct indenture of lease with Lender, its transferee, successors, or assigns (collectively "Purchaser") and City.

3. Non-Disturbance After Foreclosure. If any interest of Owner under the Lease shall be transferred to a Purchaser by reason of any foreclosure, trustee's sale or other proceeding for enforcement of the Deed of Trust or by deed in lieu thereof during the term of the Lease, and if City is not in material default under the Lease beyond any cure period provided for in the Lease at such time, Purchaser will recognize the Lease as a direct lease between Purchaser and the City and will not disturb City in its possession of the Premises for any reason other than one that would have entitled Owner to terminate the Lease or otherwise dispossess City of the Premises under the Lease. Purchaser shall be bound to City under all the terms, covenants and conditions of the Lease for the balance of the term thereof, and any extension or renewal thereof which may be or become effective in accordance with any option therefore in the Lease, with the same force and effect as though the Lease was originally made directly between Purchaser and the City, provided that:

3.1 Purchaser shall not be liable for any acts or omissions of any prior landlord under the Lease, including Owner ("Prior Landlord").

3.2 Purchaser shall not be subject to any setoffs or defenses that City might have as to Owner or to any claims for damages against any Prior Landlord.

3.3 Purchaser shall be responsible for the performance of only those covenants and obligations of any Prior Landlord under the Lease accruing after the foreclosure or transfer to Purchaser.

3.4 Purchaser shall not be bound by any payment of rent or additional rent by City to any Prior Landlord for more than two (2) months in advance.

3.5 Purchaser shall not be liable or responsible for or with respect to the retention, application, and/or return to City of any security deposit, cleaning deposit or other prepaid charge paid to other Prior Landlord, whether or not still held by such Prior Landlord, unless and until Purchaser as actually received for its own account as landlord the full amount of such security deposit, cleaning deposit or other prepaid charge.

However, nothing contained in this Agreement is intended to release, limit or affect (i) Owner or Purchaser from its obligations to fulfill its obligations under the Lease prospectively from and after the date of any foreclosure or other transfer, (ii) any or all of City's rights and remedies against Owner for any act, omission or breach of the Lease by Owner, and (iii) City's right to terminate this Lease or exercise other available remedies based upon a breach by Owner.

4. Attornment. If any interest of Owner under the Lease is transferred to a Purchaser by reason of any foreclosure, trustee's sale or other proceeding for enforcement of the Deed of Trust or by deed in lieu thereof during the term of the Lease, City shall be bound to Purchaser as City's landlord under the terms, covenants and conditions of the Lease for the remaining balance of the Lease with the same force and effect as if the Lease was originally made directly between City and Purchaser, such attornment to be effective and self-operative without the execution of any further instrument on the part of any of the parties to this Agreement.

5. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the Charter of the City and County of San Francisco.

6. Recordation. Lender may record this Agreement in the Official Records of the City and County of San Francisco. The parties hereto agree to execute and deliver, in recordable form if necessary, any and all further documents and instruments reasonably requested by any party hereto to give effect to the terms of provisions of this Agreement.

7. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

8. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9. Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to form one document, which may be recorded. This Agreement shall not be binding on City unless and until City has received a fully executed original of this Agreement, signed by City, Owner and Lender.

10. Attorneys Fees. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising under this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party. For purposes of this Agreement, 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.

11. Recitals and Exhibits. The Recitals set forth above and the Exhibits referenced herein and attached hereto are incorporated into and made a part of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

OWNER: C&E HAAS DEVELOPMENT COMPANY, LLC, a California limited liability company

By: _____
Charles J. Haas
President

Date: _____

LENDER: _____

By: _____
Name: _____
Its: _____

Date: _____

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
John Updike
Director of Property

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: _____
Carol Wong, Deputy City Attorney

EXHIBIT A

Legal Description of Property

EXHIBIT G

PERMITTED STORED MATERIALS

Twenty four (24) standard single cell of Lead Sulfuric Acid battery (s), sealed case maintenance free type for each Server Rack.

Total liquid electrolyte: $1 \times 24 \times 4.25 \text{ gal} = 102.0 \text{ gallons}$
H₂SO₄ (Sulfuric Acid): $1 \times 24 \times 1.2 \text{ gal} = 28.8 \text{ gallons}$

These batteries would be held in (1) one rack, the dimensions of the rack would be 35.58" wide x 26.25" deep x 77.96" tall.

[To be supplied by DEM]

EXHIBIT H

CITY EQUIPMENT FREQUENCIES

[To be supplied by DEM]

854.11250	809.11250	125.00	SFMTA MTMS
854.23750	809.23750	125.00	SFMTA MTMS
854.31250	809.31250	75.00	SFMTA MTMS
854.38750	809.38750	75.00	SFMTA MTMS
854.46250	809.46250	75.00	SFMTA MTMS
854.63750	809.63750	175.00	SFMTA MTMS
856.01250	811.01250	1375.00	SFMTA MTMS
856.51250	811.51250	275.00	SFMTA MTMS
856.68750	811.68750	175.00	SFMTA MTMS
857.06250	812.06250	375.00	SFMTA MTMS
857.56250	812.56250	325.00	SFMTA MTMS
857.68750	812.68750	125.00	SFMTA MTMS
858.06250	813.06250	375.00	SFMTA MTMS
858.51250	813.51250	450.00	SFMTA MTMS
858.68750	813.68750	175.00	SFMTA MTMS
859.11250	814.11250	425.00	SFMTA MTMS
859.51250	814.51250	400.00	SFMTA MTMS

Microwave

Hop License: 1455 to CRS
11215

Hop License: CRS to 1455
10715

EXHIBIT I

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

Exempt from recording fees pursuant to Government
Code Section 27383.

Documentary Transfer Tax: NONE – Exempt pursuant
to San Francisco Business and Tax Regulations Code
Section 1105

(Space above this line reserved for Recorder's use only)

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of _____, 20__, is by and between C&E HAAS DEVELOPMENT COMPANY, LLC, a California limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

Recitals

A. Concurrently herewith, Landlord and City have entered into that certain Lease, dated _____, 20__ (the "Lease"), pursuant to which Landlord leased to City and City leased from Landlord the real property more particularly described in the attached Exhibit A (the "Property"), which is incorporated by this reference.

B. Landlord and City desire to execute this Memorandum to provide constructive notice of the Lease to all third parties, and all of the terms and conditions of the Lease are incorporated herein by reference as if they were fully set forth herein and reference is made to the Lease itself for a complete and definitive statement of the rights and obligations of Landlord and Tenant thereunder.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Pursuant to the terms of the Lease, Landlord leased the Property to City for a term commencing on the date Landlord delivers possession of the Property to City as set forth in the Lease. The Term of the Lease shall expire on the date that is _____ (__) years after the Commencement Date (as such term is defined in the Lease), subject to _____ option to extend (subject to the terms and conditions of the Lease), unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. The lease of the Property to City is made pursuant to the Lease, which is incorporated in this Memorandum by reference. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the Lease. In the event any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease shall govern. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease.

IN WITNESS WHEREOF, Landlord and City have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD: C&E HAAS DEVELOPMENT COMPANY, LLC, a California limited liability company

By: Charles J. Haas

Its: President

By: _____

Its: _____

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,

By: _____
JOHN UPDIKE
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____

Deputy City Attorney

State of California)
)
County of _____)

On _____ before me, _____,
personally appeared _____, who proved to me on the basis of satisfactory evidence to be
the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Replace with New Notary?]

State of California)
)
County of _____)

On _____ before me, _____,
personally appeared _____, who proved to me on the basis of satisfactory evidence to be
the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
)
County of _____)

On _____ before me, _____,
personally appeared _____, who proved to me on the basis of satisfactory evidence to be
the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of Property