

File No. 170099

Committee Item No. 10  
Board Item No. 5

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee Date April 6, 2017

Board of Supervisors Meeting Date April 18, 2017

**Cmte Board**

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

**OTHER (Use back side if additional space is needed)**

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Health Commission Resolution</u> |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <u>Power Point presentation</u>     |
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Completed by: Linda Wong Date March 30, 2017  
Completed by: Linda Wong Date April 12, 2017

1 [Real Property Lease - American Messaging Services, LLC - Zuckerberg San Francisco  
2 General Hospital and Trauma Center, Building 25 - 1001 Potrero Avenue - \$5,000 per Month  
3 Base Rent Exempt]

4 **Resolution authorizing and approving the lease of a portion of the roof and equipment**  
5 **room at Zuckerberg San Francisco General Hospital and Trauma Center, Building 25, at**  
6 **1001 Potrero Avenue with American Messaging Services, LLC, a Delaware limited**  
7 **liability company, at the monthly base rent of \$5,000 which shall be waived while**  
8 **providing paging services and equipment to the City, for a five-year term to commence**  
9 **upon approval by the Board of Supervisors and Mayor, with two five-year options to**  
10 **extend.**

11  
12 WHEREAS, The Department of Public Health ("DPH"), the Zuckerberg San Francisco  
13 General Hospital and Trauma Center ("ZSFGH"), and their respective doctors, nurses, and  
14 staff, rely upon the paging services and equipment provided by American Messaging  
15 Services, LLC ("AMS"), through a Paging Equipment and Services Agreement dated June 1,  
16 2013, for daily and emergency communications at ZSFGH and around the City; and

17 WHEREAS, The new ZSFGH is designed and constructed with materials that block  
18 radio and cellular from reaching portions of the building including basement surgical areas;  
19 and

20 WHEREAS, The ZSFGH requires antennas and boosters within the building to provide  
21 sufficient paging and cellular service to staff, patients and visitors to routinely communicate  
22 daily and during emergencies; and

23 WHEREAS, To ensure the doctors and staff at the ZSFGH receive their pages in the  
24 hospital, at the campus and surrounding areas, AMS requires the installation of two antennae,  
25 a satellite dish, and one rack in the building with related power supply equipment; and

1           WHEREAS, The Real Estate Division on behalf of the DPH has negotiated a new  
2 lease ("Lease") substantially the form on file with the Clerk of the Board of Supervisors in File  
3 No. 170099, which is hereby declared to be a part of this resolution as if set forth fully herein  
4 (the "Lease") to allow the installation of the antennas and satellite dish on the roof and a rack  
5 in the equipment room at Building 25; and

6           WHEREAS, The term of the lease shall be for five (5) years commencing upon  
7 approval by the Board of Supervisors and Mayor; and,

8           WHEREAS, AMS shall have two (2) additional five (5) year option terms to extend the  
9 Lease at the then City's minimum monthly base rent for similar personal communication sites  
10 within City owned assets, or, at the Base Rent prior to the start of any Option Year Term after  
11 adjusting for an annual Base Rent escalation of three (3%) percent of the then Base Rent,  
12 which options can be accepted at the discretion of the Director of the DPH and the Director of  
13 Property, so long as the Master Agreement is not terminated and the City continues to benefit  
14 from the Master Agreement; and

15           WHEREAS, The base monthly rent of \$5,000 is subject to annual adjustments of three  
16 (3%) percent; and

17           WHEREAS, AMS shall pay a service charge for janitorial, pest, debris, and utility costs  
18 estimated to be \$3,708.00 per year; and

19           WHEREAS, AMS shall be exempt from payment of Base Rent and the service charge  
20 for utilities so long as the City and AMS' Master Agreement to provide paging services and  
21 equipment to the City is in effect and City benefits from the Master Agreement; and

22           WHEREAS, On August 24, 2016, the Environmental Planning Division of the San  
23 Francisco Planning Department determined that the project, the lease and use of City  
24 Property for installation of communications equipment, would not be subject to the California  
25 Environmental Quality Act, Public Resources Code, Section 21000 et seq. ("CEQA"), pursuant

1 to CEQA Guidelines, Section 15301 and 15303; said determination is on file with the Clerk of  
2 the Board of Supervisors in File No. 170099 and is incorporated herein by reference; and

3 WHEREAS, On September 8, 2016, the San Francisco Planning Department found the  
4 project, lease and use of the City property to AMS complies with CEQA and is consistent with  
5 the City's General Plan and with Planning Code, Section 101.1-(b); a copy of the General  
6 Plan Referral is on file with the Clerk of the Board of Supervisors in File No. 170099 and is  
7 incorporated herein by reference; and

8 WHEREAS, On December 6, 2016, the Health Commission of the City and County of  
9 San Francisco passed Resolution 16-13 recommending that the Board of Supervisors  
10 approve lease agreements for the installation of necessary equipment for paging and cellular  
11 services at ZSFGH, Building 25; now, therefore be it

12 RESOLVED, That in accordance with the recommendation of the Director of the  
13 Department of Public Health, the Director of Property and the City Attorney, the Director of  
14 Property on behalf of the City, as Landlord, be and is hereby authorized to take all actions  
15 necessary to execute the Lease at ZSFGH, Building 25, for a five year term and two five year  
16 options subject to the enactment of a resolution by the Board of Supervisors and the Mayor, in  
17 their respective sole and absolute discretion, approving and authorizing the same; and, be it

18 FURTHER RESOLVED, The monthly base rent for the initial five year term shall be  
19 \$5,000.00, subject to annual adjustments of three (3%) percent, exclusive of utilities, janitorial,  
20 and debris services estimated to be \$3,708.00 per year which may be waived as set forth in  
21 the Lease; and, be it

22 FURTHER RESOLVED, The Board of Supervisors approves the Lease in substantially  
23 the form in the Board's File and authorizes the Director of Property to take all actions, on  
24 behalf of City, to enter into any amendments or modifications (including without limitation, the  
25 exhibits) to the Lease that the Director of Property determines, in consultation with the City

1 Attorney, are in the best interests of the City, do not materially increase the obligations or  
2 liabilities of the City, and are necessary or advisable to complete the transaction and  
3 effectuate the purposes and intent of this resolution and are in compliance with all applicable  
4 laws, including City's Charter; and, be it

5 FURTHER RESOLVED, That the Lease contains language indemnifying and holding  
6 harmless the Landlord from, and agreeing to defend the Landlord against, any and all claims,  
7 costs and expenses, including, without limitation, reasonable attorney's fees, incurred as a  
8 result of City's use of the Premises, any default by the City in the performance of any of its  
9 obligations under the Lease or any acts or omissions of City or its agents, in, on, or about the  
10 Premises or the property on which the Premises are located, including those claims, costs  
11 and expenses incurred as a result of negligence or willful misconduct of Landlord or its  
12 agents; and, be it

3 FURTHER RESOLVED, That the Competitive Bidding Procedures would be impractical  
14 in light of the existing Master Agreement between AMS and the City providing City with paging  
15 services and equipment for use by City, including DPH, in the City including ZSFGH; and, be it

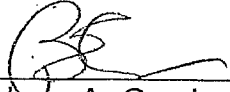
16 FURTHER RESOLVED, That any action heretofore taken by any City employee or  
17 official with respect to the exercise of the Lease as set forth herein is hereby approved,  
18 confirmed and ratified; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors finds that the actions  
20 contemplated in this Resolution are consistent with the City's General Plan and with Planning  
21 Code, Section 101.1-(b) for the reasons set forth in the General Plan Referral dated  
22 September 8, 2015; and, be it

23 FURTHER RESOLVED, That within thirty (30) days of the Lease agreement being fully  
24 executed by all parties, the Director of Property shall provide a copy of the Lease agreement  
25 to the Clerk of the Board to include into the official file.

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RECOMMENDED:



Barbara A. Garcia, MPA, Director  
Department of Public Health

RECOMMENDED:



John Updike  
Director of Property  
Real Estate Division

<p><b>Items 9 and 10</b> <b>Files 17-0100 and 17-0099</b></p>	<p><b>Department:</b> Department of Public Health (DPH)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<p><b>File 17-0100:</b> The proposed resolution approves a new lease between DPH and SPOK, Inc. (SPOK), a Delaware corporation, to lease a portion of the equipment room at ZSFGH to install SPOK’s paging and radio equipment.</p>	
<p><b>File 17-0099:</b> The proposed resolution approves a new lease agreement between the Department of Public Health (DPH), as landlord, and American Messaging Services, LLC (American Messaging Services), a Delaware limited liability company, as tenant, for DPH to lease a portion of the roof and equipment room at Zuckerberg San Francisco General Hospital (ZSFGH) to American Messaging Services to install paging and radio equipment.</p>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• Building 25, the new trauma center at ZSFGH that opened in May 2016, is built with materials that block radio and cellular signals from reaching portions of the building including basement surgical areas. To address the issue, DPH installed a Distributed Antenna System that enhances coverage through a series of in-building repeaters. The Distributed Antenna System supports a wide range of wireless, cellular, public safety, radio, and paging service providers.</li> <li>• To ensure sufficient paging and cellular service to doctors and staff at ZSFGH, (1) American Messaging Services, which has an agreement with DPH to provide paging and related services, needs to install two antennae and a satellite dish on the roof and one rack with power supply equipment in the equipment room of Building 25; and (2) SPOK, which has an agreement with the University of California, San Francisco (UCSF), needs to install one antenna on the roof and one rack with power supply equipment in the equipment room of Building 25 to connect to the building’s Distributed Antenna System.</li> <li>• Each lease is for approximately five years with two (2) five-year options to extend.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• Annual rent for each of the tenants is \$60,000. Lease payments are waived during the term of the respective agreements to provide paging and related services to DPH and UCSF. The City will also pay for utilities, estimated to be approximately \$3,708 per year, for each of the tenants while the master agreements for paging services are in effect.</li> </ul>	
<p style="text-align: center;"><b>Recommendations</b></p>	
<ul style="list-style-type: none"> <li>• File 17-0100 should be amended to state that UCSF will provide advanced notification to DPH if their master agreement with SPOK ends during the term of the proposed lease agreement.</li> <li>• Approve the proposed resolutions, as amended.</li> </ul>	

**MANDATE STATEMENT**

City Administrative Code 23.27 states that lease agreements with a term of one year or longer or with rent of \$5,000 or more and where the City is the landlord is subject to Board of Supervisors approval.

**BACKGROUND****Paging Equipment and Services Provided by American Messaging Services and SPOK**

The Department of Technology (DT) entered into an agreement with American Messaging Services in 2013 to provide paging equipment and services for City departments following a competitive request for proposals (RFP) process. Under the agreement, American Messaging Services provides paging equipment and services to Zuckerberg San Francisco General Hospital (ZSFGH) and Laguna Honda Hospital. The agreement was for a term of three years from July 1, 2013 to June 30, 2016 with one option to extend through June 30, 2017. The agreement amount was for not-to-exceed \$300,000.<sup>1</sup> According to Ms. Verwina Roble, Communications Business Analyst at DPH, DT intends to enter into a new agreement with American Messaging Services without undergoing a new competitive process when the current master agreement expires on June 30, 2017. According to Ms. Roble, the City is not planning to undertake a new competitive process because moving to a different vendor would be highly disruptive to the operation of the more than 1,000 active pagers being used for emergency response at ZSFGH. DT intends to renew the master agreement with American Messaging Services for three years with two one-year options to extend for a total of five years.

SPOK, Inc. (SPOK) has a master agreement with the University of California, San Francisco (UCSF) to provide paging services and equipment to UCSF, including medical staff and emergency personnel located at the ZSFGH campus. DPH staff report that they do not have information about the agreement because it is between UCSF and SPOK. Therefore, City staff were not able to provide information about the terms of the agreement.

**Distributed Antenna System at ZSFGH**

Building 25, the new trauma center at ZSFGH that opened in May 2016, is built with materials that block radio and cellular signals from reaching portions of the building including basement surgical areas. To address the issue, DPH installed a Distributed Antenna System that enhances coverage through a series of in-building repeaters. The Distributed Antenna System supports a wide range of wireless, cellular, public safety, radio, and paging service providers. To ensure sufficient paging and cellular service to doctors and staff at ZSFGH, (1) American Messaging Services needs to install two antennae and a satellite dish on the roof and one rack with power supply equipment in the equipment room of Building 25; and (2) SPOK needs to install one antenna on the roof and one rack with power supply equipment in the equipment room of Building 25 to connect to the building's Distributed Antenna System.

<sup>1</sup> The agreement was not subject to Board of Supervisors approval because it was below the threshold amount set by City Charter Section 9.118.



**DETAILS OF PROPOSED LEGISLATION**

**File 17-0099:** The proposed resolution approves a new lease agreement between the Department of Public Health (DPH), as landlord, and American Messaging Services, LLC (American Messaging Services), a Delaware limited liability company, as tenant, for DPH to lease a portion of the roof and equipment room at Zuckerberg San Francisco General Hospital (ZSFGH) to American Messaging Services to install paging and radio equipment.

**File 17-0100:** The proposed resolution approves a new lease between DPH and SPOK, Inc. (SPOK), a Delaware corporation, to lease a portion of the equipment room at ZSFGH to install SPOK's paging and radio equipment.

The terms of the leases are shown in Table 1 below.

**Table 1: Summary of Lease Terms**

	American Messaging Services	SPOK
Lease Period	Approximately 4 years and 9 months From approximately April 1, 2017 to December 31, 2021	Approximately 4 years and 9 months From approximately April 1, 2017 to December 31, 2021
Size of Property	8,646 rentable square feet	Participation in distributed antenna system
Options to Extend Lease	Two 5-year options to extend through 2032 at fair market rent Total lease term if options to extend are exercised is approximately 14 years and 9 months	Two 5-year options to extend through 2032 at fair market rent Total lease term if options to extend are exercised is approximately 14 years and 9 months
Base Rent Paid by Tenant to DPH	\$5,000 per month \$60,000 per year	\$5,000 per month \$60,000 per year
Rent Waiver	Rent is waived in full during the term of the tenant's master agreement for paging services (see below)	Rent is waived in full during the term of the tenant's master agreement for paging services (see below)
Annual Adjustments to Base Rent	3 percent	3 percent
Tenant Improvements	None	None
Utilities and Services	\$3,708 per year paid by tenant, subject to 3 percent annual increase City to pay for utilities during the term of tenant's master agreement	\$3,708 per year paid by tenant, subject to 3 percent annual increase City to pay for utilities during the term of tenant's master agreement

According to Ms. Claudia Gorham, Assistant Director of Real Estate, American Messaging Services and SPOK have previously received permits from the City to install paging and radio

equipment on buildings at the ZSFGH campus without entering into leases. According to Ms. Gorham, the paging companies and the Real Estate Division mutually agreed to a more permanent arrangement for the new installations at Building 25, with rent paid by American Messaging Services and SPOK to the City should the paging services under the respective agreements with DT and with UCSF end.

### **FISCAL IMPACT**

According to Ms. Gorham, the base rent amounts are based on the City's minimum charge of \$5,000 per month at other locations for a cellular antenna on City property. As noted above, rent is waived as long as either tenant is providing paging services to hospital users under the respective agreements with DT and with UCSF. The City will also pay for utilities, estimated to be approximately \$3,708 per year, for each of the tenants while the master agreements for paging services are in effect.

### **POLICY CONSIDERATION**

Given that a new master agreement between the City and American Messaging Services has not been finalized and the City does not have control over the agreement between SPOK and UCSF, it is not known whether the tenants would ever pay the base rent over the terms of the proposed lease agreements. Ms. Gorham advises that there is a possibility, however unlikely, that American Messaging Services or SPOK could choose to leave their equipment in place to continue serving other customers in the vicinity of the ZSFGH campus in the event the master agreements with the City or UCSF ends.

Because the City is not currently tracking the SPOK master agreement, it seems possible that the agreement for paging services with UCSF could expire or terminate and the City would not be aware that they would be entitled to collect rent. Therefore, the proposed resolution should be amended to state that UCSF will provide advanced notification to DPH if their master agreement with SPOK ends during the term of the proposed lease agreement

### **RECOMMENDATIONS**

1. File 17-0100 should be amended to state that UCSF will provide advanced notification to DPH if their master agreement with SPOK ends during the term of the proposed lease agreement.
2. Approve the proposed resolutions, as amended.

COMMUNICATIONS SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

AMERICAN MESSAGING SERVICES, LLC,  
as Tenant

For the lease of

a Site at San Francisco General Hospital and Trauma Center  
Building 25  
1001 Potrero Avenue  
San Francisco, California

July 13, 2016

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LIST OF EXHIBITS

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EXHIBIT D – First Source Hiring Agreement

EXHIBIT E - Access for Telecommunications Equipment Installation and Maintenance



COMMUNICATIONS SITE LEASE

THIS COMMUNICATIONS SITE LEASE (this "Lease") dated for reference purposes only as of July 13, 2016, is made between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), and AMERICAN MESSAGING SERVICES, LLC, a Delaware limited liability corporation ("Tenant").

City and Tenant hereby covenant and agree as follows:

**1. BASIC LEASE INFORMATION**

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

Lease Reference Date:	July 13, 2016
Landlord:	CITY AND COUNTY OF SAN FRANCISCO
Tenant:	AMERICAN MESSAGING SERVICES, LLC
Building:	Zuckerberg San Francisco General Hospital and Trauma Center, Building 25, located at 1001 Potrero Avenue, San Francisco, California (the "Building").
Premises ( <u>Section 3.1</u> ):	The portions of the Building consisting of space in the Penthouse Radio Room in which Tenant's communications facilities are to be installed (shown on <u>Exhibit A</u> , Sheet 1), one (1) 19" rack in the Transmitter Room in the Basement of the Building (shown on <u>Exhibit A</u> , Sheet 2) and located on the roof of the Building on which two (2) antennas and one (1) 1.2 meter Satellite dish are to be mounted (as shown on <u>Exhibit A</u> , Sheet 3). In connection with this Lease and during the term of the Lease, Tenant shall have a nonexclusive license for the placement and use of wiring and conduit as shown on the Approved Plans (as defined below). The Building is under the jurisdiction of the City's Department of Public Health.

Term (Section 4.1): Five (5) years

Estimated commencement date: October 1, 2016

Expiration date: September 30, 2021

Extension Options (Section 28.1): Two (2) additional five (5) year Options, exercisable on the terms specified in Section 28

Base Rent (Section 5.1): Annual Base Rent: \$ 60,000.00

Monthly payments: \$ 5,000.00

So long as Tenant provides services, and in consideration of, the benefit of Tenant's Master Agreement to provide paging services for City and benefit of Tenant's equipment, Tenant is exempt from payment of rent.

Adjustment Dates (Section 5.2): Annually on January 1 of each year, beginning January 1, 2018.

Use (Section 6.1): Tenant shall only use the Premises for the construction, maintenance and operation of the Tenant Equipment and for the transmission and reception of paging and/or radio communication signals on various frequencies with the Tenant Equipment (a "Communications Site"). Tenant shall not use the Premises for any other purposes without the written consent of Landlord.

Tenant's Equipment (Exhibit C): The following equipment and improvements that Tenant has the right to install at the Building pursuant to this Lease, which installation shall be at Tenant's sole cost: Two (2) Antennae, One (1) 1.2 meter Satellite dish (roof mounted), One (1) 19" Rack (Transmitter Room), and related power cable/supply and equipment (collectively, "Tenant's Equipment") as shown on Exhibit C attached hereto.

Utilities (Section 12.1): Utilities to be provided by City for a service charge of \$3,708 per annum, payable monthly in advance at \$309.00 subject to a three (3%) percent increase annually on the anniversary of each Adjustment Date. In consideration of Tenant's Master Agreement and the benefit of the service and equipment to City, Tenant is exempt from payment of utilities during term of Tenant's Master Agreement for paging services.

Security Deposit (Section 25): \$ 5,000.00 [Already paid for Permit.]

Notice Address of Landlord: Department of Public Health

(Section 29.1):

101 Grove Street  
San Francisco, CA 94102  
Attn: Director of Public Health  
Re: SFGH – 1001 Potrero, Building 25  
American Messaging

With a copy to:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property  
Re: San Francisco General Hospital  
1001 Potrero Avenue, Building 25  
American Messaging  
Fax No.: (415) 552-9216

and to:

Office of the City Attorney  
City and County of San Francisco  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Deputy City Attorney  
Re: SFGH – 1001 Potrero  
American Messaging  
Fax No.: (415) 554-4755

Key Contact for Landlord:

Max Bunuan  
Director of Facilities, ZSFGH  
[Max.@sfdph.org](mailto:Max.@sfdph.org)

Telephone No.:

415.206.8550

Bill Kim  
[Bill.kim@sfdph.org](mailto:Bill.kim@sfdph.org)  
415.554.2633

Notice Address for Tenant  
(Section 29.1):

American Messaging Services, LLC  
Attn: Site Activity  
1720 Lakepointe Drive, Suite 100  
Lewisville, TX 75057  
927-353-1809

Key Contact for Tenant:

Heather Pitzer  
[Heather.pitzer@americanmessaging.net](mailto:Heather.pitzer@americanmessaging.net)

Telephone No.:

972.353.1932

Alternate Contact for Tenant

Rod Ferguson  
Rob.ferguson@americanmessaging.net

Telephone No.:

614.844.4859

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

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

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

### **2.2 Required Co-location**

Notwithstanding the foregoing, Tenant is on notice that Landlord may require Tenant to co-locate its facilities on the premises with other facilities or providers or require Tenant to permit other facilities or providers to co-locate on Tenant's facilities.

Tenant shall cooperate and use commercially reasonable efforts to facilitate co-location of future paging and/or telecommunications facilities upon the premises; provided, however, that Tenant shall not be under any such obligation if a proposed co-location causes interference with Tenant's existing use of the premises. If no such interference would occur upon installation of a co-locator's equipment as reasonably determined by Landlord, then the proposed co-locator in each instance shall, as a condition precedent to any proposed co-location: (i) execute and deliver a co-location agreement prepared in commercially reasonable form by the proposed co-locator; (ii) pay all costs arising from or related to the co-location, including but not limited to any and all costs incurred by Tenant to accommodate such co-location; and (iii) reimburse Tenant a commercially reasonable percentage of costs and expenses (including capital expenditures) incurred by Tenant in connection with the development, use, or occupancy of the premises prior to the co-location.

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

### **3.1 Lease Premises**

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

As used herein, "**Property**" means the Premises, Building and real property upon which the Building is located and all other improvements and appurtenances to such land. In connection with its use of the Premises and for the Term of this Lease, City grants Tenant a nonexclusive license for the placement and use of Tenant's utility and fiber cabling, wires, and conduits reasonably necessary to connect Tenant's Equipment (collectively, the "Tenant Cables") across the areas shown on the Approved Plans (as defined in Section 7.1 (Tenant Improvement Work)). Such license shall be irrevocable, but shall terminate upon any termination of this Lease. City, in

its sole discretion and at its sole cost and expense, may relocate the license area upon one hundred eighty (180) days prior written notice to Tenant. Except as otherwise expressly permitted in this Lease, all Tenant Cables that connect Tenant's Equipment located in different sites within, and on top of, the Building shall pass through existing openings in the Building's walls, floors, or ceilings unless Tenant reasonably determines that such existing openings are not usable. In such event, Tenant shall obtain Landlord's prior written consent to make any new penetrations through the Building walls, floors, or ceilings and roofs for any Tenant Cables, which consent will not be unreasonably withheld, conditioned or delayed.

To request Landlord's consent to new penetrations, Tenant shall deliver such request to Landlord in writing, together with any information reasonably requested by Landlord to analyze whether such proposed penetrations would negatively impact the Building's safety or structural integrity (a "**Request Notice**"). Such Landlord-requested information may include an analysis of the impact of the proposed penetrations, prepared by a California-licensed structural engineer with reasonable experience in analyzing such issues. If the cost of making any such new penetrations is more than Five Thousand Dollars (\$5,000), Tenant shall pay Landlord the administrative fee described in Section 8.1. If the cost of making any such new penetrations is Five Thousand Dollars (\$5,000) or less, at Landlord's election, Tenant shall pay Landlord a reasonable administrative review fee before Landlord is required to review such new penetration request. Such administrative review fee shall be based on Landlord's estimated costs in reviewing the proposed penetrations. Landlord shall notify Tenant in writing if Landlord will charge such an administrative review fee and the amount of such fee within thirty (30) days' of receiving Tenant's Request Notice. Tenant shall have the right to withdraw its Request Notice at any time; provided, however, that if Tenant withdraws such Request Notice after delivering the administrative review fee or a Section 8.1 administrative fee, Landlord shall have no obligation to reimburse such fee to Tenant.

### 3.2 As Is Lease

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

#### 4. TERM

##### 4.1 Term of Lease

The Premises are leased for a term (the "Term") of five (5) years, commencing and terminating as set forth below. The Term of this Lease shall end on the Expiration Date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the terms hereof. No delay in the commencement of this Lease beyond the Estimated Commencement Date specified in the Basic Lease Information shall serve to extend the Initial Term beyond the Expiration Date. Upon delivery of a written notice to the Director of Property no less than One Hundred and Eighty Days (180) prior to the Lease Expiration Date for the Term and any Extended Terms, Tenant shall have the right to extend the Term for up to three (3) additional terms of five (5) years on the terms provided in Section 28.1 (Options to Extend Term). As used below, the "Term" shall include the initial term of five (5) years, and any of the Extended Terms if Tenant duly exercises its Extension Options with respect to such Extended Term(s) pursuant to this Lease.

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

The Term of this Lease shall commence on the full execution by the parties (which execution by City shall require the resolution specified in Section 29.35 below) (the "Commencement Date"). The Term shall terminate on the Expiration Date unless earlier terminated pursuant to the terms hereof or extended as provided in Section 28.1. Promptly following the Commencement Date, if the Commencement Date occurs on a date other than the Estimated Commencement Date specified in the Basic Lease Information, Tenant shall deliver to City a notice in substantially the form attached hereto as Exhibit B identifying the Commencement Date determined in accordance with the provisions hereof, and City shall execute and return such notice to Tenant. However, the parties' failure to execute or deliver such notice shall not affect the commencement of the Term.

#### 5. RENT; ADDITIONAL CHARGES

##### 5.1 Base Rent

Beginning on the Commencement Date, Tenant shall pay to City during the Term the annual Base Rent specified in the Basic Lease Information as the same may be increased pursuant to Section 5.2 (Adjustments in Base Rent) (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, by good check to the City and County of San Francisco at the address for the Director of Property specified in the Basic Lease Information, or such other place as City may designate in writing. Tenant shall pay the Base Rent without any prior demand and without any deduction or setoff. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month.

In consideration of the benefit and public purpose of Tenant's Paging Equipment and Services Agreement, dated June 1, 2013, ("**Master Agreement**"), with the City to provide a radio paging telecommunications system for City's use, including the doctors and staff at the Zuckerberg San Francisco General Hospital and Trauma Center, Tenant is exempt from payment of Base Rent until the Master Agreement expires or is terminated and so long as Tenant provides said services to City and department staff.

## 5.2 Adjustments in Base Rent

Subject to the exemption set forth in Section 5.1, on each date specified in the Basic Lease Information for the adjustment of Base Rent (an "**Adjustment Date**") during the Term, the Base Rent payable by Tenant under Section 5.1 (**Base Rent**) above shall be adjusted annually by three (3) percent.

## 5.3 Additional Charges

Subject to the exemption set forth in Section 5.1, Tenant shall promptly pay to City any and all charges, if any, required under any other provision of this Lease, as additional rent (herein called "**Additional Charges**"). Such Additional Charges shall be payable to City at the same place and in the same manner as the Base Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. As used in this Lease, the term "**Rent**" shall include the Base Rent and any Additional Charges.

## 5.4 Late Charges

Subject to the exemption set forth in Section 5.1, if Tenant fails to pay any Rent within ten (10) days after delivery of notice that the same is due and payable, such unpaid amounts will be subject to a late payment charge equal to ONE HUNDRED AND FIFTY percent (150%) of the unpaid amounts in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that will be incurred by City as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amounts.

## 5.5 Default Interest

Subject to the exemption set forth in Section 5.1, any Rent, if not paid within ten (10) days following the due date, shall bear interest from the due date until paid at the rate of six percent (6%) per year, or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest and late charges shall not excuse or cure any default by Tenant.

## 6. USE

### 6.1 Permitted Use

Tenant shall use the Premises during the Term of this Lease solely for such uses as are specified in the Basic Lease Information and the Exhibits attached hereto, and for no other use. Tenant shall not interfere with the use and operation of the Building as a hospital and trauma center.

### 6.2 No Illegal Uses or Nuisances

Without limiting the foregoing, Tenant shall not use or occupy any of the Premises, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy, or hazardous use. Tenant shall take all precautions to eliminate any nuisances or hazards in connection with its activities within the

Premises. Tenant shall not advertise in any manner in areas outside the Premises or on or about the Building; provided, however that Tenant may place one identification plate on each antenna, and base station equipment component that comprises the Tenant's Equipment, which plate shall be no larger than two (2) inches by two (2) inches and shall be reasonably approved in advance by City, in order to identify Tenant's Equipment as belonging to Tenant.

## 7. INSTALLATION OF TENANT IMPROVEMENTS

### 7.1 Tenant Improvement Work

Prior to the Commencement Date, pursuant to Tenant's Permit, dated January 5, 2016, Tenant has installed Tenant's Equipment and other improvements on the Premises in accordance with the plans and specifications set forth in Exhibit A, which have been approved by City (such work is called the "**Tenant Improvement Work**" or "**Tenant Improvements**" and such plans and specifications are called the "**Approved Plans**"). A copy of the Approved Plans is attached hereto as Exhibit C. The Approved Plans may be altered, subject to the prior written and reasonable approval of City, if required in order for Tenant to obtain any permits or approvals necessary for construction of any modifications, alterations, replacements or additions.

Tenant shall not alter, replace, modify, or add to any of Tenant's Equipment without City's prior written consent; provided, however, that Tenant may perform maintenance, repairs, like-for-like exchanges or similar replacements of Tenant's Equipment and may make modifications within the interior of any of Tenant's Equipment without prior approval of City so long as the like-for-like exchanges or similar replacements of Tenant's Equipment are substantially similar in size and weight to the previous Tenant Equipment, do not pose any greater danger to the Building than the Tenant's Equipment to be so exchanged or replaced, will comply with Section 12.3 (Floor Load), and Tenant obtains all regulatory approvals required for such exchanges, replacements, or modifications. If Tenant wishes to make any exchange or replacement of Tenant's Equipment within the Premises that requires City's prior written consent, City will not unreasonably withhold, condition or delay its approval; provided, however, subject to Section 5.1, that City shall have the right to condition its approval of such requested exchange or replacement on an increase in the Base Rent if such requested exchange or replacement results in Tenant realizing additional revenues or charging higher fees to its customers, unless such higher fees to its customers are solely used to pay for Tenant's additional cost in making such requested exchange or replacement. Tenant acknowledges that City shall have the sole discretion in deciding whether to approve to any proposed addition to the Tenant's Equipment within the Premises or any proposed exchange or replacement of Tenant's Equipment that would result in any expansion of the Premises.

Tenant shall be responsible, at its cost, for performing the Tenant Improvement Work in accordance with the Approved Plans and otherwise in compliance with the standards contained in Section 8.1 (Tenant's Alterations). Tenant shall further be responsible, at its cost, for obtaining all permits and licenses required in connection with the Tenant Improvements and satisfy any conditions or mitigation measures approved in connection therewith. No Tenant Improvement Work shall commence until Tenant has first obtained all necessary permits and approvals for Tenant to be legally entitled to construct the Tenant Improvements.

### 7.2 Local Hire Requirements

Unless exempt, for any Tenant Improvement Work and Alterations, as defined in Section 8 (Tenant's Alterations), estimated to cost more than \$750,000, Tenant agrees to comply with the San Francisco Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) in the performance of the Tenant Improvement Work and Alterations. Prior to the



commencement of such work, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to discuss the local hiring requirements issued by OEWD under the San Francisco Local Hiring Policy that apply to the Tenant Improvement Work, if any. Tenant shall comply with all OEWD requirements issued with respect to the San Francisco Local Hiring Policy and applicable to the Tenant Improvement Work and Alterations.

### **7.3 Air-conditioning and Fire Suppression**

Tenant shall have the right (but not the obligation) to install and maintain at its own cost and expense a self-contained air-conditioning system and fire protection system on the Premises, as shown on the Approved Plans, if any. Installation of such systems shall be in compliance with Section 7.1 (Tenant Improvement Work) and Section 8.1 (Tenant's Alterations).

## **8. ALTERATIONS**

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

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

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

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

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

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

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

City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to all or any part of the Building, the Building Systems or the common areas of the Building, for any purpose including compliance with mandatory or voluntary controls or guidelines, subject to the following terms and conditions. In performing any such work, City shall make good faith efforts to give Tenant prior notice of such work and shall make reasonable efforts not to disrupt Tenant's normal use of Tenant's Equipment in the Premises. Subject to Section 5.1, the making of any such alterations, additions, repairs, deletions or improvements shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that Tenant can still operate the Premises as a Communications Site. During the period of any such alterations by City which materially impair Tenant's use of the Premises as a Communications Site, Tenant shall have the right to bring into the Building and operate a portable generator and mobile Communications Site and telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage and Destruction).

## **10. REPAIRS AND MAINTENANCE**

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

City shall be responsible for the maintenance of the Building and City agrees (i) to correct any immediately life-threatening or hazardous condition that affects any portion of the Building necessary for Tenant's use of the Premises as a Communications Site, so long as such condition is not the result of damage or destruction discussed in Section 15 (Destruction), the acts, omissions or negligence of Tenant or its Agents, such repair is not otherwise the responsibility of Tenant under Section 10.2 (Tenant's Repairs), and such condition is not disclosed to Tenant under any provision of this Lease or would not have otherwise been discovered by Tenant through a reasonably diligent inspection of the Premises prior to the reference date hereof, and (ii) to repair any condition caused by City or its tenants of the Building other than Tenant, which condition materially affects any portion of the Building necessary for Tenant's use of the Premises as a Communications Site and is not caused by damage or destruction discussed in Section 15 (Destruction). Upon becoming aware of any such condition, Tenant shall give the City written notice of the need for any repair for which the City is responsible under the preceding sentence; provided, however, that Tenant's agreement to provide written notice shall in no event be interpreted as an assumption of liability for such life-threatening or hazardous conditions unless Tenant would otherwise be responsible for such conditions hereunder. In the event that the costs of making the corrections or repairs described in Subsections (i) or (ii) above exceed Ten Thousand Dollars (\$10,000.00), City may elect to terminate this Lease within thirty (30) days of the condition requiring correction or repair in lieu of making such corrections or repairs, provided however, that Tenant may elect to pay the portion of such costs in excess of Ten Thousand Dollars (\$10,000.00) necessary in order to make such correction or repairs, in which case City will proceed with the correction or repair.

## 10.2 Tenant's Repairs

Tenant shall maintain all parts of its Premises at its sole expense, including without limitation, the floors, electrical wiring, fixtures and equipment, in good repair and working order and in a clean, safe and sanitary condition. Tenant shall make all repairs and replacements: (a) at Tenant's expense and at such time and, when required hereunder, in such manner as reasonably approved by City, (b) by duly licensed and bonded contractors or mechanics, (c) in a manner and using equipment and materials which will not interfere with or impair City's operations, use or occupation of the Building or the Building Systems, and (d) in accordance with any Building Rules and Regulations (as defined in Section 24 (Rules and Regulations)) and all applicable Laws (as defined in Section 13.1 (Compliance with Laws)).

## 11. LIENS

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

## 12. UTILITIES AND SERVICES

### 12.1 Utilities and Services

City shall furnish any and all utilities or services necessary or appropriate for Tenant's use and enjoyment of the Premises for a service charge of Three Thousand Seven Hundred and Eight Dollars (\$3,708.00) per annum, payable monthly in advance at Three Hundred and Nine Dollars (\$309.00) subject to a three (3%) percent increase annually on the anniversary date of each Adjustment Date. Should any governmental entity promulgate or revise any statute, ordinance or building, fire or other code or impose mandatory or voluntary controls or guidelines on City or the Building or any part thereof, relating to the use or conservation of energy or electricity, or in the event City is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines, Tenant shall be responsible for the difference in the utility or service charge, if any, due to any such alterations. Tenant shall not: (a) connect or use any electrical equipment that exceeds the capacity of the Building electrical system; or (b) connect any apparatus, machine or device through electrical outlets except in the manner for which such outlets are designed, except for such modifications as may be shown on the Approved Plans and for any other such modifications at Tenant's sole cost as are reasonably approved in writing in advance by City.

In consideration of the benefit and public purpose of Tenant's Paging Equipment and Services Agreement, dated June 1, 2013, ("Master Agreement"), with the City to provide a

radio paging telecommunications system for City's use, including the doctors and staff at the Zuckerberg San Francisco General Hospital and Trauma Center, Tenant is exempt from payment of Base Rent until the Master Agreement expires or is terminated and so long as Tenant provides said services to City and department staff.

## **12.2 Mandatory or Voluntary Restrictions**

Subject to the exemption set forth in Section 12.1, in the event City provides any utilities for a service charge pursuant to Section 12.1 (Utilities and Services), and any governmental entity promulgates or revises any statute, ordinance or building, fire or other code or imposes mandatory or voluntary controls or guidelines on City or the Building or any part thereof, relating to the use or conservation of energy or electricity, or in the event City is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that Tenant can still operate the Premises as a Communications Site.

## **12.3 Floor Load**

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

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

### **13.1 Compliance with Laws**

Tenant, at Tenant's expense, shall promptly maintain the Premises, any Tenant Improvements and Tenant's Alterations and any other improvements and equipment permitted hereunder, and Tenant's use and operations thereon, in strict compliance with all present and future laws, orders and regulations of federal, state, county and municipal authorities (collectively, "Laws") relating to the Premises or the use or occupancy thereof, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. (insofar as such Act relates to Tenant's unique use) and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in Section 27.1 (Definitions)), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. Any work or installations made or performed by or on behalf of Tenant or any person or entity claiming through or under Tenant pursuant to the provisions of this Section shall be made in conformity with and subject to the provisions of Section 10.2 (Tenant's Repairs). In making any application to City's Planning Department for the Communications Site, Tenant agrees to act as both "Applicant" and "Project Sponsor." A copy of all conditional use permits authorizing use of the Premises shall be copied to the Director of Property and the Department of Public Health prior to any work.

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any of the Tenant Improvements or any of Tenant's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Except as expressly provided herein, Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

Tenant understands and agrees that City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required regulatory approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all Laws as provided above.

### **13.2 Licenses and Approvals**

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

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

Without limiting Section 13.1 above, Tenant shall comply with all present and future laws, orders and regulations of federal, state, county and municipal authorities relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off the Premises; including without limitation, all applicable standards adopted by the Federal Communications Commission ("FCC"), whether such RF or EMF presence or exposure results from Tenant's equipment alone or from the cumulative effect of Tenant's equipment added to all other sources in the Building. City shall not agree to allow any third party entering into an occupancy or use agreement after the Commencement Date to cause an increase in RF or EMF levels in the Building such that the cumulative levels exceed allowable levels. If the cumulative effect of City's use of the Building taken together with Tenant's use hereunder and other tenant(s) whose use predated the Commencement Date exceeds such standards, Tenant shall have the right to terminate this Lease without penalty upon ninety (90) days' prior written notice to City. Without limiting the provisions of Tenant's indemnity contained in Section 18 (Indemnity), Tenant, on behalf of itself and its successors and assigns, shall indemnify the "Indemnified Parties," and each of them, from and against all "Claims" incurred in connection with or arising in whole or in part from the presence of or exposure to RFs or EMFs resulting from Tenant's use of the Premises.

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

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

### **14. SUBORDINATION**

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

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

The parties recognize that the Premises are a small portion of a building used as, among other things, a hospital and trauma center. In the event of damage to the Premises or the Building by any cause, City shall have no obligation to rebuild or repair. If City, in City's sole and absolute discretion, determines to repair or rebuild, City shall give Tenant written notice of its determination and its good faith estimate of the amount of time to repair or rebuild, within thirty (30) days of the date of such damage or destruction.

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

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

## **16. EMINENT DOMAIN**

### **16.1 Eminent Domain**

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

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

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

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

### **16.2 Temporary Takings**

Notwithstanding the foregoing, if a taking occurs with respect to all or any portion of the Premises for less than ninety (90) days, this Lease shall remain unaffected thereby, and Tenant shall continue to perform all of the terms, conditions and covenants of this Lease, except that Tenant shall be entitled to an abatement in Base Rent, if any is paid, to the extent that its use of the Premises as a Communications Site is materially impaired. In the event of any such temporary taking, City shall be entitled to receive the award.

## **17. ASSIGNMENT AND SUBLETTING**

This Lease is personal to Tenant. Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, under any circumstances. Any attempt to assign, convey or otherwise transfer this Lease shall be null and void and cause the immediate termination and revocation of this Lease.

## 18. DEFAULT

### 18.1 Events of Default

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

(a) subject to Section 5.1, any failure to pay any Base Rent or Additional Charges as and when due, provided Tenant shall have a period of ten (10) days from the date of written notice from City within which to cure any default in the payment of Rent; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure except for a three (3)-day notice to pay or quit as required by law;

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

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

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

### 18.2 Remedies

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

(a) the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount, if any, by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

(b) the rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to



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

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

## 19. TENANT'S INDEMNITY

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("**Indemnify**") City, its Agents and Invitees, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (a) injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, occurring on or about the Premises or License Areas or arising in connection with the use of the Premises or License Areas under this Lease; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises or any occurrence on the Premises from any cause attributable to the events described in clauses (a), (b) or (c) of this Section; or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or the Building; all regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except to the extent such Claim is caused by the willful misconduct or active negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of the Lease.

## 20. INSURANCE

### 20.1 Tenant's Insurance

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

(i) 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, personal injury, explosion, collapse and underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations.

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

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

(b) Commercial General Liability, Commercial Automobile Liability Insurance and Business Interruption Insurance policies shall be endorsed to provide the following:

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

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

(c) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason other than for nonpayment of a premium, which would have ten (10) days prior written notice of cancellation, to both Tenant and City. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information.

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

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

(f) Should any of the required insurance be provided under an excess or umbrella policy that follows the form and amounts of those required in this Section 20, including coverage and no additional exclusions, then proof of such excess/umbrella policy and the City as an additional insured under same shall satisfy the insurance requirements and amounts set forth herein.

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

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

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

## **20.2 Tenant's Property**

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

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

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

## **20.4 Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, City and Tenant each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is (i) covered by third party insurance such Waiving Party is required to carry under this Lease or (ii) actually covered by any other third party insurance then carried by the Waiving Party. Each Waiving Party agrees to cause its third party insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Building or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

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

### **21.1 Limitation on City's Liability**

City shall not be responsible for or liable to Tenant, and Tenant hereby waives all Claims against City and its Agents and releases City and its Agents from, all Claims for any injury, loss or damage to any person or property in or about the Premises or any License Area created under this Lease by or from any cause whatsoever (other than to the extent caused by the active negligence or willful misconduct of City and its Agents), including, without limitation, acts or

omissions of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises; theft; burst, stopped or leaking water, gas, sewer or steam pipes; or gas, fire, oil or electricity in, on or about the Premises or the Building.

### **21.2 Consequential Damages**

Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising from the disruption to Tenant Improvements. City would not be willing to enter into this Lease in the absence of a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits) arising out of this Lease, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease, regardless of the cause, and whether or not due to the active or passive negligence or willful misconduct of City or its Agents, and covenants not to sue for such damages City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them.

### **21.3 No Relocation Assistance**

This Lease creates no right in Tenant to receive any relocation assistance or payment for any reason under the Relocation Assistance Act (California Government Code Section 7260 et seq.), the Uniform Relocation Assistance Act (42 U.S.C. Section 4602 et seq.) as such acts may be amended or revised or under any existing or future law upon any termination of tenancy except as provided in Section 15 (Eminent Domain) hereof.

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

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

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

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

## 22. ACCESS TO PREMISES

### 22.1 Tenant's Access to the Premises

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

Such rights shall include the right of ingress and egress through the Building during non-business hours for access to or from the Premises or Tenant's Equipment, provided that Tenant shall provide City with at least forty-eight (48) hours prior written notice of any requested access, shall only access the Premises or any Tenant Cables elsewhere in the Building while accompanied by a designated City representative, and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the Premises (or the Building with respect to accessing any Tenant Cables) if a designated City representative is not available to accompany Tenant at such time and following such access, Tenant promptly notify the Key Contact for Landlord designated in Section 1 above.

### 22.2 City's Access to the Premises

City and its designated Agents shall the right to enter the Premises at all times with reasonable notice (except in the event of an emergency) for any of the following purposes:

- (a) To determine whether the Premises are in good condition and to inspect the Premises;
- (b) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any default in accordance with the provisions of Section 18.2 (Remedies) hereof;
- (c) To serve, post or keep posted any notices required or allowed under any provisions of this Lease or required under any applicable law;
- (d) To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder.

### 22.3 Emergency Access

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

forcible or unlawful entry onto or a detainer of, the Premises, or any eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

#### **22.4 No Liability**

City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees.

#### **22.5 No Abatement**

Subject to the exemption set forth in Section 5.1, Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section 22.

#### **22.6 Minimize Disruption**

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

### **23. ESTOPPEL CERTIFICATES**

Tenant, at any time and from time to time upon not less than ten (10) days' and after receipt of written notice from City, shall execute, acknowledge and deliver to City or to any party designated by City, a certificate of Tenant stating: (a) that Tenant has accepted the Premises, (b) the Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of the obligations of Tenant under this Lease (and if so, specifying the same), (e) whether or not there are then existing obligations of City under this Lease (and if so specifying the same), (f) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (g) any other information relating to delivery, acceptance, and condition of the Premises, and the condition of Tenant's Equipment, that may be reasonably required by any such persons.

### **24. RULES AND REGULATIONS**

Tenant shall faithfully comply with any and all reasonable rules, regulations and instructions, written or oral which may be established or modified during the Term by City with respect to use of any part of the Building. (See, Exhibit E for a copy of the rules for "Access for Telecommunications Equipment Installation and Maintenance.")

### **25. SECURITY DEPOSIT**

Prior to the execution of this Lease, Tenant deposited with City the sum specified as the security deposit in Section 1 the Basic Lease Information (the "Security Deposit"), in cash, which shall be held by City to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease.

Subject to the exemption set forth in Section 5.1, Tenant agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Premises caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of Rent or other sum due hereunder either before or after a default), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. Tenant waives the provisions of Section 1950.7 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect and agrees that Landlord may retain any portion of Security Deposit reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents or Invitees. Without limiting the foregoing, Tenant understands and agrees that Landlord may apply some or all of the Security Deposit to the payment of future Rent following a Tenant default.

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

## **26. SURRENDER OF PREMISES**

Upon the Expiration Date or other termination of this Lease, Tenant shall peaceably quit and surrender to City the Premises in good order and condition, normal wear and tear excepted, free of debris and hazards, after having made the last necessary repair required by Tenant under this Section (and damage caused by casualty or condemnation excepted). The Premises shall be surrendered free and clear of all liens and encumbrances other than presently existing liens and encumbrances and any other encumbrances created by City. Tenant shall, before the Expiration Date or other termination of this Lease, remove all of Tenant's Property as provided in Section 8.2 (Title to and Removal of Tenant Improvements), and repair any damage resulting from the removal; provided, however, that City shall have the right to require Tenant to leave all or a portion of the Tenant Cables in place if City notifies Tenant of its exercise of such right in writing prior to the Expiration Date or other termination of this Lease. Tenant's removal and repair work pursuant to this Section shall be performed (a) at Tenant's expense and at such time and, when required hereunder, in such manner as reasonably approved by City, (b) by duly licensed and bonded contractors or mechanics, (c) in a manner and using equipment and materials which will not interfere with or impair City's operations, use or occupation of the Building or the Building Systems, and (d) in accordance with any Building Rules and Regulations and all applicable Laws.

Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Property which shall remain in the Premises after the Expiration Date of this Lease may, at the option of City, be deemed abandoned and in such case may be disposed of by City in accordance with Civil Code Section 1980 et seq. or any other manner allowed by law.

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

## **27. HAZARDOUS MATERIALS**

### **27.1 Definitions**

As used herein, the following terms shall have the meanings set forth below:

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

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

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

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

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

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, disposed of or Released in, on or about the Premises or any other part of the Property, or transported to or from the Property in violation of Environmental Laws, except that Tenant may use small quantities of Hazardous Materials, including backup batteries, as needed for backup power, routine cleaning and maintenance of Tenant's Equipment which are customarily used for backup power, routine cleaning and maintenance of such equipment and so long as all such materials are handled and used in compliance with Environmental Laws. Tenant shall immediately notify Landlord if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material on or about the Premises or the Property.

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

If Tenant breaches any of its obligations contained in this Section, or if any act, omission or negligence of Tenant or any of its Agents or Invitees results in any contamination of the Premises or any other part of the Property or in a Release of Hazardous Material from, on, about, in, or beneath any part of the Premises or the Property or the violation of any Environmental Law, then in any such event Tenant, on behalf of itself and its successors and assigns, shall Indemnify City, its Agents and Invitees, and their respective successors and assigns, and each of them, from and against any and all Claims (including, without limitation, damages for decrease



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

## **28. SPECIAL PROVISIONS**

### **28.1 Extension Option**

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

So long as Tenant is providing services pursuant to its Master Agreement with the City and subject to City's rights under Sections 28.3 (City's Right to Terminate) and 28.4 (City's Protection Against Interference), City grants to Tenant three (3) options to extend the Term of this Lease (the "Extension Option"), for an additional five (5) years (the "Extended Term"). Any such notice by Tenant shall be irrevocable by Tenant except as provided in Section 28.1(b) (Base Rent and Other Terms). If any material event of default by Tenant is outstanding hereunder either on the date which is ninety (90) days prior to the expiration of the immediately prior term or at any time prior to the first day of the Extended Term (or if any event has occurred which, with the giving of notice or the passage of time or both would constitute a material event of default and such event has not been cured prior to the earlier of expiration of any applicable cure period under this Lease or the expiration of the immediately prior term), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option (and any subsequent Extension Option) shall be null and void.

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

If Tenant elects to exercise any of the Extension Options, then the lease for the Extended Term(s) shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, and subject to the exemption set forth in Section 5.1, Base Rent hereunder shall be determined as follows and adjusted in accordance with Section 5.2 (Adjustments in Base Rent):

(i) At the commencement of the Extended Term, the Base Rent shall be adjusted to the greater of: (1) the then City's minimum monthly base rent for similar personal communication sites, including equipment and antennas, atop and within City owned assets, or (2) Base Rent prior to the start of any Option Year Term after adjusting for annual Base Rent escalations. Beginning in the first year of any Option Year, Base Rent is subject to the annual escalation of 3% and shall continue each year of the Extended Term.

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

In the event City discontinues or terminates Tenant's Master Agreement (Page Equipment and Services Agreement, dated 1, 2013), or Tenant loses its permits necessary to operate the Communications Site due to reasons other than its failure to comply with the conditions of the permit and in spite of reasonable efforts by Tenant to maintain its permits, Tenant may terminate this Lease with ninety (90) days' prior written notice to City. The parties do not intend that Tenant's right to terminate be used to relocate to a better site or to reduce the total number of communications sites operated by Tenant and/or any of its affiliates for the area served by the Communications Site at the Premises.

#### **28.3 City's Right to Terminate Due to Finding by Board of Supervisors**

City shall have the right to terminate this Lease without penalty upon ninety (90) days written notice to Tenant if, after notice and public hearing and a reasonable time (not to exceed sixty (60) days) for Tenant to effect a remedy, the San Francisco Board of Supervisors determines that Tenant's continued use of the Premises will adversely affect public health and safety.

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

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

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

Tenant will not permit its equipment or use of the Premises as a Communications Site to cause interference with or impairment of City's 911 Public Communications Safety System or Citywide 800 MHz Radio System or other communication or computer equipment used by City or any of its Agents or tenants on the Property. Tenant will not use the Premises or Tenant's equipment located on the Premises in any way which interferes with any existing use of the Building prior to this Lease or any future use of the Building by City or its successors except as specifically set forth in Section 28.4 (City's Protection Against Interference) (including, without limitation, City's use of the Building as a hospital and trauma center with related radio, telephone and other communications transmission and reception), and such interference shall be deemed a material breach of this Lease by Tenant, which shall, upon notice from 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. If any change in the nature of City's use of the Building during the Term results in measurable interference which materially impairs Tenant's normal operation of its equipment located on the Premises and, as a result of such interference, it is necessary to alter the Tenant Improvements or Tenant's other equipment located on the

Premises, Tenant shall notify City of such interference, which notice shall include a detailed description of the necessary Alterations and a cost estimate therefor. Upon receipt of such notice, City shall have the right to terminate this Lease upon thirty (30) days' prior written notice to Tenant. If City elects not to terminate this Lease, Tenant may, at its election, either (i) make the Alterations described in such notice, in compliance with Section 8.1 (Tenant's Alterations) of this Lease, or (ii) terminate this Lease upon thirty (30) days' prior written notice to City. If Tenant elects to make such Alterations, Tenant shall offset the actual, documented cost incurred by Tenant to complete such Alterations against Base Rent as it comes due, up to a maximum amount equal to the lesser of (a) the cost estimate contained in Tenant's notice to City described above or (b) Ten Thousand Dollars (\$10,000.00).

## **29. GENERAL PROVISIONS**

### **29.1 Notices**

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested or overnight mail, return receipt requested, with postage prepaid, to: (a) Tenant at Tenant's address set forth in the Basic Lease Information, or at any place where Tenant or any agent, officer or employee of Tenant may be personally served if sent subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises; or (b) Landlord at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section. All notices hereunder shall be deemed to have been given or received two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight mail, or upon the date personal delivery is made. Neither party may give official or binding notice by facsimile.

### **29.2 No Implied Waiver**

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

### **29.3 Amendments**

This Lease nor any of its term or provisions may be changed, waived, discharged or terminated orally, and no breach thereof shall be waived, altered or modified, except by a written instrument signed by both parties hereto.

#### **29.4 Authority**

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

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

The words "City" or "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors, subcontractors and representatives of such party, and the term "Invitees" when used with respect to either party shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of such party. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference and such captions in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property or his or her designee unless otherwise provided in this Lease, by City's Charter or City Ordinance.

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

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

#### **29.7 Brokers**

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 as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

## **29.8 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and to each provision of this Lease shall be valid and be enforced to the full extent permitted by law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

## **29.9 Governing Law**

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

## **29.10 Entire Agreement**

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

## **29.11 Attorneys' Fee**

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

## **29.12 Holding Over**

Subject to the exemption set forth in Section 5.1, any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease for a period of one (1) year at a Base Rent equal to one hundred fifty percent (150%)

of the latest Base Rent payable by Tenant hereunder prior to such expiration, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Base Rent and Additional Charges from Tenant.

**29.13 Time of Essence**

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

**29.14 Cumulative Remedies**

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

**29.15 Survival of Indemnities**

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

**29.16 Signs**

Tenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without obtaining the prior written consent and approval of City, which City may withhold or grant in its sole discretion.

**29.17 Light and Air**

Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by City) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of City to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder, except as described in Section 28.4 (City's Protection Against Interference).

**29.18 Recording**

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

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

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

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

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

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

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

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

Tenant agrees that any person performing labor for Tenant on any public work at the Premises, which includes the Tenant Improvements, Alterations, demolition, installation, maintenance and repair work to the extent such activities are paid for in whole or part out of public funds, shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. The terms "public work" and "paid for in whole or part out of public funds" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant shall include in any contract for such labor a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

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

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

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

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

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

**(b) Subcontracts**

Tenant 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, Tenant 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 subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this Subsection shall constitute a material breach of this Lease.

**(c) Non-Discrimination in Benefits**

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

**(d) HRC Form**

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

**(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.



## 29.23 Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

#### **29.24 First Source Hiring Agreement**

Tenant and City are parties to the First Source Agreement attached to this Lease as Exhibit DE pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by Tenant under the First Source Agreement shall be a default under this Lease.

#### **29.25 Criminal History in Hiring and Employment Decisions**

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

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

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

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such

inquiry until either after the first live interview with the person, or after a conditional offer of employment.

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

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

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

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

#### **29.26 MacBride Principles - Northern Ireland**

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

#### **29.27 Drug-Free Workplace**

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

#### **29.28 Tropical Hardwood and Virgin Redwood Ban**

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

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

#### **29.29 Pesticide Prohibition**

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

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

#### **29.30 Prohibition of Tobacco Sales and Advertising**

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

#### **29.31 Prohibition of Alcoholic Beverage Advertising**

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

#### **29.32 Preservative-Treated Wood Containing Arsenic**

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

alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

### **29.33 Conflicts of Interest**

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

### **29.34 Notification of Limitations on Contributions**

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the names of each person, entity or committee described above.

### **29.35 Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

### **29.36 Counterparts**

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

**29.37 Effective Date**

This Lease shall become effective on the date upon which the Board of Supervisors and the Mayor have adopted a resolution approving this Lease and the parties hereto have duly executed this Lease.

**29.38 Sugar-Sweetened Beverage Prohibition**

Tenant agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

**29.39 Cooperative Drafting**

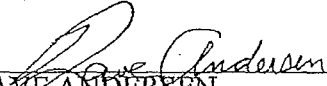
This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the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

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

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

TENANT:

AMERICAN MESSAGING SERVICES, LLC

  
By: DAVE ANDERSEN  
Its: President and COO

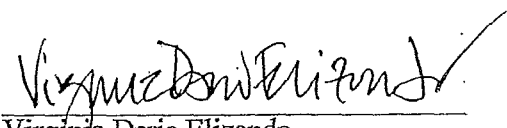
CITY:

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:   
Virginia Dario Elizondo  
Deputy City Attorney

人

1997年12月

1997年12月



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

TENANT:

AMERICAN MESSAGING SERVICES, LLC

By: DAVE ANDERSEN  
Its: President and COO

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: JOHN UPDIKE  
Director of Property

APPROVED AS TO FORM:

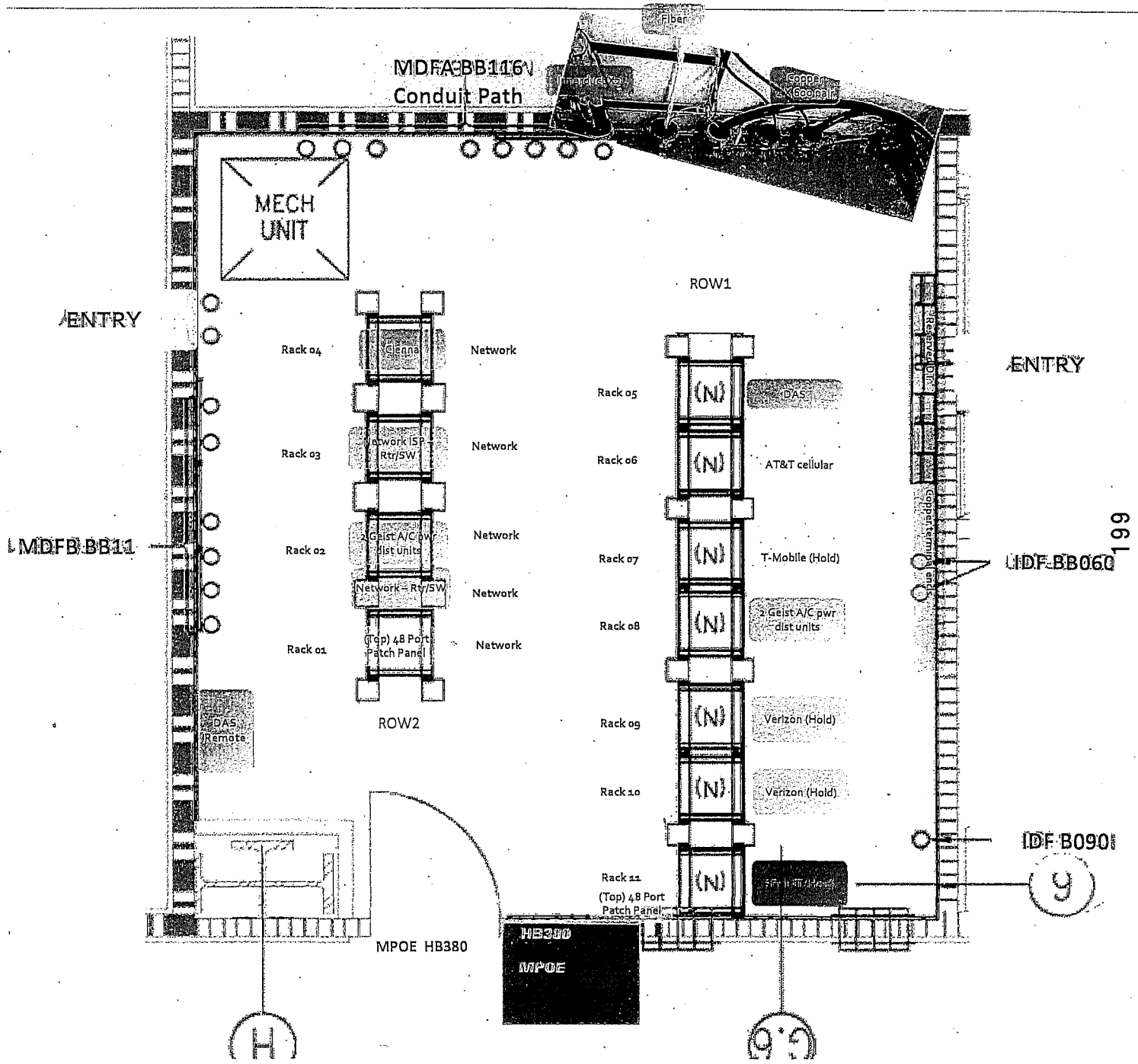
DENNIS J. HERRERA  
City Attorney

By: 

Virginia Dario Elizondo  
Deputy City Attorney

EXHIBIT A

DEPICTION OF PREMISES





**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, CA 94102

RE: Acknowledgment of Commencement Date and Expiration Date, Lease Between AMERICAN MESSAGING SERVICES, LLC, (Tenant), and the CITY AND COUNTY OF SAN FRANCISCO (Landlord), for Communications Site premises located at 1001 Potrero Avenue, Building 25, San Francisco

Dear Mr. Updike:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 4.2 of the Lease) is \_\_\_\_\_, 2016.

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

Very truly yours,

\_\_\_\_\_

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

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

Accepted and Agreed:

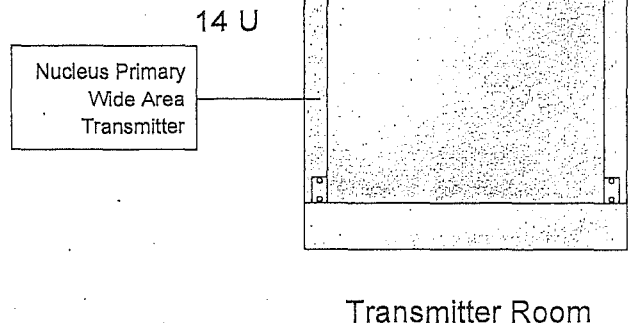
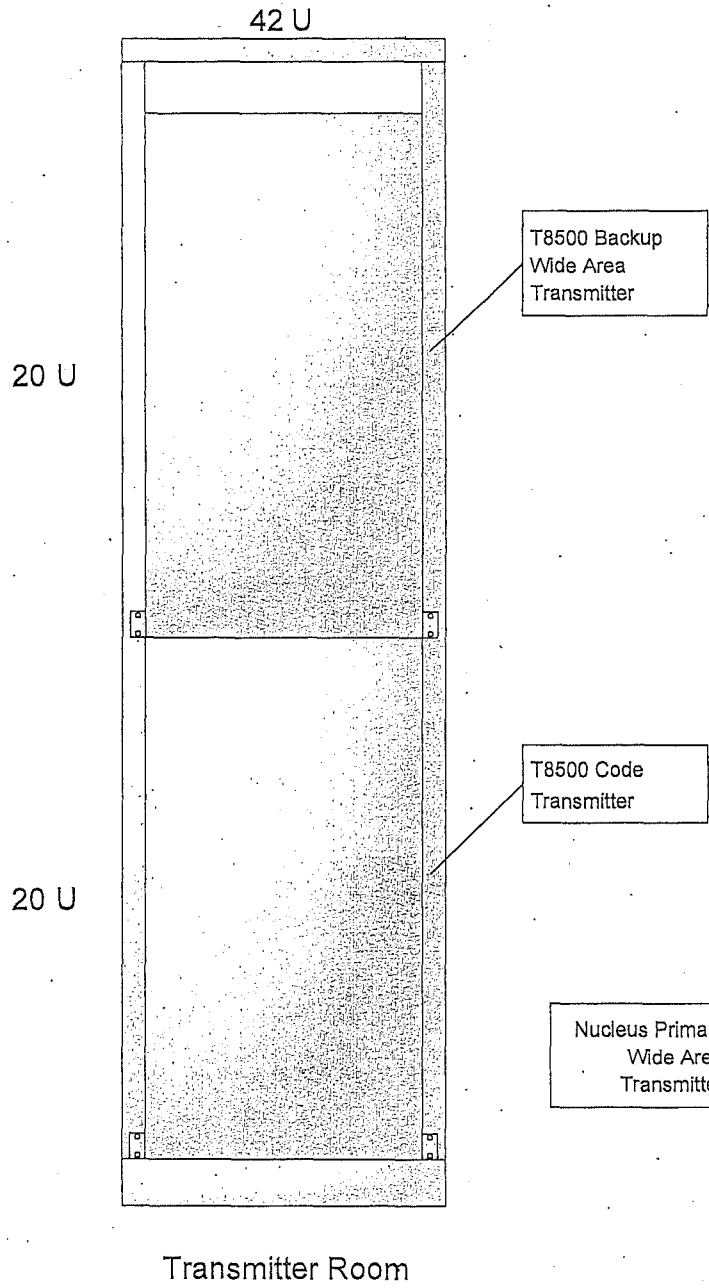
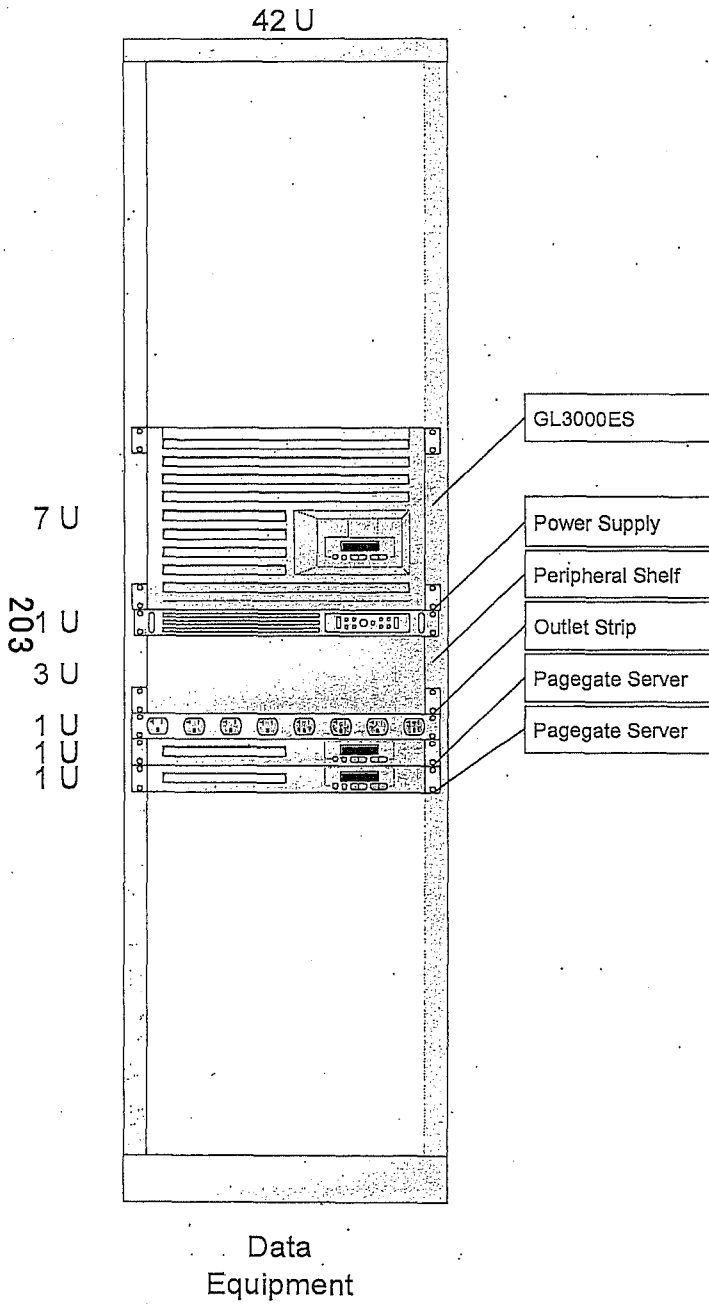
By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

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

**EXHIBIT C**

**APPROVED TENANT'S PLANS AND SPECIFICATIONS**

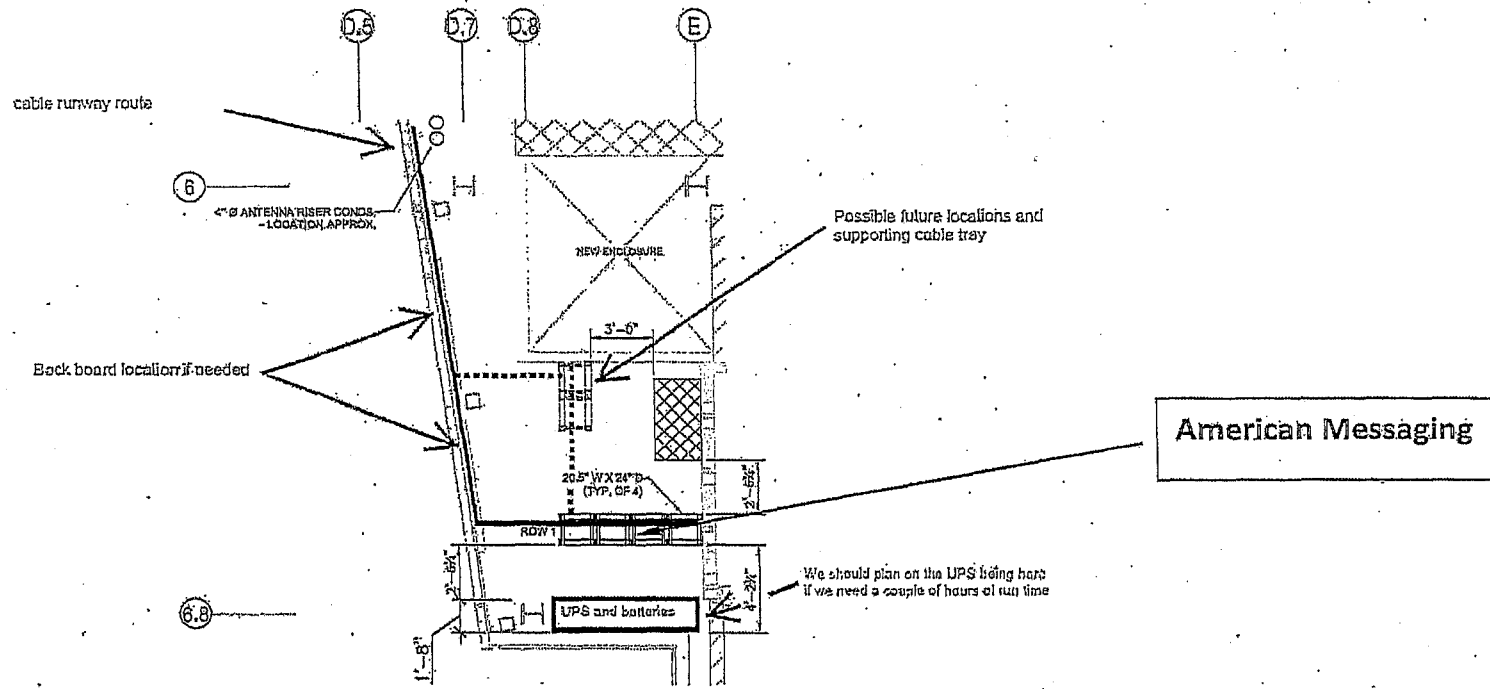
AMS Equipment







# Location in Building 25: American Messaging Penthouse Room Location.



205

1 PENTHOUSE RADIO ROOM PLAN  
SCALE: 1/8" = 1'-0"





The following equipment:

count	Equipment	Power	Rack
1	SFGH Rack (19" 4 post OSFPD approved)	(6X 120V20a) one for each server/transmitter/power supply	
1	GL3000 ES Paging Terminal		7RU Rack
1	Power Supply		1RU Rack
1	Peripherals		3 RU Rack
	Primary Pagegate Server		1RU Rack
1	Secondary Pagegate Server		1RU Rack
1	Primary Paging Transmitter		14RU Rack
1	Secondary Paging Transmitter		14RU Rack
1	Code Paging Transmitter		14RU Rack
1	Transmit Antennae DB583		Roof mount
1	Receive Antennae DB583		Roof mount
1	1.2 Meter Sat Dish		Roof mount
			55U total

Notes: 55U required

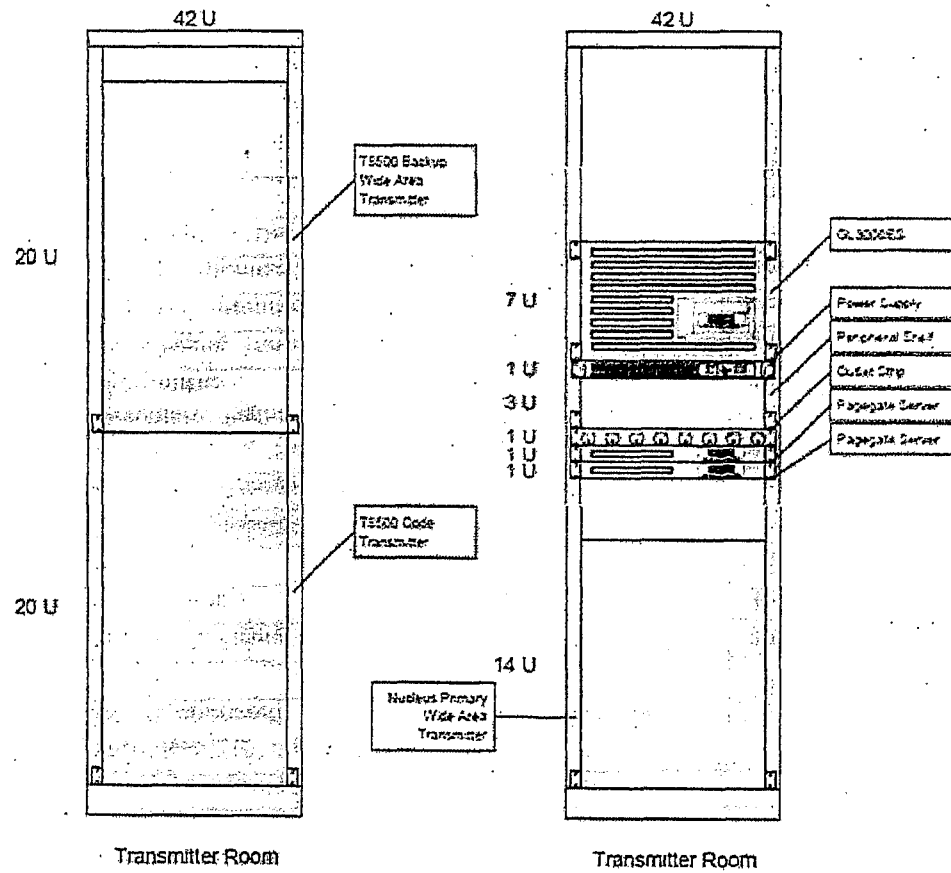
Pagegate Antenna - Ready to install - transmission line of any length can be connected directly to the antenna (and dropped through a mounting pipe), no jumper cable is furnished.

AMS has requested that DPH host virtual servers for their paging application and the web services for the client access to the Pagegate application

207

SFGH has requested AMS consolidate all BOM gear into one(1) rack

208



## Staging/Installation/Antenna Placement:

American Messaging Engineering must be on-site for all installation of electronic equipment. American Messaging Engineering is considered owner of all American Messaging provided electronics. All owner equipment must be approved and inspected prior to installation by SFGH Prime contractor and subs involved in deployment of the DAS and paging systems. An installation plan must be provided to the SFGH Prime Contractor Project Manager. Prior to energizing any RF device, a Safety inspection must be conducted by a designated RF Engineering team. Rooftop mounting include TX/RX and satellite antennas, mounted to either the North or South Tower.

Representative antennas for American Messaging.



Transmit/Receive



1.2 Meter Dish Antenna

Roof Layout B-25 Tower Mounting (South reserved) (North tower shown)

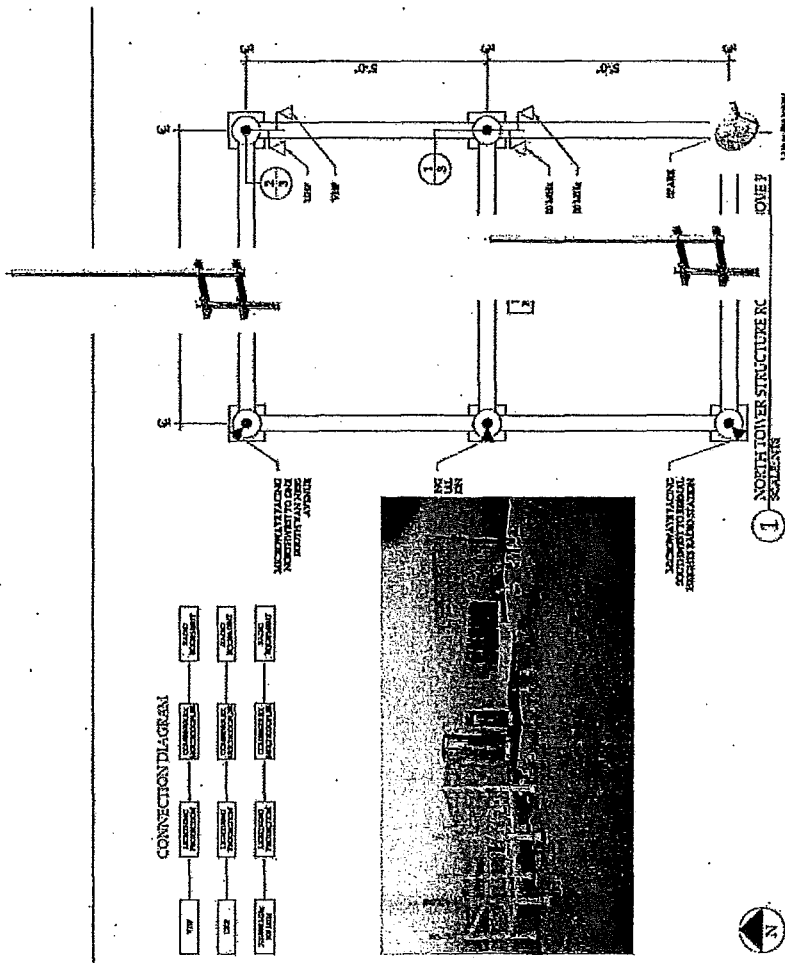


EXHIBIT D

FIRST SOURCE HIRING AGREEMENT







Edwin M. Lee, Mayor

Office of Economic and Workforce Development  
Workforce Development Division

**First Source Hiring Agreement  
For Permittee of City Property**

This First Source Hiring Agreement (this "Agreement"), is made as of July 13, 2016, by and between American Messaging Services, LLC (the "Lessee"), in favor of the First Source Hiring Administration (the "FSHA"), collectively the "Parties".

RECITALS

WHEREAS, Lessee plans to occupy the property owned by the City and County of San Francisco ("City") at 1001 Potrero, Building 25, San Francisco ("Premises") pursuant to a Permit between Lessee and the City dated July 13, 2016 ("Lease"), which requires a First Source Hiring Agreement between Lessee and FSHA; and,

WHEREAS, as a material part of the consideration given by Lessee under the Lease, Lessee has agreed to execute this Agreement and the First Source Employer's Projection of Entry-Level Positions form attached to this Agreement as *Exhibit A* (the "Projection Form") and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

- a. **Entry Level Position:** Any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
- b. **Workforce System:** The First Source Hiring Administrator established by the City and managed by OEWD.
- c. **Referral:** A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

- a. Lessee shall notify OEWD's Business Team of every available Entry Level Position at the Premises (as defined in the Lease) and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals

were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. This Agreement shall be in full force and effect throughout the term of the Lease.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this Agreement. Determination of good faith efforts shall be based on all of the following during the term of the Lease:

- a. Lessee will execute and deliver this Agreement and the Projection Form to OEWD upon entering into the Lease. Lessee will also accurately complete and submit the Projection Form annually to reflect employment conditions.
- b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this Agreement.
- c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions at the Premises 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry-Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.
- d. If Lessee's operations creates Entry Level Positions at the Premises, Lessee will use good faith efforts to meet the hiring goals established by the FSHA for filling open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.
- e. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

Lessee's failure to meet the criteria set forth in this Section does not impute "bad faith" and shall trigger a review of the referral process and compliance with this Agreement. Failure and noncompliance with this Agreement will result in penalties as defined in SF Administrative Code Chapter 83. Lessee agrees to review SF Administrative Code Chapter 83, and execution of this Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103  
Email: [Business.Services@sfgov.org](mailto:Business.Services@sfgov.org)

5. MISCELLANEOUS

This Agreement contains the entire agreement between the parties as to the subject matter hereof and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If

Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: 8/5/16

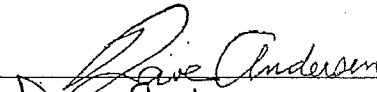
Signature:   
Name of Authorized Signer: Dave Andersen  
Company: President & COO  
Address: 1720 Lakepoint Dr suite 160 Lewisville TX 750  
Phone: 972-353-1809  
Email: s1tactivity@americanmessaging.net



EXHIBIT E

ACCESS FOR TELECOMMUNICATIONS  
EQUIPMENT, INSTALLATION AND MAINTENANCE



## Zuckerberg San Francisco General Hospital and Trauma Center

### Access for Telecommunications Equipment Installation and Maintenance

1. Telecommunication company staff (Vendor) access to ZSFG buildings requires check in at the power plant located off of 22nd St., east of Potrero Ave.
2. No equipment can be added without prior approval from both ZSFG IT and Facilities departments.
3. Vendors must notify Chief Engineer of any known safety concerns prior to obtaining approval of equipment (i.e., transmitting signal hazards).
4. Notice: 48 hour minimum notice to ZSFG Facilities Department is required prior to vendor/consultant/subcontractor access to any ZSFG campus building.
5. ZSFG reserves the right to secure power to any equipment if deemed necessary.
6. Vendors must carry an official company ID to identify themselves and wear a ZSFG Facilities ID badge to gain access to the building.
7. Vendors will be required to sign a ZSFG campus orientation sheet which informs them of safety protocols.
8. No free parking is provided.





**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and  
American Messaging Services LLC**

This Agreement is made this 1st day of June, 2013, in the City and County of San Francisco, State of California, by and between: American Messaging Services LLC, 1720 Lakepointe Dr. Suite 100, Lewisville, TX 75057, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

**Recitals**

WHEREAS, the Department of Technology ("DT") wishes to procure Paging Equipment and Services necessary to meet the current and future paging needs for the City and County of San Francisco (CCSF or City); and,

WHEREAS, a Request for Proposal ("RFP") was issued on March 13, 2013, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

Now, THEREFORE, the parties agree as follows:

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from July 1, 2013 to June 30, 2016, with one mutually revocable one-year extension.
3. **Effective Date of Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.
4. **Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.
5. **Compensation.** Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Chief Information Officer, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed Three Hundred Thousand Dollars "\$300,000". The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Technology as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.
6. **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
7. **Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."
8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or

approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**9. Disallowance. Left Blank by Agreement of the Parties**

**10. Taxes**

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

**11. Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. **Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. **Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. **Independent Contractor; Payment of Taxes and Other Expenses**

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not

greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## 15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense

costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Any of the terms of conditions of this Section 15 may be waived by the City's Risk Manager in writing, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

**16. Indemnification.** Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

**17. Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. **Liquidated Damages.** Left Blank by Agreement of the Parties. .

20. **Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

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| 8. Submitting False Claims; Monetary Penalties.     | 37. Drug-free workplace policy        |
| 10. Taxes   | 53. Compliance with laws              |
| 15. Insurance                                       | 55. Supervision of minors             |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment                                      | 58. Graffiti removal                  |

2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the

right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience**

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

3) Terminating all existing orders and subcontracts.

4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which



services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

## 22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

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| 8. Submitting false claims                    | 24. Proprietary or confidential information of City |
| 9. Disallowance                               | 26. Ownership of Results                            |
| 10. Taxes                                     | 27. Works for Hire                                  |
| 11. Payment does not imply acceptance of work | 28. Audit and Inspection of Records                 |
| 13. Responsibility for equipment              | 48. Modification of Agreement.                      |

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| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance   | 50. Agreement Made in California; Venue                 |
| 16. Indemnification   | 51. Construction  |
| 17. Incidental and Consequential Damages                        | 52. Entire Agreement                                    |
| 18. Liability of City   | 56. Severability  |
|   | 57. Protection of private information                   |

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

**23. Conflict of Interest.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's 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 constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**24. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**25. Notices to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: Michael Magliulo  
 Department of Technology  
 One South Van Ness Ave., 2<sup>nd</sup> Floor  
 San Francisco, CA 94103  
 Email: Michael.magliulo@sfgov.org

To Contractor: Michelle Olds  
 1720 Lakepointe Drive, Suite 100  
 Lewisville, Texas 75057

Any notice of default must be sent by registered mail.

26. **Ownership of Results.** Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. **Works for Hire.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. **Subcontracting.** Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. **Assignment.** The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. **Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. **Earned Income Credit (EIC) Forms.** Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these

forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

### **33. Local Business Enterprise Utilization; Liquidated Damages**

a. **The LBE Ordinance.** Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### **b. Compliance and Enforcement**

1) . If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to

Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

#### **34. Nondiscrimination; Penalties**

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, 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.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in 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 §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for

each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

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

**38. Resource Conservation.** Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**39. Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**40. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**41. Public Access to Meetings and Records.** If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing

this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

**42. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves; (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor 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. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**43. Requiring Minimum Compensation for Covered Employees**

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's

obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same



may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

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

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

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

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

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### **45. First Source Hiring Program**

##### **a. Incorporation of Administrative Code Provisions by Reference.**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

##### **b. First Source Hiring Agreement.**

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole

discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**c. Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages.**

Contractor agrees:

- 1) To be liable to the City for liquidated damages as provided in this section;
- 2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- 3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- 4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- 5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
  - (a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
  - (b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**46. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

**47. Preservative-treated Wood Containing Arsenic.** Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the 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, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor 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.

**48. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director

of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

**49. Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

**50. Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**51. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**52. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

**53. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**54. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**55. Left blank by Agreement of the Parties**

**56. Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**57. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**58. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**59. Food Service Waste Reduction Requirements.** Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

**60. Left blank by Agreement of the Parties**

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

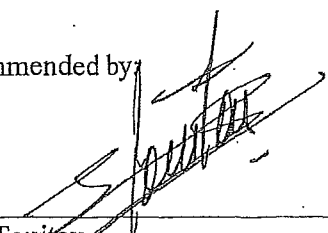
**61. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that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



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY


Recommended by:

  
\_\_\_\_\_  
Marc Touitou  
CIO, Director  
Department of Technology

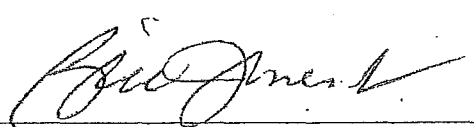
Approved as to Form:

Dennis J. Herrera  
City Attorney

By:

  
\_\_\_\_\_  
Margarita Gutierrez  
Deputy City Attorney

Approved:

  
\_\_\_\_\_  
Jaci Fong  
Director of the Office of Contract  
Administration, and  
Purchaser

Appendices

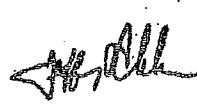
- A: Services to be provided by Contractor
- B: Calculation of Charges

CONTRACTOR

American Messaging Services, LLC

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

  
\_\_\_\_\_  
Jeff Chalmers Vice President & CFO 1720  
Lakepointe Drive, Suite 100 Lewisville,  
Texas 75057  
City vendor number: 71522

Appendix A  
Services to be provided by Contractor

1. Description of Services

A. Definitions

American Messaging acknowledges the definitions as written by the City and County of San Francisco.

B. Repair and Replacement Procedures

American Messaging has included a Sample Transition Plan within the appendix of this response that will be customized to meet the City and County of San Francisco's requirements for the initial rollout of paging equipment.

As needed throughout the term of the agreement, American Messaging will exchange paging equipment that stops working due to normal wear and tear at no additional charge to the City and County of San Francisco.

American Messaging will provide spare paging equipment to the City and County of San Francisco to retain in stock to be used for immediate activations and exchanges. The City and County of San Francisco will have the ability to activate or exchange paging equipment by contacting Customer Service or utilizing My Paging Account.

As equipment shipments are needed, the City and County of San Francisco will have the ability to place orders through Customer Service or through My Paging Account. American Messaging deploys automated order fulfillment as soon as the City and County of San Francisco orders a new or replacement pager. As an element of our excellent Customer Service, a representative can initiate the shipping order and prioritize it to meet the City and County of San Francisco's needs for the pager(s) to arrive at the desired location and time. Orders should be placed by 3:00pm (CST) to ensure same day shipping. Overnight and expedited shipping options are available upon request.

Hospital Visits:

American Messaging will assign a dedicated Account Manager who will work with the City and County of San Francisco (or the hospitals directly) to schedule visits to Laguna Honda Hospital and San Francisco General Hospital.

C. Paging Equipment Safety Rating

All of the devices being proposed are intrinsically safe and UL approved.

**A. Pager Types**

American Messaging acknowledges the equipment requirements detailed by the City and County of San Francisco. All proposed pagers will comply with the following: pocket sized, include a battery and belt clip/holster, antenna enclosed within pager, audible and/or vibrate alarms. Controls for the pager will include power, reset, message scrolling and alert tone/vibration mode selection. American Messaging provides multiple voicemail options that will work with any of the proposed paging plans.

**1. Numeric Pagers**

American Messaging will provide numeric pagers that meet the requirements detailed by the City and County of San Francisco. Numeric Paging is the perfect solution when a phone number is all that is needed to stay in touch. Complete pager specifications are included below:

Features	Benefits
FLEX™ Capable	Offers users the latest and most efficient technology affording extended battery life and page reliability.
Message Slots: 30	Plenty of memory to receive and store all your important messages so you can refer to them when needed.
Shows Time and Date	Pager provides added convenience since it also acts as a watch and calendar.
Message Time and Datestamping	Helps you prioritize your messages by knowing exactly what date and time they were received.
Alarm	Built-in alarm clock great for organizing a busy schedule.
User Selectable Alerts	Choose a favorite, or change your alert so you can differentiate your pager from others. (8 melodies and 4 beep tones)
Vibrating Alert	You can be alerted of incoming messages in a noisy environment or discreetly alerted when you do not want to disturb those around you with a loud alert.
Message Lock	Lock up to 14 important messages so they will not be accidentally erased.
Selective Erase	Allows you to erase messages that are no longer needed, thereby keeping your pager's memory organized.
Erase All	Keep your memory slots organized by easily erasing all unlocked messages when you no longer need to save them.
Memory Retention	Don't accidentally erase important messages by turning off your pager - the messages are retained when the pager is off.
Low Battery Alarm	Notifies you that your battery is getting low and needs to be replaced - helping to ensure that you don't miss any messages.
Duplicate Message	Duplicate Messages are stored in the same memory slot as original message - saving memory space for new messages. The latest timestamp is used and a Duplicate prompt is displayed when the message is read.
Message Full Indicator	Let's you know when your message slots are full.
E-Luma-Glow Display	Soft blue display for superior readability in low-light conditions.
Battery: 1 AAA	Battery is small, lightweight and replacements readily available.
Removable Beltclip	Wear your pager with the clip out, change clip colors, or take the clip off and slip it easily into your pocket or purse.

## 2. Alphanumeric Pagers

American Messaging will provide alphanumeric pagers that meet the requirements detailed by the City and County of San Francisco. Alphanumeric Paging provides full text messaging capability and potentially eliminates the need for a return phone call. Alphanumeric paging also allows the receipt of messages from email via [www.MyAirMail.com](http://www.MyAirMail.com), or to <10-digit pager #>@MyAirMail.com. Complete pager specifications are included below:

Features	Benefits
Electra Light Display	Providing exceptional clarity and optimum readability in low-light conditions.
34 Message Memory	Plenty of memory to receive and store all your important messages and up to 15 different information services.
Message Lock	Lock important messages so they will not be accidentally erased.
Information Services Capable	Allows user to receive information services such as sports, weather, headline news, stocks.
Date and Time Display	Helps you prioritize your messages by knowing exactly what date and time they were received.
Private Time	Provides the ability to turn off all pager alerts during specified times and still receive your messages.
Alarm Clock	You can set your pager to wake you up in the morning or to remind you of that important appointment.
Audible and Vibrating Alerts	You can be alerted of incoming messages in a noisy environment or discreetly alerted when you do not want to disturb those around you with a loud alert.
Reminder Alert	A short friendly alert reminds you when you have not reviewed your messages.
Selective Erase or Erase All	Allows you to erase messages that are no longer needed, thereby keeping your pager's memory organized or Keep your memory slots organized by easily erasing all unlocked messages when you no longer need to save them.
Notebook Entries	Use the notebook entries to store any messages containing names and phone numbers of friends, family, or business associates for easy reference.
Message Preview	Allows you to view the first line of each message for quick reference.
Zoom from 4 Lines to 2	Zoom in from 4 lines to 2 lines for a larger view of your messages.
Memory Retention when Power Off	Don't accidentally erase important messages by turning off your pager - the messages are retained when the pager is off.
Battery Gauge and Battery Backup	Lets you know when your battery is getting low and maintains information while replacing the battery.
Specifications	
Color:	Black
Dimensions:	3.0" x 2.0" x .05"
Weight:	3 oz with battery
Battery Type:	1 AA
Protocol:	Flex

### 3. Two-way Pagers

American Messaging will provide two-way pagers that meet the requirements detailed by the City and County of San Francisco. Two-way Paging provides the ability to send and receive messages and reply to incoming messages. Responding messages can be sent to another two-way device, to any email address, or a text-enabled mobile phone. Two-way paging also ensures that the message is received accurately. If the pager receives a garbled message, the pager will automatically request that the network resend the message. If the pager is still unable to receive the message, the network will store the message for up to 96 hours while it continues to try to locate the pager to deliver the message. If the pager is turned off, changes coverage area, or is out of the local coverage area, the system will deliver the stored messages once it locates the pager or after the pager returns to a designated local coverage area. A total of 25 stored messages can be delivered based on a first in, first out methodology. Undeliverable messages stored within the system for longer than 96 hours will be deleted.

Complete pager specifications are included below:

#### **Features and Benefits**

##### **Display**

- Zoom from 4 lines to 2
- Optimax® EL Electra Light Display
- Lighted QWERTY Keyboard
- Shows Time of Day and Date

##### **Indicators/Alert Features**

- Built-In Alarm Clock
- User Selectable Alerts
- Quiet Mode Vibrating Alert
- Reminder Alert On/Off
- Low Battery Indicator
- Service Indicators

##### **Messaging Features**

- 2way Messaging Capability
- Holds up to 250 Addressess
- Separate In/Outbox
- Automatic Signature Capability
- Locked Message & Message Memory
- Message Management (multiple or individual address)
- Message Time and Date Stamping
- Mailboxes (Personal and Information Services) (01)
- Separate Folders to Save Important Messages
- Erase All
- Selective Erase
- Saves Messages When Off or Changing the Battery
- Emoticons

##### **Technology**

- FLEX® protocol for Advanced Paging Reliability
- Information Services Capable (01)

- Information on Demand Capable (01)
- Control Features
- Private Time
- Quiet Mode

**B. Pager Telephone Numbers**

American Messaging will provide local toll free numbers to the City and County of San Francisco. These numbers will be direct and will not require any additional identification.

**C. Direct Paging Controller Access**

The City and County of San Francisco will have access to perform transactions through My Paging Account. My Paging Account is American Messaging's premiere self-service application that is available virtually any time, day or night. There is no charge to access your account, and you can enjoy the ease of these transactions:

- View and print your billing statement (including historical statements)
- Make a payment using a credit card or draft from your checking account
- Set up your account on our Automatic Payment Plan (APP)
- Order a new pager or exchange one on an existing account
- Add Enhanced Services, such as Voice Mail or PageSaver™
- Activate a pager from the Spare pager inventory at your company
- Track your pager Order
- View a pager Profile (pager number, serial number, capcode, and statement description)

American Messaging will also provide pager programming equipment that can be used to program group capcodes onto pagers in the City and County of San Francisco's possession.

**D. Leased Line Connectivity**

American Messaging provides the following methods to send messages to an American Messaging Alphanumeric or Two-Way pager:

- **Internet:** [www.MyAirMail.com](http://www.MyAirMail.com)
- **Email:** any email program can dispatch alphanumeric messages to American Messaging Paging customers using [<10-digit pager #>@MyAirMail.com](mailto:<10-digit pager #>@MyAirMail.com)
- **Alpha Paging Software:** stand-alone and network-based versions are available
- **Operator Dispatch:** messages are phoned in to the American Messaging national dispatch center
- **SNPP (Simple Network Paging Protocol):** via "telnet" to the American Messaging server
- **WCTP (Wireless Communication Transfer Protocol):** used for the secure transmission from automated, server-based systems
  - Messages are transmitted into an American Messaging switch, regardless of how or where the messages originate. Once in the switch, American Messaging routes the message via the appropriate Flex or ReFlex network, which then delivers the message to the pager.

#### **E. Pager Radio Coverage-General**

American Messaging provides paging on nationwide frequencies and numerous local frequencies, with coverage in all 50 states, 98 of the top 100 major metro markets, and beyond. \*

- **Local** – includes one or more Metropolitan Statistical Areas (MSAs)
- **Wide Area – Statewide** – includes major MSAs within a state. Please ask your Account Representative about availability in your area.
- **Regional / Multi-State**
- **Nationwide**

\*Actual coverage may vary due to terrain, weather, building density, interference, and equipment failures. No wireless coverage is 100% accurate at all times. Coverage Maps have been provided within this response.

#### **Outage Notification**

We utilize a network trouble ticketing and notification system. Our system called phaseaware allows us to more effectively communicate during network outage situations. This system improves our mean time to restore which reduces the duration of any potential service interruptions. It also allows our customers to receive automated information and updates related to network problems which impact their account specifically. Designated teams have been created to ensure proper notification to mission critical customers during a system outage. Levels of notification are business hours, after hours, and 24 hours.

**Manual Notification** via phone call or email is available for all local and nationwide outages.

Notification of the local outage is given to the on-call local representative responsible for your area at the initial discovery of the outage. Nationwide communications are provided at initial discovery of the issue and at least every 2 hours after until the issue is resolved. Local communications are provided at initial discovery and at least every 4 hours until resolution.

American Messaging has provided pricing for local, statewide, regional and nationwide coverage options within the Flat Fee Rate Proposal section of this response.

#### **1. Pager Coverage – San Francisco General Hospital**

American Messaging currently has coverage enhancement equipment located at San Francisco General Hospital. American Messaging will work with the City and County of San Francisco to conduct testing throughout the San Francisco General Hospital location to evaluate coverage abilities and discuss options of additional enhancements if necessary.

#### **2. Pager Coverage – Tuolumne County**

American Messaging is the current paging provider for CSSF Water Department. Coverage is limited in Tuolumne County, American Messaging will work with the City and County of San Francisco to evaluate coverage abilities and discuss options of additional enhancements if necessary.

**3. Pager Coverage – Municipal Railway Tunnel System**

American Messaging will work with the City and County of San Francisco, to conduct testing throughout the MUNI Tunnel System to evaluate coverage abilities and discuss options.

**4. Pager Coverage – San Francisco International Airport**

American Messaging has previously worked with the City and County of San Francisco to conduct testing within the SF International Airport. At that time it was determined through the City that coverage was adequately provided. American Messaging will work with the City and County of San Francisco to conduct testing throughout the SF International Airport location to evaluate coverage abilities and discuss options of additional enhancements if necessary.

**5. Pager Coverage – Sheriff's Department**

American Messaging has conducted preliminary testing in the areas around San Bruno Jail and it has been determined that street level coverage is available. American Messaging will work with the City and County of San Francisco to conduct testing throughout the San Bruno Jail location to evaluate coverage abilities and discuss options of additional enhancements if necessary.

**F. Flat Rate in Home Area**

The paging services purchased pursuant to this Contract shall be for paging units and service covering the 415, 408, 510, 530, 650, 925, 209, and 707 area codes (Home Area). Area code splits or overlays shall not affect the geographic boundaries of the Home Area for purposes of this Contract.

**G. Recycling of Pager Phone Numbers**

American Messaging will make reasonable efforts not to recycle numbers for a minimum of six (6) months upon termination to that pager phone number.

**H. Transition Plan for Conversions**

American Messaging understands the importance of a smooth transition to a new paging Carrier. We have developed a step-by-step Transition Plan that will be customized to City and County of San Francisco's application, and our staff will work diligently to get your paging service started off right. The Sample Transition Plan has been provided within the Appendix of this response.

**I. Experience in Similar Contracts**

American Messaging provides paging services to numerous similar size customers and public organizations. American Messaging values the privacy of our customers and requires that written permission be obtained from all potential references; therefore, American Messaging has included four references and contact information that can be used to obtain evaluation information regarding our services within this response.

**J. Network Flexibility**

If necessary, American Messaging can provide additional equipment to City and County of San Francisco to enhance paging coverage; subject to a separately negotiated agreement. American Messaging has successfully used many different methods of attaining building penetration in areas such as basements, computer rooms and tunnels. The different methods are as follows:



- Low Power Transmitter - This is a small 1 to 2 watt transmitter located in a problem area of the respective facility and will eliminate any intermittent paging.
- Down Tilt Antenna - This is an antenna, which will send a signal at a more direct position to a problem area. For example, if American Messaging has a nearby transmitter and pages are not being received in a basement, the antenna could be tilted down for better reception.
- Full Power Transmitter on City and County of San Francisco's location - This would most likely resolve any paging reception problem within the building.

#### K. Help Desk

American Messaging will provide the City and County of San Francisco an **Account Team** composed of professionals with unparalleled experience in the paging and messaging industry. This Team will serve as a single point of contact for concerns related to managing the City and County of San Francisco's paging service, and will work in earnest to provide satisfaction to its end-users. In the spirit of continuous improvement, we always welcome feedback from customers and their employees.

American Messaging staffs an inbound queue of Customer Service Representatives (CSRs) and off-line CSRs for additional support. **Telephone support** hours are from 7:00AM to 7:00PM CST with after hour support from 7:00PM to 7:00AM. Offline support is available from 6:30 AM to 5:00PM CST. Additionally, we offer **Customer Self Service Options** that are available 24 hours a day, seven days a week.

Customer Service representatives are monitored up to fifteen (15) times per month internally by both supervisors and a specialized quality assurance team. Additionally, American Messaging utilizes a third party vendor to provide feedback to ensure our customers are receiving outstanding customer service.

**Customer Service Contact Numbers:**

Phone: 1-888-223-4123  
 Fax: 1-866-804-9383  
 IVR/Self-Serve: 1-888-247-7890

#### L. Single Point of Contact (SPC) / Account Manager

American Messaging will also designate a specific **Major Account Executive** to uphold all aspects of paging services for the City and County of San Francisco. The Account Executive will coordinate the rollout and continue to support the City and County of San Francisco on a local level.

**Account Manager (Business Hours 8am – 5pm)**

Name: Michelle Olds  
 Phone: 925-337-2647  
 Fax: 925-447-7111  
 Pager: 925-931-5150  
 Email: [michelle.olds@americanmessaging.net](mailto:michelle.olds@americanmessaging.net)

**Vice President – Sales (Business Hours 8am – 5pm)**

Name: Rick Darling

Phone: 636-386-3334

Fax: 636-386-0388

Cell: 314-941-0404

Email: [rick.darling@americanmessaging.net](mailto:rick.darling@americanmessaging.net)

Michelle Olds, your dedicated Account Manager has worked as an Account Manager for American Messaging and predecessor companies for more than 14 years. American Messaging has included four references within this response, which are currently being serviced by Michelle.

In an effort to keep our employees as current and up to date as possible on industry expansion; American Messaging provides on-going training and refresher courses to all of its employees.

**M. Modifying Service Features**

The City and County of San Francisco will have access to an **Account Team** composed of professionals with unparalleled experience in the paging and messaging industry. This Team will serve as a single point of contact for concerns related to managing City and County of San Francisco's paging service, and will work in earnest to provide satisfaction to its end-users. **Telephone support** hours are from 7:00AM to 7:00PM CST with after hour support from 7:00PM to 7:00AM.

American Messaging also offers the Self-Service Options as described within this response to allow the City and County of San Francisco the freedom to perform transactions at their convenience.

Most service features can be added, changed or deleted immediately upon request.

**N. Pager Ordering and Activity Procedures**

American Messaging will work with the City and County of San Francisco to develop mutually agreeable ordering and activity procedures. American Messaging will allow the City and County of San Francisco the ability to list authorized contacts and levels of authority. The City and County of San Francisco will have access to place orders by contacting the Platinum Account Team or by utilizing My Paging Account or the IVR, the Self-Service Options described within this response.

Activity Reports will be provided upon request.

**O. Replacing Paging Equipment (Lost, Stolen, or Damaged)**

American Messaging will provide a minimum of 5% spare pagers to the City and County of San Francisco to retain in stock for immediate activations, replacements, or exchanges.

In the event that an order needs to be placed for a replacement pager, American Messaging deploys automated order fulfillment as soon as City and County of San Francisco orders a new or

replacement pager. As an element of our excellent Customer Service, a representative can initiate the shipping order and prioritize it to meet City and County of San Francisco's needs for the pager(s) to arrive at the desired location and time. Cut-off time for orders to be sent out the same day is 3:00pm, Central Standard Time, and American Messaging will pass on any charges that are incurred for shipping and handling.

As an option, we offer our Pager Replacement Program (PRP) at a low monthly rate per unit, which will expediently replace any pager that is lost, stolen, or damaged beyond repair for the prices listed below.

**PAGER REPLACEMENT PROGRAM RATES**

Service	Monthly Rate	Loss Fee with PRP	Loss Fee without PRP
Numeric	\$0.50	\$15.00	\$34.95
Alphanumeric	\$0.50	\$35.00	\$69.95
Two-way	\$0.50	\$80.00	\$99.00

Note: American Messaging reserves the right to change or discontinue equipment models during an Agreement.

**P. City Stock**

American Messaging will provide a minimum of 5% spare pagers to the City and County of San Francisco to retain in stock for immediate activations or exchanges. The City and County of San Francisco will not be charged a monthly fee for these units until they are activated.

The City and County of San Francisco will have access to Customer Service as well as the Self-Service Options in the event that additional spare equipment needs to be ordered. American Messaging will also provide at no charge to City and County of San Francisco return labels for leased equipment that must be returned.

**Q. Equipment Maintenance and Customer Support**

**1. Replacement of Lost, Stolen, or Damaged Pagers**

The City and County of San Francisco will have access to Customer Service as well as the Self-Service Options to report lost, stolen, or damaged pagers.

American Messaging will provide a minimum of 5% spare pagers to the City and County of San Francisco to retain in stock for immediate activations, replacements, or exchanges.

In the event that an order needs to be placed for a replacement pager, American Messaging deploys automated order fulfillment as soon as City and County of San Francisco orders a new or replacement pager. As an element of our excellent Customer Service, a representative can initiate the shipping order and prioritize it to meet City and County of San Francisco's needs for the pager(s) to arrive at the desired location and time. Cut-off time for orders to be sent out the same day is 3:00pm, Central Standard Time, and American Messaging will pass on any charges that are incurred for shipping and handling.

**2. Pager Repair**

American Messaging is proposing leased equipment to the City and County of San Francisco. As part of this lease, American Messaging will exchange any equipment that stops working due to normal wear and tear at no additional charge.

**3. Battery Type**

American Messaging agrees and will comply that all numeric and alphanumeric pagers use either Type AA or AAA batteries.

**4. Replacement Batteries**

American Messaging will supply the City and County of San Francisco with batteries upon request on a quarterly basis at no charge.

**R. Equipment Specifications**

**1. User Operating Manual and Other User Documentation**

American Messaging will provide reference cards and operation/instruction manuals with new orders and as needed upon request. User manuals can also be downloaded at [www.americanmessaging.net](http://www.americanmessaging.net).

**2. New or Reconditioned Pagers**

American Messaging will provide new equipment for all new activation requests. Throughout the term of the agreement American Messaging may provide new or like-new equipment for replacement and pager exchanges.

**3. Model Equipment Substitution**

Throughout the term of this agreement, American Messaging may substitute equipment models with similar models that meet or exceed the specifications as the units listed within this response.

**4. Equipment Samples**

American Messaging will provide demonstration equipment to the City and County of San Francisco to be utilized for testing purposes, upon request. This equipment will remain the property of American Messaging and shall be returned in good condition, normal wear and tear accepted.

**5. Description of Features**

American Messaging acknowledges the features that the City and County considers minimum requirements for the paging models and will work with the City and County of San Francisco to provide equipment that meets and/or exceeds these expectations.

**A. Monthly Service Billing Process**

1. All monthly service rates are billed from the 1<sup>st</sup> to the 30<sup>th</sup> or 31<sup>st</sup> of each month.
2. Monthly invoices will be available to the City and County of San Francisco by the 10<sup>th</sup> of each month.
3. American Messaging has assigned a Billing Account Representative that will work as the Single Point of Contact for managing invoice issues, including billing escalations.

4. If an invoice needs to be revised, American Messaging will create a corrected invoice, upon request.
5. American Messaging will work with the City and County of San Francisco to ensure that any potential past due payment issues are resolved and that they will not impact services and order placements.
6. American Messaging agrees to waive late payment fees. American Messaging agrees that payment will be due 30 days from the bill availability date.
7. American Messaging will work with the City and County of San Francisco to ensure that the necessary fields are included on the electronic invoices.
8. The City and County of San Francisco will receive electronic invoices once registered through My Paging Account. My Paging Account will also provide access to reporting.
9. American Messaging acknowledges
10. American Messaging will make reasonable efforts to provide two months notice if formatting changes will occur.
11. The City and County of San Francisco will have access to pull reports and invoicing reports from My Paging Account.

**B. Single Point of Contact (SPC), Billing Account Manager, Billing Account Representative**

American Messaging will provide the City and County of San Francisco with a dedicated Account Manager and the Customer Service Support Team who will serve as the points of contact for billing related issues. American Messaging will also provide access to a single point of contact that can work with the City and County of San Francisco with problems specifically related to Electronic Billing.

American Messaging will also assign a Billing Account Manager and Representative to the City and County of San Francisco, who currently oversee multiple major government accounts.

<b><u>Billing Account Representative (Business Hours 7am – 4pm)</u></b>
Name: Danielle Aldrich Phone: 888-699-9014 ext 5280 Fax: 866-486-7345 Email: <a href="mailto:Danielle.aldrich@americanmessaging.net">Danielle.aldrich@americanmessaging.net</a>

<b><u>Billing Account Manager (Business Hours 7am – 4pm)</u></b>
Name: Donna Hedlund Phone: 214-222-6350 Fax: 866-486-7345 Email: <a href="mailto:donna.hedlund@americanmessaging.net">donna.hedlund@americanmessaging.net</a>

In an effort to keep our employees as current and up to date as possible on industry expansion; American Messaging provides on-going training and refresher courses to all of its employees.

## Section 5: Invoice / Billing

American Messaging Services  
 PO BOX 293450  
 LEWISVILLE, TX 75029  
 Billing Inquiries : 888 247-7890  
 Sales Inquiries: 800 624-7868

Account Name: Customer Name  
 Account Number: F1-222222  
 PAYMENT DUE: 10/15/2005

Please send written correspondence that is not payment related to the address above.

Invoice Number	Invoice Date	Prior Balance	Payments & Credits	Current Charges	Amount Due
F1222222FJ	10/1/2005	\$0.00	\$	\$12.32	\$12.32

Number	Description	Account Activity	Amount
913-555-1212	ALPHANUMERIC PAGING	SERVICE FROM 10/01/05 TO 10/31/05	\$11.45
	STATE SALES TAX		\$0.61
	CITY OF TOPEKA TAX		\$0.11
	AMS UNIV SVC CHG		\$0.14
	AMS REGULATORY CHARGE		\$0.01
	***	1-888-22	

Thank you for your prompt payment. American Messaging appreciates your business.

RETURN THE LOWER PORTION WITH YOUR PAYMENT

American Messaging  
 PO BOX 5749  
 Carol Stream, IL 60197

Invoice Date	Account Number	Amount Due
10/1/2005	F1-222222	\$12.32

Customer Name  
 Customer Address  
 City, St (Zipcode)  
 Customer Phone Number

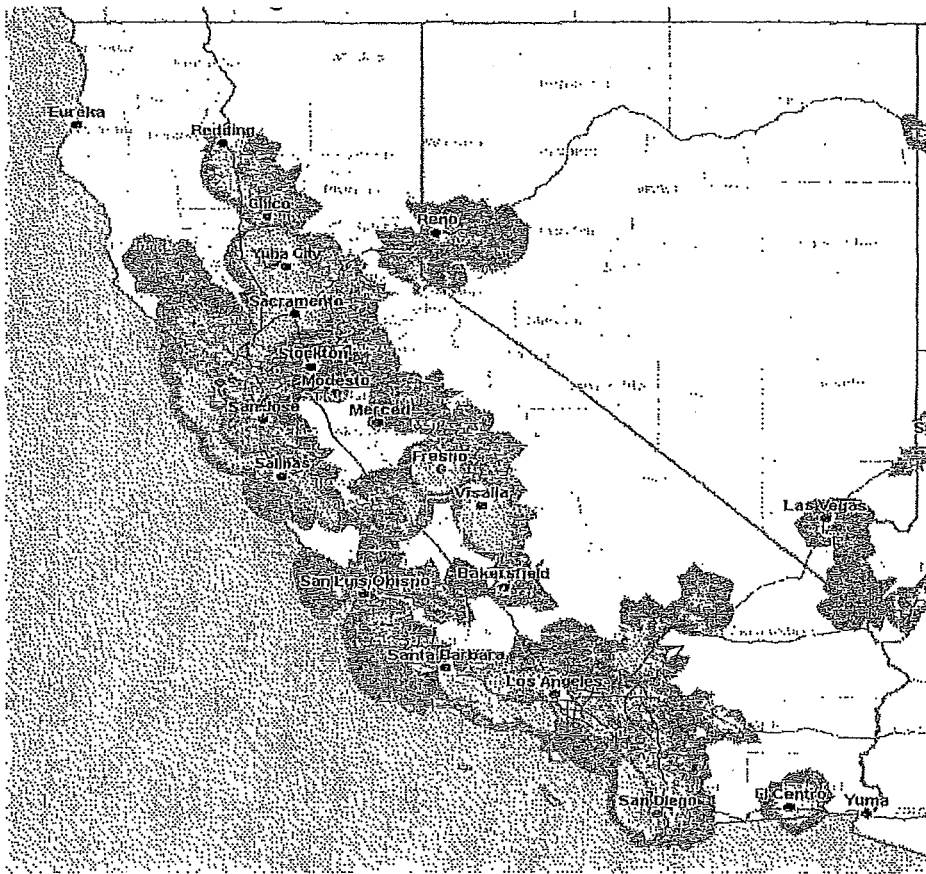
**SAMPLE CALLCOUNT/USAGE REPORT**

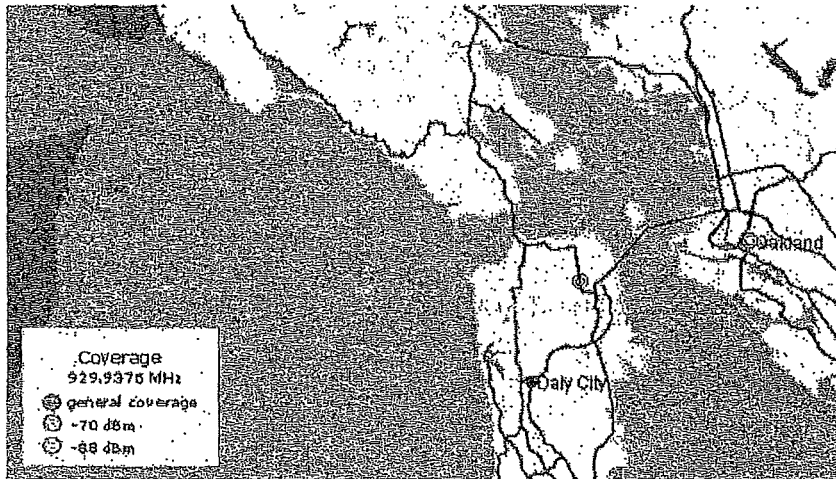
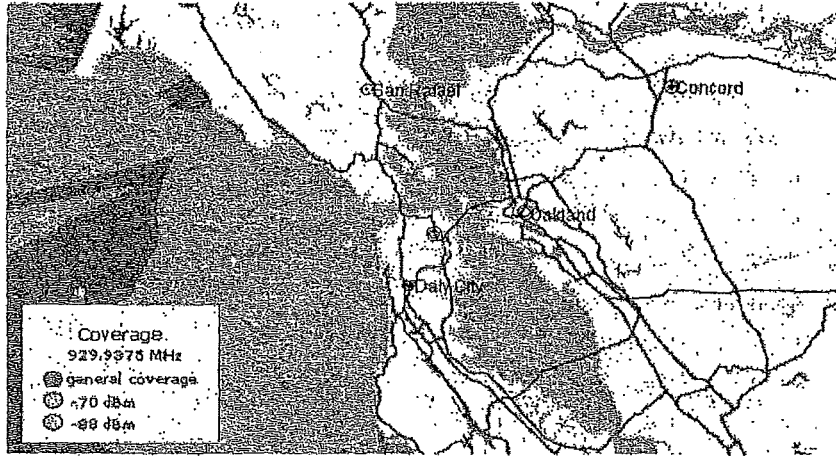
SS-RCALLE      Call Count Report by Account      Page: 1  
 4/2/2013      AMERICAN MESSAGING      01:54 PM

Call Counts for R1-987654: Company Name  
 Extract Dates: 01/01/13 - 02/28/13

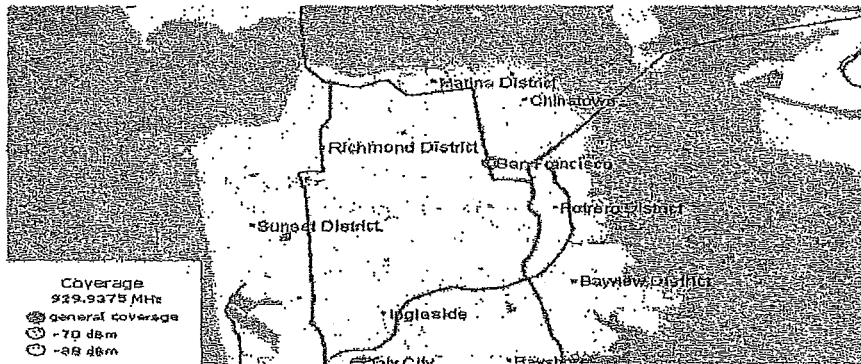
Phone Number	Capcode	Call Count
123 456-0564	E000111222	557
123 456-0662	E4567891011	1620
<del>123 456-0683</del>	<del>E987654444</del>	<del>537</del>
123 456-0733	E123456789	917

**Coverage Maps**









**Sample Transition Plan**

ASSIGNMENT	RESPONSIBLE PARTY	TIME
Procedures approved by the City and County of San Francisco and AMS, then disseminated by the City and County of San Francisco and AMS to the respective business units of both companies.	Both	2 days
Obtain the City and County of San Francisco key contact list of those involved in the exchange process, listing the locations they manage. This list will be forwarded to AMS for aligning locations with the AMS representative.	City and County of San Francisco	2 days
Meeting set with the key contacts of City and County of San Francisco to determine the specific pager needs for each business unit. Coverage, Alpha Dispatching Devices, enhancements and Billing format will be determined. AMS will provide City and County of San Francisco a list of AMS contacts for each business unit/local office.	AMS	2 days
City and County of San Francisco to notify employees that AMS will be the new paging vendor and establish the transition period.	City and County of San Francisco	2 days
Order pagers for City and County of San Francisco via AMS Contract Evolution process, setting bill rates, programming and delivery requirements. With consideration to delivery dates from the manufacturer, AMS will report delivery dates for each City and County of San Francisco business unit.	AMS	4 days or less
City and County of San Francisco to provide AMS a detailed list of all current pager user names and types of pager (numeric or alphanumeric).	City and County of San Francisco	2 days
AMS to provide City and County of San Francisco with all new pager numbers (if applicable) 2 weeks prior to deactivation from City and County of San Francisco's current paging vendor.	AMS	2 days
Pagers delivered to the City and County of San Francisco key contacts. Pagers will be sent with complete instructions, belt clips/holsters, and initial batteries.	AMS	3-5 days

Supply the City and County of San Francisco key contacts with City and County of San Francisco Support and escalation information, an inventory of pager clips, battery doors and spare pagers for minor repairs; quantity based on units per location.	AMS	Time of Conv.
Train each key contact on the Customer Service process, paging software and Internet paging methods.	AMS	Time of Conv.
Schedule a two-week and one-month follow-up meeting to ensure that the implementation process has been successful, making any necessary adjustments.	AMS	Time of Conv.
AMS will periodically schedule meetings for continual quality service performance reviews with City and County of San Francisco, maintaining high performance standards of paging equipment, transmission and service. This process will be on going; updating City and County of San Francisco of new offerings, ensuring provisions, terms and conditions are being met.	AMS	As Needed

**Appendix B  
Calculation of Charges**

**Flat Fee Rate Proposal**

**NUMERIC 1-WAY PAGING**

Service	Monthly Rate (Includes Lease)	Page Allowance Per Month	Charge Per Page Over Allowance
Local*	\$ 1.95 per month	Unlimited	N/A
Statewide*	\$ 1.95 per month	Unlimited	N/A
Regional	\$ 5.00 per month	Unlimited	N/A
Nationwide	\$ 9.45 per month	Unlimited	N/A

\*Local service includes one or more Metropolitan Statistical Areas (MSAs).  
Statewide service includes major MSAs within a state.

**ALPHANUMERIC 1-WAY PAGING**

Service	Monthly Rate (Includes Lease)	Page Allowance Per Month**	Charge Per Page Over Allowance
Local*	\$ 3.50 per month	Unlimited	N/A
Statewide*	\$ 3.50 per month	Unlimited	N/A
Regional	\$ 10.00 per month	Unlimited	N/A
Nationwide	\$ 14.00 per month	Unlimited	N/A

\*Local service includes one or more Metropolitan Statistical Areas (MSAs).  
Statewide service includes major MSAs within a state. \*\* Two hundred  
forty (240) character limit per page.

**2-WAY PAGING**

Service	Monthly Rate (Includes Lease)	Packet Allowance	Charge Per Packet Over
Nationwide	\$17.95 per month	Unlimited	N/A

**Third Party Carrier Pricing:**

In certain instances, American Messaging may utilize third party carriers to provide paging services. The pricing contained herein is based on services provided directly by American Messaging. If we determine that the use of a third-party carrier is necessary, the associated service costs will be negotiated separately.

**ENHANCED SERVICE OPTIONS**

Group Paging	\$ 4.95 per month, unlimited
--------------	------------------------------

Voice Mail Pkg. A (5 msgs / 60 sec / 24 hr ret)	\$ 2.50 per month
Voice Mail Pkg. B (10 msgs /60 sec /24 hr ret)	\$ 1.50 per month
Secondary 800/888/877 Number	\$ 4.00 per month
Custom Greeting	\$ 0.50 per month
Operator Dispatch	Starting at \$ 12.90 per month
PageSaver™ Numeric Retrieval	No Charge
Page Forwarding	\$ 0.50 per month
Alpha Paging Software	Starting at \$ 29.95 per copy
PageCopy	\$ 2.50 per address / per month
IntelliMessage (Desktop and/or Mobile)	No Charge w/active pager
Standalone IntelliMessage (Desktop and/or	\$ 3.50 per month

### **EQUIPMENT MAINTENANCE & REPLACEMENTS**

American Messaging will exchange leased paging units at no additional charge that are defective or stop working due to normal wear and tear. As an option, we offer our **Pager Replacement Program (PRP)** at a low monthly rate per unit, which will expediently replace any pager that is lost, stolen, or damaged beyond repair for the prices listed below.

### **PAGER REPLACEMENT PROGRAM RATES**

<b>Service</b>	<b>Monthly Rate</b>	<b>Loss Fee with PRP</b>	<b>Loss Fee without PRP</b>
Numeric	\$ 0.50	\$15.00	\$34.95
Alphanumeric	\$ 0.50	\$35.00	\$69.95
Two-way	\$ 0.50	\$80.00	\$99.00

\* Replacement cost of equipment without PRP is based on current retail rates for similar equipment and/or accessories.

### **MISCELLANEOUS CHARGES, TAXES AND FEES SHIPPING CHARGES**

American Messaging deploys automated order fulfillment as soon as the City and County of San Francisco orders a new or replacement pager. As an element of our excellent Customer Service, a representative can initiate the shipping order and prioritize it to meet the City and County of San Francisco's needs for the pager(s) to arrive at the desired location and time. American Messaging will pass on any charges that are incurred for shipping and handling.

### **TAXES AND FEES**

Prices stated in this Proposal do not include state and local sales tax, and other applicable taxes, fees, charges, or pass-through assessments.

Please note: If any federal, state or local government tax, fee, duty, or surcharge (collectively referred to as a "Tax") is required by applicable law to be collected from Customer by Carrier, then (a) Carrier shall bill Customer for such Tax, (b) Customer shall timely remit such Tax to Carrier, and (c) Carrier shall, where applicable, remit such collected Tax to the appropriate taxing authority. If Carrier does not collect a Tax because Customer has provided Carrier with evidence of exemption, and if such as an exemption is later determined to be inadequate, then, as between Carrier and Customer, Customer shall be liable for such uncollected Tax and for all interest, penalties and additions to Tax which are determined to be due with respect to such uncollected Tax.

## **2. Reports**

Contractor shall submit written reports as requested by the Department of Technology. Format for the content of such reports shall be determined by the Department of Technology. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

## **3. Department Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the Department of Technology will be Michael Magliulo.





# SAN FRANCISCO PLANNING DEPARTMENT

## CEQA Categorical Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address		Block/Lot(s)	
1101 Potrero Ave		4154/001	
Case No.	Permit No.	Plans Dated	
2016-010378GPR		N/A	
<input checked="" type="checkbox"/> Addition/ Alteration	<input type="checkbox"/> Demolition (requires HRER if over 45 years old)	<input type="checkbox"/> New Construction	<input type="checkbox"/> Project Modification (GO TO STEP 7)
Project description for Planning Department approval.			
Lease space in the Zuckerberg San Francisco General Hospital and Trauma Center, Building 25, within the building's distributed antenna system ("DAS") for installation of communications facilities. Install facilities within the existing basement and penthouse. Install three 10-foot-tall antennas on the roof.			

### STEP 1: EXEMPTION CLASS

#### TO BE COMPLETED BY PROJECT PLANNER

<b>*Note: If neither class applies, an <i>Environmental Evaluation Application</i> is required.*</b>	
<input checked="" type="checkbox"/>	<b>Class 1 – Existing Facilities.</b> Interior and exterior alterations; additions under 10,000 sq. ft.
<input checked="" type="checkbox"/>	<b>Class 3 – New Construction/ Conversion of Small Structures.</b> Up to three (3) new single-family residences or six (6) dwelling units in one building; commercial/office structures; utility extensions; ; change of use under 10,000 sq. ft. if principally permitted or with a CU. Change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	Class ____

### STEP 2: CEQA IMPACTS

#### TO BE COMPLETED BY PROJECT PLANNER

<b>If any box is checked below, an <i>Environmental Evaluation Application</i> is required.</b>	
<input type="checkbox"/>	<b>Air Quality:</b> Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities) within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g., backup diesel generators, heavy industry, diesel trucks)? <i>Exceptions: do not check box if the applicant presents documentation of enrollment in the San Francisco Department of Public Health (DPH) Article 38 program and the project would not have the potential to emit substantial pollutant concentrations. (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Air Pollutant Exposure Zone)</i>
<input type="checkbox"/>	<b>Hazardous Materials:</b> If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks); Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential? If yes, this box must be checked and the project applicant must submit an Environmental Application with a Phase I Environmental Site Assessment. <i>Exceptions: do not check box if the applicant presents documentation of enrollment in the San Francisco Department of Public Health (DPH) Maher program, a DPH waiver from the</i>

	<i>Maher program, or other documentation from Environmental Planning staff that hazardous material effects would be less than significant (refer to EP_ArcMap &gt; Maher layer).</i>
<input type="checkbox"/>	<b>Transportation:</b> Does the project create six (6) or more net new parking spaces or residential units? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?
<input type="checkbox"/>	<b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? (refer to EP_ArcMap > CEQA Catex Determination Layers > Archeological Sensitive Area)
<input type="checkbox"/>	<b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to EP_ArcMap > CEQA Catex Determination Layers > Topography)
<input type="checkbox"/>	<b>Slope = or &gt; 20%:</b> Does the project involve any of the following: (1) square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Topography) If box is checked, a geotechnical report is required.
<input type="checkbox"/>	<b>Seismic: Landslide Zone:</b> Does the project involve any of the following: (1) square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Seismic Hazard Zones) If box is checked, a geotechnical report is required.
<input type="checkbox"/>	<b>Seismic: Liquefaction Zone:</b> Does the project involve any of the following: (1) square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Seismic Hazard Zones) If box is checked, a geotechnical report will likely be required.
<b>If no boxes are checked above, GO TO STEP 3. If one or more boxes are checked above, an <u>Environmental Evaluation Application</u> is required, unless reviewed by an Environmental Planner.</b>	
<input checked="" type="checkbox"/>	<b>Project can proceed with categorical exemption review. The project does not trigger any of the CEQA impacts listed above.</b>
Comments and Planner Signature ( <i>optional</i> ): Jean Poling	

Digitally signed by Jean Poling  
DN: cn=Jean Poling, o=San Francisco  
Department of Planning, email=jean.poling@sfdph.org  
date: 2016.04.18 15:00:01 -0700

**STEP 3: PROPERTY STATUS – HISTORIC RESOURCE  
TO BE COMPLETED BY PROJECT PLANNER**

<b>PROPERTY IS ONE OF THE FOLLOWING:</b> (refer to Parcel Information Map)	
<input checked="" type="checkbox"/>	<b>Category A: Known Historical Resource. GO TO STEP 5.</b>
<input type="checkbox"/>	<b>Category B: Potential Historical Resource (over 45 years of age). GO TO STEP 4.</b>
<input type="checkbox"/>	<b>Category C: Not a Historical Resource or Not Age Eligible (under 45 years of age). GO TO STEP 6.</b>



**STEP 4: PROPOSED WORK CHECKLIST  
TO BE COMPLETED BY PROJECT PLANNER**

Check all that apply to the project.	
<input type="checkbox"/>	1. <b>Change of use and new construction.</b> Tenant improvements not included.
<input type="checkbox"/>	2. <b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. <b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. <b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. <b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. <b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. <b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. <b>Addition(s)</b> that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
<b>Note: Project Planner must check box below before proceeding.</b>	
<input type="checkbox"/>	Project is not listed. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project does not conform to the scopes of work. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves four or more work descriptions. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves less than four work descriptions. <b>GO TO STEP 6.</b>

**STEP 5: CEQA IMPACTS – ADVANCED HISTORICAL REVIEW  
TO BE COMPLETED BY PRESERVATION PLANNER**

Check all that apply to the project.	
<input type="checkbox"/>	1. Project involves a <b>known historical resource (CEQA Category A)</b> as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	2. <b>Interior alterations to publicly accessible spaces.</b>
<input type="checkbox"/>	3. <b>Window replacement</b> of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	4. <b>Facade/storefront alterations</b> that do not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	5. <b>Raising the building</b> in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	6. <b>Restoration</b> based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
<input type="checkbox"/>	7. <b>Addition(s)</b> , including mechanical equipment that are minimally visible from a public right-of-way and meet the <i>Secretary of the Interior's Standards for Rehabilitation</i> .
<input checked="" type="checkbox"/>	8. <b>Other work consistent with the Secretary of the Interior Standards for the Treatment of Historic Properties</b> (specify or add comments):

<input type="checkbox"/>	<p>9. Other work that would not materially impair a historic district (specify or add comments):</p> <p>(Requires approval by Senior Preservation Planner/Preservation Coordinator) _____</p>
<input type="checkbox"/>	<p>10. Reclassification of property status. (Requires approval by Senior Preservation Planner/Preservation Coordinator)</p> <p><input type="checkbox"/> Reclassify to Category A      <input type="checkbox"/> Reclassify to Category C</p> <p>a. Per HRER dated: _____ (attach HRER)</p> <p>b. Other (specify): _____</p>
<p><b>Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST check one box below.</b></p>	
<input type="checkbox"/>	<p>Further environmental review required. Based on the information provided, the project requires an <i>Environmental Evaluation Application</i> to be submitted. GO TO STEP 6.</p>
<input checked="" type="checkbox"/>	<p>Project can proceed with categorical exemption review. The project has been reviewed by the Preservation Planner and can proceed with categorical exemption review. GO TO STEP 6.</p>
<p>Comments (optional):</p> <p>Proposed antennas to be located on top of the recently constructed hospital and setback from the face of the building (minimally visible from the street).</p>	
<p>Preservation Planner Signature: <i>Jina Jiao</i></p>	

**STEP 6: CATEGORICAL EXEMPTION DETERMINATION  
TO BE COMPLETED BY PROJECT PLANNER**

<input type="checkbox"/>	<p>Further environmental review required. Proposed project does not meet scopes of work in either (check all that apply):</p> <p><input type="checkbox"/> Step 2 – CEQA Impacts</p> <p><input type="checkbox"/> Step 5 – Advanced Historical Review</p> <p><b>STOP! Must file an <i>Environmental Evaluation Application</i>.</b></p>	
<input checked="" type="checkbox"/>	<p>No further environmental review is required. The project is categorically exempt under CEQA.</p>	
	<p>Planner Name:</p> <p>Project Approval Action:</p> <p>Board of Supervisors approves lease</p> <p><small>If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.</small></p>	<p>Signature:</p> <p><b>Jean Poling</b></p> <p>Digitally signed by Jean Poling Date: 2016.08.24 15:52:35 -07'00'</p>
<p>Once signed or stamped and dated, this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code.</p> <p>In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination can only be filed within 30 days of the project receiving the first approval action.</p>		

**STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT  
TO BE COMPLETED BY PROJECT PLANNER**

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

**PROPERTY INFORMATION/PROJECT DESCRIPTION**

Project Address (If different than front page)		Block/Lot(s) (If different than front page)
Case No.	Previous Building Permit No.	New Building Permit No.
Plans Dated	Previous Approval Action	New Approval Action
Modified Project Description:		

**DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION**

Compared to the approved project, would the modified project:	
<input type="checkbox"/>	Result in expansion of the building envelope, as defined in the Planning Code;
<input type="checkbox"/>	Result in the change of use that would require public notice under Planning Code Sections 311 or 312;
<input type="checkbox"/>	Result in demolition as defined under Planning Code Section 317 or 19005(f)?
<input type="checkbox"/>	Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption?
If at least one of the above boxes is checked, further environmental review is required. <b>ATEX FORM</b>	

**DETERMINATION OF NO SUBSTANTIAL MODIFICATION**

<input type="checkbox"/>	The proposed modification would not result in any of the above changes.
If this box is checked, the proposed modifications are categorically exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice.	
Planner Name:	Signature or Stamp:





# SAN FRANCISCO PLANNING DEPARTMENT

## General Plan Referral

*Date:* September 8, 2016

*Case No.* Case No. 2016-010378GPR  
Leasing of space at the Zuckerberg San Francisco General Hospital and Trauma Center for installation of communications equipment

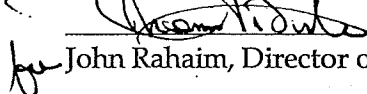
*Block/Lot No.:* 4154/001

*Project Sponsor:* Claudia Gorham  
San Francisco Real Estate Department  
25 Van Ness Ave. Suite 400  
San Francisco, CA 94102

*Applicant:* Same as Above

*Staff Contact:* Maria De Alva – (415) 575-8729  
[Maria.F.DeAlva@sfgov.org](mailto:Maria.F.DeAlva@sfgov.org)

*Recommendation:* Finding the project, on balance, is in conformity with the General Plan

*Recommended*  
*By:*   
John Rahaim, Director of Planning

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

### PROJECT DESCRIPTION

The Project proposes leasing space at the Zuckerberg San Francisco General Hospital and Trauma Center, Building 25, within the building's distributed antenna system ("DAS") for installation of communications facilities for paging and cellular communications for City and UCSF staff (doctors, nurses, etc.), patients and visitors of numerous vendors.

The submittal is for a General Plan Referral to recommend whether the Project is in conformity with the General Plan, pursuant to Section 4.105 of the Charter, and Section 2A.52 and 2A.53 of the Administrative Code.

## ENVIRONMENTAL REVIEW

On August 24, 2016 the Environmental Planning Division of the Planning Department determined that the project is categorically exempt under CEQA Guidelines Sections 15301 and 15303 (Planning Case No. 2016-010378GPR):

## GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

The project is the lease of space at the, Zuckerberg San Francisco General Hospital and Trauma Center for installation of communications equipment. The Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 as described in the body of this letter and is, on balance, **in-conformity** with the following Objectives and Policies of the General Plan:

Note: General Plan Objectives and Policies are in **bold font**, General Plan text in regular font; staff comments are in *italic font*.

### COMMUNITY SAFETY

#### OBJECTIVE 1

**REDUCE STRUCTURAL, AND NON-STRUCTURAL HAZARDS TO LIFE SAFETY AND MINIMIZE PROPERTY DAMAGE RESULTING FROM FUTURE DISASTERS.**

#### POLICY 1.20

Increase communication capabilities in preparation for all phases of a disaster, and ensure communication abilities extend to hard-to-reach areas and special populations.

Strong communication systems are critical to a City's functioning in a hazard scenario. Communication will be necessary in the response phase immediately following a disaster, and continued conveyance of recovery efforts and their progress is an important aspect of the reconstruction period.

*In case of a disaster, the communication abilities of a Public Health Center will be fundamental in the coordination of available resources and resumption of social services.*

#### OBJECTIVE 2

**BE PREPARED FOR THE ONSET OF DISASTER BY PROVIDING PUBLIC EDUCATION AND TRAINING ABOUT EARTHQUAKES AND OTHER NATURAL AND MAN-MADE DISASTERS, BY READYING THE CITY'S INFRASTRUCTURE, AND BY ENSURING THE NECESSARY COORDINATION IS IN PLACE FOR A READY RESPONSE.**

#### POLICY 2.15

Utilize advancing technology to enhance communication capabilities in preparation for all phases of a disaster, particularly in the high-contact period immediately following a disaster.

*In case of a disaster, the communication abilities of a Public Health Center will be fundamental in the coordination of available resources and resumption of social services. The installation of the communication equipment on the proposed leased space would benefit UCSF staff and personnel, as well as patients and visitors.*

**PROPOSITION M FINDINGS – PLANNING CODE SECTION 101.1**

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project, the lease of space at the, Zuckerberg San Francisco General Hospital and Trauma Center for installation of communications equipment is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

**Eight Priority Policies Findings**

The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

The proposed project is found to be consistent with the eight priority policies of Planning Code Section 101.1 in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

*The Project would have no impact, adverse or otherwise, to existing and future neighborhood-serving retail uses and opportunities will be preserved for resident employment in and ownership of such businesses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhood.

*The Project would have no adverse effect on the existing housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced.

*The Project would have no adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The Project would not result in commuter traffic impeding MUNI's transit service, overburdening the streets or altering current neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for residential employment and ownership in these sectors be enhanced.

*The Project would not affect the existing economic base in this area.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The Project would not adversely affect achieving the greatest possible preparedness against injury and loss of life in an earthquake. All carriers are required to install their equipment according to local, state and federal (FCC) codes and regulations.*

7. That landmarks and historic buildings be preserved.

*The Project would not have an adverse impact on any landmarks or historic buildings. The proposed lease is located in Building 25, a newly constructed building. In addition, all of the carriers' equipment is being installed within the interior of the building.*

8. That our parks and open space and their access to sunlight and vistas be protected from development.

*The Project would have no adverse effect on parks and open space or their access to sunlight and vista.*

<b>RECOMMENDATION:</b>	<b>Finding the Project, on balance, in-conformity with the General Plan</b>
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cc: Claudia Gorham, Real Estate Division

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**ZSFGH – American Messaging Services, LLC – Lease for Building 25, iDAS Participation**

Preliminary Information Request  
Budget and Finance Committee Meeting Preparation

1. Attached via email
  - a. Proposed Resolution
  - b. Proposed Lease
  - c. Health Commission Resolution (passed)
  - d. Master Agreement for Paging Services
  
2. Lease summary:

	Existing Lease Terms	New Lease Terms
Lease Period	N/A	Five Years ~January 1, 2017 – December 31, 2022
Size of property	N/A	Two Antenna on roof, one dish on roof, one rack
Options to extend the lease	N/A	Two, Five-Year (5 yr.) Option to Extend at fair market rent
Base rent paid by tenant	N/A	\$5,000.00 per month (\$60,000 per yr.) to be waived during term Tenant's Master Agreement for paging services
Annual rent adjustments to base rent	N/A	Three percent per year
Tenant Improvement Allowance	N/A	None. No Tenant Improvements required
Utilities and services	N/A	City to pay for electric during term of Tenant's Master Agreement for paging services; otherwise, \$3,708 per term subject to three percent annual increase

Note: AMS provides paging services and equipment to the CCSF for emergency personnel (police, fire, and health, including doctors, nurses and staff at ZSFGH). The new ZSFGH Building 25 is not conducive to receipt of paging/cellular coverage within the middle, basement or confined areas of the building. In response, the City installed a "Distributed Antenna System" ("DAS") within Building 25 (a series of repeaters that transmit and create better coverage within the building) and companies, such as American Messaging System, can join into the system for coverage in the building, with the vendors supplying their own equipment and racks to connect/participate (and remains responsible for their own equipment) in the system.

3. N/A

4. The greater of: (a) City's minimum monthly base rent for similar personal communications sites, including equipment and antennas, atop and within City owned assets and (b) Base Rent prior to the start of any Option Year term after adjusting for annual Base Rent escalations – both subject to annual escalation of three percent.

5. N/A – No Tenant Improvements required. Tenant to supply own equipment and hook up into the DAS.

6. During the Term, so long as Tenant provides paging services to the City (Citywide), and in consideration of, the benefit of Tenant's Master Agreement to provide emergency paging services and equipment for City – which are necessary within Building 25 and to the Department of Public Health, and its doctors, nurses, other medical staff, patients and visitors – Tenant is exempt from payment of rent and utilities.

7. Participation is open to both paging companies (AMS and SPOK) that provide paging equipment and services to the City and its partner at ZSFGH – UCSF; and, open to cellular companies (such as AT&T, Verizon, T-Mobile, Sprint).

8. AMS is providing its own equipment to connect to the DAS. It will have one antenna on the roof of Building 25 and one rack inside. The minimum charge of \$5,000 is what the City charges at other locations for one antenna within the City.

**Health Commission  
City and County of San Francisco  
Resolution No. 16-13**

**RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE LEASE AGREEMENTS FOR THE INSTALLATION OF NECESSARY EQUIPMENT FOR PAGING AND CELLULAR SERVICES AT ZUCKERBERG SAN FRANCISCO GENERAL HOSPITAL AND TRAUMA CENTER.**

WHEREAS, the Department of Public Health (DPH), the Zuckerberg San Francisco General Hospital and Trauma Center (ZSFG), and their respective doctors, nurses, and staff, rely upon the paging and cellular services for daily and emergency communications at ZSFG and around the City; and

WHEREAS, the new ZSFG building 25 is designed and constructed with materials that block radio and cellular signals from reaching portions of the building, including basement surgical areas; and

WHEREAS, limited paging and cellular services could pose a major safety or health concern if doctors, nurses, staff or patients/visitors are unable to communicate, especially during times of emergencies; and

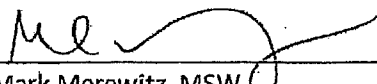
WHEREAS, to provide sufficient reception, cellular and paging service providers must install additional antennae, boosters, and other equipment on or in Building 25; and

WHEREAS, lease agreements with the City will be required to allow cellular and paging services companies to install this needed equipment in or on Building 25; and

WHEREAS, the Real Estate Division, on behalf of DPH, is negotiating lease agreements with the appropriate vendors for the installation of necessary equipment paging and cellular services at ZSFG; and

BE IT RESOLVED, that the Health Commission recommends that the Board of Supervisors approve leases negotiated by the Real Estate Division, on behalf of DPH, to allow the installation of the necessary equipment on Building 25 at ZSFG to ensure adequate paging and cellular services.

I hereby certify that the San Francisco Health Commission adopted this resolution at its meeting of December 6, 2016.

  
\_\_\_\_\_  
Mark Morewitz, MSW  
Health Commission Executive Secretary



January 19, 2017

Through Supervisor Malia Cohen

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102

Dear Board Members:

Attached for your consideration is a Resolution approving and authorizing the lease of a portion of Building 25, the new Zuckerberg San Francisco General Hospital and Trauma Center ("ZSFGH"), located at 1001 Potrero Avenue, San Francisco, which allows the proposed tenant American Messaging Services, LLC ("AMS"), to participate in Building 25's DAS (a multi-carrier cellular, paging and public safety radio "Distributed Antenna System") and to install and operate equipment for its radio paging telecommunications system used by the City, including the doctors and staff at ZSFGH, via a Master Service Contract entered into in 2013 for AMS to provide paging equipment and services to the City.

Specifically, the Resolution approves:

- (A) A lease term of five years commencing upon approval by the Board of Supervisors and Mayor;
- (B) Two additional option terms of five years to extend the lease;
- (C) A base monthly rent of \$5,000, subject to annual adjustments of 3% (in both the initial and option terms);
- (D) The Tenant to pay for utilities and other services for a service charge of \$3,708.00 per year;
- (E) A waiver that the Tenant is to be exempt from payment of Base Rent and utilities and other services so long as the City and Tenant's Master Services Contract for AMS to provide paging services and equipment to the City is in effect and City benefits from the Master Agreement;
- (F) A finding that Competitive Bidding Procedures would be impractical in light of the existing Master Agreement between AMS and the City;
- (G) That the actions contemplated in the Resolution are consistent with the City's General Plan and with Planning Code Section 101.1-(b) for the reasons set forth in the General Plan Referral dated September 8, 2015; and
- (H) Authorizes other actions in furtherance of the Resolution.

## **Background**

The Department of Public Health (“DPH”), emergency services (such as SFFD, SFPD and SFSD) and the doctors, nurses, patients and visitors of the new Zuckerberg San Francisco General Hospital and Trauma Center (“ZSFGH”), aka Building 25 at the campus, require strong paging and cellular services for daily and emergency communications. Building 25 was constructed with materials that hinder radio and cellular signals from reaching essential portions of the building for daily operation (such as the basement surgical areas, stairwells, building system areas – such as mechanical and electrical rooms, restrooms and general use spaces such as break rooms) and in emergencies (such as crawl spaces, sub-basement areas, and moat area a requirement for First Responders).

To resolve the issue, DPH installed a Distributed Antenna System which enhances coverage inside the building through a series of “in-building” antennas (repeaters) distributing the radio/cellular frequencies of the participants of the DAS throughout designated spaces within the building - - connecting service providers, such as AMS, to clinicians, clients and care. The DAS supports a broad range of wireless services, cellular, public safety, first responder, two-way radios, and paging.

In light of AMS’ Master Service Agreement to provide the City with paging services throughout the City, DPH agreed to allow AMS to install equipment not only for paging service within Building 25 but also to provide more and stronger coverage in the neighborhood (one rack, associated cables, two antennas and one dish on the roof).

In consideration of the benefit to the City, DPH, ZSFGH, and emergency services, and the patients, doctors, staff and visitors to ZSFGH, during the term of the Master Services Contract, rent and all service charges (for utilities and other services) will be waived. If and when Building 25 ceases to be used as ZSFGH or the service agreement is terminated or ends, the waiver ceases.

The Department of Public Health and the Real Estate Division of the General Services Agency recommend approval of the proposed Resolution. If you have any questions regarding the project or the lease, please contact Vernie Roble at [Verwina.roble@sfdph.org](mailto:Verwina.roble@sfdph.org) or Claudia J. Gorham at 415.554.9871 or [Claudia.gorham@sfgov.org](mailto:Claudia.gorham@sfgov.org).

Respectfully,

Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2017 JAN 24 PM 4:

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

lease check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

Sponsor(s):

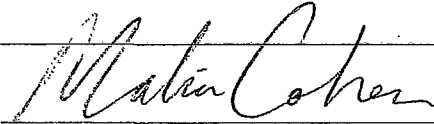
Cohen

Subject:

Real Property Lease - American Messaging Services, LLC, a Delaware limited liability company - Zuckerberg San Francisco General Hospital and Trauma Center, Building 25 - 1001 Potrero Avenue -\$5,000 per month base rent exempt

The text is listed below or attached:

Attached

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: American Messaging Services, LLC	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. (1) Marc Gineris, Tom Hopkins, J. Roy Pottle (2) J. Roy Pottle, CEO; Jeff Chalmers, CFO; Dave Andersen, COO (3) N/A (4) None	
Contractor address: 1720 Lakepointe Drive, Suite 100, Lewisville, Texas 75057	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: Rent : \$5,000 per month (waived)
Describe the nature of the contract that was approved: Lease of antenna and rack space for participation in DAS at Zuckerberg San Francisco General Hospital, Building 25, 1001 Potrero Ave, San Francisco, CA 94110	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Clerk of the Board of Supervisors, Angela Calvillo	Contact telephone number: 415-554-5184
Address: City Hall, Room 244, San Francisco, CA 94102	E-mail: board.of.supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

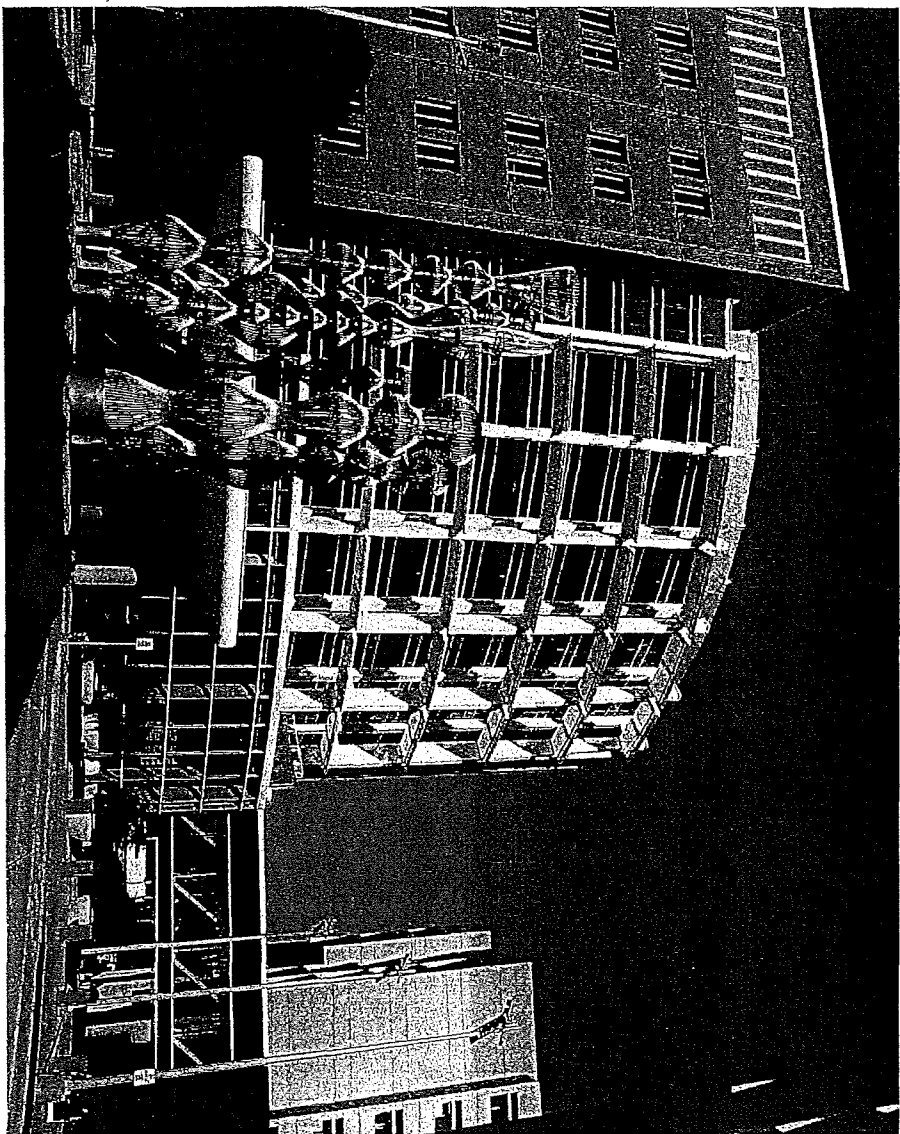
Date Signed

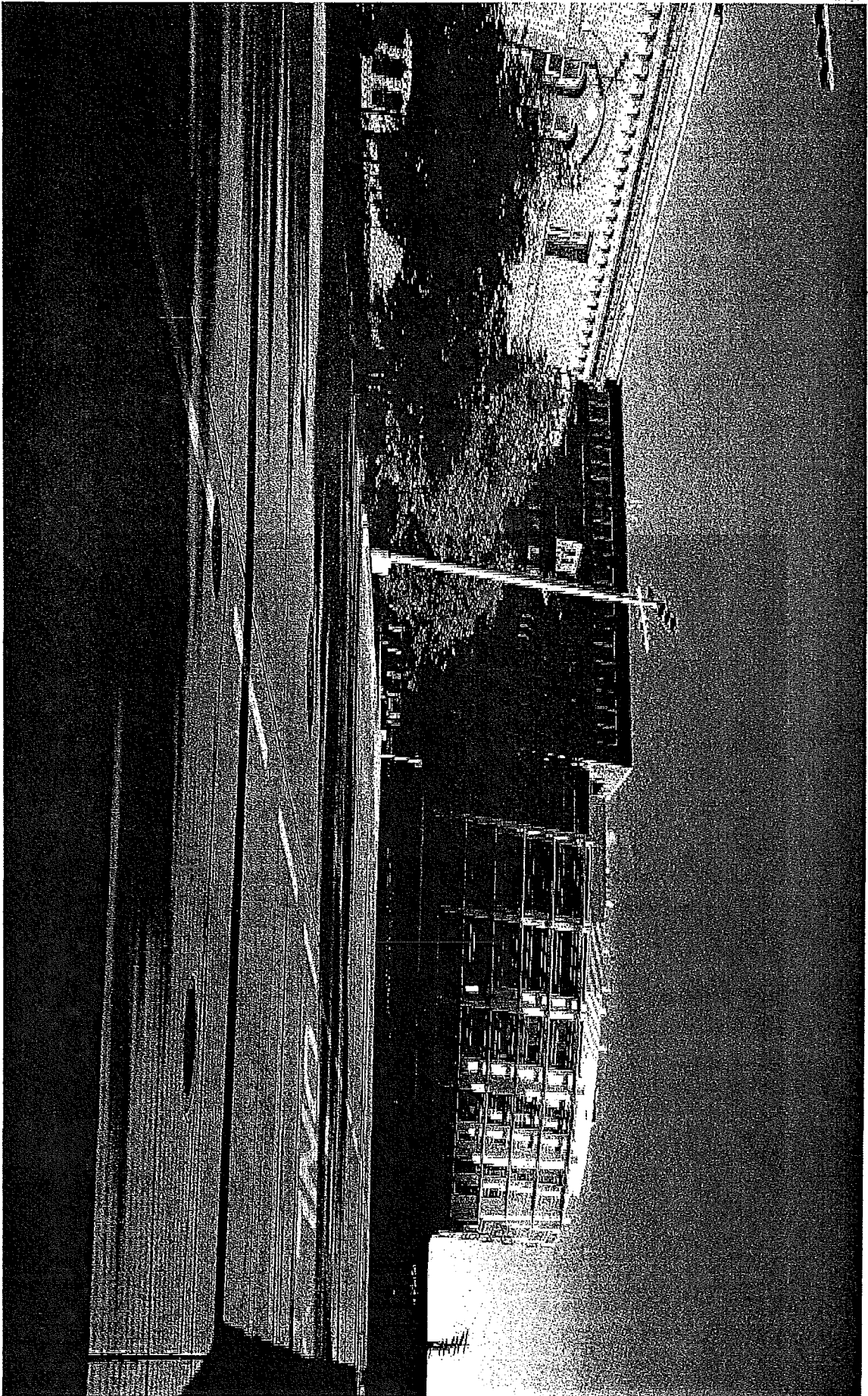


ZUCKERBERG  
SAN FRANCISCO  
GENERAL  
HOSPITAL  
DISTRIBUTED  
ANTENNA SYSTEM  
("DAS") LEASES

1387 SUB 4.6.17

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## DISTRIBUTED ANTENNA SYSTEM – “DAS”

- SFDPH installed system at new ZSFGH – Building 25
- Supports multiple wireless services (cellular, two-way radios, paging both commercial and City’s public safety/first responder frequencies)
- City’s paging service provided by American Messaging Systems
- UCSF’s paging service provided by SPOK
- Enhances coverage within the building including:
  - Operating Rooms (lower levels)
  - Procedure/Treatment Rooms
  - Elevators
  - Basement
  - Stairwells
  - Mechanical/Electrical Rooms
  - Crawl Space/Sub-basement [First Responder requirement]

\* City currently negotiating renew Master Agreement with American Messaging Services (3 years + 2 year option) – Official duty pager for DPH, Code Blue alerting

\* Over 1,000 active pagers used by both DPH doctors, staff, and other first responders (public safety)

\* SPOK currently has a month to month service agreement with SPOK to provide paging services (UCSF researchers, doctors, nurses, and other clinical staff)

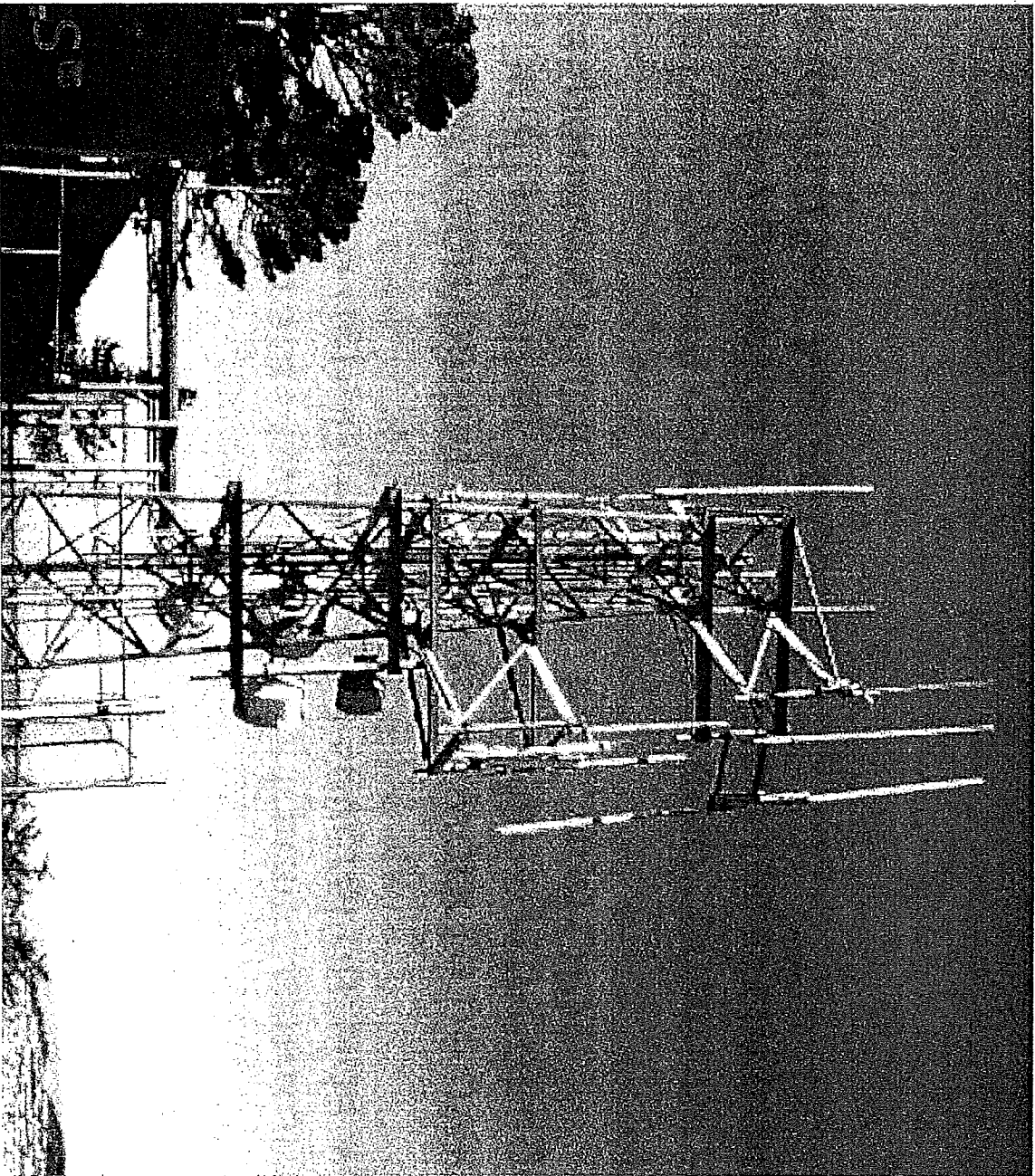
\* Health Commission recommended the Board of Supervisors approve the lease agreements via a resolution adopted on November 30, 2016

	<b>AMERICAN MESSAGING SERVICES</b>	<b>SPOK</b>
LEASE TERM	Approval of Lease to December 31, 2021 Approximately 4 years and 9 months	Approval of Lease to December 31, 2021 Approximately 4 years and 9 months
OPTIONS	Two 5 year options At the then current "Fair Market Rent"	Two 5 year options At the then current "Fair Market Rent"
EQUIPMENT	19" Rack – Transmitter Room 1.2 Meter Dish Antenna - Roof 1-Transmit Antenna, 1-Receive Antenna - Roof	1 – Yagi Antenna and BDA adapter - Roof
BASE RENT	\$5,000 per month \$60,000 per year	\$5,000 per month \$60,000 per year
ANNUAL ADJUSTMENTS	3 percent	3 percent
UTILITIES AND SERVICES	Approximately \$3,708 per year paid by Tenant, subject to 3% annual adjustment	Approximately \$3,708 per year paid by Tenant, subject to 3% annual adjustment
WAIVER	Rent and utilities/services waived in full during term of Master Service Agreement	Rent and utilities/services waived in full during term of Master Service Agreement



## 800 MHz PUBLIC SAFETY RADIO REPLACEMENT PROJECT

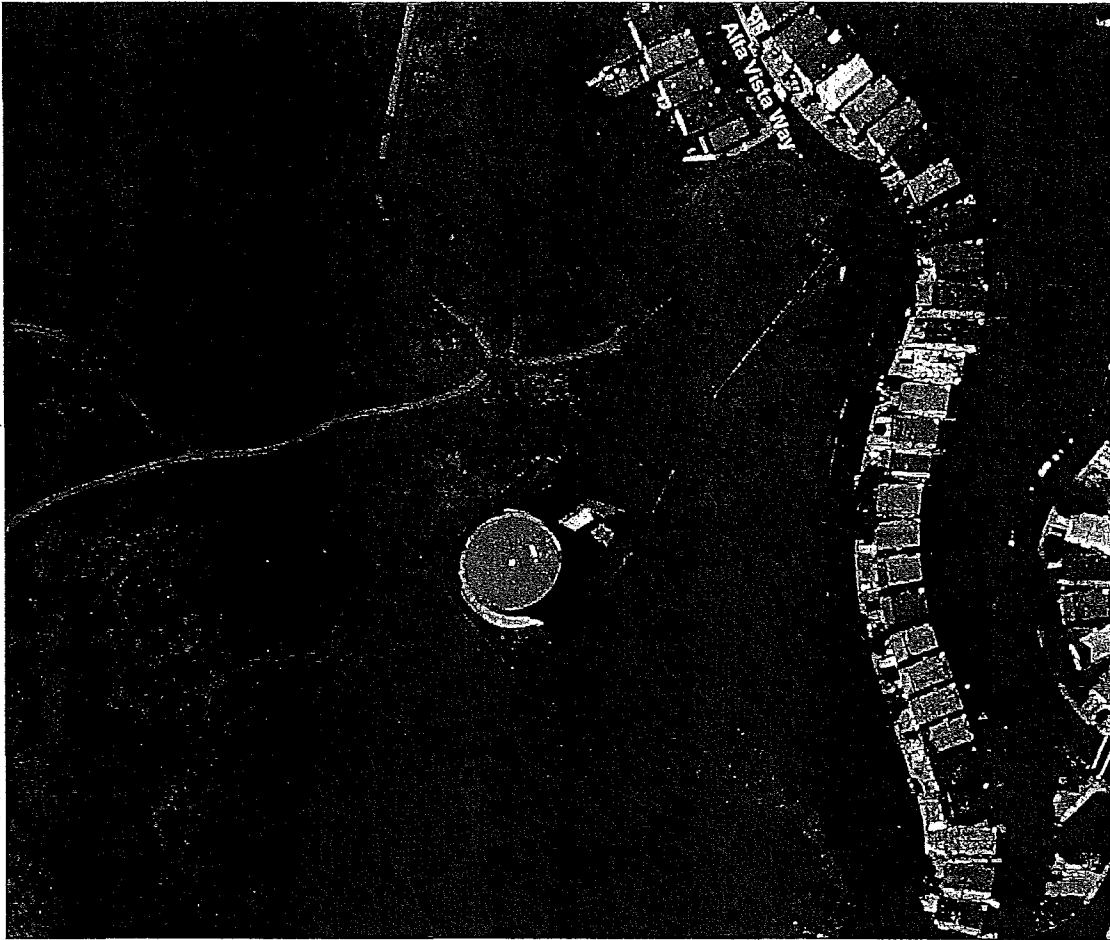
- \* City operates two 800 MHz Radio Communications Systems used by 20 departments and several outside agencies
- \* City combining into one network to be used by SFPD, SFFD, Sheriff and other Emergency Management agencies for first responders, Public Works, PUC, and DPH
- \* New system consists of 10 radio communication sites, 1 primary dispatch site, to provide radio coverage throughout City and into San Mateo County



800 MHz Public  
Safety Radio  
Replacement  
Project

South Hill Tower  
Lease





\* Existing tower for current 800 MHz Citywide Emergency Radio System, 700 MHz Interoperable Radio System, the Public Service Emergency Radio System, the Wireless Data Network and City's Public Wi-Fi Network

\* 1998 - Lease – Between Daly City and CCSF to construct 40' tower at Daly City's water tank site off of Alta Vista Way

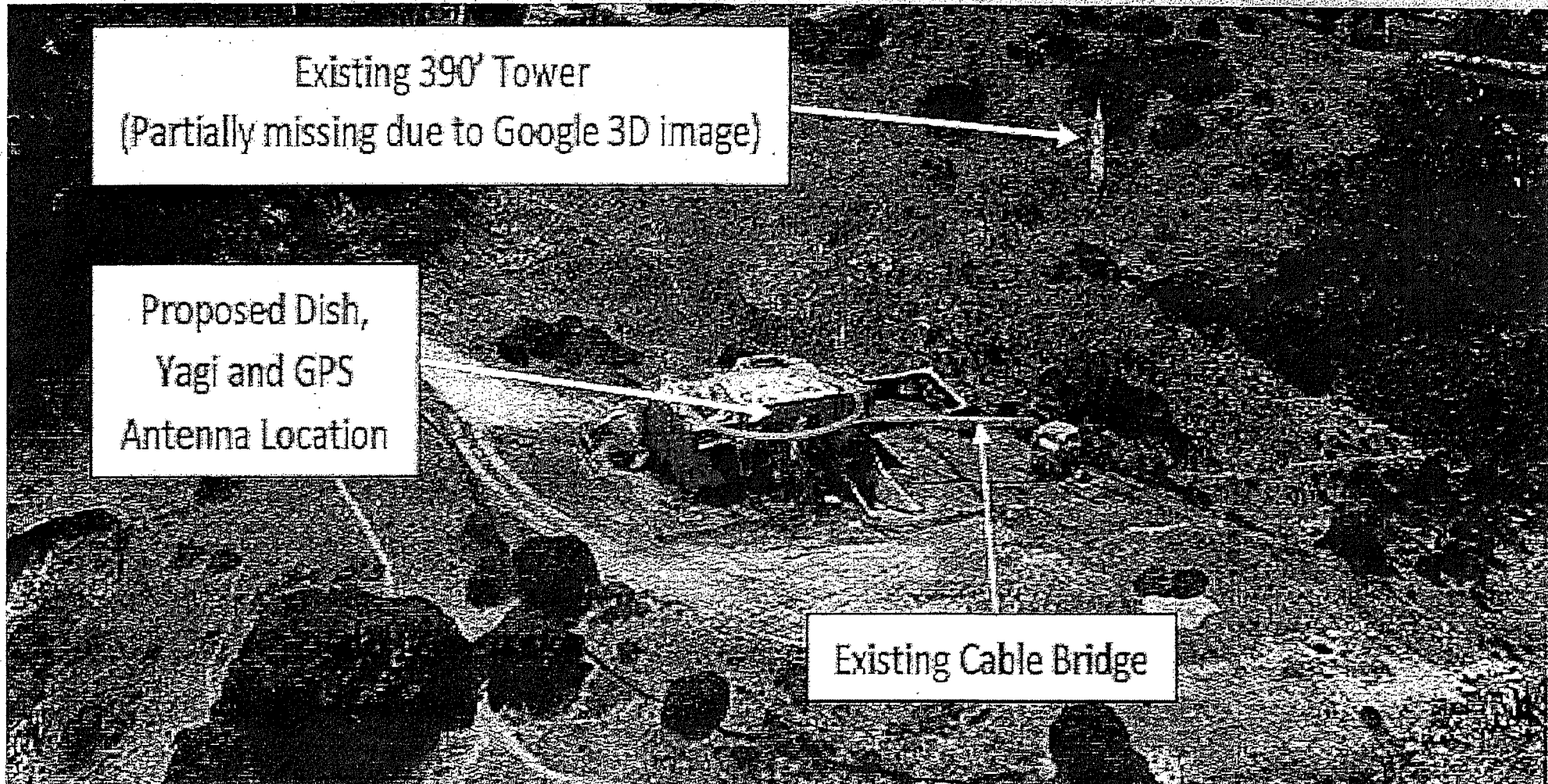
\* Tower part of the original six locations determined essential to optimal radio coverage

\* Complete coverage depends upon towers in specific locations at specific heights – other locations were reviewed but did not provide the required coverage, strength of signal or minimal dropped zones

## South Hill Tower Lease Terms:

- ◆ 25 years - July 1, 2017 to June 30, 2042 (No options)
- ◆ \$3,657 per month - \$43,884 per year  
Based upon the State's guidelines
- ◆ 3.5% annual adjustment
- ◆ \$7,200 per year in utilities
- ◆ State Park Benefit Fund Payment - \$175,000 (2 installments)
- ◆ State may place one antenna on tower in the future

# Bayview Park Road Lease



Existing 390' Tower  
(Partially missing due to Google 3D image)

Proposed Dish,  
Yagi and GPS  
Antenna Location

Existing Cable Bridge

## Bayview Park Road Lease Terms:

- ◆ 10 years - April 1, 2017 to March 31, 2027 (3 five-year options)
- ◆ \$7,650 per month – 95% of appraised fair market rent of \$8,000 per month
- ◆ 3% annual adjustment
- ◆ City pays utilities – estimated at \$12,000 per year
- ◆ One time fee – \$25,000; Administration Fee \$2,100
- ◆ Site improvements - \$1,375,003

Address	Date	Monthly Rent	Annual Adjustment	Utilities	Comments
1 Bayview Park Road	Proposed	\$7,650.00	3%	No	One time fee - \$25,000
One Market Plaza	Pending	\$13,750.00	3%	Yes	City lessee; 2 equipment rooms; more antennas; wifi
1250 Jones	12/2015	\$11,286.25	2.5 - 4%	Yes	City lessee; one time fee \$25,000; similar equipment
1 Bayview Park Road (existing)	1/2015	\$6,500.00	3%	No	SFMTA lessee - no Yagi, no microwave, no secured room, provides power for other tenants
1 Bayview Park Road	8/2014	\$6,000.00	3%	No	KEST AM radio - no inside racks
555 California St.	5/2013	\$8,123.50	2.5%	Yes	SFMTA - substantially less equipment