

COMMUNICATIONS SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
"Landlord" or "City"

and

STATE OF CALIFORNIA,  
at the direction and with the consent of the California Highway Patrol,  
acting by and through the Director of the Department of General Services (DGS),  
"Tenant" or "State"

For the lease of

Space at 125 Christmas Tree Point,  
San Francisco, California

State Lease Number: 5952-001

November 17, 2022

Table of Contents

1.	BASIC LEASE INFORMATION .....	1
2.	CO-LOCATION OF TELECOMMUNICATIONS FACILITIES .....	3
2.1	Prohibition on Co-location Without Landlord's Consent.....	3
2.2	Required Co-location.....	4
3.	PREMISES; AS IS LEASE .....	4
3.1	Lease Premises; License Area.....	4
3.2	As Is Lease.....	5
3.3	Energy Consumption Disclosure .....	6
4.	TERM .....	6
4.1	Term of Lease .....	6
4.2	Confirmation of Commencement Date and Expiration Date .....	6
4.3	Termination of 2007 Revocable Permit .....	6
5.	RENT; ADDITIONAL CHARGES.....	7
5.1	Base Rent.....	7
5.2	Adjustments in Base Rent .....	7
5.3	Additional Charges .....	7
5.4	Late Charges .....	7
5.5	Default Interest .....	8
6.	USE .....	8
6.1	Permitted Use.....	8
6.2	No Illegal Uses, Nuisances, or Advertising .....	8
7.	INSTALLATION OF TENANT IMPROVEMENTS.....	8
7.1	Tenant Improvement Work .....	8
7.2	Working Requirements .....	9
7.3	Air-Conditioning and Fire Suppression .....	9
8.	ALTERATIONS.....	9
8.1	State's Alterations.....	9
8.2	Title to and Removal of State's Equipment.....	10
8.3	Taxes on State's Property .....	11
8.4	Working Requirements .....	11
9.	CITY'S ALTERATIONS OF THE BUILDING AND BUILDING SYSTEMS .....	11

10. REPAIRS AND MAINTENANCE ..... 11

10.1 City's Repairs ..... 11

10.2 State's Repairs ..... 12

11. LIENS ..... 12

12. UTILITIES AND SERVICES ..... 13

12.1 Utilities and Services ..... 13

12.2 Mandatory or Voluntary Restrictions..... 14

12.3 Floor Load ..... 14

13. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS .... 14

13.1 Compliance with Laws..... 14

13.2 Licenses and Approvals ..... 16

13.3 Radiofrequency Radiation and Electromagnetic Fields ..... 16

13.4 Compliance with City's Risk Management Requirements..... 16

14. SUBORDINATION..... 16

15. DAMAGE OR DESTRUCTION..... 17

16. EMINENT DOMAIN ..... 17

16.1 Eminent Domain ..... 17

16.2 Temporary Takings..... 18

17. ASSIGNMENT AND SUBLETTING..... 18

17.1 Restriction on Assignment and Subletting ..... 18

17.2 Notice of Proposed Transfer..... 18

17.3 City's Response ..... 18

17.4 Effect of Sublease or Assignment..... 19

17.5 Assumption by Transferee..... 19

17.6 Permitted Assignment ..... 19

18. DEFAULT ..... 20

18.1 Events of Default ..... 20

18.2 Remedies ..... 20

19. STATE'S INDEMNITY ..... 21

20. INSURANCE ..... 22

20.1 State's Insurance ..... 22

20.2 State's Property ..... 23

20.3 City's Self Insurance..... 23

20.4	Waiver of Subrogation Rights .....	23
21.	LIMITATION OF CITY'S LIABILITY .....	23
21.1	Limitation on City's Liability.....	23
21.2	Consequential Damages .....	24
21.3	No Relocation Assistance.....	24
22.	ACCESS TO PREMISES .....	25
22.1	State's Access to the Premises .....	25
22.2	City's Access to the Premises .....	25
22.3	Emergency Access.....	26
22.4	No Liability .....	26
22.5	No Abatement.....	26
22.6	Minimize Disruption .....	26
23.	ESTOPPEL CERTIFICATES.....	26
24.	RULES AND REGULATIONS .....	26
25.	SECURITY DEPOSIT.....	27
26.	SURRENDER OF PREMISES .....	27
27.	HAZARDOUS MATERIALS.....	27
27.1	Definitions.....	27
27.2	Hazardous Materials in Premises .....	28
27.3	State's Environmental Indemnity .....	28
28.	SPECIAL PROVISIONS .....	29
28.1	Extension Option .....	29
28.2	Right to Terminate .....	30
28.3	City's Right to Terminate Due to Finding by Board of Supervisors .....	30
28.4	City's Protection Against Interference.....	30
28.5	State's Protection Against Interference.....	30
29.	GENERAL PROVISIONS .....	32
29.1	Notices .....	32
29.2	No Implied Waiver .....	32
29.3	Amendments .....	32
29.4	Authority .....	32
29.5	Interpretation of Lease.....	33
29.6	Successors and Assigns .....	33

29.7	Brokers .....	33
29.8	Severability .....	33
29.9	Governing Law .....	34
29.10	Entire Agreement.....	34
29.11	Holding Over.....	34
29.12	Time of Essence.....	34
29.13	Cumulative Remedies .....	34
29.14	Survival of Indemnities .....	34
29.15	Signs .....	35
29.16	Light and Air .....	35
29.17	Recording .....	35
29.18	Taxes, Assessments, Licenses, Permit Fees and Liens.....	35
29.19	Non-Liability of City Officials, Employees and Agents .....	36
29.20	Prevailing Wages and Local Hiring Requirements.....	36
29.21	Non-Discrimination in City Contracts and Benefits Ordinance.....	37
29.22	Requiring Health Benefits for Covered Employees.....	38
29.23	MacBride Principles - Northern Ireland.....	38
29.24	Drug-Free Workplace .....	38
29.25	Tropical Hardwood and Virgin Redwood Ban.....	38
29.26	Restrictions on the Use of Pesticides .....	39
29.27	Prohibition of Tobacco Sales and Advertising .....	39
29.28	Prohibition of Alcoholic Sale and Advertising .....	39
29.29	Preservative-Treated Wood Containing Arsenic.....	40
29.30	Conflicts of Interest.....	40
29.31	Notification of Limitations on Contributions.....	40
29.32	Sunshine Ordinance .....	41
29.33	Food Service and Packaging Waste Reduction.....	41
29.34	Compliance with San Francisco Business and Tax Regulations Code.....	41
29.35	Counterparts.....	41
29.36	Effective Date .....	42
29.37	Cooperative Drafting.....	42

LIST OF EXHIBITS

EXHIBIT A – Description of Premises and Installation Plans

EXHIBIT B – Notice of Commencement Date

EXHIBIT C – Rent and Utility Schedule

## COMMUNICATIONS SITE LEASE

THIS COMMUNICATIONS SITE LEASE (this "Lease") dated for reference purposes only as of November 17, 2022, is made between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), and STATE OF CALIFORNIA, at the direction and with the consent of the CALIFORNIA HIGHWAY PATROL, acting by and through the Director of the Department of General Services (DGS), hereinafter collectively referred to as "State".

City and State 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: November 17, 2022
- Landlord: CITY AND COUNTY OF SAN FRANCISCO
- Tenant: STATE OF CALIFORNIA, at the direction and with the consent of the CALIFORNIA HIGHWAY PATROL, acting by and through the Director of the Department of General Services (DGS)
- Building (Section 2.1): Central Radio Station, located at 125 Christmas Tree Point, aka Twin Peaks Blvd also known as Assessor's Block 2719C, Lot 004, San Francisco, California (the "**Building**") (shown on Exhibit A-1).
- Premises (Section 2.1): The "**Premises**" shall be defined as the portions of the Building consisting of (1) approximately four (4) square feet of space in the Conventional Xmtr Room in the Building in which State's one repeater is installed (the "**Equipment Area**") (shown on Exhibit A-1), and (2) certain space on Tower 3, Northwest Leg, where State's one (1) antenna is mounted (the "**Antenna Location**") (as shown on Exhibit A-2). In connection with the lease of the Premises and for the term of the Lease, State shall have a nonexclusive license for the placement and use of cables, conduits, wires, cable trays, and other connecting hardware reasonably necessary to connect State's Equipment (as defined below) together and to a power source (collectively, "**Connecting Equipment**") in the portions of the Building between the Equipment Area and Antenna Location and between the Equipment Area, the Antenna Location and City's utility

connection locations (shown on Exhibit A-1 and Exhibit A-2) (the "License Area"). The Premises is under the jurisdiction of the City's Real Estate Division of the City Administrator's Office.

Term ( <u>Section 3.1</u> ):	Ten (10) years, commencing on the full execution of this Lease (the " <b>Commencement Date</b> ") and expiring on the tenth (10th) anniversary of the Commencement Date.
	Estimated Commencement Date: January 1, 2023
	Expiration Date: December 31, 2032
Extension Options ( <u>Section 28.1</u> ):	Two (2) additional terms of five (5) years each, exercisable on the terms specified in Section 28.1.
Base Rent ( <u>Section 4.1</u> ):	Annual Base Rent: \$ 9,000.00 Monthly payments: \$750.00, in advance
Adjustment Dates ( <u>Section 4.2</u> ):	Annually on January 1st of each year, beginning January 1, 2024, four percent (4%) adjustment per year. For reference purposes only, see Proposed Rent Schedule, shown on Exhibit C, attached hereto and made a part hereof.
Use ( <u>Section 5.3</u> ):	State shall use the Premises for the installation, construction, maintenance, operation, and repair of State's Equipment (as defined below) as an unmanned telecommunication facility for the transmission and reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications equipment (a " <b>Communications Site</b> "). State shall not use the Premises for any other purposes without the written consent of City.
State's Equipment ( <u>Section 7</u> ):	State has the right to install and maintain the following items in the License Area at its sole cost: one (1) UHF repeater with voter, Row 1, Rack 11 and one (1) Omni Dipole antenna at the 100' level. (" <b>State's Equipment</b> ")
Utilities and Services ( <u>Section 12.1</u> ):	All utilities and services necessary for use of the Premises to be provided by City at State's cost. State shall pay City \$150.00 per month for utilities subject to a three (3) percent annual increase.
Security Deposit ( <u>Section 25</u> ):	Not Applicable



Notice Address of Landlord  
(Section 29.1):

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property  
Re: CHP, 125 Christmas Tree Point

Email:  
Telephone:

[realestateadmin@sfgov.org](mailto:realestateadmin@sfgov.org)  
415-554-9850

With a copy 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: Real Estate Team Leader  
Re: CHP, 125 Christmas Tree Point  
Fax No.: (415) 554-4755

Key Contact for Landlord:

Sandi Levine

Telephone No.:

415-361-1555

Email:

[sandi.levine@sfgov.org](mailto:sandi.levine@sfgov.org)

Notice Address for State  
(Section 29.1):

State of California  
Department of General Services  
Real Estate Division  
Lease Management (5952-001)  
707 3<sup>rd</sup> Street, Fifth Floor  
Sacramento, CA 95605  
[LeaseManagement@dgs.ca.gov](mailto:LeaseManagement@dgs.ca.gov)

Key Contact for State:

Betty Holland/CHP Telecommunications Section

Email:

[CHPTelecomLeasing@chp.ca.gov](mailto:CHPTelecomLeasing@chp.ca.gov)

Telephone No.:

916-843-4200

Alternate Contact for State

Kimberley Tsumura

Email:

[Kim.Tsumura@dgs.ca.gov](mailto:Kim.Tsumura@dgs.ca.gov)

Telephone No.:

916-375-4050

## 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 facility comprised of one or more antennas, dishes, or similar devices owned or used by more than one public or private entity that does not control or is not controlled by or under common control with, the State.

## 2.2 Required Co-location

Notwithstanding the foregoing, State acknowledges that Landlord may require State to co-locate its facilities on the Premises with other facilities or providers or require State to permit other facilities or providers to co-locate on State's facilities.

State shall cooperate and use commercially reasonable efforts to facilitate co-location of future telecommunications facilities upon the Premises; provided, however, State shall not be under any such obligation if a proposed co-location causes interference with State'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 approved by City and State; (ii) pay all costs arising from or related to the co-location, including but not limited to any and all costs incurred by State to accommodate such co-location; and (iii) reimburse State a commercially reasonable percentage of costs and expenses (including capital expenditures) incurred by State 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; License Area

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

In connection with its use of the Premises as a Communications Site and for the Term of this Lease, City grants State a nonexclusive license (which license will not be revoked by City except upon the expiration or earlier termination of this Lease) to place, install, use, maintain, repair, replace, and remove the Connecting Equipment in the Premises. City, in its reasonable discretion, may relocate the License Area to an alternate location that does not materially increase interference as reasonably acceptable to State, at City's sole cost, with reasonable notice to State, and subject to all necessary and required regulatory, or other permits and approvals. 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.

Except as otherwise expressly permitted in this Lease, all Connecting Equipment shall pass through existing openings in the Building's walls, floors, ceilings, and roof unless State reasonably determines that such existing openings are not usable. In such event, State shall obtain Landlord's prior written consent to make any new penetrations through the Building walls, floors, ceilings, and roof for any Connecting Equipment, which consent will not be unreasonably withheld, conditioned or delayed.

To request Landlord's consent to new penetrations, State 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), State 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, State 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. City shall notify State in writing if City will charge such an administrative review fee and the amount of such fee within thirty (30) days' of receiving State's Request Notice. State shall have the right to withdraw its Request Notice at any time; provided, however, that if State withdraws such Request Notice after delivering the administrative review fee or a Section 5.1 administrative fee, City shall have no obligation to reimburse such fee to State.

### 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 CITY 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 Lease, neither the Premises nor the License Area have been inspected by a certified access specialist ("CASp"). A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit State from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of State if requested by State. City and State shall mutually agree on the arrangements for the time and manner of such CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

### 3.3 Energy Consumption Disclosure

State consents to utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time (“Energy Consumption Reporting Laws”), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

## 4. TERM

### 4.1 Term of Lease

The Premises are leased for a term (the "Term") of ten (10) years, commencing and terminating as set forth below; provided that either party may terminate this Lease early by delivering at least sixty (60) days prior written notice to the other party. 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. State shall have the right to extend the Term for two (2) additional terms of five (5) years each as provided in Section 28.1 (Options to Extend Term). As used below, the "Term" shall include the initial term of ten (10) years, and any of the Extended Terms if State duly exercises its Extension Options with respect to such Extended Term(s) pursuant to Section 28.1 of this Lease.

### 4.2 Confirmation of Commencement Date and Expiration Date

The Term of this Lease shall commence on the date (the "**Commencement Date**") this Lease is fully executed by the parties (which execution by City shall require the approval of a resolution as set forth in Section 23.30 of San Francisco Administrative Code). The Term shall terminate on the Expiration Date unless earlier terminated pursuant to the terms hereof or extended as provided in Section 28.1(a).

### 4.3 Termination of 2007 Revocable Permit

Immediately prior to the Commencement Date, State used the Premises from City pursuant to a certain Revocable Permit to Enter and Use Property dated as of November 15, 2007, (the "**2007 Permit**"). The term of the 2007 Permit expired on January 1, 2008, and State continued to occupy the Premises pursuant to the Permit with City's consent on a month to month basis pursuant to Section 6 of the 2007 Permit. State represents that all equipment and property at the Premises described in the 2007 Permit immediately prior to the Commencement Date is owned by State and that there have been no upgrades, changes or replacements of said equipment.

State and City agree that the 2007 Permit, and State's use of the Premises under the 2007 Lease, shall automatically terminate as of 12:01 a.m. of the Commencement Date.

## 5. RENT; ADDITIONAL CHARGES

### 5.1 Base Rent

Beginning on the Commencement Date, State 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 last 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 upon thirty (30) days advance notice. State 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 the event of an unresolved State budget, said consideration shall be suspended as past due with interest charge or late payment penalty waived until State budget is approved. State remains responsible for the full amount of the past due consideration and such amount must be paid in full once the State budget is approved.

### 5.2 Adjustments in Base Rent

On each date specified in the Basic Lease Information for the adjustment of Base Rent (an "**Adjustment Date**") during the Term, the Base Rent payable by State under Section 5.1 (Base Rent) above shall be increased by an amount equal to Four Percent (4%) over the Base Rent paid immediately prior to the applicable Adjustment Date, see Exhibit D, attached hereto.

### 5.3 Additional Charges

State shall promptly pay to City any and all Utility Charges under Section 12.1 (Utilities and Services), and other amounts, if any, required under any other provision of this Lease, as additional rent (herein called "**Additional Charges**"). Such Additional Charges shall be payable to City at the same place and in the same manner as the Base Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. As used in this Lease, the term "**Rent**" shall include the Base Rent and any Additional Charges.

### 5.4 Late Charges

If State fails to postmark payment of any Rent within thirty (30) days after State's receipt of written notice that the same is due and payable, such unpaid amounts may be subject to a late payment charge equal to five percent (5%) of the unpaid amounts in each instance. The late payment charge has been agreed upon by City and State, 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 State, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amounts.

## 5.5 Default Interest

Any Rent, if not paid within sixty (60) 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 State nor on any amounts on which late charges are paid by State 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 State.

## 6. USE

### 6.1 Permitted Use

State shall use the Premises during the Term of this Lease solely for such uses as are specified in the Basic Lease Information and for no other use. State acknowledges that this prohibition on the change in use is expressly authorized by California Civil Code Section 1997.230 and is fully enforceable. State shall not interfere with the use and operation of the Building or any other tenants' use of same.

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

Without limiting the foregoing, State 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. State shall take all precautions to eliminate any nuisances or hazards in connection with its activities within the Premises. State shall not advertise in any manner in areas outside the Premises or on or about the Building; provided, however that State may (i) place one identification plate on each antenna, and base station equipment component that comprises the State'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 the State's Equipment as belonging to State, and (ii) install all signage required by federal, state and local laws, rules and regulations, codes and ordinances.

## 7. INSTALLATION OF TENANT IMPROVEMENTS

### 7.1 Tenant Improvement Work

As of the Commencement Date, the State's Equipment in the Equipment Area and Antenna Location is as listed and depicted in Exhibit A.

Should State desire to upgrade or replace such Equipment, State shall submit its plans and specifications to the Director of Property for written approval prior to commencement of the work (such work is called the "**Tenant Improvement Work**" or "**Tenant Improvements**" and such plans and specifications are called the "**Approved Plans**"). The Approved Plans may be altered if required in order for State to obtain any permits or approvals necessary for construction of the Tenant Improvements, subject to the prior written and reasonable approval of City. State 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 (State's Alterations). State 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 State has first obtained all necessary permits and approvals for State to be legally entitled to construct the Tenant Improvements.

## 7.2 Working Requirements

State and its subtenants shall comply with the applicable requirements of San Francisco Administrative Code Sections 23.61 and 23.62 in the performance of the Tenant Improvement Work, as further set forth in Section 29.21 (Prevailing Wages and Local Hiring Requirements) below.

## 7.3 Air-Conditioning and Fire Suppression

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

# 8. ALTERATIONS

## 8.1 State's Alterations

(a) State shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "**Alterations**") to the Building or any of the Building Systems, except with City's prior written consent in each instance which shall not be unreasonably withheld. All Alterations shall be done at State'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 Twenty-Five Thousand Dollars (\$25,000), then State 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

(b) Without limiting Section 27.2 (Hazardous Materials in Premises) below, if asbestos-containing materials ("**ACM**") are determined to exist in or about the Premises, State shall ensure that all Tenant Improvement Work, Alterations and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, State shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Section 25915 *et seq.* informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

(c) State, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the California Building Standards Code and any applicable requirements of the San Francisco Building Code, Section 3407, and all other

applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). State and its Agents or Invitees shall give to City three (3) business days' prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, State and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

## 8.2 Title to and Removal of State's Equipment

Title to the State's Equipment, Tenant Improvements, all permitted improvements or equipment installed at and affixed to the Premises by State and all of State's personal property (collectively, "**State's Property**") shall remain the property of State; provided, however, that any structural improvements to the Building or any new openings made in the Building pursuant to Section 3.1 that are made by State with City's consent shall become City's property and remain on the Premises, unless otherwise approved by City to remain State's property. City hereby acknowledges that State 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 State 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). State may at any time, including any time it vacates the Premises (excluding the structural improvements referenced above), remove all of State'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 State to remove on or after the Expiration Date or any earlier termination of this Lease in accordance with Section 26 (Surrender of Premises) at State's sole expense, all or part of any structural improvements to the Premises or the common areas of the Building made by City or State, which were made in order to provide sufficient support for State's equipment, and any antenna or tower supports, foundations, or base plates. In the event State has timely exercised the Extension



Option, then City's election in the preceding sentence shall apply as of the expiration date of the Extended Term.

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

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

### **8.4 Working Requirements**

State and its subtenants shall comply with the applicable requirements of San Francisco Administrative Code 23.61 and 23.62 in the performance of the Tenant Improvement Work, as further set forth in Section 29.21 (Prevailing Wages and Working Requirements) below.

## **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 State prior notice of such work and shall make reasonable efforts not to disrupt State's normal use of State's Equipment in the Premises. The making of any such alterations, additions, repairs, deletions or improvements shall in no event entitle State to any damages, relieve State 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 State, provided that State can still operate the Premises as a Communications Site. During the period of any such alterations by City which materially impair State's use of the Premises as a Communications Site, State shall have the right at no additional charge to bring into the Building and operate a portable generator and mobile Communications Site and telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage and Destruction).

## **10. REPAIRS AND MAINTENANCE**

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

City shall not be responsible for any maintenance of any portion of the Building, except that City agrees (i) to correct any immediately life-threatening or hazardous condition that affects any portion of the Building necessary for State's use of the Premises as a Communications Site, so long as such condition is not the result of damage or destruction discussed in Section 15 (Damage or Destruction), the acts, omissions or negligence of State or its Agents, such repair is not otherwise the responsibility of State under Section 10.2 (State's Repairs), and such condition is not disclosed to State under any provision of this Lease or would not have otherwise been discovered by State 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 State, which condition materially affects any portion of the Building necessary for State's use of the Premises as a Communications Site and is not caused by damage or destruction discussed in Section 15 (Damage or Destruction). Upon becoming aware of any such condition, State 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 State'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 State would otherwise be responsible for such conditions hereunder. In the event that the costs of making the corrections or repairs described in subsections (i) or (ii) above exceed Twenty-Five Thousand Dollars (\$25,000.00), City may elect to terminate this Lease within thirty (30) days of the condition requiring correction or repair in lieu of making such corrections or repairs, provided however, that State may elect to pay the portion of such costs in excess of Twenty-Five Thousand Dollars (\$25,000.00) necessary in order to make such correction or repairs, in which case City will proceed with the correction or repair.

## 10.2 State's Repairs

State 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. State shall repair all damage to the Building to the extent such damage results from any State Alterations, State's use of the Premises, or State's entry on the Building pursuant to this Lease. State shall make all repairs and replacements: (a) at State'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)).

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

## 11. LIENS

State 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 State. In the event State 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 shall be payable to City by State 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. State 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 (including preventative) for which State is responsible hereunder. State 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 electrical power and telephone service necessary or appropriate for State's Equipment and State's use of the Premises. Commencing upon the Commencement Date, and monthly thereafter until the expiration of this Lease or State is able to secure a separate meter, State shall pay to City concurrently with each installment of the Base Rent a total amount of One Hundred and Fifty Dollars (\$150) per month ("**Utility Charge**") subject to a three (3%) percent increase annually on the anniversary date of each Adjustment Date.

State may install its own meter, provided that State shall only receive electric service from the San Francisco Public Utilities Commission ("**SFPUC**") if the SFPUC determines that such services are feasible and State must obtain the prior written approval of City, acting in its proprietary capacity as the Building owner, to the plans for the installation of a separate meter. 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, State shall be responsible for the difference in the utility or service charge, if any, due to any such Alterations.

#### (a) Sub-Metered

If applicable, if State is unable to secure separate utility service for State's Equipment and State's use of the Premises, then State shall have the right to sub-meter and use City's electrical service at the Building, including the right to upgrade such utility service at State's sole cost and in a manner reasonably acceptable to City, as Landlord, provided State has any and all required permits and regulatory approvals. State shall reimburse City the actual cost of utility service used by State. The Utility Charge shall be subject to annual reconciliation every six (6) months (or any shorter or longer period selected by City) based on the actual amount of electricity used by State as charged by PG&E or SFPUC without additional City mark-up or administrative fee. State will remit any underpayment within forty-five (45) days of receipt of the reconciliation and any overpayment will be subtracted from the next payment(s) of Utility Charges until reconciled.

#### (b) Interruption

City shall exercise best efforts to maintain electrical service to the Building at all times and shall exercise good faith efforts under the circumstances to provide State with notice at least forty-eight (48) hours prior to any planned interruptions, shut-down or disablement via telephone and email as set forth in the Basic Lease Information.

City acknowledges that State requires the radio use from the Premises which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If an interruption in electrical power service occurs for more than twenty-four (24) consecutive hours, City agrees to allow State 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 in this Section 12, Section 7 (Installation of Tenant Improvements) and Section 15 (Damage or Destruction).

State 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 State's sole cost as are reasonably approved in writing in advance by City.

## **12.2 Mandatory or Voluntary Restrictions**

In the event City provides any utilities pursuant to Section 12.1 (Utilities and Services), and any governmental entity promulgates or revises any statute, ordinance or building, fire or other code or imposes mandatory or voluntary controls or guidelines on City or the Building or any part thereof, relating to the use or conservation of energy or electricity, or in the event City is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle State to any damages, relieve State 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 State, provided that if State cannot operate the Premises as a Communications Site without material interference, State may terminate this Lease upon ten (10) days prior written notice to City. During the period of any such alterations by City which materially impair State's use of the Premises as a Communications Site, State shall have the right, at no additional charge, to bring into the Building and operate a portable generator and mobile Communications Site and telescopic antennae or tower, in a mutually acceptable location and on the other terms and conditions provided with respect to such equipment in Section 15 (Damage or Destruction).

## **12.3 Floor Load**

Without the prior written consent of City, which City shall not unreasonably withhold, State 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, State 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 (State'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**

State, at State's expense, shall promptly maintain the Premises, any Tenant Improvements and State's Alterations, the State's Equipment, and any other improvements and equipment permitted hereunder, and State'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 State'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. Notwithstanding the foregoing, State shall not be responsible for bringing any non-complying conditions in the Premises into compliance with Laws unless such compliance is triggered directly or indirectly as a result of work or installations made by or on behalf of State in the Premises. State further acknowledges City shall have no obligation to bring any non-complying conditions in the Premises or elsewhere in the Building into compliance with Laws; provided, however, that if State is not reasonably able to use the Premises for its permitted uses under this Lease due to non-complying conditions that are not triggered directly or indirectly as a result of work or installations made by or on behalf of State in the Premises, State shall have the right to terminate this Lease by delivering at least thirty (30) days prior written notice of such termination to City. Any work or installations made or performed by or on behalf of State or any person or entity claiming through or under State pursuant to the provisions of this Section shall be made in conformity with and subject to the provisions of Section 10.2 (State's Repairs). In making any application to City's Planning Department for the Communications Site, State agrees to act as both "Applicant" and "Project Sponsor."

The parties acknowledge and agree that State's obligation to comply with all Laws as provided herein is a material part of the bargained-for consideration under this Lease. State's obligation under this Section shall include, without limitation, the responsibility of State to make substantial or structural repairs and alterations to the Premises (including any of the Tenant Improvements or any of State'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 State or City, the degree to which the curative action may interfere with State'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 State's particular use of the Premises; provided however, that if any future Law requires such substantial or structural repairs and alterations, and such future Law is not triggered by State's particular use of the Premises or any State improvements or State's alterations, State shall have the right to terminate this Lease in lieu of performing such substantial or structural repairs and alterations by delivering thirty (30) days advance written notice of such termination to City. Except as expressly provided herein, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve State from its obligations hereunder, or shall give State any right to otherwise seek redress against City, and State waives any rights now or hereafter conferred upon it by any existing or future Law 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.

State 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 State'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 State's obligation to cause the Premises to be used and occupied in accordance with all Laws as provided above.

### **13.2 Licenses and Approvals**

State 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 State's Equipment on the Premises. State 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, State 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, whether such RF or EMF presence or exposure results from State's equipment alone or from the cumulative effect of State'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. To the extent permitted by Government Code section 14662.5, State agrees to indemnify and hold harmless the City from damages proximately caused by State by reason of State's uses authorized in this Lease. State shall not indemnify or hold harmless for any claim or damages caused by City's sole negligence or willful misconduct, or any other damages or claims to the extent not authorized by Government Code section 14662.5.

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

State 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 State in the Premises. State, at State'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, State shall attorn to the successor-in-interest to City, at the option of such successor-in-interest, provided that so long as State is not in default hereunder, such successor-in-interest shall recognize this Lease and shall not disturb State in its possession of the Premises for any reason other than one that would entitle City to terminate this Lease or otherwise dispossess State 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 State written notice of such subordination. State 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 transmitter room. 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 State written notice of its determination and its good faith estimate of the amount of time to repair or rebuild, within thirty (30) days of the date of such damage or destruction. If such repairs or rebuilding cannot be completed within two hundred ten (210) days after the date of such damage or destruction, or if City elects not to repair or rebuild as provided above, then State shall have the right, at its election, to terminate this Lease upon thirty (30) days prior written notice to City.

During the period of any repair or rebuilding provided for hereunder, State shall have the right, at its sole expense, to bring onto the Building in a location mutually acceptable to State 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 State'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 State 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, State 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 State 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 State'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 State within sixty (60) 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. State shall have no claim against City for the value of

any unexpired term of this Lease or otherwise except that State may claim any portion of the award that is specifically allocable to State's relocation expenses or the interruption of or damage to State's business or loss or damage to State'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. State 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 State shall continue to perform all of the terms, conditions and covenants of this Lease, except that State shall be entitled to an abatement in Base Rent to the extent that its use of the Premises as a Communications Site is materially impaired. In the event of any such temporary taking, State shall be entitled to receive that portion of any award which represents compensation for the use or occupancy of the Premises during the Term up to the total Base Rent and Additional Charges owing by State for the period of the taking, and City shall be entitled to receive the balance of any award.

## **17. ASSIGNMENT AND SUBLETTING**

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

State shall not directly or indirectly (including, without limitation, by merger, acquisition, or other transfer of any controlling interest in State), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, "**Assignment**"), or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "**Sublease**"), without City's prior written consent, which shall not unreasonably be withheld, subject to the exception for certain permitted transfers as provided in Section 17.6 (Permitted Assignment). Notwithstanding anything to the contrary contained in this Lease, in no event shall State have the right to encumber by a mortgage, deed of trust, security agreement, or otherwise, any part of the Premises, the Building or City's interest therein.

### **17.2 Notice of Proposed Transfer**

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

### **17.3 City's Response**

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



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

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

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

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

#### **17.5 Assumption by Transferee**

Each Transferee shall assume all obligations of State under this Lease and shall be and remain liable jointly and severally with State for the payment of the Base Rent and Additional Charges, and for the performance of all of the terms, covenants, conditions and agreements herein contained on State's part to be performed. No Assignment shall be binding on City unless State or Transferee shall deliver to City evidence satisfactory to City that it has obtained all permits, licenses, or other approvals required to operate as a wireless telecommunications service provider on the Premises, a counterpart of the Assignment (or other document reasonably satisfactory to the City in the event of an assignment permitted under Section 17.6 (Permitted Assignment)) and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Section. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Except for a permitted assignment to a general partner or affiliate of State as provided in Section 17.6, State shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

#### **17.6 Permitted Assignment**

City agrees that State shall be permitted to enter into an Assignment of this Lease or Sublease of the Premises, without City's prior consent but with notice to City

as provided below, to any entity which directly or indirectly controls, is controlled by or is under the common control with, State, and will use the Premises in the same manner as State under this Lease and holds all licenses, permits, and other approvals necessary to lawfully operate a Communications Site on the Premises. State shall use its best efforts to provide City with notice in advance of any such permitted Assignment and in any event shall provide City with written notice no later than ten (10) days after the effective date of such permitted Assignment.

## **18. DEFAULT**

### **18.1 Events of Default**

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

(a) Any failure to pay any Base Rent or Additional Charges as and when due, provided State shall have a period of forty-five (45) days from State's receipt of written notice from City within which to postmark payment to cure any default in the payment of Rent;

(b) Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided State shall have a period of forty five (45) days from the date of State's receipt 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 forty-five (45)-day period, State shall have a reasonable period to complete such cure if State promptly undertakes action to cure such default within such thirty (30)-day period and thereafter diligently prosecutes the same to completion and State uses its best efforts to complete such cure within sixty (60) days after written notice of default from City;

(c) Any vacation or abandonment of the Premises for more than thirty (30) consecutive days such that the Premises are no longer being used for the purposes set forth in Section 6.1; 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 State's insolvency to take possession of all or substantially all of the assets of State, or an assignment by State for the benefit of creditors, or any action taken or suffered by State 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 State which is not cured by State 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 State's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period

that State 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 State'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 State'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, State 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 State 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 State upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

(d) State shall make all payments to City without deduction (except for offsets explicitly allowed hereunder), default or delay. In the event of the failure of State to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of State or City to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from the non-defaulting party to the defaulting party of such default, this License may, at the non-defaulting party's sole discretion, be terminated. Notwithstanding the foregoing, if a non-monetary default may not be reasonably cured within such thirty (30) day period and the defaulting party commences to cure such default within the thirty (30) day period, the time to cure may be extended through a writing signed by both parties, to a time frame and deadline mutually agreeable to the parties. So long as the defaulting party diligently prosecutes the cure to completion under the mutually agreed upon extended deadline, then this License may not be terminated under this Clause. However, if the defaulting party operates with unreasonable delay in curing the default or otherwise does not cure within the mutually agreed upon time frame, the non-defaulting party may terminate immediately.

## 19. STATE'S INDEMNITY

To the extent permitted by Government Code section 14662.5, State agrees to indemnify, defend and hold harmless ("**Indemnify**") City, its Agents and Invitees, 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, City, its Agents or Invitees, 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. The foregoing Indemnity shall include, without limitation, reasonable fees of 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. State shall not indemnify or hold harmless for any claim or damages caused by City's sole negligence or willful misconduct, or any other damages or claims to the extent not authorized by Government Code section 14662.5.

## 20. INSURANCE

### 20.1 State's Insurance

(a) During the Term, State will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance that complies with applicable Laws; and (ii) commercial general liability ("CGL") insurance with respect to its activities on the Property, such insurance to afford protection of up to Five Million Dollars (\$5,000,000) per occurrence and Six Million Dollars (\$6,000,000) annual aggregate, based on Insurance Services Office (ISO) Form CG 00 01, or a substitute form, providing substantially equivalent coverage. State's CGL insurance shall contain a provision including and naming the Indemnified Parties as additional insureds. Such additional insured coverage: (i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by State, its employees, agents or independent contractors; (ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and (iii) shall not exceed State's indemnification obligation under this Lease, if any.

(b) Notwithstanding the foregoing, State shall have the right to self-insure the coverages required in subsection (a) as follows:

(i) In accordance with Government Code Section 11007.4, the State of California has elected to be self-insured for liability exposures. Under this form of insurance, the State and its employees acting in the course and scope of their employment are insured for tort liability arising out of official State business. All claims against the State of California based on tort liability should be presented as a

government claim to the Government Claims Program, P.O. Box 989052 MS 414, West Sacramento, CA <http://www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx>.

(ii) The State of California has also elected to be insured for its motor vehicle liability exposures through the State Motor Vehicle Liability Self-Insurance Program (VELSIP). This program provides liability coverage arising out of the operations of motor vehicles used by State employees for official State business (California Vehicle Code Sections 17000 and 17001). Motor vehicle liability claims against the State of California should be presented to the Office of Risk and Insurance Management, P.O. Box 989052 MS-403, West Sacramento, CA 95798-9052, (800) 900-3634, [claims@dgs.ca.gov](mailto:claims@dgs.ca.gov). If your motor vehicle liability claim is not resolved within six months from the date of loss, California law requires you to file a formal claim with the Government Claims Program, P.O. Box 989052 MS414, West Sacramento, CA 95798-9052. (Gov Code Section 900, et.seq.) Internet link: <http://www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx>.

(iii) The State of California has a Master Agreement with the State Compensation Insurance Fund regarding Workers' Compensation benefits for all State employees, as required by the Labor Code.

## **20.2 State's Property**

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

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

State acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third-party insurance with respect to the Building, the Premises or otherwise.

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

Notwithstanding anything to the contrary contained herein, City and State (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by third party insurance which is required to be purchased by the Waiving Party under this Lease or is actually 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 State, and State 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**

State 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 or the State's Equipment. 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 State expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of State or other waivers contained in this Lease and as a material part of the consideration for this Lease, State 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 State 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 State 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.

State 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), State 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.

State acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, anticipated and unanticipated claims. State

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 State's Access to the Premises**

City hereby grants to State 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 to where State's Equipment is installed as shown on Exhibit A. Use of such common areas shall be subject to City's rights under Section 9 (City's Alterations of Building and Building Systems). The license granted to State hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating State's Equipment located within the Premises and the Connecting Equipment in the License Area, 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 State's Equipment, provided that State shall notify City or a designee, as designated by City, at least twenty-four (24) hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to State's requested access. In the event of an emergency, State shall have the right to enter the Premises and License Area provided it makes good faith efforts to notify City, or City's designated person, in advance of such entry. The foregoing license is irrevocable until this Lease expires or sooner terminates as provided herein.

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

City and its designated Agents shall the right to enter the Premises at all reasonable times upon not less than twenty-four (24) hours advance notice (except in the event of an emergency) for any of the following purposes:

(a) To determine whether the Premises are in good condition and to inspect the Premises;

(b) To determine whether State is in compliance with its obligations hereunder and to cure or attempt to cure any default in accordance with the provisions of Section 18.2 (Remedies) hereof;

(c) To serve, post or keep posted any notices required or allowed under any provisions of this Lease or required under any applicable law;

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

(e) To show the Premises to any prospective purchasers, brokers, encumbrancers or officials, or, during the last year of the Term of this Lease, to exhibit the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

### **22.3 Emergency Access**

In the event of any emergency, as determined by City, City may, at its sole option and without notice (provided that City shall make reasonable efforts to provide State with notice when feasible in light of the exigent circumstances) enter the Premises and alter or remove State's Property on or about the Premises only to the extent that altering or removing such property is reasonably required in order to address the emergency. 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 State from the Premises or any portion thereof.

### **22.4 No Liability**

City shall not be liable in any manner, and State 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 State, its Agents or Invitees.

### **22.5 No Abatement**

State 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 State's use hereunder.

## **23. ESTOPPEL CERTIFICATES**

State, 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 State stating: (a) that State has accepted the Premises (or, if State has not done so, that State has not accepted the Premises and specifying the reasons therefor), (b) the Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of the obligations of State 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 that may be required by any such persons.

## **24. RULES AND REGULATIONS**

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



## 25. SECURITY DEPOSIT

City is not requiring a security deposit.

## 26. SURRENDER OF PREMISES

Upon the Expiration Date or other termination of this Lease, State 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 State under this Section (and damage caused by casualty or condemnation excepted). The Premises shall be surrendered free and clear of all liens and encumbrances caused by State. State shall, immediately before the Expiration Date or other termination of this Lease, remove all of State's Property and repair any damage resulting from the removal; subject to City's exercise of its rights under Section 8.2 (Title to and Removal of State's Equipment). State's removal and repair work pursuant to this Section, if any, shall be performed (a) at State's expense and at such time and, when required hereunder, in such manner as reasonably approved by City, which City approval shall not be unreasonably withheld, conditioned or delayed, (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. State's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of State's Property which shall remain in the Premises within ninety (90) days 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, State 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 State'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**

State covenants and agrees that neither State 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 State may use small quantities of Hazardous Materials, including backup batteries, as needed for backup power and routine cleaning and maintenance of State's Equipment which are customarily used for backup power and routine cleaning and maintenance of such equipment and so long as all such materials are handled and used in compliance with Environmental Laws. State shall immediately notify City if and when State learns or has reason to believe there has been any Release of Hazardous Material on or about the Premises or the Property.

### **27.3 State's Environmental Indemnity**

To the extent permitted by Government Code section 14662.5, if State breaches any of its obligations contained in this Section, or if any act, omission or negligence of State 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 State, 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 arising during or after the Term of this Lease relating to such Release or violation of Environmental Laws. The foregoing Indemnity includes, without limitation and to the extent allowed by California Government Code section 14662.5, costs incurred in connection with any activities required to Investigate and Remediate any Hazardous Material brought onto the Premises or the Property by State or any of its Agents or Invitees and to restore the Property to its condition prior to State's introduction of such Hazardous Material or the correction of any violation of Environmental Laws. State specifically acknowledges and agrees that it has an immediate and independent obligation to defend City, its Agents and Invitees 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 State by City and continues at all times thereafter. Without limiting the foregoing, if State 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 State 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. State 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. State shall not indemnify or hold harmless for any claim or damages caused by City's sole negligence or willful misconduct, or any other damages or claims to the extent not authorized by Government Code section 14662.5.

## **28. SPECIAL PROVISIONS**

### **28.1 Extension Option**

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

(1) 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 State two (2) options to extend the Term of this Lease (the "**Extension Option**"), each for an additional five (5) years (the "**Extended Term**"). The Lease shall automatically renew for the Extended Term upon the same terms and conditions unless State notifies City in writing of State's intention not to renew this Lease at least ninety (90) days prior to the then-scheduled expiration of the Term. Any such notice by State shall be irrevocable by State except as provided in Section 28.1(b) (Base Rent and Other Terms). If any monetary event of default by State is outstanding hereunder either on the date which is ninety (90) days prior to the expiration of the immediately prior 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 State to reject State's exercise of the Extension Option, whereupon the Extension Option shall be null and void.

(2) Notwithstanding the foregoing, City and State acknowledge and agree that the automatic exercise feature of the Extensions Options in Section 28.1(a)(1) is subject to the approval of both the Board of Supervisors and the Mayor of the City. If the Board of Supervisors and the Mayor adopt a resolution that authorizes City to execute this Lease, but does not expressly approve the automatic exercise feature of the Extension Options, then State shall be required to notify City in writing of State's intention to renew this Lease for the applicable Extended Term at least two hundred seventy (270) days prior to the then-scheduled expiration of the Term.

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

If State elects to exercise an Extension Option pursuant to the terms and conditions set forth in Section 28.1(a) above, then the lease for the Extended Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that upon the commencement of the Extended Term the Base Rent due and payable hereunder shall be increased by an amount equal to four percent (4%) over the Base Rent amount due during the year immediately preceding the Extended Term hereunder, notwithstanding Section 5.2 (Adjustments in Base Rent). see Rent Schedule in Exhibit D, attached hereto.

## **28.2 Right to Terminate**

Each Party shall have the right to terminate this Lease at any time during the term hereof by giving written notice to the other party at least three hundred sixty-five (365) days prior to the date when such termination shall become effective.

If State fails to complete its move out within the notice period and remains on the Premises, additional rent shall be paid and prorated based on the actual number of days the State occupies the Premises following the effective date of termination.

## **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 State if, after notice and public hearing and a reasonable time (not to exceed sixty (60) days) for State to effect a remedy, the San Francisco Board of Supervisors determines that State's continued use of the Premises will adversely affect public health and safety.

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

City shall not grant a lease for the Building if such use would materially adversely interfere with State'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 State not causing measurable interference which materially impairs State's ability to utilize the Premises for its intended purpose.

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

(a) State 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 any other communication or computer equipment used by City or any of its Agents or Invitees on the Property. Subject to City's obligations under Section 28.4 (City's Protection Against Interference), State will not use the Premises or the State'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 (including, without limitation, City's use of the Building as a communications site with related radio, telephone and other communications transmission and reception), and such interference shall be deemed a material breach of this Lease by State, and State 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 (i) to bring an action to enjoin such interference and/or pursue any other remedy available at law or in equity to cause the interference to cease, other than the termination of the Lease, and (ii) if such interference continues for more than four (4) consecutive days after State's receipt of written notice from City, to cause State's Equipment to temporarily cease operation by means of operating a power shut-off or other equipment shut-off device pursuant to standing instructions provided by State, in which event City shall immediately notify State's representative as noted in this Lease that a shut-off of State's Equipment has occurred.

(b) If City plans to make any Alteration to the Building or change in the nature of City's use of the Building during the Term that is reasonably anticipated to result in measurable interference which materially and adversely impairs State's normal

operation of State's Equipment located on the Premises, and as a result of such interference, it would be necessary to either (1) alter all or any portion of the State's Equipment located in the Premises, or (2) to relocate all or any portion of State's Equipment located in any portion of the Premises (each such alteration and relocation is referred to as an "Interference Change"), then City shall notify State in writing ("Change Notice") as far as reasonably possible in advance of the implementation of an Interference Change, but in no event (absent a bona fide emergency) less than one hundred and eighty (180) days in advance of the date that City reasonably anticipates the need to commence the work required. In the event of a bona fide emergency, City shall provide the Change Notice as much in advance as is reasonably practicable in light of the existence of the bona fide emergency. Following State's receipt of a Change Notice from City or State's delivery of written notice to City that an Interference Change has occurred or appears to be imminent, City and State shall (i) promptly and reasonably communicate and cooperate with reasonable diligence and continuity to identify (A) the alterations of State's Equipment on the Premises that may be required in light of the Interference Change, and/or (B) an alternate location of comparable size in and/or on the Building ("Relocation Premises") to which the affected portion(s) of State's Equipment may be relocated, so that State's Equipment, following any such alterations and/or relocation to the Relocation Premises, will provide reasonably comparable operational coverage, capacity and service to State's customers based on a reasonable and objective evaluation of the technical performance of State's Equipment. As part of the communication/cooperation process with City, State shall provide City with a written description of the work and a good faith cost estimate concerning State's Equipment and/or the Building that would be required to effect the necessary alterations and/or relocation, for City's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. (c) If State elects to make such alterations to State's Equipment in the Premises and/or to relocate State's Equipment to the Relocation Premises due to an Interference Change, then such work shall be at State's sole cost and expense, provided, however, that State shall have the right to offset the actual, documented cost incurred by State to complete such alterations or relocation of State's Equipment against Base Rent as it comes due, up to a maximum amount equal to the lesser of (i) the cost estimate contained in State's notice to City described above or (ii) Ten Thousand and No/100 Dollars (\$10,000.00). (d) If State determines, in State's sole discretion, that making the necessary alterations to State's Equipment in the Premises and/or completing the necessary relocation of State's Equipment to the Relocation Premises for an Interference Change are infeasible for either technological and/or economic reasons, then in lieu of undertaking the necessary alterations to State's Equipment and/or completing the relocation of State's Equipment to the Relocation Premises, State shall have the right to terminate the Lease without further liability upon written notice to City.

(c) In the event that after compliance by City and State with the process identified in Section 28.5(b) to address and resolve the Interference Change, City is unable, after using reasonable efforts to do so, to identify Relocation Premises in the Building that would be available to resolve the Interference Change, then City shall have the right to terminate the Lease upon written notice to State to accomplish the City's paramount purpose of undertaking an Alteration to the Building or change in the nature of City's use of the Building during the Term that is reasonably anticipated to result in an Interference Change.

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

### **29.2 No Implied Waiver**

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

### **29.3 Amendments**

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

### **29.4 Authority**

If State signs as a corporation or a partnership, each of the persons executing this Lease on behalf of State does hereby covenant and warrant that State is a duly authorized and existing entity, that State is qualified to do business in California, that State has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of State are authorized to do so. Upon City's request, State 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 "State" or "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 State 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 State and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon the sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

## **29.7 Brokers**

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

## **29.8 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other

than those as to which it is invalid or unenforceable, shall not be affected thereby, and to each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

#### **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. State 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 State by implication or otherwise unless expressly set forth herein.

#### **29.11 Holding Over**

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month to month tenancy for a period of no longer than twelve (12) months, and shall otherwise be on the terms and conditions herein specified so far as applicable (including increases in Base Rent on any successive Adjustment Dates, but not those pertaining to the Term and any Extension Options). Any holding over without City's consent shall (a) require State to pay Base Rent equal to one hundred ten percent (110%) of the latest Base Rent payable by State if State is at fault for the holdover, and (b) constitute a default by State 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 State, and whether or not the amounts are at the holdover rate specified above or the rate in effect at the end of the Term.

#### **29.12 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.

#### **29.13 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.

#### **29.14 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.



### **29.15 Signs**

State 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.

### **29.16 Light and Air**

State 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 State to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of City to State, or in any other way affect this Lease or State's obligations hereunder, except as described in Section 28.4 (City's Protection Against Interference). State shall have the right to terminate this Lease upon sixty (60) days prior written notice in the event a structure is built either by City or others that makes the use of the site inoperable to State for telecom purposes.

### **29.17 Recording**

State 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.

### **29.18 Taxes, Assessments, Licenses, Permit Fees and Liens**

(a) State recognizes and understands that this Lease may create a possessory interest subject to property taxation and that State may be subject to the payment of property taxes levied on such interest. State 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) State 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 State's usage of the Premises that may be imposed upon State by law, all of which shall be paid when the same become due and payable and before delinquency. State 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 State, if so desiring, may have reasonable opportunity to contest the validity of the same.

(c) San Francisco Administrative Code Sections 23.38 and 23.39 require that the City report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction; and that State report certain information relating to such matters to City within sixty (60) days after the applicable transaction. State agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

### **29.19 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 State, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to State, its successors and assigns, or for any obligation of City under this Lease.

### **29.20 Prevailing Wages and Local Hiring Requirements**

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

State shall include, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. State's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse/prevailingwages](http://www.sfgov.org/olse/prevailingwages) or call the City's Office of Labor Standard Enforcement at 415-554-6235.

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

State shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third-party beneficiary

for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. State shall cooperate and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. State's failure to comply with its obligations under this subsection shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

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

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

In the performance of this Lease, State agrees not to discriminate against any employee of, any City employee working with State, or applicant for employment with State, 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.

State 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 11.1 (Compliance with Laws) hereof, State acknowledges its obligation to comply with such Act and any other federal, state or local disability rights legislation. State warrants that it will fulfill that obligation. State also warrants that it will not discriminate against disabled persons in the provision of services, benefits or activities.

### **(b) Subleases and Other Subcontracts**

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

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

State does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to

state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2 (b) of the San Francisco Administrative Code.

**(d) CMD Form**

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

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

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. To the extent applicable to State, State 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, State 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 State and/or deducted from any payments due State.

**29.22 Requiring Health Benefits for Covered Employees.**

The State is exempt, per the Administrative Code Section 12Q.2.4(12).

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

**29.24 Drug-Free Workplace**

State 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. State agrees that any violation of this prohibition by State, its employees, agents or assigns shall be deemed a material breach of this Lease.

**29.25 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.

### **29.26 Restrictions on the Use of Pesticides**

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

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

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

State 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.

### **29.28 Prohibition of Alcoholic Sale and Advertising**

State acknowledges and agrees that no advertising or sale of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other

products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

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

State 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. State 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 State 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.

#### **29.30 Conflicts of Interest**

Through its execution of this Lease, State acknowledges that it is familiar with the provisions of 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 State becomes aware of any such fact during the term of this Lease, State shall immediately notify the City.

#### **29.31 Notification of Limitations on Contributions**

For the purposes of this Section, a "City Contractor" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its execution of this Agreement, State acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. State acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. State further acknowledges that (i) the prohibition on contributions applies to State, each member of State's board of directors, State's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in State, any subcontractor listed in the contract, and any committee that is sponsored or controlled by State, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, State certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it

submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

### **29.32 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.

### **29.33 Food Service and Packaging Waste Reduction**

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

### **29.34 Compliance with San Francisco Business and Tax Regulations Code**

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

### **29.35 Counterparts**

This Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. In the event the Lease is executed by wet ink signatures, the original signatures shall also be exchanged between the parties via mail, in addition to any exchange via electronic means.

**29.36 Effective Date**

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

**29.37 Cooperative Drafting**

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, 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.

**SIGNATURES ON NEXT PAGE**



City and State have executed this Lease as of the date(s) set forth below.

STATE OF CALIFORNIA

CITY:

DIRECTOR OF THE DEPARTMENT  
OF GENERAL SERVICES

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

Approved:

By:  Digitally signed by Deron Morillas  
Date: 2023.02.14 11:22:40 -08'00'  
DERON MORILLAS  
Assistant Chief  
Real Estate Leasing and Planning

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Consent:

APPROVED AS TO FORM:

CALIFORNIA HIGHWAY PATROL

DAVID CHIU  
City Attorney

By:  \_\_\_\_\_  
J. D. SACCANI  
Assistant Chief

By: \_\_\_\_\_  
ELIZABETH A. DIETRICH  
Deputy City Attorney

Approval Recommended:

DEPARTMENT OF GENERAL  
SERVICES

By:  Digitally signed by Kimberley Tsumura  
Date: 2023.02.06 14:29:33 -08'00'

KIMBERLEY TSUMURA  
Senior Real Estate Officer  
State Owned Leasing and  
Development

# EXHIBIT A

## SITE MAP

CONTRACT DRAWING NO. 2719C  
DATE: 08/14/2013

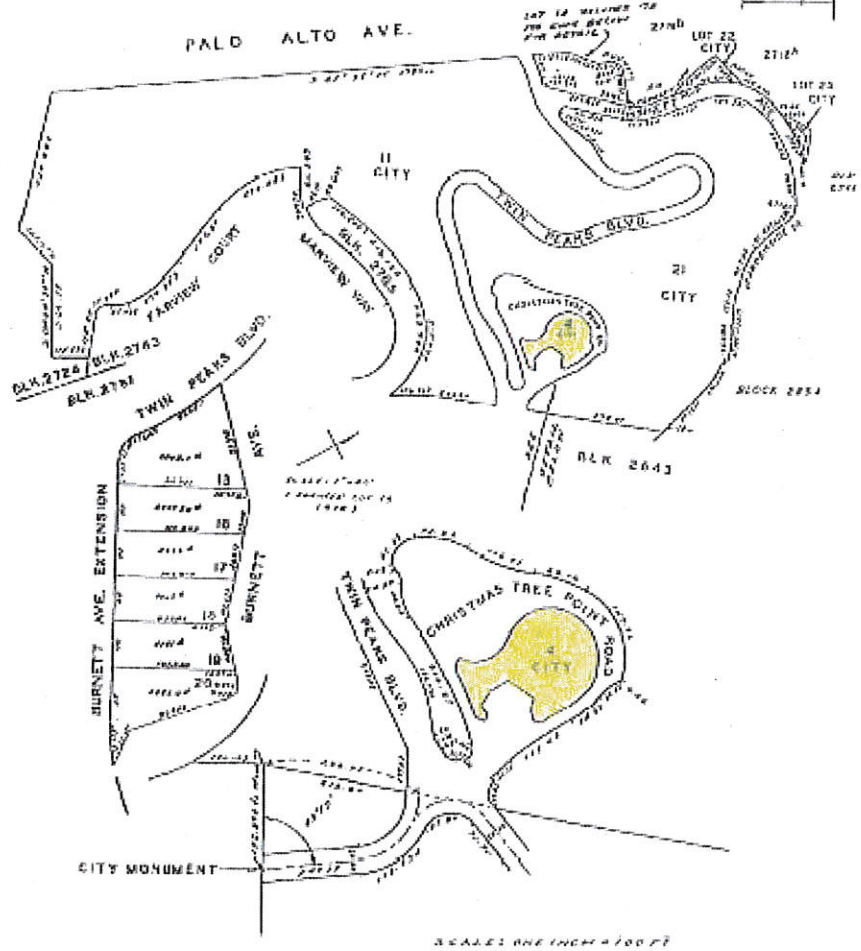


SCALE: 1" = 100'

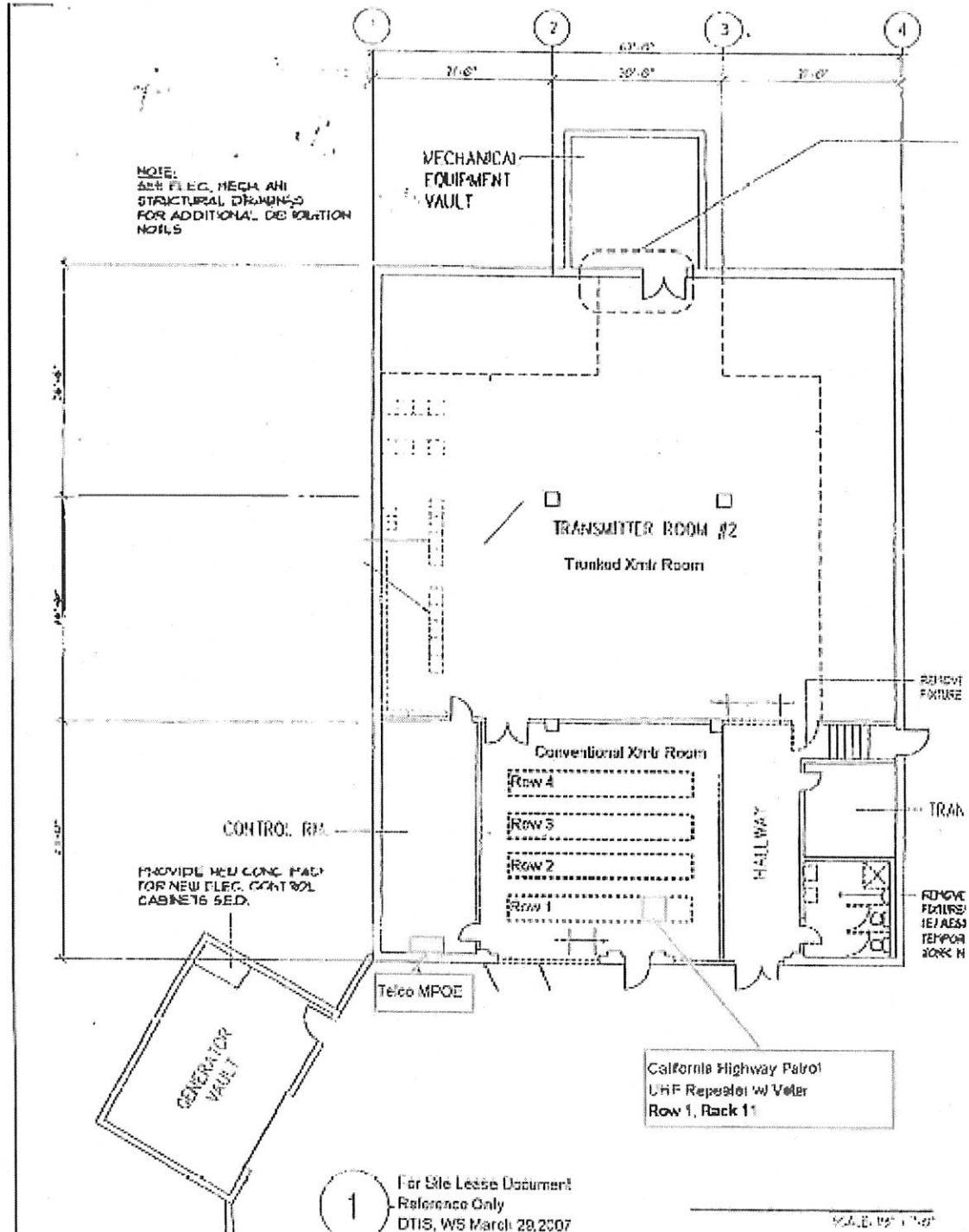
2719C

TWIN PEAKS TERRACE

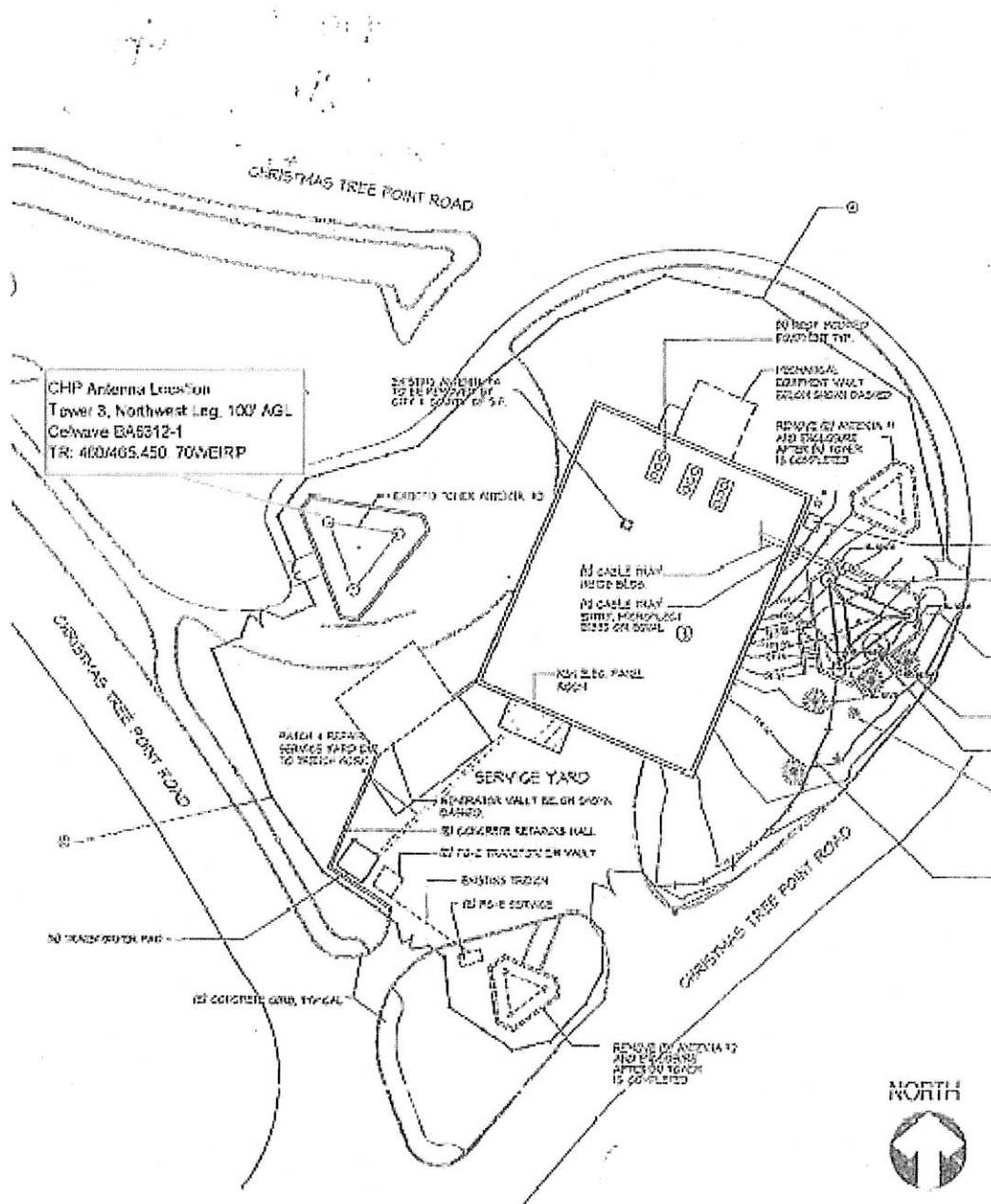
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3	REVISED	08/14/2013
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5	REVISED	08/14/2013
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100	REVISED	08/14/2013



**EXHIBIT A-1**  
**EQUIPMENT AREA**



**EXHIBIT A-2**  
**ANTENNA LOCATION**



2 For Site Lease Document Reference Only

SCALE: 1" = 40'-0"

EXHIBIT B

[Date]

Mr. Andrico Q. Penick  
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 STATE OF CALIFORNIA, at the direction and with the consent of the California Highway Patrol, acting by and through the Director of the Department of General Services (DGS)\_ (State), and the CITY AND COUNTY OF SAN FRANCISCO (Landlord), for Communications Site premises located at Christmas Tree Point, Twin Peaks Boulevard, San Francisco

Dear Ms. Brown:

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

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

Very truly yours,

\_\_\_\_\_

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

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

Accepted and Agreed:

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

ANDRICO Q. PENICK  
Director of Property

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

**EXHIBIT C**

**RENT SCHEDULE, PAID MONTHLY**

Start Date	End Date	Payment	Start Date	End Date	Payment
<b>Initial 10 year Term</b>			<b>First 5 year Option</b>		
Upon Execution	12/31/2023	\$750.00	1/1/2033	12/31/2033	\$1,110.18
1/1/2024	12/31/2024	\$780.00	1/1/2034	12/31/2034	\$1,154.59
1/1/2025	12/31/2025	\$811.20	1/1/2035	12/31/2035	\$1,200.77
1/1/2026	12/31/2026	\$843.65	1/1/2036	12/31/2036	\$1,248.81
1/1/2027	12/31/2027	\$877.39	1/1/2037	12/31/2037	\$1,298.76
1/1/2028	12/31/2028	\$912.49	<b>Second 5 year Option</b>		
1/1/2029	12/31/2029	\$948.99	1/1/2038	12/31/2038	\$1,350.71
1/1/2030	12/31/2030	\$986.95	1/1/2039	12/31/2039	\$1,404.74
1/1/2031	12/31/2031	\$1,026.43	1/1/2040	12/31/2040	\$1,460.93
1/1/2032	12/31/2032	\$1,067.48	1/1/2041	12/31/2041	\$1,519.36
			1/1/2042	12/31/2042	\$1,580.14

**UTILITY SCHEDULE PAID MONTHLY**

Start Date	End Date	Payment	Start Date	End Date	Payment
<b>Initial 10 year Term</b>			<b>First 5 year Term</b>		
Upon Execution	12/31/2023	\$150.00	1/1/2033	12/31/2033	\$201.59
1/1/2024	12/31/2024	\$154.50	1/1/2034	12/31/2034	\$207.64
1/1/2025	12/31/2025	\$159.14	1/1/2035	12/31/2035	\$213.86
1/1/2026	12/31/2026	\$163.91	1/1/2036	12/31/2036	\$220.28
1/1/2027	12/31/2027	\$168.83	1/1/2037	12/31/2037	\$226.89
1/1/2028	12/31/2028	\$173.89	<b>Second 5 year Term</b>		
1/1/2029	12/31/2029	\$179.11	1/1/2038	12/31/2038	\$233.70
1/1/2030	12/31/2030	\$184.48	1/1/2039	12/31/2039	\$240.71
1/1/2031	12/31/2031	\$190.02	1/1/2040	12/31/2040	\$250.33
1/1/2032	12/31/2032	\$195.72	1/1/2041	12/31/2041	\$260.35
			1/1/2042	12/31/2042	\$270.76