

PUBLIC UTILITIES COMMISSION

EDWIN M. LEE, MAYOR

RADIO COMMUNICATIONS SITE LEASE

between

**CITY AND COUNTY OF SAN FRANCISCO,
as Tenant**

and

**COMMUNICATION & CONTROL, INC.
as Landlord**

**For the lease of
Telecommunication Facilities
At Mount Allison
Alameda County, California**

Dated November 1, 2014

PUBLIC UTILITIES COMMISSION

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Ann Moller Caen – Vice President
Francesca Vietor – Commissioner
Anson Moran – Commissioner
Art Torres – Commissioner**

**Harlan L. Kelly, Jr.
General Manager of Public Utilities Commission**

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Exhibit A:	Description of Property
Exhibit B:	Description of Existing Premises and Existing Facilities
Exhibit C:	Notice of Commencement Date
Exhibit D:	Price List for Antennas and Racks (see Section 4.2)
Exhibit E:	Approved Plans for Additional Facilities (to be initialed and attached when finalized)

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

RADIO COMMUNICATIONS SITE LEASE

THIS RADIO COMMUNICATIONS SITE LEASE (this “**Lease**”) dated for reference purposes only as of November 1, 2014, is made between COMMUNICATION & CONTROL, INC., a California corporation (“**Landlord**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Public Utilities Commission (“**City**” or “**Tenant**”).

Recitals

A. Landlord owns the real property in Alameda County, California, known as Assessor’s Parcel No. 096-0090-005-07, more commonly known as Mt. Allison and more particularly described in attached **Exhibit A** (the “**Property**”), on which Landlord owns and operates communications towers (collectively, the “**Tower**”) and equipment shelters and other associated ground facilities.

B. Pursuant to a Radio Communications Site Lease dated November 1, 2005 between Landlord and City, and a Radio Communications Site Lease dated July 1, 2012, between Landlord and City (together, the “**Existing Leases**”), City leases from Landlord certain space on the Tower and space in the ground shelter (collectively, the “**Existing Premises**”) as described in attached **Exhibit B**, for City’s antennas and equipment described in **Exhibit B**, and has a nonexclusive license for placement and maintenance of antenna cables and other appurtenances. Such existing antennas, equipment, cables and appurtenances are referred to herein collectively as City’s “**Existing Facilities**.” The Existing Leases are currently scheduled to expire on October 31, 2014.

C. City desires to continue leasing the Existing Premises and to lease additional space on the Tower and in the shelter for additional antennas and equipment, for a term extending beyond October 31, 2014, and Landlord is willing to lease such space to City, all on the terms and conditions set forth in this Lease.

Now, therefore, Landlord and Tenant hereby covenant and agree as follows:

1. BASIC LEASE INFORMATION

1.1 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 1, 2014
Landlord:	COMMUNICATION & CONTROL, INC.
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Property (Section 2.1):	That portion of Assessor’s Parcel No. 096-0090-005-07 (more commonly known as Mt. Allison), Alameda County, California, as more particularly described on attached Exhibit A , and all appurtenances and improvements thereto.

Premises (**Section 2.1**):

(a) The Existing Premises, as described in **Exhibit B**, and (b) the following additional space on the Property, subject to modification as provided in **Section 2.1** (the "**Additional Premises**"): (i) shelter space for one (1) nineteen inch (19") equipment rack (24" x 24" footprint), (ii) Tower space for one (1) four foot (4') diameter dish antenna, 135' elevation, 3.60 true azimuth, and (iii) Tower space for one (1) six foot (6') diameter dish antenna, thirty foot (30') elevation, 12.30 true azimuth. Such equipment rack, 4' dish and 6' dish antenna, together with the fasteners, cables and appurtenances necessary for installation and operation, as the same may be modified as provided in **Section 2.1**, are referred to in this Lease as City's "**Additional Facilities**."

License (**Section 2.2**):

In connection with lease of the Premises and for the Term of the Lease, Tenant shall have a nonexclusive and nonpossessory license (the "**License**") (i) for the placement of antenna cables, fasteners, and other appurtenances as necessary for the installation and operation of Tenant's Equipment, (ii) for the non-exclusive use and right of vehicular access, ingress and egress over existing roads, paths and driveways from Weller Road to the Communications Site and (iii) within the Communications Site for pedestrian access to and from the Premises (including the front and back of Tenant's equipment racks (collectively, the "**License Area**").

Initial Term (**Section 3.1**):

Five (5) years
Estimated Commencement Date: November 1, 2014
Actual Commencement Date: _____, 2014

Extension Options (**Section 3.2**):

Four additional term(s) of five (5) years each, extended automatically unless City gives at least 90 days advance notice of intent not to extend

Base Rent (**Section 4.1**):

Initial Monthly Base Rent for Existing Premises: \$3,740.15, comprised of the amounts specified in **Exhibit B**.

Estimated Initial Monthly Base Rent for Additional Premises (subject to adjustment as provided in **Section 4.1** to the extent that the final design of the Additional Facilities includes changes in the number and/or size of the antennas and/or rack):

\$960.00, comprised of the following components:

Tower Space:

6' MW Dish: \$380.00

4' MW Dish: \$150.00

Shelter Space:

19" equipment rack: \$435.00

Adjustment Dates (**Section 4.2**):

November 1, 2015 and each November 1 thereafter during the Term, pursuant to **Section 4.2**, below, Base Rent shall be adjusted by three percent (3%) of the then current Base Rent, and the Utility Charge shall be adjusted separately as provided in **Section 11.1**.

Use (**Section 5.1**):

City, including any of its departments, commissions or agencies, shall use the Premises as one of City's radio communications services facilities and for other general telecommunications uses ("**Communications Site**"); however, no additional equipment can be installed on the Premises without the prior written consent of Landlord in its reasonable discretion.

Utilities and Services
(**Section 11.1**):

All utilities and services necessary for use of the Communications Site and permitted by this Lease shall be provided to the Premises by Landlord in accordance with the standards set forth in **Section 11.1**, below, at Tenant's cost. A fuel powered electrical generator is available on the Property and may be used by Tenant in the event of emergency or interruption of utility service, although Landlord does not guaranty it will function.

Initial Monthly Utility Charge
(**Section 11.1**):

\$105

Security Deposit (**Section 24.1**):

None

Notice Address of Tenant
(**Section 28.1**):

San Francisco Public Utilities Commission
525 Golden Gate Avenue, 5th Floor
San Francisco, CA 94102-3220
Attn: Director of Information Technology Services
Re: Mt. Allison Lease

with a copy to:

San Francisco Public Utilities Commission
Real Estate Services
525 Golden Gate Ave., 10th Floor
San Francisco, California 94102
Attn.: Real Estate Director
Re: Mt. Allison Lease

and:

SFPUC Hetch Hetchy Water and Power
Maintenance Engineering
Attn: Chief Engineer and Communications Manager
One Lakeshore Drive
Moccasin, CA 95347
Re: Mt. Allison Lease

Key Contact for Tenant:

Fonda Davidis

Telephone No.:

(415) 551-4306

Secondary Key Contact for Tenant:

Ken Salmon, IT Services Director

Telephone No.:

(415) 551-4301

Notice Address for Landlord
(Section 28.1):

Communication & Control Inc.
2633 S. Bascom Avenue
Campbell, California, 95008-5698

Key Contact for Landlord:

Scott McQueen

Telephone No.:

(800) 399-6326, (408) 377-2900

Brokers:

N/A

2. PREMISES; AS-IS LEASE

2.1 Lease Premises. Subject to the terms, covenants and conditions of this Lease, Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord. The term “**Premises**” means the Existing Premises and the Additional Premises as defined in **Section 1.1** (Basic Lease Information). The Premises are part of the Property, as defined in **Section 1.1** (Basic Lease Information). Notwithstanding the foregoing, Landlord and Tenant acknowledge that Tenant’s design for the Additional Facilities is not yet complete and may change as it is finalized by Tenant’s design/build contractor. If the final design involves a different number, size and/or location of antennas or equipment racks, Landlord and Tenant shall confirm such changes to the Additional Premises and Additional Facilities in writing.

2.2 License. Landlord hereby confers on Tenant for the term of this Lease, the License (as defined in **Section 1.1**, Basic Lease Information) to use the License Area as set forth in **Section 1.1** (Basic Lease Information). Notwithstanding anything to the contrary contained herein, this License does not constitute a grant by Landlord of any ownership, leasehold, easement or other property interest or estate whatsoever in the License Area, or any portion thereof, and the License is subject to all terms and conditions of this Lease. The rights granted to Tenant herein are for the purpose of installing, constructing, inspecting, maintaining, restoring, replacing, accessing and operating City’s Existing Facilities, Additional Facilities, and associated cables, fasteners and equipment located within or on the Premises or such License Area, including, in the case of an emergency, the right to install temporary facilities required to maintain continuous operation of Tenant’s communications facility including a fuel-powered

electrical generator in a location pre-approved by the Landlord, in the reasonable discretion of the Landlord (collectively, “**Tenant’s Equipment**”). Tenant shall notify Scott McQueen, or such other person as designated by Landlord, at least 48 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant’s requested access. However, Tenant shall have immediate access to the Premises in the case of an emergency provided Tenant uses its best efforts to give Landlord advance notice of such access by notifying Scott McQueen telephonically, and if such notice is not possible, Tenant shall notify Landlord immediately after such access. The notice required in the preceding sentence shall be by telephone and telefacsimile. It is the parties’ intent that the License granted under this Lease shall be coterminous with the Lease. Accordingly, termination or expiration of the Lease in accordance with the terms hereof shall effect termination of the License. Landlord, in its sole discretion, may relocate the License at any time following reasonable notice to Tenant.

3. TERM

3.1 Initial Term of Lease and Confirmation of Commencement Dates. The Premises are leased for a term (the “**Initial Term**”) of five (5) years commencing on the date (the “**Commencement Date**”) which is the later of (a) the Estimated Commencement Date, or (b) the Effective Date (as defined in **Section 28.29**). Notwithstanding the foregoing, the term for the Additional Premises shall commence on the date (the “**Additional Premises Commencement Date**”) which is the first business day following Tenant’s delivery of written notice to Landlord that Tenant has obtained all permits and approvals necessary for Tenant to be legally entitled to construct and operate City’s Additional Facilities in the Additional Premises (the “**Additional Facilities Approvals**”). The Initial Term for the entire Premises shall end on the day before the 5-year anniversary of the Commencement Date (the “**Expiration Date**”) unless earlier terminated pursuant to the terms hereof.

Notwithstanding anything to the contrary herein, if Landlord receives a bona fide offer from a third party to lease all or part of the Additional Premises for comparable rent for a term commencing on a date (the “**Third Party Commencement Date**”) which is on or after the Commencement Date but before the Additional Premises Commencement Date, Landlord shall notify Tenant and provide a copy of the offer. Within fifteen business days after receipt of such notice, Tenant shall notify Landlord whether Tenant (i) elects to commence paying Base Rent for such Additional Premises on the Third Party Commencement Date [in which case, Landlord shall tender possession of such Additional Premises to Tenant as of the Third Party Commencement Date (and the Third Party Commencement Date shall be deemed the Additional Premises Commencement Date with respect to such Additional Premises)] or (ii) waive Tenant’s right to lease such Additional Premises, in which case Landlord shall be free to lease such Additional Premises to the third party. If Tenant waives the right to lease such Additional Premises and Landlord thereafter fails to enter into a lease with the third party before or within ten business days after the Third Party Commencement Date, Landlord shall then offer to lease such Additional Premises to Tenant on the original terms provided herein.

Notwithstanding anything to the contrary herein, City shall have the right at any time during the Term to cancel this Lease, without any penalty, fee or other liability, by giving Landlord not less than sixty (60) days prior written notice.

Promptly following the Commencement Date, if the Commencement Date occurs on a date other than the Estimated Commencement Date specified in the Basic Lease Information, Tenant shall deliver to Landlord a notice in substantially the form attached hereto as **Exhibit C** identifying the Commencement Date determined in accordance with the provisions hereof, and Landlord shall execute and return such notice to Tenant. Promptly following the Additional Premises Commencement Date, Tenant shall deliver to Landlord a notice in substantially the form attached hereto as **Exhibit C** identifying the Additional Premises Commencement Date determined in accordance with the provisions hereof, and Landlord shall execute and return such

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

3.2 Extension Options. City shall have the right to extend the Term for four (4) successive periods of five (5) years each ("**Extension Terms**") upon the same covenants, terms and conditions set forth herein, including annual Base Rent increases in accordance with **Section 4.2**. This Lease shall be automatically extended for each successive Extension Term unless City provides written notice to Landlord of City's intention not to extend this Lease at least ninety (90) days prior to the expiration of the then current Initial Term or Extension Term. The Initial Term and all Extension Terms are referred to herein collectively as the "**Term**."

3.3 Existing Premises; Delay in Delivery of Additional Premises. Landlord and City acknowledge that City currently operates City's Existing Facilities in the Existing Premises pursuant to the Existing Leases. The Existing Leases are scheduled to expire on October 31, 2014, and Tenant shall remain in possession of the Existing Premises on the Commencement Date. Landlord shall use its good faith, diligent efforts to tender possession of the **Additional Premises** to Tenant on or before the Additional Premises Commencement Date. If Landlord is unable to tender possession of the Additional Premises by the Additional Premises Commencement Date, then the validity of this Lease shall not be affected except that City's obligations to pay Monthly Base Rent (or any other charges) for the Additional Premises shall not commence until Landlord has tendered possession of the Additional Premises and Tenant has obtained the Additional Facilities Approvals. However, if Landlord is unable to deliver possession of the Additional Premises to City as required hereunder within thirty (30) days after Tenant obtains the Additional Facilities Approvals, then City may, at its option, terminate this Lease with respect to the Additional Premises, without any further liability under this Lease, upon written notice to Landlord given any time before Landlord tenders possession of the Additional Premises.

3.4 Termination of Existing Leases. The Existing Leases shall terminate effective upon commencement of the Initial Term of this Lease.

4. RENT; ADDITIONAL CHARGES

4.1 Base Rent. Beginning on the Commencement Date, Tenant shall pay to Landlord during the Term the monthly Base Rent for the Existing Premises specified in the Basic Lease Information, as the same may be increased pursuant to **Section 4.2** (Adjustments in Base Rent). Tenant shall commence paying Base Rent for the Additional Premises, as such Base Rent may be adjusted pursuant to **Section 4.2**, commencing on the Additional Premises Commencement Date, as defined in **Section 3.1**, provided that Landlord tenders possession of the Additional Premises to Tenant on that date.

The Base Rent shall be payable in monthly installments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. The Base Rent shall be adjusted to reflect the actual premises occupied by the Tenant at the time the monthly installment comes due. Tenant shall pay the Base Rent without any prior demand and without any deduction or setoff except as otherwise provided in this Lease. If the Commencement Date or Additional Premises 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 applicable Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.2 Adjustments in Base Rent. On each date specified in the Basic Lease Information for the adjustment of Base Rent (an "**Adjustment Date**") during the Term, the Base Rent payable by Tenant under **Section 4.1** for the Premises (Base Rent) shall be adjusted by

three percent (3%) each year. The annual adjustments shall not apply to the Shelter-Utility Charge portion of the Base Rent, which is subject to adjustment in accordance with the provisions of **Section 11.1**, Utilities and Services.

If the final design of the Additional Facilities includes a different number or different sizes of antennas or racks than described in **Section 1** [Basic Lease Information], the Base Rent for the Additional Premises shall be modified to apply Landlord's standard pricing to the designed facilities, consistent with the price list attached as **Exhibit D**. Further, if the Additional Premises Commencement Date occurs after November 1, 2015, the Base Rent for the Additional Premises as of the Additional Premises Commencement Date shall be increased by three percent (3%) as it would have been had the Additional Premises been part of the Premises on November 1, 2015.

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

5. USE

5.1 Permitted Use. Tenant, including any of its departments, commissions or agencies, may use the Premises during the Term of this Lease for radio communications services facilities and such other general telecommunication uses as are specified in the Basic Lease Information and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

5.2 Interference with Access. Landlord shall provide to City at all times use of the Premises and uninterrupted access thereto to the maximum extent possible, including, without limitation, during any power outages affecting the Premises or any portion of the License Area. If City's use of any of the Premises or License Area, or access thereto is interrupted due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for seventy-two (72) hours and impairs City's ability to access the Premises or to otherwise use the Premises, including any Tenant's Equipment located thereon, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to access or use the Premises, including any Tenant's Equipment located thereon. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to access or use the Premises, including any Equipment of Tenant's located thereon, then City shall have the right, without limiting any of its other rights under this Lease to terminate this Lease. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to **Section 12** (Damage and Destruction) hereof.

6. INSTALLATION OF TENANT IMPROVEMENTS Following the Commencement Date and Tenant's receipt of the Additional Facilities Approvals, Tenant shall commence to install City's Additional Facilities on the Additional Premises in accordance with the plans and specifications, approved by Landlord (such work is called the "**Tenant Improvement Work**" or "**Tenant Improvements**" and such plans and specifications are called the "**Approved Plans**"). Upon approval, a copy of the Approved Plans will be initialed by the parties and attached hereto as **Exhibit E**. The Approved Plans may be altered, subject to the prior written and reasonable approval of Landlord, if required in order for Tenant to obtain any permits or approvals necessary for construction of the Tenant Improvements. Tenant shall be responsible, at its cost, for performing the Tenant Improvement Work in accordance with the Approved Plans and

otherwise in compliance with the standards contained in **Section 7.1** (Tenant's Alterations). Tenant shall further be responsible, at its cost, for obtaining all permits and licenses required in connection with the Tenant Improvements and satisfying any conditions or mitigation measures approved in connection therewith. No Tenant Improvement Work shall commence until Tenant has first obtained all necessary permits and approvals for Tenant to be legally entitled to construct the Tenant Improvements.

7. ALTERATIONS

7.1 Tenant's Alterations. Except as set forth below in this **Section 7.1**, Tenant shall not make or permit any alterations to the Property or any of the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems on the Property (collectively, "**Utility Network**"), except with Landlord's prior written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Utility Network, systems or structural integrity of improvements on the Property, shall not constitute Alterations requiring Landlord's consent. Any alterations to the Property or Utility Network ("**Alterations**") shall be done at Tenant's sole expense in accordance with applicable Laws (as defined below). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. City shall be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Tenant requests in writing and Landlord accepts such Alterations at the time of City's request and agrees they can remain on the Premises after termination of the Lease.

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

7.3 City's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant (all of which are herein called "**City's Personal Property**") that can be removed without structural or other material damage to the Premises shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 25** (Surrender of Premises) hereof. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing or otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the City's Personal Property from the Premises within thirty (30) days after the earlier of the Expiration Date or receipt of notice of the sooner termination of this Lease (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), (ii) will repair any damage caused by the removal of City's Personal Property, and (iii) Tenant reimburses Landlord for its actual costs in reviewing and preparing any document required under this subsection which amount shall not exceed \$1,000.00. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within thirty (30) days after the Expiration Date.

8. LANDLORD'S ALTERATIONS OF THE PROPERTY AND UTILITY

NETWORK Landlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to all or any part of the Property, the Utility Network or the common areas of the Property, for any purpose including compliance with mandatory or voluntary controls or guidelines, subject to the following terms and conditions. In performing any such work (including without limitation any leasehold improvement work for other tenants on the Property), Landlord shall make good faith efforts to give Tenant prior notice of such work, and shall make reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Premises and License Area, including Tenant's use of any Tenant's Equipment located thereon. Landlord shall promptly remedy any such interference or disruption upon receiving City's notice thereof.

9. MAINTENANCE AND REPAIRS

9.1. Landlord's Maintenance and Repairs. Landlord shall repair and maintain, at its cost, in good working order and in a safe and sanitary condition, (a) any exterior and structural portions of any improvements located on the Property, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and any heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, and security systems of such improvements, and (b) any other mechanical, electrical and communications systems, utilities and other infrastructure serving the Premises, the License Area and any Common Areas (collectively, the "**Property Systems**"). Without limiting the foregoing, Landlord shall maintain the Property in a clean, safe and attractive manner and shall not permit any other tenants of the Property to disturb or interfere with City's use of the Premises or permit to be done in or about the Property or anything that is illegal, is dangerous to persons or property or constitutes a nuisance.

9.2. City's Maintenance and Repairs. Subject to Landlord's warranty under **Section 12.1** (Premises Compliance), and Landlord's repair and maintenance obligations hereunder, City shall, at its sole expense, operate, repair, maintain and manage, at its sole cost the Premises, the Existing Facilities, Tenant Improvements and any other permitted Alterations, in good working order and in a safe and sanitary condition, normal wear and tear excepted, from and after the Commencement Date. Tenant shall, at its sole expense, repair any damage to the License Area, normal wear and tear excepted, caused by Tenant, its Agents or Invitees. At all times during the Term of the Lease, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those portions of the Property that are necessary to inspect, operate, maintain or repair any telecommunications, data and computer cabling facilities and equipment installed by City.

10. LIENS Tenant shall keep the Premises and the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant, except for Tenant obligations under the financing arrangements described in **Section 7.3** (City's Personal Property). Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Landlord shall deem proper for the protection of Landlord, the Premises, and the Property, from mechanics' and material suppliers' liens. Tenant shall give to Landlord at least ten (10) days' prior written notice of commencement of any repair or construction on the Premises except for minor and routine repair and maintenance for which Tenant is responsible hereunder and except for emergency repairs (for which Tenant shall give such notice as is reasonably practicable under the circumstances).

11. UTILITIES AND SERVICES

11.1 Utilities and Services. During the Term, Landlord shall furnish, or cause to be furnished to the Premises, any and all utilities or services necessary or appropriate for City's use and enjoyment of the Premises including, but not limited to: (a) Climate control (HVAC) in the

shelter portion of the Premises in amounts required for City's comfortable use and operation of the shelter portion of the Premises and Tenant's Equipment on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("Daily Basis") maintaining a temperature range from not less than -30 and not greater than 60 °C (-22 to +140 °F); (b) electric power consisting of one 115 VAC, 20A circuit for each equipment rack, delivered to a simplex or duplex outlet located on the wall no further than 3 feet from the edge of the rack, and otherwise in amounts required for the operation of Tenant's Equipment, on a Daily Basis with automatic generator back-up power to be established no later than 120 seconds following any loss of utility power; and (c) telephone service in the form of at least one voice PSN telephone line with call in capability in the shelter. During the Term, Landlord shall provide a fuel powered electrical generator for the benefit of the Premises in the event of emergency or interruption of utility service. Landlord does not guarantee that the generator will function; however, Landlord will provide maintenance and servicing of the generator in accordance with manufacturer recommendations, including regular general inspection, lubrication service, cooling system service, fuel system service, servicing and testing starting batteries and regular engine exercise.

Tenant shall not: (a) connect or use any electrical equipment that exceeds the capacity of the electrical system(s) on the Property; or (b) connect any apparatus, machine or device through electrical outlets except in the manner for which such outlets are designed, except for such modifications as may be shown on the Approved Plans and for any other such modifications at Tenant's sole cost as are reasonably approved in writing in advance by Landlord.

Landlord shall pay for all gas costs. Tenant shall pay as additional rent the cost of all electrical service provided to the Premises and attributable to Tenant's operations of their Equipment ("**Utility Charge**"). The initial Utility Charge will be an estimated cost given by the Tenant to the Landlord upon the execution of this Agreement to be paid in the same manner as Rent pursuant to **Section 4.1** of this Agreement. Within the first six (6) months after installation of the Additional Facilities and then yearly thereafter for the Term and any Extended Term, the Tenant's Equipment will be audited for electrical usage (for a period of at least 30 days and not more than 60 days) to determine the average use of Tenant. This audited usage will be used to recalculate and amend Tenant's electrical costs. (Example for a 30 day usage period: 343 kWh X current rate at .11 per kWh = \$ 37.73). Upon determination of the actual average usage, Tenant shall be notified of the cost of its actual usage and that amount shall be payable with the next monthly Rent payment and thereafter in accordance with **Section 4.1** of this Agreement. Tenant or Landlord shall reimburse the other for any deficiencies or overages in the amounts paid by Tenant within 30 days of the notice of the actual usage. Tenant shall be solely responsible for and promptly pay all charges for any telephone service and any other utility, other than gas used or consumed by Tenant on the Premises. The initial estimated monthly Utility Charge is set forth in **Section 1.1** (Basic Lease Information).

11.2 Maintenance of Fences and Road. Landlord shall maintain in good condition and repair at its expense any existing fence along or about the property line of the Premises. Landlord shall also maintain, at its expense, in good condition and repair an all-weather gravel roadway in, on or to the License Area leading to Premises or Tenant's Improvements which road Tenant acknowledges may be used by Landlord and/or other tenants of Landlord. Landlord shall not interfere with any travel on such roads by Tenant or its Agents, as defined in **Section 28.5**.

11.3 Disruption of Essential Services. In the event of any failure, stoppage or interruption of any utilities or services to be furnished by Landlord hereunder, Landlord shall immediately notify City of such failure, stoppage or interruption, diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. In the event Landlord is unable to supply any of the Property's sanitary, electrical, heating, air conditioning, fire protection and security, or other essential services serving the Premises (collectively, "**Essential Services**") and such inability of Landlord impairs City's ability to access or use the License Area or Premises, including Tenant's Equipment located thereon, for a period of twenty-four (24)

hours or more, then the Rent shall be abated based on the extent such inability of Landlord impairs City's ability to access or use the License Area or Premises, including the Tenant's Equipment located thereon, or, alternatively at City's election, City shall have the option to provide such services and offset the reasonable cost thereof against the Rent next due under this Lease. Such abatement, or right to provide the services and offset against Rent, shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs City's ability to access or use the License Area or Premises, including the Tenant's Equipment located thereon. Landlord shall use its best efforts to restore disrupted Essential Services as soon as possible. However, if such failure to provide any Essential Services continues for any reason for thirty (30) days and such failure interferes with City's access and use of the License Area or Premises, including the Tenant's Equipment located thereon, then City may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Lease upon written notice to Landlord.

12. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS

12.1 Premises Condition. Landlord and Tenant agree and acknowledge that Tenant is accepting the Premises in the "as-is" condition. It is the responsibility of the Tenant to satisfy itself as to the condition of the physical structure, fixtures and permanent improvements of the Premises and all portions of the Property and the License Area along the path of travel to the Premises. Landlord makes no warranty or representation as to the condition of the Premises, except that Landlord represents that as of the date of this Lease Landlord has not received any written notice of non-compliance with any laws, orders and regulations of federal, state, county and municipal authorities (collectively, the "**Laws**") relating to any portion of the Premises, Property, or License Area or the use or occupancy thereof. Landlord acknowledges and agrees that in no event shall Tenant have any obligation to maintain any portion of the Premises, Property, License Area or Property Systems serving the Premises in compliance with applicable present or future Laws, except to the extent of City's obligations with respect to the Premises pursuant to **Section 12.2** below. Without limiting **Section 18.2** (Landlord's Indemnity), Landlord shall Indemnify City against any and all Claims, as defined in **Section 18.1**, arising out of any failure of the Property, License Area, Property Systems, or any portion thereof, to comply with applicable Laws as provided in this Section or any misrepresentation by Landlord under this Section so long as such Claims are not caused by Tenant, its contractors, agents, or employees.

12.2. City's Compliance with Laws; Indemnity. City shall use the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to **Section 7** hereof and such modifications are not otherwise Landlord's responsibility under this Lease. City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures and permanent improvements of the Premises or portions of the Property along the path of travel to the Premises, which shall not be Tenant's obligation as provided in **Section 12.1** above. Without limiting **Section 18.1** (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

12.3 Licenses and Approvals. Tenant represents and warrants that it has acquired all licenses, permits, and other approvals required under all federal, state, and local laws for the operation of Tenant's Existing Facilities on the Premises and will obtain all such licenses, permits and approvals for the Additional Facilities before commencing installation. Tenant shall maintain all such licenses, permits or other approvals throughout the Term of this Lease.

12.4 Radiofrequency Radiation and Electromagnetic Fields. Without limiting Section 12.1 above, Tenant shall comply with all present and future laws, orders and regulations of federal, state, county and municipal authorities relating to allowable presence of or human exposure to Radiofrequency Radiation (“**RFs**”) or Electromagnetic Fields (“**EMFs**”) on or off the Premises, including without limitation, all applicable standards adopted by the Federal Communications Commission, whether such RF or EMF presence or exposure results from Tenant’s equipment alone or from the cumulative effect of Tenant’s equipment added to all other sources on or near the Property. Landlord 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 on the Property such that the cumulative levels exceed allowable levels. If the cumulative effect of Landlord’s use of the Property taken together with Tenant’s use hereunder and other tenant(s) or permittee(s) whose use predated the Commencement Date exceeds such standards, Tenant shall have the right to terminate this Lease without penalty upon thirty (30) days’ prior written notice to Landlord.

12.5 Compliance with Insurance Requirements. Tenant shall not conduct any use in or about the Premises that would create any unusual fire risk, and shall take commercially reasonable steps to protect Landlord from any potential premises liability by reason of any business operation being conducted by Tenant in the Premises.

13. SUBORDINATION. Subject to the terms and conditions set forth below, 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, “**Encumbrances**”), which may now exist or hereafter be executed affecting any of the Property or Landlord’s interest therein and all renewals, extensions, modifications, and replacements of such Encumbrance. Notwithstanding the foregoing, Landlord shall have the right to subordinate any such Encumbrances to this Lease. Notwithstanding the foregoing, if any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to Landlord, at the option of such successor-in-interest, provided that so long as Tenant is not in default hereunder, such successor-in-interest shall recognize this Lease and shall not disturb Tenant in its possession of the Premises, and provided that Tenant has received proper written notice of such succession and the name and address of the successor Landlord. City’s covenant to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the non-disturbance commitments specified in this paragraph. No further instrument shall be required to make the provisions hereof operative except that Landlord shall give Tenant written notice of such subordination. Tenant agrees, however, to execute and deliver, upon request by Landlord and in a form reasonably acceptable to 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.

14. DAMAGE OR DESTRUCTION. In the event of damage to the Premises or the Property by any cause, Landlord shall rebuild or repair the same without delay, provided that such repairs can be made under applicable laws within sixty (60) days after Landlord obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (the “**Repair Period**”). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with City’s access to or use of the License Area or Premises. Landlord’s repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City’s Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within sixty (60) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than sixty (60) nor more than ninety (90) days after notice is given by Landlord. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any excess Rent previously paid for any period of time after the date of the damage.

During the period of any repair or rebuilding provided for hereunder, Tenant shall have the right, at its sole expense, to bring onto the Property in a location mutually acceptable to Tenant and Landlord and to operate a portable generator and/or mobile Communications Site and telescopic antennae or tower (collectively "**Temporary Communications System**") in order to provide for continuous service to Tenant's customers during such period. Neither the placement nor use of such generator or equipment shall interfere with Landlord's operations or business in the Property or, if Landlord has elected to repair or rebuild the Premises or the Property as provided above, with such repair or reconstruction. Notwithstanding the foregoing, Tenant, in its sole discretion, shall have the right to terminate this Lease upon thirty (30) days advance written notice if Tenant is unable to operate such portable generator or mobile Communication Site on the Property during any period of repair or rebuilding provided for hereunder as a result of Landlord's failure to provide a mutually acceptable location for such equipment.

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

If at any time during the last six (6) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder, Landlord or City may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Landlord may terminate this Lease only if the time to repair the damage would exceed or be completed within 30 days of the termination date of this Lease. The parties hereto understand and agree that the provisions of this Section are intended to govern fully the rights and obligations of the parties in the event of damage or destruction, and Tenant and Landlord 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.

15. EMINENT DOMAIN

15.1 Definitions.

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

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

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

15.2 General. If all or any part of the Premises or License Area shall be Taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, this Lease shall terminate as to the part so Taken as of the Date of Taking. In the case of a partial Taking, Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to Landlord within thirty (30) days after such date. 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 Property shall be Taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, Landlord shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the Date of Taking.

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

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

15.3 Total Taking; Automatic Termination. If there is a total Taking of the Premises or License Area, then this Lease shall terminate as of the Date of Taking.

15.4 Partial Taking; Election to Terminate.

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

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

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

15.5 Termination of Lease; Rent and Award . Upon termination of this Lease in its entirety pursuant to **Section 15.3**, or pursuant to an election under **Section 15.4**, then: (a) City's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) Landlord shall be entitled to the entire Award in connection therewith as may be allocated to its interests, except that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property. If the condemning authority awards only a single lump sum to Landlord for any Taking, City shall be entitled to a reasonable and equitable portion of such sum for City's relocation expenses, the interruption of City's business and damage to City's Personal Property.

15.6 Partial Taking; Continuation of Lease. If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under **Section 15.4**, then this Lease shall terminate as to the portion of the Premises so Taken, but shall remain in full force and effect as to the portion not Taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be equitably reduced, and (b) Landlord shall be entitled to the entire Award as may be allocated to its interests, and City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property. If the condemning authority awards only a single lump sum to Landlord for any Taking, City shall be entitled to a reasonable and equitable portion of such sum for City's relocation expenses, the interruption of or damage to City's business and damage to City's Personal Property.

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

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

17. DEFAULT; REMEDIES

17.1 Events of Default. Any of the following shall constitute an event of default by Tenant hereunder:

(a) any failure to pay any Base Rent or Additional Charges as and when due, provided Tenant shall have a period of ten (10) days from the date of written notice from Landlord within which to cure any default in the payment of Rent; provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City or any Adjustment Date, City shall have

twenty (20) days to cure any such nonpayment after written notice thereof from Landlord; provided, further that Landlord shall have no obligation to provide written notice of monetary default more than three (3) times in any calendar year during the Term;

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

(c) abandonment of the Premises (within the meaning of California Civil Code Section 1951.3).

17.2 Remedies. Upon the occurrence of an event of default by Tenant which is not cured by Tenant within the applicable grace period as provided above, Landlord shall have the following rights and remedies in addition to all other rights and remedies available to Landlord at law or in equity:

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

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due, for so long as Landlord does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations.

17.3. Landlord's Default If Landlord fails to perform any of its obligations under this Lease, then (except to the extent otherwise provided in the Lease, and without limiting any of City's other cure rights under this Lease) City may, at its sole option, cure such default at Landlord's expense if such default continues after thirty (30) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such 30-day period, such 30-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Without limiting the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with City's ability to access or use the License Area or Premises, including the Tenant's Equipment located thereon. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to access or use the License Area or Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such 60-day period. City's rights hereunder and under **Section 3.3** (Delay in Delivery of Additional Premises), **Section 5.2** (Interference with Access), and **Section 11.3** (Disruption in Essential Services), shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

18. INDEMNITIES

18.1. City's Indemnity. City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents, as defined in **Section 28.5**, from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees, (collectively, "**Claims**"), incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the gross negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

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

19. INSURANCE

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

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

In addition, Landlord, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows: (a) Commercial general liability insurance with limits not

less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU); and (b) Worker's Compensation Insurance with Employer's Liability Limits not less than \$1,000,000 each accident.

19.3. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord with respect to the Property or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering the Landlord. However, Tenant shall reimburse Landlord for any commercially reasonable deductibles required under the insurance policy if the damage is caused by the fault or negligence of City. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relating to the Property or the Premises; provided, Landlord's failure to do so shall not affect the above waiver.

20. INTENTIONALLY OMITTED

21. ACCESS TO PREMISES

21.1 Landlord's Access to the Premises.

(a) General Access. Landlord reserves for itself and its designated Agents, as defined in **Section 28.5**, the right to enter the Premises, the License Area and any portion thereof at all reasonable times upon not less than twenty-four (24) hours notice (except in the event of an emergency) for any of the following purposes:

(i) To determine whether the Premises and License Area are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

(ii) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of Section 17.2 (Remedies) hereof;

(iii) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

(iv) To do any maintenance or repairs to the Premises or License Area that Landlord has the right or the obligation, if any, to perform hereunder; and

(v) To show it to any prospective purchasers, brokers, Encumbrancers or officials, or, during the last year of the Term of this Lease, exhibiting the Premises and License Area to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

Landlord acknowledges that Tenant's cellular equipment is highly sensitive and is subject to federal regulations restricting access to such telecommunication equipment. Accordingly, Landlord shall not enter portions of the Premises containing such equipment (other than in the event of an emergency) unless Landlord has given Tenant at least one (1) business day's prior notice. In the event of emergency, Landlord shall use reasonable efforts to notify

Tenant prior to such entry and Landlord shall promptly advise Tenant of any such emergency entry promptly thereafter.

(b) Emergency Access. In the event of any emergency, as determined by Landlord, Landlord may, at its sole option and without notice (provided that Landlord shall make reasonable efforts to provide Tenant with notice when feasible in light of the exigent circumstances) enter the Premises.

(c) Minimize Disruption. Landlord shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's access to the Premises and use hereunder.

22. ESTOPPEL CERTIFICATES Either party, from time to time during the Term upon not less than thirty (30) days' prior written notice from the other party, shall execute, acknowledge and deliver to the other party, or such persons or entities designated by such other party, a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the date to which Rent has been paid, and (e) any other information that may be reasonably required.

23. INTENTIONALLY OMITTED

24. INTENTIONALLY OMITTED

25. SURRENDER OF PREMISES Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear excepted. Within ten (10) days after the Expiration Date, City shall remove from the Premises all of City's Personal Property, City's telecommunications, data and computer facilities, and any Alterations City desires or is required to remove from the Premises pursuant to the provisions of **Section 7.1** (Tenant's Alterations), above. City shall repair or pay the cost of repairing any damage to the Premises or the Property resulting from such removal. Notwithstanding anything to the contrary in this Lease, City may, but shall not be required to, demolish or remove from the Premises any of the Leasehold Improvements. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

26. HAZARDOUS MATERIALS

26.1 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. Sections 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 Property, or in, on, under or about the Property or the environment.

26.2 Landlord’s Representations and Covenants. Landlord represents and warrants to City that, to the best of Landlord’s knowledge with no duty to investigate, the following statements are true and correct and will be true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in telecommunications sites, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks; (d) there has been and is no Release of any Hazardous Material in, on, under or about the Property; and (e) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City’s obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety and welfare of City’s employees or City’s use, occupancy or enjoyment of the Premises for their intended purposes.

26.3. Landlord’s Environmental Indemnity. Without limiting Landlord’s Indemnity in **Section 18.2** (Landlord’s Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Landlord’s representations, warranties or covenants in the preceding Section, or (b) in connection with any presence or Release of Hazardous Material in, on, under or about the Property, unless City or its Agents caused such Release.

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

26.5 City’s Environmental Indemnity. If City breaches any of its obligations contained in this Section, or if City or its Agents cause a Release of Hazardous Material from, on, or about the Premises or the Property or the violation of any Environmental Law, then City

shall Indemnify Landlord from and against any and all Claims arising during or after the Term of this Lease as a result of such Release or violation of Environmental Laws; provided, however, Tenant shall not be liable for any Claims to the extent such Release or violation of Environmental Laws was caused by the negligence or willful misconduct of Landlord or its Agents. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy.

27. SPECIAL PROVISIONS

27.1 Tenant's Right to Terminate. Without limiting any other rights of City under this Lease, this Lease may be terminated by Tenant in whole or in part on sixty (60) days' prior written notice to Landlord as follows: (i) if and to the extent Tenant does not obtain licenses, permits or other approvals necessary to the construction or operation of Tenant's Facilities or is unable to maintain such licenses, permits or approvals due to reasons other than its failure to comply with the conditions of any such licenses, permits and approvals; or (ii) if and to the extent Tenant is unable to occupy or utilize the Premises due to a final and nonappealable ruling or directive of the FCC or other governmental or regulatory agency having jurisdiction over the Tenant or the Property, including, but not limited to, a take-back of frequencies. Upon the expiration of the notice period described in this subsection, this Lease shall terminate with respect to the portion of the Premises specified in the notice, and neither party hereto shall have any further obligations with respect thereto, except as expressly set forth herein.

27.2 City's Right to Terminate Due to Finding by Board of Supervisors. City shall have the right to terminate this Lease without liability upon ninety (90) days written notice to Landlord if, after notice and public hearing, the San Francisco Board of Supervisors determines that City's continued use of the Premises will adversely affect public health and safety.

27.3 Tenant's Protection Against Interference. So long as Tenant is not in default hereunder, after the Effective Date Landlord shall not use or grant a right for others to use the Property if such use would materially adversely interfere with Tenant's normal operation of the Communications Site as contemplated by this Lease. Any such use or right to use the Property granted to a third party that permits the installation of communication equipment shall be conditioned upon such use not causing measurable interference which materially impairs Tenant's ability to utilize the Premises for its intended purpose as set forth in this Lease. If during the Term Landlord initiates a use of the Property or grants any right for others to use the Property and such use causes measurable interference that materially impairs Tenant's normal operation of all or part of its Communications Site as contemplated by this Lease, Tenant shall notify Landlord, and Landlord shall have a reasonable period to correct such interference, during which time Landlord shall make all reasonable efforts to correct the interference. Without limiting any other remedies available at law or in equity, if Landlord fails to correct such interference within a reasonable period after Tenant's notice, Tenant shall have the right to terminate this Lease with respect to the adversely impacted portion of the Premises by giving notice to Landlord or, if Tenant determines that such interference can be eliminated by altering the Tenant Improvements or Tenant's other equipment located on the Premises, Tenant may so notify Landlord, which notice shall include a detailed description of the necessary Alterations and a cost estimate therefor ("**Tenant's Alteration Notice**"). Upon receipt of such notice, Landlord shall have the right, by giving notice to Tenant within fifteen (15) days after receipt of Tenant's Alteration Notice, to terminate this Lease with respect to the adversely impacted portion of the Premises, effective not less than thirty (30) days after delivery of the notice to Tenant. If Landlord elects not to terminate this Lease after receiving Tenant's Alteration Notice, Tenant may, at its election, either (i) make the Alterations described in Tenant's Alteration Notice, in compliance with **Section 7.1** (Tenant's Alterations) of this Lease, or (ii) terminate this Lease upon thirty (30) days' prior written notice to Landlord. If Tenant elects to make such

Alterations, Tenant shall offset the actual, reasonable and documented cost incurred by Tenant to complete such Alterations against Base Rent as it comes due.

27.4 Landlord's Protection Against Interference. Tenant will not permit its Existing Facilities or use of the Existing Premises as a Communications Site to cause interference with or impairment of Landlord's computer equipment or the communications configurations, equipment and frequencies existing on the Property as of the effective date whether used by Landlord or any of its Agents or tenants on the Property. Tenant will not use the Existing Premises or its Existing Facilities located on the Existing Premises in any way that interferes with any existing use of the Property prior to the effective date of the Existing Lease under which such Existing Facilities were installed (including, without limitation, Landlord's use of the Property as a warehouse with related radio, telephone and other communications transmission and reception). Tenant will not permit any of its Additional Facilities or use of the Additional Premises as a Communications Site to cause interference with or impairment of Landlord's computer equipment or the communications configurations, equipment and frequencies existing on the Property as of the Effective Date, whether used by Landlord or any of its Agents or tenants on the Property. Tenant will not use the Additional Premises or its Additional Facilities located on the Additional Premises in any way that interferes with any existing use of the Property prior to the Effective Date (including, without limitation, Landlord's use of the Property as a warehouse with related radio, telephone and other communications transmission and reception). Tenant shall comply with all noninterference rules of the Federal Communications Commission and shall reasonably cooperate with Landlord and other tenants to resolve any issues of interference in an equitable fashion, subject to Tenant's rights under **Section 27.3** (Tenant's Protection Against Interference).

27.5 INTENTIONALLY OMITTED

28. GENERAL PROVISIONS

28.1 Notices. Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by commercial courier, or by sending it first class mail or certified mail with a return receipt requested, or next-business-day mail, return receipt requested, with postage prepaid, to: (a) Tenant at Tenant's address set forth in the Basic Lease Information, or at any place where Tenant or any agent, officer or employee of Tenant, acting through SFPUC, may be personally served if sent subsequent to Tenant's vacating, deserting, or abandoning such notice address(es); or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section. All correctly addressed notices sent by a method that provides confirmation of delivery or attempted delivery shall be deemed to have been given or received on the earliest of confirmed attempted, refused, or completed delivery, or upon the date personal delivery is made. Facsimile numbers are provided for convenience of communication. Neither party may give official or binding notice by facsimile.

28.2 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 or of such term, covenant or condition. No acceptance by any Agent of Landlord 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 Landlord while City is in default hereunder, shall constitute a waiver of such breach or of Landlord'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 Landlord or City given in any instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of this Lease.

28.3 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.

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

28.5 Interpretation of Lease. The words "Landlord" and "Tenant" or "City" as used herein shall include the plural as well as the singular. 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. Use of the word "including" or similar words shall not be construed to limit any general term or statement in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words are used. 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. Except as otherwise expressly provided in this Lease, whenever in this Lease Landlord or City is required or requested to give its consent or approval, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval or withholding of consent shall be stated in reasonable detail in writing. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through the SFPUC General Manager, SFPUC Director of Information Technology Services, SFPUC Real Estate Director or City Director of Property, or their respective designees, unless otherwise provided in this Lease, by City's Charter or City ordinance.

28.6 Successors and Assigns. The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third party beneficiaries to this Lease.

28.7 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

28.8 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 shall be valid and enforceable to the full extent permitted by law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

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

28.10 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.

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

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

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

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

28.15 Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

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

28.17 Quiet Enjoyment and Title. Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of **Section 18** (Indemnities), Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

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

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

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

28.21 Prevailing Wages for Construction Work. Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises which Landlord provides under this Lease shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Landlord shall include, in any contract for construction of such improvements to the Premises, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord shall require any contractor to provide, and shall deliver to City every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

28.22 Non-Discrimination in City Contracts and Benefits Ordinance.

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

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

(c) Non-Discrimination in Benefits. Landlord does not as of the date of this Lease and will not during the Term, 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) Condition to Lease. As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Landlord hereby represents that prior to execution of this Lease, (i) Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Landlord

shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

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

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

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

28.26 Tropical Hardwood and Virgin Redwood Ban.

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

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

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

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

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

28.29 Effective Date . This Lease shall become effective on the date upon which the Board of Supervisors and PUC have duly adopted resolutions approving this Lease and the Mayor has approved this Lease, and the parties hereto have duly executed this Lease.

28.30 Disclosure. 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.

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

28.32 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.

28.33 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 CITY'S PUBLIC UTILITIES COMMISSION AND MAYOR AND BOARD OF SUPERVISORS EACH SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE, AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON, AND SUBJECT TO, DUE ADOPTION OF SUCH RESOLUTIONS, AND THIS LEASE SHALL BE NULL AND VOID IF SUCH RESOLUTIONS ARE NOT ADOPTED BY THE PUBLIC UTILITIES COMMISSION AND MAYOR AND BOARD OF SUPERVISORS, EACH IN THEIR SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGE]

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

LANDLORD:

**COMMUNICATION & CONTROL,
INC.,** a California corporation

CITY:

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

By: _____

Name: _____

Title: _____

Harlan L. Kelly, Jr.
General Manager
Public Utilities Commission

By: _____

Name: _____

Title: _____

AUTHORIZED BY

PUBLIC UTILITIES COMMISSION

Resolution No. 14-0112
Adopted: July 8, 2014

BOARD OF SUPERVISORS

Resolution No. _____
Adopted: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney


By: 
Carolyn Johnson Stein
Deputy City Attorney

EXHIBIT A

Description of Leased Premises

All that certain real property located in Alameda County, California, described as follows:

BEGINNING at the United States Geological Survey (USGS) Station Allison, being a 2-inch Bronze USGS Disc stamped "VA 2659" thence from said point of beginning North 20 deg. 30' 36" East 518.96 feet to a 2"x 2" hub being the TRUE POINT OF BEGINNING of this description; thence South 00 deg. 13' 45" East 990.00 feet to a 2"x 2" hub; thence South 89 deg. 43' 37" West 1100.00 feet to a concrete nail and flagging set in rock; thence North 00 deg. 13' 45" West 990.00 feet to a 2"x 2" hub; thence North 89 deg. 43' 37" East 1100.00 feet to the said true point of beginning a portion of Section 16, Township 5 South Range 1 East, Mount Diablo Base and Meridian.

The bearing of North 00 deg. 13' 45" West of the line from City of San Francisco Brass Disk Monument No. 77.7 to City of San Francisco Brass Disk Monument No. 74 was used as the basis of all bearings used in this description.

F.C.C. Information:

Latitude 37 29' 56" North
Longitude 121 52' 16" West

Assessor Parcel Number: 096-0090-005-07

EXHIBIT B

Existing Premises and City's Existing Facilities

[See attached spreadsheet]

EXHIBIT B

Existing Premises and City's Existing Facilities

Itm	Qty	System	Location	Description	Rent
Mt. Allison Lease #1					
1	1	SCADA Radio	Mt. Allison	Communication shelter space for one (1) 19" EIA open equipment rack, with a 24" x 24" footprint.	543.20
2	1	SCADA Radio	Mt. Allison	Utility connection for equipment rack.	35.00
3	1	SCADA Radio	Mt. Allison	Tower space for one (1) Omni antenna, up to 12' long, up to 80' Height AGL, with minimum vertical separation of 6' btw Omnis, for 932/941 MHz SCADA System.	0.00
4	1	SCADA Radio	Mt. Allison	Tower space for one (1) Omni antenna, up to 12' long, up to 80' Height AGL, with minimum vertical separation of 6' btw Omnis, for 932/941 MHz SCADA System.	171.07
Sub-Total					749.27
5	1	PUC MW	Mt. Allison	Tower space for one (1) 2' diameter parabolic microwave antenna at 60' minimum height AGL, up to 100' AGL for a LOS to Calaveras Reservoir on an azimuth due North.	196.87
6	1	PUC MW	Mt. Allison	Tower space for one (1) 4' diameter parabolic microwave antenna at 12' minimum height AGL, up to 25' AGL for a LOS to Sunol Yard on an azimuth due North.	361.88
7	1	PUC MW	Mt. Allison	Tower space for one (1) 6' diameter parabolic microwave antenna at 12' minimum height AGL, up to 25' AGL for a LOS to HTWTP on an azimuth North-West.	520.06
Sub-Total					\$1,078.81
8	1	WSTD Voice Radio	Mt. Allison	Communication shelter space for one (1) 19" EIA open equipment rack, with a 24" x 24" footprint.	572.43
9	1	WSTD Voice Radio	Mt. Allison	Communication shelter space for one (1) 19" EIA open equipment rack, with a 24" x 24" footprint.	572.43
10	1	WSTD Voice Radio	Mt. Allison	Utility connection for equipment rack.	35.00
11	1	WSTD Voice Radio	Mt. Allison	Utility connection for equipment rack.	35.00
12	1	WSTD Voice Radio	Mt. Allison	Communication shelter space for mounting 10 each Low-Band radio filter cavities, measuring 6'-8' diameter and up to 12' long. Space can be on the interior back or side wall of shelter. Alternatively, overhead mounting may also be possible. NO COST	0.00
13	1	WSTD Voice Radio	Mt. Allison	Tower space for one (1) Omni antenna, 16' long, minimum 60' Height AGL, with minimum vertical separation of 6' btw Omnis, for 37/42 MHz (Low-Band) voice radio system. Possible reduction in number through antenna combining.	52.64
14	1	WSTD Voice Radio	Mt. Allison	Tower space for one (1) Omni antenna, 16' long, minimum 60' Height AGL, with minimum vertical separation of 6' btw Omnis, for 37/42 MHz (Low-Band) voice radio system. Possible reduction in number through antenna combining.	52.64
15	1	WSTD Voice Radio	Mt. Allison	Tower space for one (1) Omni antenna, 16' long, minimum 60' Height AGL, with minimum vertical separation of 6' btw Omnis, for 37/42 MHz (Low-Band) voice radio system. Possible reduction in number through antenna combining.	\$164.49
Sub-Total					\$1,484.63
Mt. Allison Lease #1 Total					\$3,312.71
Mt. Allison Lease #2					
1	1	PUC MW	Mt. Allison	Tower space for one 6' diameter parabolic microwave antenna at 12' minimum height AGL, up to 25' AGL for a LOS to Livermore Hills on an azimuth North East	\$427.44
Mt. Allison Lease #2 Total					\$427.44
Mt. Allison Lease #1 & #2 GRAND TOTAL					\$3,740.15

EXHIBIT C

NOTICE OF COMMENCEMENT DATE

[Date]

Mr. Scott McQueen
Vice President of Operations
Communication & Control, Inc.
Campbell, CA 95008-2900

RE: Acknowledgment of Commencement Date and Expiration Date, Lease Between
_____ (Landlord), and the City and County of
San Francisco (Tenant), for Communications Site premises located at

Dear Mr. McQueen:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is _____, 2014.

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

Very truly yours,

Name _____
Title _____

Accepted and Agreed:

By: _____

Dated _____