

File No. 170100

Committee Item No. 9  
Board Item No. 6

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

**Committee:** Budget & Finance Sub-Committee

**Date** April 6, 2017

## Board of Supervisors Meeting

Date April 18, 2017

**Cmte Board**

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

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

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**Completed by:** Linda Wong **Date** March 30, 2017

Completed by: Linda Wong Date: April 12, 2017

1 [Real Property Lease - SPOK, Inc. - Zuckerberg San Francisco General Hospital and Trauma  
2 Center, Building 25 - 1001 Potrero Avenue - \$5,000 per Month Base Rent Exempt]

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

9  
10 WHEREAS, The Priscilla and Mark Zuckerberg San Francisco General Hospital and  
11 Trauma Center ("ZSFGH"), is one of the nation's leading public hospitals and has  
12 continuously provided emergency, acute care, and trauma services to San Francisco  
13 residents for more than one hundred years; and

14 WHEREAS, The ZSFGH campus, including the new hospital at Building 25, is under  
15 the jurisdiction of the City and County of San Francisco's ("City") Department of Public Health  
16 ("DPH"); and

17 WHEREAS, DPH and the Regents of the University of California – San Francisco  
18 ("UCSF") have a long standing affiliation through which UCSF provides physicians and other  
19 professional services at ZSFGH; and

20 WHEREAS, UCSF, DPH, ZSFGH, and their respective doctors, nurses, and staff, rely  
21 upon the paging services and equipment provided by SPOK, Inc., ("SPOK"), through a Paging  
22 Equipment and Services Agreement for daily and emergency communications with UCSF;  
23 and

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

1 WHEREAS, ZSFGH requires antennas and boosters within the building to provide  
2 sufficient paging and cellular service to staff, patients and visitors to routinely communicate  
3 daily and during emergencies; and

4 WHEREAS, To ensure the doctors and staff at the ZSFGH receive their pages in the  
5 hospital, at the campus and surrounding areas, SPOK requires the installation of one Yagi  
6 antenna on the roof of Building 25, and one rack and related power supply equipment in  
7 Building 25 to connect to the building's Distributed Antenna System ("DAS"); and

8 WHEREAS, The Real Estate Division on behalf of the DPH has negotiated a new lease  
9 ("Lease") substantially the form on file with the Clerk of the Board of Supervisors in File  
10 No. 170100, which is hereby declared to be a part of this resolution as if set forth fully herein  
11 (the "Lease") to allow the installation of the equipment at Building 25; and

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

14 WHEREAS, SPOK shall have two (2) additional five (5) year option terms to extend the  
15 Lease at the then City's minimum monthly base rent for similar personal communication sites  
16 within City owned assets, or, at the Base Rent prior to the start of any Option Year Term after  
17 adjusting for an annual Base Rent escalation of three (3%) percent of the then Base Rent,  
18 which options can be accepted at the discretion of the Director of the DPH and the Director of  
19 Property, so long as its UCSF Agreement is not terminated and the City and UCSF continue  
20 to benefit from the Agreement; and

21 WHEREAS, The base monthly rent of \$5,000.00 is subject to annual adjustments of  
22 three (3%) percent; and

23 WHEREAS, The SPOK shall pay for janitorial, pest, debris, and utility costs estimated  
24 to be \$3,708.00 per year; and  
25

1 WHEREAS, SPOK shall be exempt from payment of Base Rent, utilities and other  
2 service charges so long as UCSF's and SPOK'S Agreement to provide paging services and  
3 equipment to UCSF and thereby effectively to the ZSFGH and DPH is in effect and City  
4 benefits from the Agreement; and

5 WHEREAS, On August 24, 2016, the Environmental Planning Division of the San  
6 Francisco Planning Department determined that the project, the lease and use of City  
7 Property for installation of communications equipment, would not be subject to the California  
8 Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA"), pursuant  
9 to CEQA Guidelines Section 15301 and 15303, Said determination is on file with the Clerk of  
10 the Board of Supervisors in File No. 170100 and is incorporated herein by reference; and

11 WHEREAS, On September 8, 2016, the San Francisco Planning Department found the  
12 project, lease and use of the City property to AMS complies with CEQA and is consistent with  
13 the City's General Plan and with Planning Code Section 101.1-(b); a copy of the General Plan  
14 Referral is on file with the Clerk of the Board of Supervisors in File No. 170100 and is  
15 incorporated herein by reference; and

16 WHEREAS, On December 6, 2016, the Health Commission of the City and County of  
17 San Francisco passed Resolution No. 16-13 recommending that the Board of Supervisors  
18 approve lease agreements for the installation of necessary equipment for paging and cellular  
19 services at ZSFGH, Building 25; now, therefore, be it

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

1 FURTHER RESOLVED, The monthly base rent for the initial five year term shall be  
2 \$5,000.00, subject to annual adjustments of three (3%) percent, exclusive of utilities, janitorial,  
3 and debris services estimated to be \$3,708.00 per year; and, be it

4 FURTHER RESOLVED, The Board of Supervisors approves the Lease in substantially  
5 the form in the Board's File and authorizes the Director of Property to take all actions, on  
6 behalf of City, to enter into any amendments or modifications (including without limitation, the  
7 exhibits) to the Lease that the Director of Property determines, in consultation with the City  
8 Attorney, are in the best interests of the City, do not materially increase the obligations or  
9 liabilities of the City, and are necessary or advisable to complete the transaction and  
10 effectuate the purposes and intent of this resolution and are in compliance with all applicable  
11 laws, including City's Charter; and, be it

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

20 FURTHER RESOLVED, That the Competitive Bidding Procedures would be impractical  
21 in light of the existing Agreement between SPOK and UCSF providing UCSF with paging  
22 services and equipment for use by UCSF at Building 25 and the ZSFGH campus; and, be it

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

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

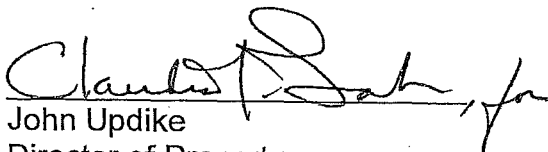
5 FURTHER RESOLVED, That within thirty (30) days of the Lease agreement being  
6 fully executed by all parties, the Director of Property shall provide a copy of the Lease  
7 agreement to the Clerk of the Board to include into the official file.  
8  
9

10 RECOMMENDED:

11   
12

13 Barbara A. Garcia, MPA, Director  
14 Department of Public Health  
15

16 RECOMMENDED:

17   
18

19 John Updike  
20 Director of Property  
21 Real Estate Division  
22  
23  
24  
25

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

**MANDATE STATEMENT**

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

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

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

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

**Distributed Antenna System at ZSFGH**

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

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



**DETAILS OF PROPOSED LEGISLATION**

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

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

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

**Table 1: Summary of Lease Terms**

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

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

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

#### **FISCAL IMPACT**

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

#### **POLICY CONSIDERATION**

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

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

#### **RECOMMENDATIONS**

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

COMMUNICATIONS SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

SPOK, INC.,  
as Tenant

For the lease of

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

November 1, 2016

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**LIST OF EXHIBITS**

**EXHIBIT A – Description of Premises**

**EXHIBIT B – Notice of Commencement Date**

**EXHIBIT C – Approved Tenant's Plans and Specifications**

**EXHIBIT D – First Source Hiring Agreement (Already executed)**

**EXHIBIT E - Access for Telecommunications Equipment Installation and Maintenance**



## COMMUNICATIONS SITE LEASE

THIS COMMUNICATIONS SITE LEASE (this "Lease") dated for reference purposes only as of November 1, 2016, is made between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), and SPOK, INC., a Delaware corporation ("Tenant").

City and Tenant hereby covenant and agree as follows:

### **1. BASIC LEASE INFORMATION**

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

Lease Reference Date:	November 1, 2016
Landlord:	CITY AND COUNTY OF SAN FRANCISCO
Tenant:	SPOK, INC.
Building ( <u>Section 2.1</u> ):	Zuckerberg San Francisco General Hospital and Trauma Center, Building 25, located at 1001 Potrero Avenue, San Francisco, California (the "Building").
Premises ( <u>Section 3.1</u> ):	The portions of the Building consisting of (1) space in the Penthouse of the Building in which Tenant's communications paging facilities are to be installed (shown on <u>Exhibit A</u> , Sheet 1), including a SPOK BDA (B-Directional Amplifier) in Penthouse rack #1, below AMS equipment and (2) certain space located on the roof of the Building on which one (1) Yagi antenna is to be mounted (as shown on <u>Exhibit A</u> , Sheet 2). In connection with the lease of the Premises and for the term of the Lease, Tenant shall have a nonexclusive license for the placement and use of wiring and conduit as shown on the Approved Plans (as defined below). The Building is under the jurisdiction of the City's Department of Public Health.
Term ( <u>Section 4.1</u> ):	Five (5) years  Estimated commencement date: January 1, 2017  Expiration date: December 31, 2021
Extension Options ( <u>Section 28.1</u> ):	Two (2) additional five (5) year Options,

	exercisable on the terms specified in <u>Section 28</u>
Base Rent ( <u>Section 5.1</u> ):	Annual Base Rent: \$ 60,000.00 Monthly payments: \$ 5,000.00  So long as Tenant provides services, and in consideration of the benefit of Tenant's Master Agreement to provide paging services for City and City's affiliates including UCSF and benefit of Tenant's equipment, Tenant is exempt from payment of Base Rent.
Adjustment Dates ( <u>Section 5.2</u> ):	Annually on January 1 of each year, beginning January 1, 2018.
Use ( <u>Section 6.1</u> ):	Tenant shall only use the Premises for the installation, maintenance and operation of Tenant Equipment and for the transmission and reception of paging and/or radio communication signals on various frequencies with the Tenant Equipment (a " <b>Communications Site</b> "). Tenant shall not use the Premises for any other purposes without the written consent of Landlord.
Tenant's Equipment ( <u>Section 6</u> ):	The following equipment and improvements that Tenant has the right to install at and on the Building pursuant to this Lease, which installation shall be at Tenant's sole cost: One (1) Yagi antenna, one (1) 1w BDA (bi-directional amplifier), and related power cable/supply and equipment (collectively " <b>Tenant's Equipment</b> ") shown on Exhibit C attached hereto.
Utilities ( <u>Section 12.1</u> ):	Utilities to be provided by City for a service charge of \$3,708 per annum, payable monthly in advance at \$309.00 subject to a three (3% percent increase annually on the anniversary of each Adjustment Date. In consideration of Tenant's Master Service Agreement and the benefit of the service and equipment to City and its affiliates, including UCSF, Tenant is exempt from payment of utilities during the term of Tenant's Master Agreement for paging services.
Security Deposit ( <u>Section 25</u> ):	\$ 5,000.00 [Already paid by Tenant for Permit.]
Notice Address of Landlord ( <u>Section 29.1</u> ):	Department of Public Health 101 Grove Street San Francisco, CA 94102 Attn: Director of Public Health Re: ZSFGH – SPOK, INC. Lease

with a copy to:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property  
Re: ZSFGH – SPOK, INC. Lease  
Fax No.: (415) 552-9216

and to:

Office of the City Attorney  
City and County of San Francisco  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Virginia Dario Elizondo  
Deputy City Attorney  
Re: ZSFGH – SPOK, INC., Lease  
Fax No.: (415) 554-4755

Key Contact for Landlord:

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

Telephone No.:

415.206.8550

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

Notice Address for Tenant  
(Section 29.1):

SPOK, Inc.  
Site Leasing  
3000 Technology Drive, Suite 400  
Plano, TX 75074

Key Contact for Tenant:

Ruth Obyrne

Telephone No.:

480.216.9656

Alternate Contact for Tenant

Jim Klenke

Telephone No.:

972.801.0208

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

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

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

## **2.2 Required Co-location**

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

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

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

### **3.1 Lease Premises**

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

As used herein, "**Property**" means the Premises, Building and real property upon which the Building is located and all other improvements and appurtenances to such land. In connection with its use of the Premises and for the Term of this Lease, City grants Tenant a nonexclusive license for the placement and use of Tenant's utility and fiber cabling, wires, and conduits reasonably necessary to connect Tenant's Equipment (collectively, the "Tenant Cables") across the areas shown on the Approved Plans (as defined in Section 7.1 (Tenant Improvement Work)). Such license shall be irrevocable, but shall terminate upon any termination of this Lease. City, in its sole discretion and at its sole cost and expense, may relocate the license area upon one hundred eighty (180) days prior written notice to Tenant. Except as otherwise expressly permitted in this Lease, all Tenant Cables that connect Tenant's Equipment located in different sites within, and on top of, the Building shall pass through existing openings in the Building's walls, floors, or ceilings unless Tenant reasonably determines that such existing openings are not usable. In such event, Tenant shall obtain Landlord's prior written consent to make any new penetrations through the Building walls, floors, or ceilings and roofs for any Tenant Cables, which consent will not be unreasonably withheld, conditioned or delayed.

To request Landlord's consent to new penetrations, Tenant shall deliver such request to Landlord in writing, together with any information reasonably requested by Landlord to analyze whether such proposed penetrations would negatively impact the Building's safety or structural integrity (a "**Request Notice**"). Such Landlord-requested information may include an analysis of the impact of the proposed penetrations, prepared by a California-licensed structural engineer with reasonable experience in analyzing such issues. If the cost of making any such new penetrations is more than Five Thousand Dollars (\$5,000), Tenant shall pay Landlord the administrative fee described in Section 8.1. If the cost of making any such new penetrations is

Five Thousand Dollars (\$5,000) or less, at Landlord's election, Tenant shall pay Landlord a reasonable administrative review fee before Landlord is required to review such new penetration request. Such administrative review fee shall be based on Landlord's estimated costs in reviewing the proposed penetrations. Landlord shall notify Tenant in writing if Landlord will charge such an administrative review fee and the amount of such fee within thirty (30) days' of receiving Tenant's Request Notice. Tenant shall have the right to withdraw its Request Notice at any time; provided, however, that if Tenant withdraws such Request Notice after delivering the administrative review fee or a Section 8.1 administrative fee, Landlord shall have no obligation to reimburse such fee to Tenant.

### **3.2 As Is Lease**

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

## **4. TERM**

### **4.1 Term of Lease**

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

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

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

### **5. RENT; ADDITIONAL CHARGES**

#### **5.1 Base Rent**

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

In consideration of the benefit and public purpose of Tenant's Master Agreement to provide a radio paging telecommunications system for the University of California – San Francisco ("UCSF") (an affiliate of ZSFGH) within the SFGH campus, and the benefit of Tenant's Equipment for same and the City, including the doctors and staff at the Zuckerberg San Francisco General Hospital and Trauma Center, Tenant is exempt from payment of Base Rent until the Master Agreement expires or is terminated and so long as Tenant provides said services to UCSF, City and their respective staff.

#### **5.2 Adjustments in Base Rent**

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

#### **5.3 Additional Charges**

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

## **5.4 Late Charges**

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

## **5.5 Default Interest**

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

## **6. USE**

### **6.1 Permitted Use**

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

### **6.2 No Illegal Uses or Nuisances**

Without limiting the foregoing, Tenant shall not use or occupy any of the Premises, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy, or hazardous use. Tenant shall take all precautions to eliminate any nuisances or hazards in connection with its activities within the Premises. Tenant shall not advertise in any manner in areas outside the Premises or on or about the Building; provided, however that Tenant may place one identification plate on each antenna and base station equipment component that comprises the Tenant's Equipment, which plate shall be no larger than two (2) inches by two (2) inches and shall be reasonably approved in advance by City, in order to identify Tenant's Equipment as belonging to Tenant.

## **7. INSTALLATION OF TENANT IMPROVEMENTS**

### **7.1 Tenant Improvement Work**

Prior to the Commencement Date, pursuant to Tenant's Permit to Enter, dated February 16, 2016, Tenant installed Tenant's Equipment and other improvements on the Premises in accordance with the plans and specifications set forth in Exhibit A, , which have been approved by City (such work is called the "Tenant Improvement Work" or "Tenant Improvements" and such plans and specifications are called the "Approved Plans"). A copy of the Approved Plans is attached hereto as Exhibit C.

Tenant shall not alter, replace, modify, or add to any of Tenant's Equipment without City's prior written consent; provided, however, that Tenant may perform maintenance, repairs,

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

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

## **7.2 Local Hire Requirements**

Unless exempt, for any Tenant Improvement Work and Alterations, as defined in Section 8 (Tenant's Alterations), estimated to cost more than \$750,000, Tenant agrees to comply with the San Francisco Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) in the performance of the Tenant Improvement Work and Alterations. Prior to the commencement of such work, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to discuss the local hiring requirements issued by OEWD under the San Francisco Local Hiring Policy that apply to the Tenant Improvement Work, if any. Tenant shall comply with all OEWD requirements issued with respect to the San Francisco Local Hiring Policy and applicable to the Tenant Improvement Work and Alterations.

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

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

# **8. ALTERATIONS**

## **8.1 Tenant's Alterations**

Tenant shall not make or permit any alterations to the Building or any of the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Building (collectively, "**Building Systems**"), except with City's prior written consent in each instance which may be withheld in City's sole discretion. All Alterations shall be done at Tenant's sole expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or



mechanics, and subject to all other conditions which City may reasonably impose. If the cost of any Alterations to the Building (excluding any shown on the Approved Plans) is in excess of Five Thousand Dollars (\$5,000), then Tenant shall pay City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. "Hard costs" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees.

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

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

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

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

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

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

## **10. REPAIRS AND MAINTENANCE**

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

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

### **10.2 Tenant's Repairs**

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

## **11. LIENS**

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

encumbrances affecting any portion of the Premises or the Building except as expressly permitted under this Lease or without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

## **12. UTILITIES AND SERVICES**

### **12.1 Utilities and Services**

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

In consideration of the benefit and public purpose of Tenant's Master Agreement to provide a radio paging telecommunications system for the University of California – San Francisco ("UCSF") (an affiliate of ZSFGH) within the SFGH campus, and the benefit of Tenant's Equipment for same and the City, including the doctors and staff at the Zuckerberg San Francisco General Hospital and Trauma Center, Tenant is exempt from payment of Base Rent, including Utilities and Services, until the Master Agreement expires or is terminated and so long as Tenant provides said services to UCSF, City and their respective staff.

### **12.2 Mandatory or Voluntary Restrictions**

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

### **12.3 Floor Load**

Without the prior written consent of City, which City may give or refuse in City's sole discretion, Tenant shall not place or install in the Premises any machine, equipment, structure or other improvement the weight of which shall exceed the normal loadbearing capacity of the floors or roof of the Building, except as may be shown in the Approved Plans. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant at its sole expense shall reinforce the floor or roof of the Premises in the area of such placement or installation, pursuant to plans and specifications reasonably approved by City and otherwise in

compliance with Section 8.1 (Tenant's Alterations), to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

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

#### **13.1 Compliance with Laws**

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

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

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

### **13.2 Licenses and Approvals**

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

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

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

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

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

## **14. SUBORDINATION**

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

## **15. DAMAGE OR DESTRUCTION**

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

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

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

## **16. EMINENT DOMAIN**

### **16.1 Eminent Domain**

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

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

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

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

## **16.2 Temporary Takings**

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

## **17. ASSIGNMENT AND SUBLETTING**

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

## **18. DEFAULT**

### **18.1 Events of Default**

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

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

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

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

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



## 18.2 Remedies

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

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

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

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

## 19. TENANT'S INDEMNITY

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("**Indemnify**") City, its Agents and Invitees, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (a) injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, occurring on or about the Premises or License Areas or arising in connection with the use of the Premises or License Areas under this Lease; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises or any occurrence on the Premises from any cause attributable to the events described in clauses (a), (b) or (c) of this Section; or (e) any acts, omissions or negligence of Tenant, its



Agents or Invitees, in, on or about the Premises or the Building; all regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except to the extent such Claim is caused by the willful misconduct or active negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of the Lease.

## **20. INSURANCE**

### **20.1 Tenant's Insurance**

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

(i) General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, explosion, collapse and underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations.

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

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

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

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

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

(iii) Tenant can refuse to obtain Business Interruption Insurance with the understanding and acknowledging that City shall not be liable for any interruption or loss of paging service, unless directly and exclusively caused from the gross negligence or willful misconduct of City or its Agents, giving rise to any lost revenue and/or profit of Tenant, including but not limited to, as set forth in Section 22.4.

(c) Lessee will provide ten (10) days advanced written notice to the City of cancellation for nonpayment of a premium, and thirty (30) days advance written notice to the City of cancellation, for reasons other than nonpayment of premium. Lessee shall provide thirty (30) days advance written notice to the City of any intended on-renewal or reduction in coverage. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information.

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

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

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

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

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

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

## **20.2 Tenant's Property**

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

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

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

## **20.4 Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, City and Tenant each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence

of such other party, to the extent such loss or damage is (i) covered by insurance obtained by the Waiving Party under this Lease or (ii) actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its third party insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Building or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

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

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

City shall not be responsible for or liable to Tenant, and Tenant hereby waives all Claims against City and its Agents and releases City and its Agents from, all Claims for any injury, loss or damage to any person or property in or about the Premises or any License Area created under this Lease by or from any cause whatsoever (other than to the extent caused by the active negligence or willful misconduct of City and its Agents), including, without limitation, acts or omissions of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises; theft; burst, stopped or leaking water, gas, sewer or steam pipes; or gas, fire, oil or electricity in, on or about the Premises or the Building.

### **21.2 Consequential Damages**

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

### **21.3 No Relocation Assistance**

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

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

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

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

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

## **22. ACCESS TO PREMISES**

### **22.1 Tenant's Access to the Premises**

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

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

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

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

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

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

### **22.3 Emergency Access**

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

### **22.4 No Liability**

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

### **22.5 No Abatement**

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

### **22.6 Minimize Disruption**

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

## **23. ESTOPPEL CERTIFICATES**

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

## **24. RULES AND REGULATIONS**

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

## 25. SECURITY DEPOSIT

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

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

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

## 26. SURRENDER OF PREMISES

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

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

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

## **27. HAZARDOUS MATERIALS**

### **27.1 Definitions**

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

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

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

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

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

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

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

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

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

## **28. SPECIAL PROVISIONS**

### **28.1 Extension Options**

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

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



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

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

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

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

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

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

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

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

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

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

Tenant will not permit its equipment or use of the Premises as a Communications Site to cause interference with or impairment of City's 911 Public Communications Safety System or Citywide 800 MHz Radio System or other communication or computer equipment used by City or any of its Agents or tenants on the Property. Tenant will not use the Premises or Tenant's Equipment located on the Premises in any way which interferes with any existing use of the Building prior to this Lease or any future use of the Building by City or its successors except as specifically set forth in Section 28.4 (City's Protection Against Interference) (including, without limitation, City's use of the Building as a hospital and trauma center with related radio, telephone and other communications transmission and reception), and such interference shall be deemed a material breach of this Lease by Tenant, which shall, upon notice from City, be responsible for terminating such interference. In the event any such interference does not cease promptly, the

parties acknowledge that continuing interference may cause irreparable injury and, therefore, City shall have the right to bring action to enjoin such interference or to terminate this Lease immediately upon notice, at City's election. If any change in the nature of City's use of the Building during the Term results in measurable interference which materially impairs Tenant's normal operation of its equipment located on the Premises and, as a result of such interference, it is necessary to alter the Tenant Improvements or Tenant's other equipment located on the Premises, Tenant shall notify City of such interference, which notice shall include a detailed description of the necessary Alterations and a cost estimate therefor. Upon receipt of such notice, City shall have the right to terminate this Lease upon thirty (30) days' prior written notice to Tenant. If City elects not to terminate this Lease, Tenant may, at its election, either (i) make the Alterations described in such notice, in compliance with Section 8.1 (Tenant's Alterations) of this Lease, or (ii) terminate this Lease upon thirty (30) days' prior written notice to City. If Tenant elects to make such Alterations, Tenant shall offset the actual, documented cost incurred by Tenant to complete such Alterations against Base Rent as it comes due, up to a maximum amount equal to the lesser of (a) the cost estimate contained in Tenant's notice to City described above or (b) Ten Thousand Dollars (\$10,000.00).

## **29. GENERAL PROVISIONS**

### **29.1 Notices**

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

### **29.2 No Implied Waiver**

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

### **29.3 Amendments**

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

### **29.4 Authority**

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

### **29.5 Interpretation of Lease**

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

### **29.6 Successors and Assigns**

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

### **29.7 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such

commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

#### **29.8 Severability**

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

#### **29.9 Governing Law**

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

#### **29.10 Entire Agreement**

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

#### **29.11 Attorneys' Fee**

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

#### **29.12 Holding Over**

Subject to the exemption set forth in Section 5.1, any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease for a period of one (1) year at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Base Rent and Additional Charges from Tenant.

#### **29.13 Time of Essence**

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

#### **29.14 Cumulative Remedies**

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

#### **29.15 Survival of Indemnities**

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

#### **29.16 Signs**

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

#### **29.17 Light and Air**

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

#### **29.18 Recording**

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

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

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or

assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

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

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

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

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

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

Tenant agrees that any person performing labor for Tenant on any public work at the Premises, which includes the Tenant Improvements, Alterations, demolition, installation, maintenance and repair work to the extent such activities are paid for in whole or part out of public funds, shall be paid not less than the highest prevailing rate of wages 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. The terms "public work" and "paid for in whole or part out of public funds" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant shall include in any contract for construction of such labor a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

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

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

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

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

Tenant further acknowledges that the Americans with Disabilities Act requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Subject to Section 11.1 (Compliance with Laws) hereof, Tenant acknowledges its obligation to comply with such Act and any other federal, state or local disability rights legislation. Tenant warrants that it will fulfill that obligation. Tenant also warrants that it will not discriminate against disabled persons in the provision of services, benefits or activities.

**(b) Subcontracts**

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

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

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

**(d) HRC Form**

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

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

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

### **29.23 Requiring Health Benefits for Covered Employees**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider

for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

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

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

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

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

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

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

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

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

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly provided by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

#### **29.29 Pesticide Prohibition**

Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to Department of Public Health, Zuckerberg San Francisco General Hospital and Trauma Center an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease,

(b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

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

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

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

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

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

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

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **29.33 Conflicts of Interest**

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

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

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

#### **29.35 Sunshine Ordinance**

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

#### **29.36 Counterparts**

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

#### **29.37 Effective Date**

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

### **29.38 Sugar-Sweetened Beverage Prohibition**

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

### **29.39 Cooperative Drafting**

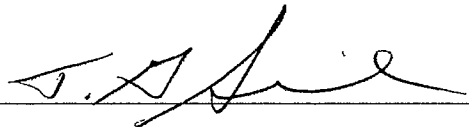
This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE PARTIES ACKNOWLEDGE THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL A RESOLUTION OF CITY SHALL HAVE BEEN DULY ADOPTED APPROVING THIS LEASE, AND AUTHORIZING APPROPRIATE CITY OFFICERS TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON, AND SUBJECT TO, DUE ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF SUCH RESOLUTION IS NOT ADOPTED BY THE BOARD OF SUPERVISORS AND APPROVED BY THE MAYOR, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH CITY'S CHARTER AND ALL OTHER APPLICABLE LAWS. APPROVAL OF THE TRANSACTIONS CONTEMPLATED BY THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

TENANT:

SPOK, INC.  
a Delaware corporation

By: 

Its: CIO

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

Its: \_\_\_\_\_


CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By:   
Virginia Dario Elizondo  
Deputy City Attorney

**EXHIBIT A**

**PLANS**

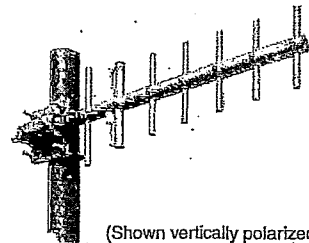
# KATHREIN

## SCALA DIVISION

## TY-900 Yagi Antenna

The Kathrein-Scala TY series are rugged broadband yagi antennas fabricated of 6061/T6 aluminum rod and seamless drawn pipe, anodized for maximum reliability and corrosion resistance. The hardware and fastenings are stainless steel. The internal balun, coax feed and connector are sealed in a foam potting system to prevent moisture penetration and assure long service life in severe environmental conditions. The heavy aluminum mounting casting allows installation for V or H polarization.

- The TY-900 is specifically designed for professional fixed-station applications in the 890–960 MHz band.



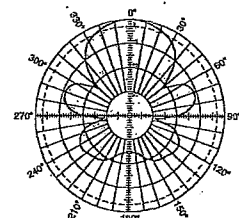
(Shown vertically polarized)

### Specifications:

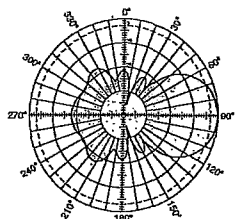
Frequency range	890–960 MHz
Gain	12 dBi
Impedance	50 ohms
VSWR	< 1.5:1 maximum (1.35:1 typical)
Polarization	Horizontal or vertical
Front-to-back ratio	>20 dB
Maximum input power	100 watts (at 50°C)
H-plane beamwidth	48 degrees (half-power)
E-plane beamwidth	40 degrees (half-power)
Connector	N female
Weight	3 lb (1.4 kg)
Dimensions	23 x 7 inches (584 x 178 mm)
Wind load	at 93 mph (150kph) 3 lbf / 4 lbf (11 N) / (17 N)
Wind survival rating*	150 mph (240 kph)
Shipping dimensions	28 x 10 x 4.5 inches (710 x 254 x 114 mm)
Shipping weight	5.0 lb (2.3 kg)
Mounting	For masts of 1.25 to 2.375 inch (32 to 60 mm) OD.

See reverse for order information.

\* Mechanical design is based on environmental conditions as stipulated in TIA-222-G-2 (December 2009) and/or ETS 300 019-1-4 which include the static mechanical load imposed on an antenna by wind at maximum velocity. See the Engineering Section of the catalog for further details.



H-plane  
Horizontal pattern – V-polarization  
Vertical pattern – H-polarization



E-plane  
Horizontal pattern – H-polarization  
Vertical pattern – V-polarization



10065-E





RF Connectors

: N-type Female

Weight

: 39 lbs. (17.7kg.) approx.

### ENVIRONMENTAL CONDITIONS:

The unit is designed for indoor applications:

Operating temperature: - 20°C to + 50°C

Storage temperature: - 50°C to + 90°C

### BDA CONNECTIONS

The BDA AC power is accepted through a standard 3-wire male plug (IEC-320) with phase, neutral and ground leads. The AC power is wired to a high efficiency DC switching power supply which is CE and UL approved. The power supply runs the amplifiers and the Power On lamp. The metal enclosure of the BDA is connected to ground.

A 9-pin D-Sub connector provides failure alarm output contacts (see diagram next page) as well as an optional 12 VDC (250mA) auxiliary output.

The RF connections are made via two type "N" female connectors. The RF connector labeled "BASE" must be connected to the antenna pointing towards the base station. The RF connection labeled "MOBILE" must be connected to the antenna facing the area to be covered by the BDA.

The RF connections must be made through cables with characteristic impedance of 50 ohms.

The isolation between the base station antenna and the mobile antenna should be at least 12 dB higher than the BDA gain. Isolation less than this value can cause gain ripple across the band. Isolation equal to or less than the BDA gain will give rise to oscillations which will saturate the amplifiers and possibly cause damage to the BDA.

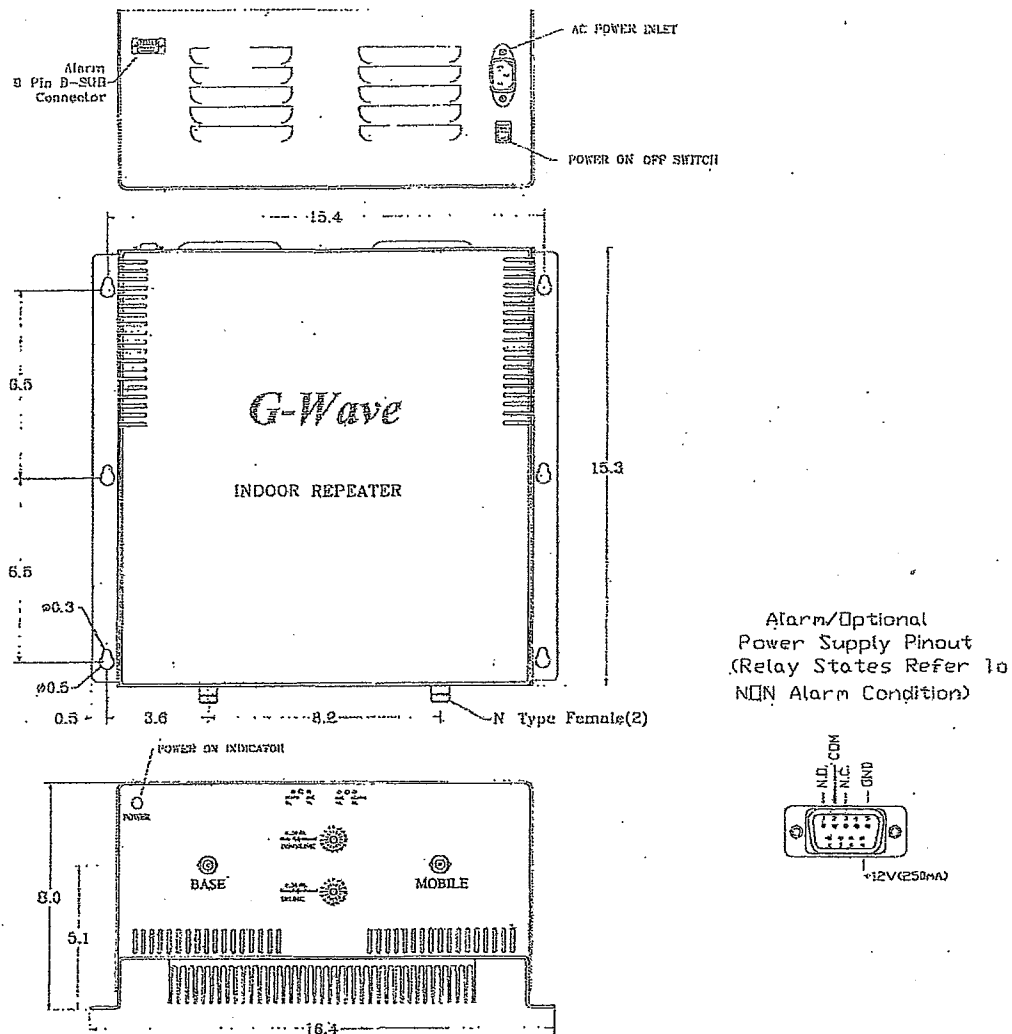
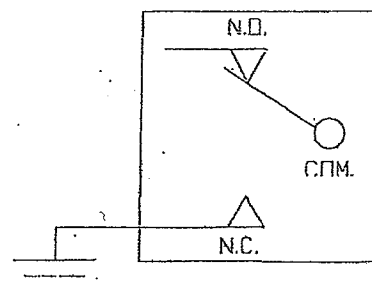


Figure 2a

### Conditions for Optional Alarm

The alarm monitors current of both uplink and downlink amplifiers. An alarm condition will occur if either uplink or downlink amplifiers are over or under its current tolerance or if there is no DC power present.

(Relay Shown in Non-Alarm Condition)



**EXHIBIT B**

[Date]

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

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

Dear Mr. Updike:

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

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

Very truly yours,

\_\_\_\_\_  
THOMAS SAINÉ

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

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

Accepted and Agreed:

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

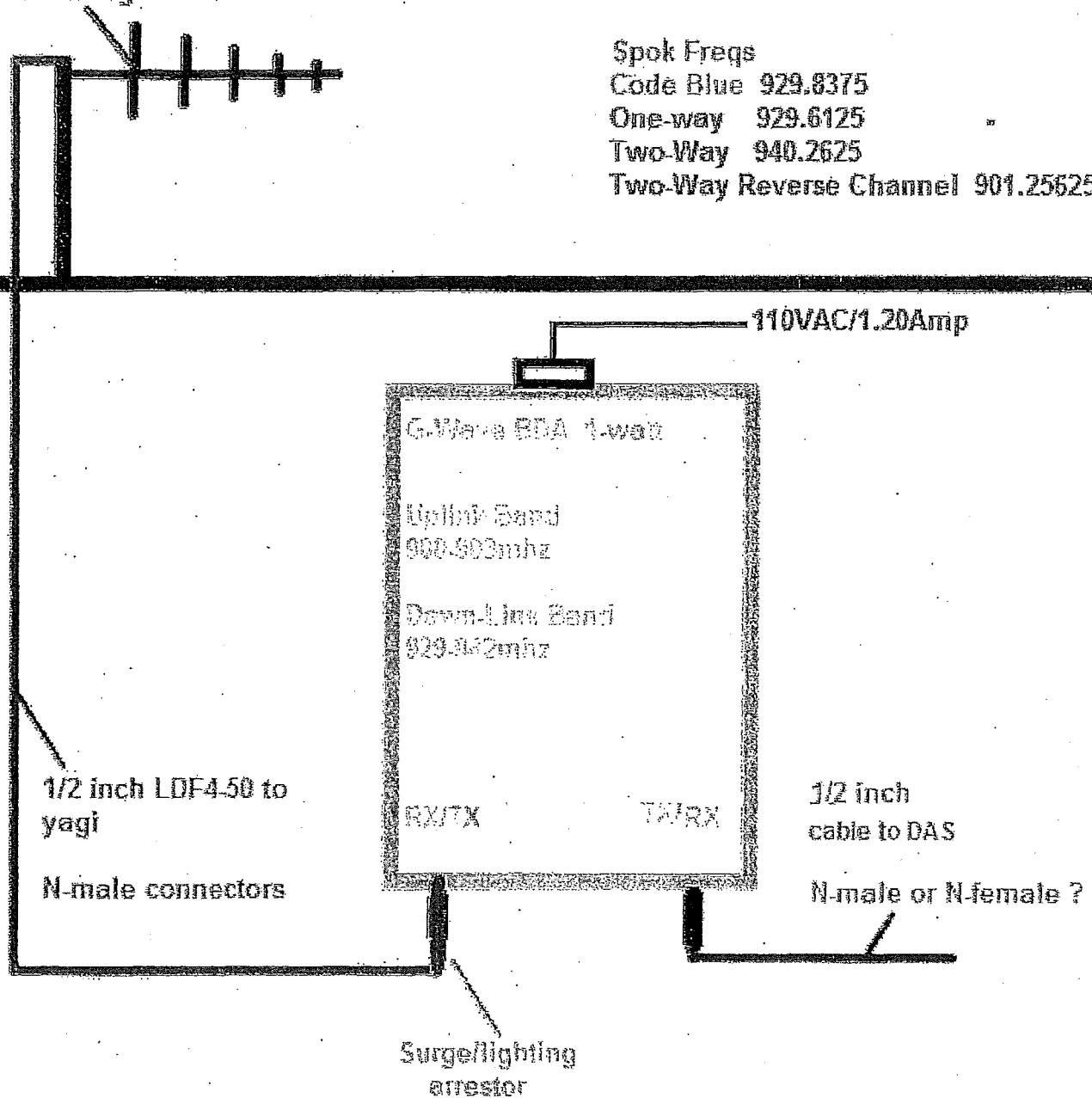
Dated: \_\_\_\_\_

**EXHIBIT C**

**APPROVED TENANT'S PLANS AND SPECIFICATIONS**

6 element yagi 896-940mhz 9db 150watts  
Model # MXRMYA9306Y  
Pointing to Bldg30 or 3

Spok Freqs  
Code Blue 929.8375  
One-way 929.6125  
Two-Way 940.2625  
Two-Way Reverse Channel 901.25625



**EXHIBIT D**

**FIRST SOURCE HIRING AGREEMENT**



First Source Hiring Agreement  
For Permittee of City Property

This First Source Hiring Agreement (this "Agreement"), is made as of February \_\_, 2016, by and between SPOK, INC. (the "Permittee"), in favor of the First Source Hiring Administration (the "FSHA"), collectively the "Parties".

RECITALS

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

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

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

1. DEFINITIONS

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

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

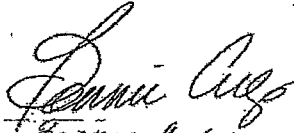
2. OEWD WORKFORCE SYSTEM PARTICIPATION

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

by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

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

Date: 3/1/16

Signature: 

Name of Authorized Signer: Bonnie Culp

Company: Spok, Inc.

Address: 2850 Versar Center Ste 420

Phone: 403-269-1850 Springfield, VA 22151

Email: HR@Spok.com



**EXHIBIT E**

**ACCESS FOR TELECOMMUNICATIONS  
EQUIPMENT, INSTALLATION AND MAINTENANCE**

**Zuckerberg San Francisco General Hospital and Trauma Center**  
**Access for Telecommunications Equipment Installation and Maintenance**

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



# SAN FRANCISCO PLANNING DEPARTMENT

## CEQA Categorical Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

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

### STEP 1: EXEMPTION CLASS

#### TO BE COMPLETED BY PROJECT PLANNER

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

### STEP 2: CEQA IMPACTS

#### TO BE COMPLETED BY PROJECT PLANNER

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

	<i>Mahe program, or other documentation from Environmental Planning staff that hazardous material effects would be less than significant (refer to EP_ArcMap &gt; Maher layer).</i>
<input type="checkbox"/>	<b>Transportation:</b> Does the project create six (6) or more net new parking spaces or residential units? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?
<input type="checkbox"/>	<b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? (refer to EP_ArcMap > CEQA Catex Determination Layers > Archeological Sensitive Area)
<input type="checkbox"/>	<b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to EP_ArcMap > CEQA Catex Determination Layers > Topography)
<input type="checkbox"/>	<b>Slope = or &gt; 20%:</b> Does the project involve any of the following: (1) square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Topography) If box is checked, a geotechnical report is required.
<input type="checkbox"/>	<b>Seismic: Landslide Zone:</b> Does the project involve any of the following: (1) square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Seismic Hazard Zones) If box is checked, a geotechnical report is required.
<input type="checkbox"/>	<b>Seismic: Liquefaction Zone:</b> Does the project involve any of the following: (1) square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Seismic Hazard Zones) If box is checked, a geotechnical report will likely be required.
<b>If no boxes are checked above, GO TO STEP 3. If one or more boxes are checked above, an <u>Environmental Evaluation Application</u> is required, unless reviewed by an Environmental Planner.</b>	
<input checked="" type="checkbox"/>	<b>Project can proceed with categorical exemption review. The project does not trigger any of the CEQA impacts listed above.</b>
<b>Comments and Planner Signature (optional):</b> Jean Poling <div style="float: right; font-size: small;">       Signed: Jean M. Poling        Title: Senior Planner, Environmental Planning        Date: 2/11/16     </div>	

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

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

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

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

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

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

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

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

<input type="checkbox"/>	<p>Further environmental review required. Proposed project does not meet scopes of work in either (check all that apply):</p> <p><input type="checkbox"/> Step 2 – CEQA Impacts</p> <p><input type="checkbox"/> Step 5 – Advanced Historical Review</p> <p>STOP! Must file an <i>Environmental Evaluation Application</i>.</p>			
<input checked="" type="checkbox"/>	<p>No further environmental review is required. The project is categorically exempt under CEQA.</p> <table border="1"> <tr> <td> <p>Planner Name:</p> <p>Project Approval Action:</p> <p>Board of Supervisors approves lease</p> <p>If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.</p> </td> <td> <p>Signature:</p> <p><b>Jean Poling</b></p> <p>Digitally signed by Jean Poling  Date: 2016.08.24 15:52:35 -07'00'</p> </td> </tr> </table> <p>Once signed or stamped and dated, this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code.</p> <p>In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination can only be filed within 30 days of the project receiving the first approval action.</p>		<p>Planner Name:</p> <p>Project Approval Action:</p> <p>Board of Supervisors approves lease</p> <p>If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.</p>	<p>Signature:</p> <p><b>Jean Poling</b></p> <p>Digitally signed by Jean Poling  Date: 2016.08.24 15:52:35 -07'00'</p>
<p>Planner Name:</p> <p>Project Approval Action:</p> <p>Board of Supervisors approves lease</p> <p>If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.</p>	<p>Signature:</p> <p><b>Jean Poling</b></p> <p>Digitally signed by Jean Poling  Date: 2016.08.24 15:52:35 -07'00'</p>			

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

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

**PROPERTY INFORMATION/PROJECT DESCRIPTION**

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

**DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION**

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

**DETERMINATION OF NO SUBSTANTIAL MODIFICATION**

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







## SAN FRANCISCO PLANNING DEPARTMENT

### General Plan Referral

*Date:* September 8, 2016

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

*Block/Lot No.:* 4154/001

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

*Applicant:* Same as Above

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

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


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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

*Recommended  
By:*

  
for John Rahaim, Director of Planning

#### PROJECT DESCRIPTION

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

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

## ENVIRONMENTAL REVIEW

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

## GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

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

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

### COMMUNITY SAFETY

#### OBJECTIVE 1

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

#### POLICY 1.20

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

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

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

#### OBJECTIVE 2

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

#### POLICY 2.15

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

GENERAL PLAN REFERRAL.

CASE NO. 2016-010378GPR  
LEASING OF SPACE AT THE ZUCKERBER SAN FRANCISCO  
GENERAL HOSPITAL AND TRAUMA CENTER FOR  
INSTALLATION OF COMMUNICATIONS EQUIPMENT

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

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

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

**Eight Priority Policies Findings**

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

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

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

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

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

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

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

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

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

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

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

GENERAL PLAN REFERRAL

CASE NO. 2016-010378GPR  
LEASING OF SPACE AT THE ZUCKERBER SAN FRANCISCO  
GENERAL HOSPITAL AND TRAUMA CENTER FOR  
INSTALLATION OF COMMUNICATIONS EQUIPMENT

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

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

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

7. That landmarks and historic buildings be preserved.

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

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

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

**RECOMMENDATION:**

**Finding the Project, on balance, in-conformity with the  
General Plan**

cc: Claudia Gorham, Real Estate Division

\\citypln-InfoVol\InfoDrive\Citywide\General Plan\General Plan Referrals\2016\2016-010378GPR - 1001 Potrero  
Avenue\2016-010378GPR - 1001 Potrero Avenue.docx

## ZSFGH – SPOK, INC. – Lease for Building 25, iDAS Participation

Preliminary Information Request  
Budget and Finance Committee Meeting Preparation

1. Attached via email
  - a. Proposed Resolution
  - b. Proposed Lease
  - c. Health Commission Resolution (passed)
  - d. Letter re UCSF Agreement

### 2. Lease summary:

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

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

### 3. N/A

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

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

6. During the Term, so long as Tenant provides paging services to UCSF medical staff, and in consideration of, the benefit of Tenant's paging services and equipment to ZSFGH and City – which are necessary within Building 25 and its doctors, nurses, other medical staff, patients and visitors – Tenant is exempt from payment of rent and utilities.

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

8. SPOK is providing its own equipment to connect to the DAS. The minimum charge of \$5,000 is what the City charges at other locations for cellular sites on City's real property.

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

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

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

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

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

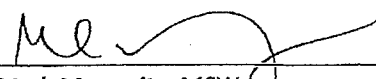
WHEREAS, to provide sufficient reception, cellular and paging service providers must install additional antennae, boosters, and other equipment on or in Building 25; and

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

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

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

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

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



January 19, 2016

Spok Equipment at SFGH

To whom it may concern,

Spok, Inc installed paging transmitter equipment at three locations at the SFGH (San Francisco General Hospital). This system is designed to serve the SFGH location. The equipment locations are as follows:

Building 30 – 929.6125 & 2way transmitters located on the 5<sup>th</sup> floor in a bathroom closet 3955TA

Building 30 Penthouse roof – (2) two transmit antennas, (1) 1.2m satellite dish and (1) GPS dome antenna

Building 3 - 929.6125 & 2way transmitters located on the 3<sup>rd</sup> floor mezzanine equipment room

Building 3 Penthouse roof - (2) two transmit antennas, (1) 1.2m satellite dish and (1) GPS dome antenna

Building 3 – (1) BDA (bi-directional amplifier) – located on the 5<sup>th</sup> floor above resident's room 5H 17

The SFGH transmitter sites were engineered and designed to maximize Spok's rf paging signals in order to provide adequate in-building coverage at the SFGH facility. Incidental use cannot be avoided 100% by immediately adjacent area, due to bleeding over of signal as with all RF signals.

If you have any concerns or questions please contact me.

Sincerely,

Ruth O'Byrne

*Director, Technology Operations Western Division*

Spok, Inc.

(480) 216-9656 Office



# Introduction Form

By a Member of the Board of Supervisors or the Mayor

2017 JAN 24 PM 4:15

Time stamp  
or meeting date

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

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

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

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

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

**Sponsor(s):**

Cohen

**Subject:**

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

**The text is listed below or attached:**

Attached

Signature of Sponsoring Supervisor:

*Malia Cohen*

**For Clerk's Use Only:**

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

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>		
Name of contractor: SPOK, LLC		
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>(1) Vincent D. Kelly, Royce Yudkoff, Samme L. Thompson, Mathew Oristano, N. Blair Butterfield, Stacia A. Hylton, Brian O'Reilly  (2) Vincent D. Kelly, CEO; Shawn Endsley, CFO; Hermant Goel, President  (3) N/A  (4) None</p>		
Contractor address: 300 Technology Drive, Suite 400, Plano, TX 75074		
<table style="width: 100%;"> <tr> <td style="width: 50%;">Date that contract was approved: <i>(By the SF Board of Supervisors)</i></td> <td style="width: 50%;">Amount of contract: Rent: \$5,000 per month (waived)</td> </tr> </table>	Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: Rent: \$5,000 per month (waived)
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: Rent: \$5,000 per month (waived)	
Describe the nature of the contract that was approved: Lease of rack space and associated equipment for participation in DAS at Zuckerberg San Francisco General Hospital, Building 25, 1001 Potrero Ave, San Francisco, CA 94110		
Comments:		

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

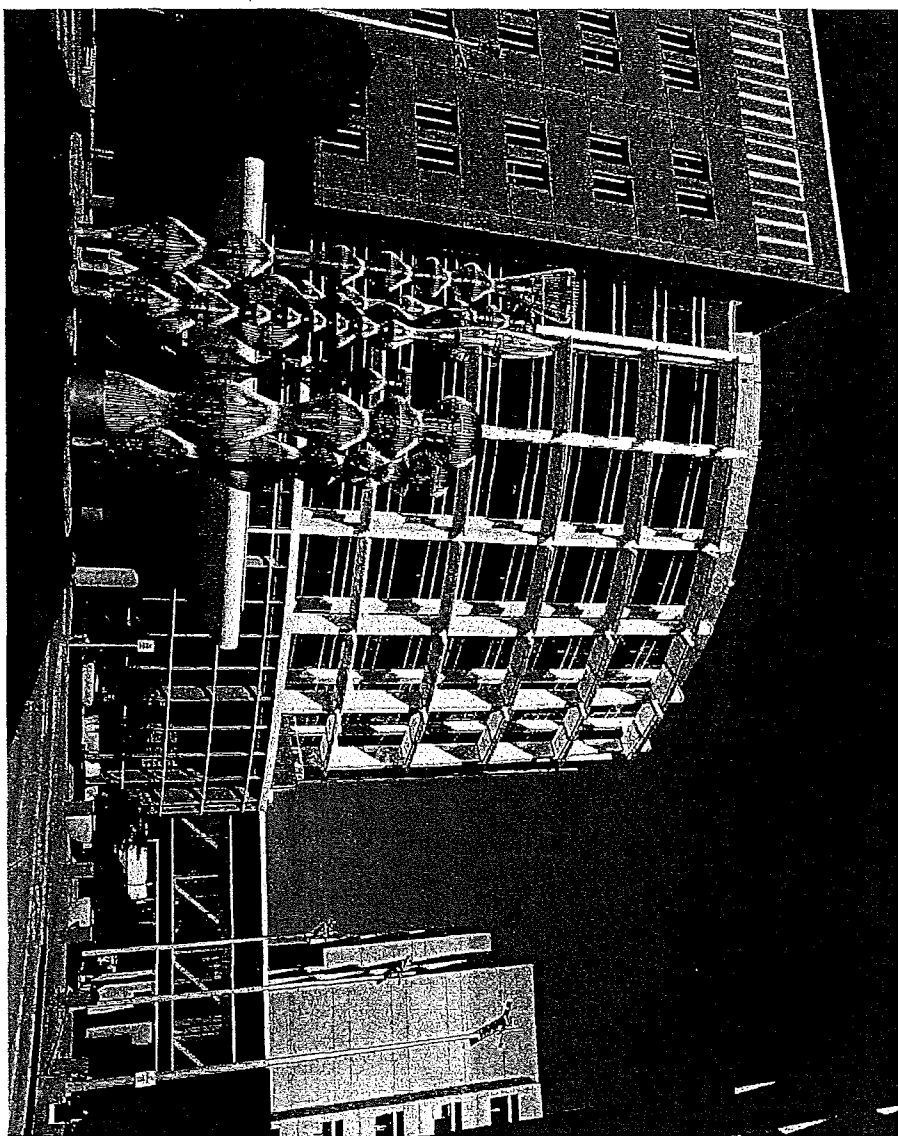
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

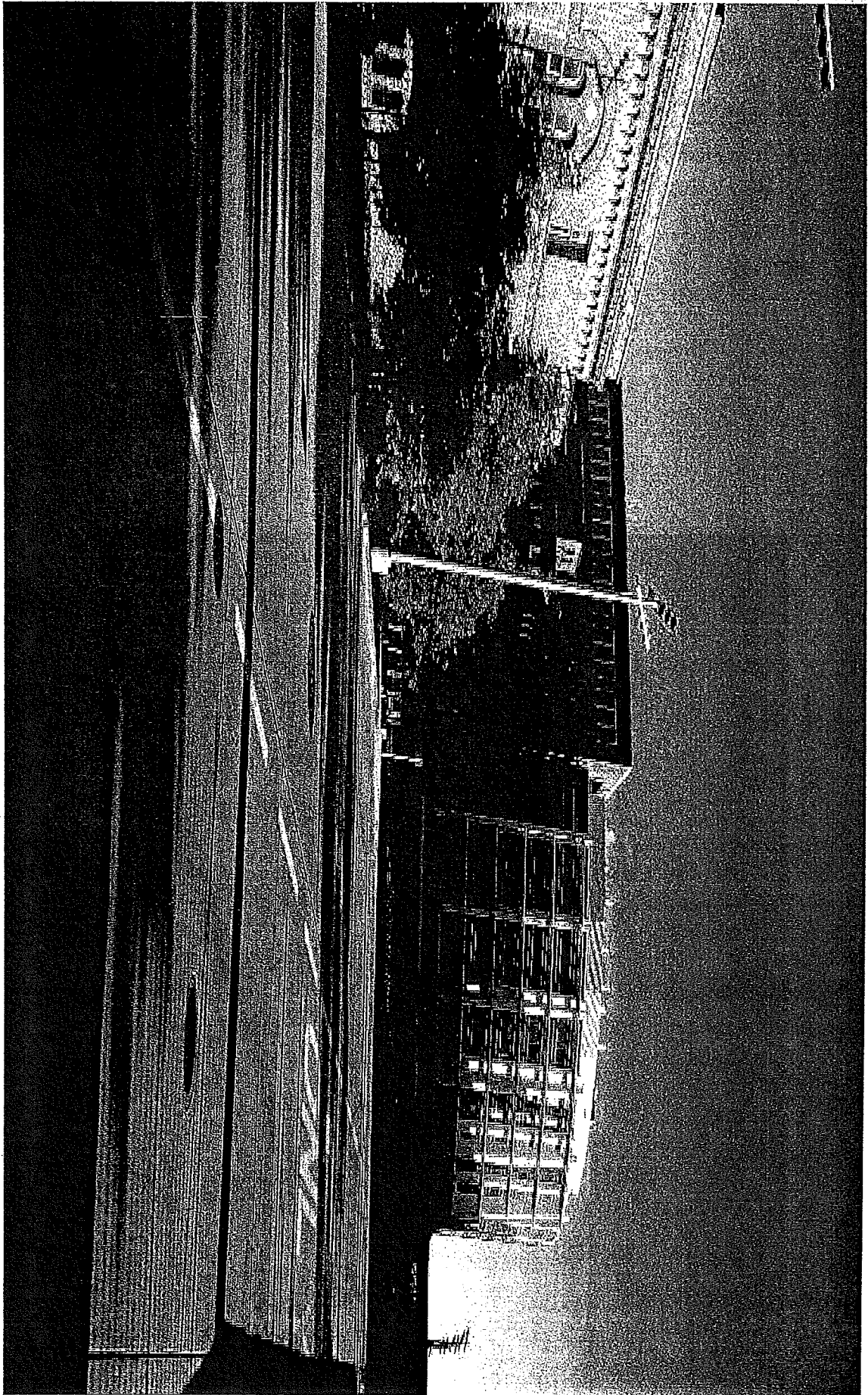
Date Signed

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





## **DISTRIBUTED ANTENNA SYSTEM – “DAS”**

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

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

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

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

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

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



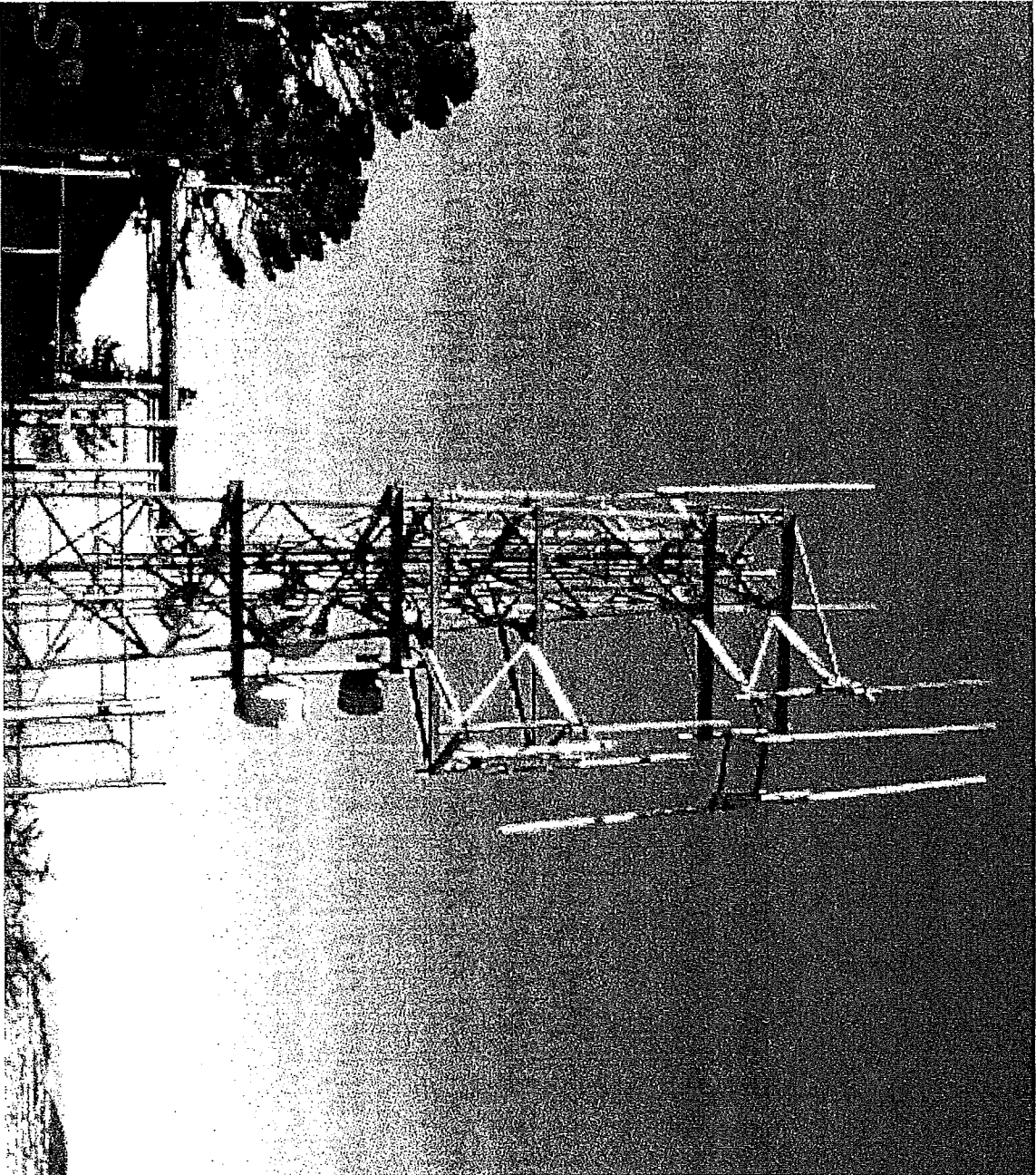


## **800 HMh PUBLIC SAFETY RADIO REPLACEMENT PROJECT**

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

800 MHz Public  
Safety Radio  
Replacement  
Project

South Hill Tower  
Lease





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

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

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

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

## South Hill Tower Lease Terms:

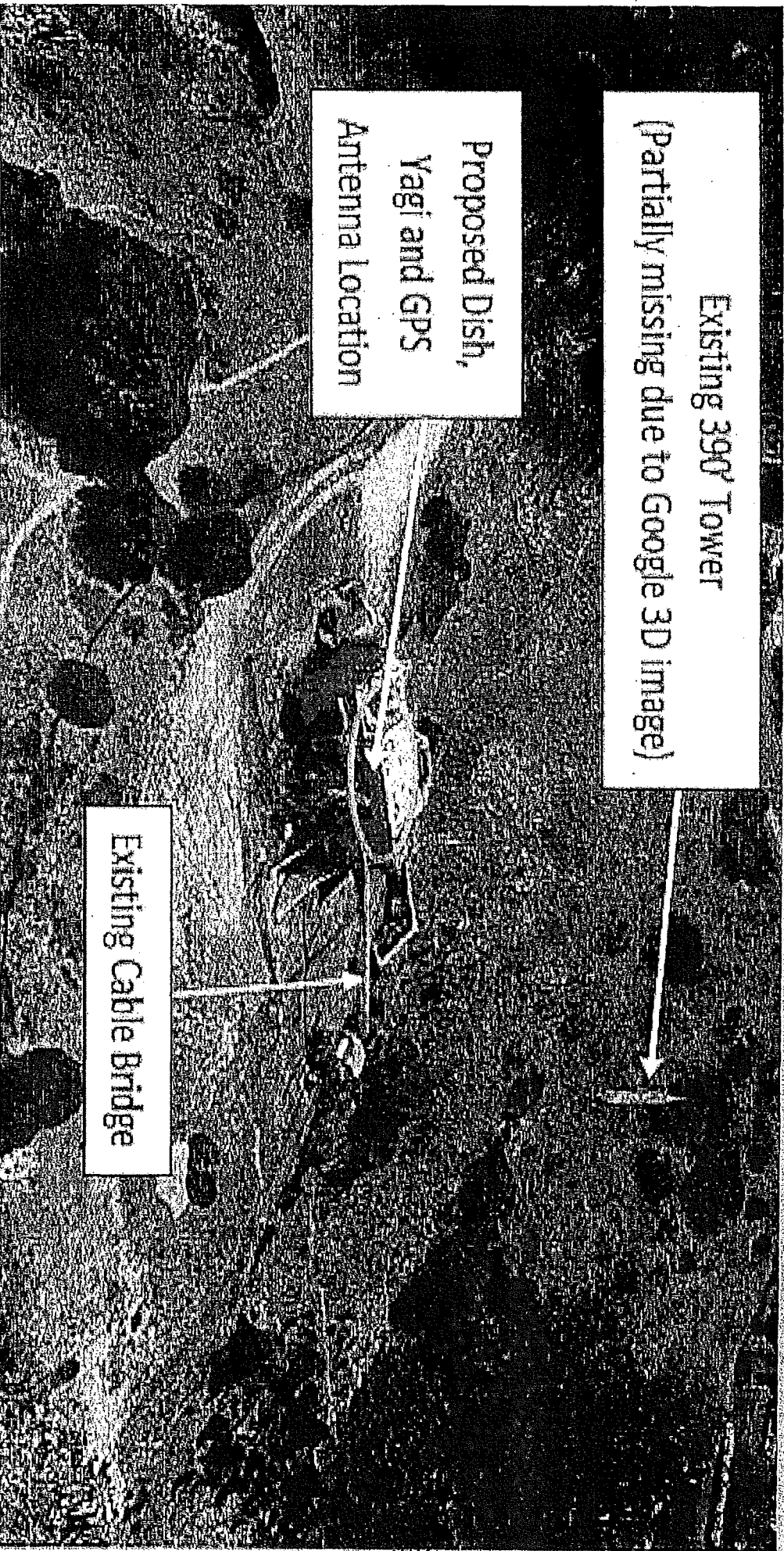
- ◆ 25 years - July 1, 2017 to June 30, 2042 (No options)
- ◆ \$3,657 per month - \$43,884 per year  
Based upon the State's guidelines
- ◆ 3.5% annual adjustment
- ◆ \$7,200 per year in utilities
- ◆ State Park Benefit Fund Payment - \$175,000 (2 installments)
- ◆ State may place one antenna on tower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

# Bayview Park Road Lease

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

Proposed Dish,  
Yagi and GPS  
Antenna location

Existing Cable Bridge



## Bayview Park Road Lease Terms:

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

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