

FIRST AMENDMENT TO ANTENNA SITE LEASE

THIS FIRST AMENDMENT TO ANTENNA SITE LEASE (this "Amendment") is dated for reference purposes as of May 3, 2010, by and between PPF PARAMOUNT ONE MARKET PLAZA OWNER, L.P., a Delaware limited partnership ("Landlord") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant"). Capitalized terms used herein but not defined shall have the meaning given them in the Lease (as defined below).

THIS AMENDMENT is made with reference to the following facts:

A. City and Landlord, as successor-in-interest to EOP-One Market L.L.C., a Delaware limited liability company (doing business in California as EOP-One Market LLC), are parties to that certain Antenna Site Lease, dated April 22, 1998 (the "Initial Lease"), pursuant to which City presently leases the Premises consisting of a portion of Room #AMZ98, located on the mezzanine of the roof of Building located at One Market Street, San Francisco, California, and commonly known as the Spear Tower, together with certain other locations on the roof of the Spear Tower, in order to install and operate certain Site Equipment for City's emergency and non-emergency communications system. The Initial Lease as amended by this Amendment shall be referred to herein as the "Lease."

B. Exhibits A-2 and A-3 to the Initial Lease depicted the locations of the Site Equipment which consisted of the six (6) antennas located on the Premises.

C. Prior to the date hereof, City installed certain additional equipment not depicted on Exhibits A-2 and A-3 to the Initial Lease.

D. City is working to improve its program of public safety communications in San Francisco, and in connection with such improvement, City desires to install certain additional equipment.

E. Landlord and City desire to amend the Initial Lease to (1) document the location of all of existing Site Equipment, (2) permit City to install additional equipment in additional locations on the roof of the Spear Tower, and (3) increase the Base Rental payable under the Lease, and amend the Lease in certain other respects.

NOW, THEREFORE, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Landlord agree as follows:

1. **Existing Site Equipment.** As of the date hereof, the locations of all existing City equipment on the roof of the Spear Tower are depicted with a designation "(E)" on the Exhibit A attached to this Amendment, and Landlord and City acknowledge that all such equipment is deemed to be "Site Equipment," as such term is used in the Lease and the location of each item of equipment is included within the Premises.

2. Additional Site Equipment.

(a) From and after the date hereof, and subject to the terms and conditions of the Lease, City shall have the right to install the following additional Site Equipment (the "Additional Site Equipment") in Room #AMZ98 and on the roof of the Spear Tower, provided that such installations shall be made in accordance with the provisions of the Lease, including, without limitation, the provisions of Section XI.B. and the technical standards set forth in Exhibit C to the Lease:

- (i) One (1) HPD antenna; to be installed in the location depicted with the designation "(P)" on the attached Exhibit A;
- (ii) One (1) GPS antenna array; to be installed in a location to be determined by Landlord and City; and
- (iii) Two (2) 700 MHz 2-way antennas; to be installed in locations to be determined by Landlord and City.

As used in this Amendment, the "Additional Premises" shall mean the locations on which the Additional Site Equipment is installed pursuant to the terms hereof. The location of such Additional Site Equipment shall be subject to Landlord's reasonable approval; provided, however, that Landlord agrees to take into account City's proposed operation of the Additional Site Equipment for the Permitted Use, including, if applicable, any special requirements such as line of sight with other City facilities, and City acknowledges that the location of the Additional Site Equipment may not interfere with any other communication or other system then installed on the roof of the Spear Tower. Landlord and City shall use good faith efforts to promptly resolve any disagreement about the designated location of the Additional Site Equipment.

Following the installation of any item of Additional Site Equipment or New Equipment (as defined below), City shall promptly deliver to Landlord an updated diagram in the form of **Exhibit A** attached hereto depicting the location of all of the Site Equipment, including all Additional Site Equipment and/or New Equipment, as applicable.

(b) **Definition of Premises.** Effective as of the date of Landlord's delivery of any portion of the Additional Premises to the City, the locations of such Additional Premises shall be deemed to be part of the Premises, as defined in the Lease.

(c) **Base Rent for Additional Premises.** Commencing on July 1, 2009 (the "Additional Premises Rent Commencement Date") and continuing throughout the Lease Term, City shall pay Rent for the Additional Premises at the rate of Fourteen Thousand Four Hundred Dollars (\$14,400.00) per annum for each calendar year of May 1st through April 30th (the "Additional Premises Base Rental"), payable in advance in two equal annual installments of Seven Thousand Two Hundred Dollars (\$7,200.00) each on the first (1st) day of April and the first (1st) day of October, in accordance with Section IV.A of the Lease; provided, however, that the first installment of Additional Premises Base Rental for the period of July 1, 2009 through September 30, 2009, shall be payable within thirty (30) days after the effective date of this Amendment and prorated based on the actual number of days during such period. Commencing on May 1, 2010, the Additional Premises Base Rental shall be adjusted in the manner provided in

Section IV.C of the Lease. City acknowledges that the Additional Premises Rent Commencement Date for the entire Additional Premises shall be July 1, 2009, notwithstanding the effective date of this Amendment and notwithstanding the actual date of Landlord's delivery of any portion of the Additional Premises, provided that there shall be an appropriate proration of Additional Premises Base Rental if Tenant's occupancy of the Additional Premises is delayed due to Landlord's failure to deliver any portion of the Additional Premises either (A) within thirty (30) days after the effective date of this Amendment, with respect to the Additional Site Equipment described in item (i) of Section 2(a), or (B) with respect to the Additional Site Equipment described in items (ii) and (iii) of Section 2(a), within thirty (30) days after the determination of the location of such Additional Site Equipment.

3. **New Equipment.**

(a) **New Installations Option.** During the Term of the Lease (including any Renewal Term), City shall have the ongoing option (the "New Installations Option") to install one or more additional antennas and ancillary equipment (the "New Equipment") on the roof of the Spear Tower and, as applicable, in Room #AMZ98, on the terms and conditions set forth in this Section 5; provided, however that the size, design and location of such equipment and manner of installation shall be subject to Landlord's reasonable approval. City shall exercise the New Installations Option, if at all, by written proposal to Landlord given from time to time, which proposal shall include the exact size and the general description of the New Equipment. As soon as reasonably possible after Landlord's receipt of a City's proposal, Landlord shall designate a proposed location for the New Equipment that are the subject of such proposal, which location shall be subject to City's reasonable approval. Landlord agrees that the location of the New Equipment will take into account City's proposed operation of the antenna for the Permitted Use, including, if applicable, any special requirements such as line of sight with other City facilities, and City acknowledges that the location of the antenna site(s) may not interfere with any other communication or other system then installed on the roof of the Spear Tower. The locations of all New Equipment shall be referred to herein as "New Sites."

(b) **Rent for New Sites.** City shall pay rent for each New Site at the prevailing market rate, determined as provided herein and adjusted as provided herein, from and after the date on which Landlord delivers such New Site to City (each such delivery date, an "New Site Rent Commencement Date"). Promptly following the designation and approval of the New Site, City shall provide Landlord with written notice of City's determination of prevailing market rate for the New Site, as established or approved by the City's Director of Property. If Landlord disputes City's determination of the prevailing market rate, Landlord shall provide City with written notice of Landlord's opinion of prevailing market rate together with reasonable substantiation for such rate, within fourteen (14) days following City's notice to Landlord. If Landlord does not so dispute City's determination of prevailing market rate, then the Base Rental for the New Site shall be the rate so determined by City. If Landlord disputes City's determination of the prevailing market rate:

- (i) Within thirty (30) days following Landlord's notice to City containing Landlord's opinion of prevailing market rate, Landlord and City shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement. If

Landlord and City reach an agreement as to the prevailing market rate, such rate shall be the Base Rental for the New Site.

- (ii) If within such thirty (30) day period Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one real estate broker.
- (iii) The broker selected by each party shall together immediately select a third broker who shall within ten (10) days of his or her selection, choose either Landlord's or City's determination of the prevailing market rate and provide the reasoning for such selection, and the rate so chosen shall be the Base Rental for the New Site.
- (iv) All brokers specified above shall (i) have had at least five (5) years experience within the previous ten (10) years as a real estate broker working in the downtown San Francisco area, with working knowledge of current rooftop equipment rental rates and practices, and (ii) have not acted in any capacity for either party for at least the 2 prior years. Each party shall pay for its own broker. Landlord shall pay the cost of the third broker and City shall reimburse Landlord upon demand for one-half the actual and reasonable cost of such third broker.
- (v) If City's Director of Property does not approve of the prevailing market rate as determined by the appraisal procedure specified above, the Director of Property shall revoke the exercise of the New Installations Option by written notice to Landlord.

Base Rental for each New Site for each calendar year of May 1 through April 30 during the Term with respect to such New Site shall be payable in advance in two annual installments on the first day of April and October, in accordance with Section IV.A of the Initial Lease, provided that the initial installment of Base Rental for the New Site shall be payable within thirty (30) days after the New Site Rent Commencement Date. If the New Site Rent Commencement Date is a date other than May 1 or November 1, then Base Rental for the New Site for the period commencing on the New Site Rent Commencement Date and ending on the next occurring May 1 or November 1, as applicable, shall be appropriately prorated. Commencing on the May 1st immediately following the New Site Rent Commencement Date, the Additional Site Base Rental shall be adjusted in the manner provided in Section IV.C of the Initial Lease.

(c) **Additional Terms and Conditions.** Effective as of the date of Landlord's delivery of any New Site to the City, the locations of such New Site shall be deemed to be part of the Premises, as defined in the Lease. All installations of New Equipment shall be made in accordance with the provisions of the Lease, including, without limitation, the provisions of Section XI.B. and the technical standards set forth in Exhibit C to the Initial Lease. If City is in default under the Lease on the date of giving a notice exercising any New Installations Option, Landlord may reject such exercise by delivering written notice thereof to City.

4. **No Rent Reduction.** In no event shall the amount of rent payable under the terms of the Lease by City be reduced in the event City removes any item of Site Equipment, whether for obsolescence or any other reason.

5. **City to Pay Cost of Landlord's Review.** The sixth (6th) sentence of Section XI.B of the Initial Lease is deleted in its entirety and the following language is substituted in its place, "Tenant shall reimburse Landlord upon demand as Additional Base Rental for all reasonable sums, including, without limitation, the cost of any third party technical studies or reviews, arising out of or related to Landlord's examination or review of any proposed alteration, addition, or improvement to any Site Equipment, Additional Site Equipment or New Equipment."

6. **Termination Date.** Landlord and City acknowledge and agree that in July of 2007, City timely exercised its first Renewal Option and extended the Lease Term such that the Termination Date is April 30, 2013.

7. **Notice Addresses.** The notices addresses set forth in Section I.A.8 of the Initial Lease are hereby deleted and the following addresses are substituted therefor:

Tenant: Notices shall be sent to Tenant at the following addresses:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Amy L. Brown,
Director of Property
Fax No.: (415) 552-9216

with a copy to:
Department of Technology (DT)
1 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Attn: General Manager

and a copy to:
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Real Estate and Finance Team
Fax No.: (415) 554-4755

Landlord: Notices shall be sent to Landlord at the following addresses:

PPF PARAMOUNT ONE MARKET PLAZA OWNER, L.P.
c/o Morgan Stanley US RE Investing Division
555 California Street, Suite 2200, Floor 21
San Francisco, California 94104
Attention: Artlyn Fong

with a copy to:

PARAMOUNT GROUP, INC.
One Market Plaza
Spear Tower, Suite 345
San Francisco, California 94105
Attention: Area Asset Manager/General Manager

and a copy to:

PARAMOUNT GROUP, INC.
1633 Broadway, Suite 1801
New York, NY 10019
Attention: Bernard A. Marasco
Director of Leasing

8. **Covenant Not to Discriminate.** Article XXXIV Section T is hereby added to the Lease as follows:

“T. Covenant Not to Discriminate. In the performance of this Lease, Landlord covenants and agrees not to discriminate on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of Landlord, any City employee working with Landlord, or any applicant for employment with Landlord.”

9. **Requirements for Lease Amendments.** Article XXXIV Section U is hereby added to the Lease as follows:

“U. Amendments. Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the City’s Director of Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to

the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of City's Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (a) increasing the Term, (b) increasing the Rent, (c) changing the general use of the Premises from the use authorized under Article V of this Lease, and (d) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of City's Board of Supervisors."

10. **Conflicts of Interest.** Article XXXIV Section W is hereby added to the Lease as follows:

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

11. **Notification of Limitations on Contribution.** Article XXXIV Section X is hereby added to the Lease as follows:

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

12. **Sunshine Ordinance.** Article XXXIV Section V is hereby added to the Lease as follows:

“V. **Sunshine Ordinance.** In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors’ bids, 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, 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.”

13. **Estoppel Certificates.** Landlord acknowledges and agrees that notwithstanding the provisions of items (v) and (ix) of Section 6 of the Addendum of the Initial Lease, (A) City cannot confirm the rentable square footage of the Premises, and (B) any estoppel certificate delivered by City pursuant to such Section 6 shall certify the then-expiration date of the Lease (which, as of the effective date of this Amendment is April 30, 2013).

14. **No Joint Venture.** This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Landlord relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Landlord, and the City shall in no way be responsible for the acts or omissions of Landlord on the Premises or otherwise.

15. **Attorneys Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys’ fees. For purposes of this Amendment, reasonable fees of attorneys of 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.

16. **References.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

17. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

18. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

19. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as

amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights which the City may have relating to the Lease. Landlord and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

20. **Effective Date of Amendment.** Notwithstanding anything to the contrary contained in this Amendment, Landlord acknowledges and agrees that no officer or employee of City has authority to commit City hereto unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Amendment and authorizing consummation of the transaction contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Amendment shall be null and void unless City's Mayor and Board of Supervisors approve this Amendment, in their respective sole and absolute discretion, and in accordance with all applicable laws. Approval of this Amendment 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. Subject to the foregoing, the effective date of this Amendment shall be the date this Amendment is executed by Landlord and City.

(Signatures on following page)

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