



U.S. GOVERNMENT LEASE FOR REAL PROPERTY



DATE OF LEASE:

LEASE NO: 17WSW0228C

THIS LEASE under the authority of 40 U.S.C. §585, as delegated under 41 CFR §102-73.175, is made and entered into this date by and between: The City of San Diego

whose address is:

1200 Third Avenue, Suite 1700
San Diego, CA 92101

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for considerations hereinafter mentioned, covenant and agree as follows;

- 1. Lease of Premises.** Lessor operates a Tower and Shelter on Property located as described in Exhibit "A", (Latitude 33.008917, Longitude -116.972806) ("Property") more commonly known to Lessor as Mt. Woodson. Lessor leases to the Government and the Government leases from the Lessor a certain portion of the Property consisting of (a) antenna attachment space on the Tower for a Government owned antenna; (b) the Lessor provides approximately 10 square feet of shelter floor space for placement of a Government owned transmitter; and, (c) the Lessor provides ground space for a Government stand-by generator and fuel tank {(a), (b) and (c) collectively, hereinafter called the "Premises," "Property," or "antenna facility(ies)"} in Exhibit "A" is a depiction of the Premises and is attached hereto and incorporated herein by reference. Throughout the Term, the Government shall have the right to ingress and egress 24 hours per day and 7 days per week.
- 2. Term.** TO HAVE AND TO HOLD the said Premises for a 3 year term that begins on March 1, 2018 and ends on February 28, 2021, subject to the termination and other rights as may be hereinafter set forth.
- 3. Rent.** The Government shall pay the Lessor an annual rent of \$11,113.08 payable at the rate of \$926.09 per month in arrears. If the term of this Lease includes any partial month, rent for the partial month shall be prorated. Rent shall be made via Electronic Funds Transfer and based on the information provided in the System for Award Management database (available at <https://www.sam.gov>) or successor database.
- 4. Termination.** The Government may terminate this lease at any time by giving at least 90 calendar days' notice in writing to the Lessor, and no rent shall accrue after the effective date of termination. Lessor may terminate this lease at any time by giving at least 180 days' notice in writing to the Government. Said notice shall be computed commencing with the day after the date of mailing.
- 5. Permitted Use.** (a) The Government may use the Premises for the transmission and reception of weather broadcast communications and emergency broadcast communications along with the associated installation, construction, maintenance, operation and subsequent repair(s), replacement and upgrade of its communications antenna and related equipment, cables, accessories and/or improvements. (b) The Government may install, operate, maintain and replace transmission cables from the transmitters to the antenna(s) and electric lines from the main feed to the transmitters. (c) The Government's equipment is provided on Exhibit "B". Lessor's execution of this Agreement will signify Lessor's acknowledgement of the Government's equipment and use of the Premises. (d) The Government may take appropriate means to secure the Premises and the Government's equipment. The Government has the right to modify, supplement, replace, or upgrade its equipment on the Premises at any time during the term of this agreement. (e) At any time during the term of this agreement, the Government shall have the right to perform maintenance, repairs, replacement, and upgrades to its equipment on the Premises without the consent of the Lessor. Notwithstanding the foregoing, the Government shall provide sixty (60) days written notice of any non-routine/non-emergency maintenance, repair, replacement or upgrade to its equipment. Lessor retains the right to prohibit such non-routine/non-emergency maintenance, repairs, replacement or upgrades to the Government's equipment if installing said equipment would interfere with Lessor's use of the Property, or any other previously authorized third-party use of the Property. If Lessor believes that the proposed maintenance, repairs, replacements or upgrades would interfere, Lessor shall notify the Government within thirty (30) days of receipt of the written notice provided by Government to Lessor. If any of the Government's non-routine maintenance repairs, replacement, or upgrade requests are denied, the Government may immediately terminate this Lease.

6. **Interference.** (a) The Government represents and warrants that its use of the Premises will not interfere with existing radio frequency(ies) used on the Property as disclosed by the Lessor, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. (b) After the date of this agreement, the Lessor will not grant a lease, license or any other right or encumbrance to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the antenna facility, the radio frequency, the operations, or the rights of the Government under this agreement. (c) Lessor will not use, nor will Lessor permit its employees, lessees, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the antenna facility, the radio frequency, the operations or the rights of the Government under this Agreement. In the event of such interference, Lessor will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from the Government. In the event any such interference does not cease within the aforementioned cure period then the Government will have the right to terminate this lease agreement. The Lessor will not be responsible for interference which is beyond the reasonable control of the Lessor, as determined by the Government.

The radio frequency utilized by the Government equipment governed by this Lease is listed below:

Site Name	Transmitter & (Site) Name	FCC-Antenna Structure-Registration Number	Call Sign	Frequency Range	WFO
San Diego	Mt. Woodson	1200993	KEC62	162.4 – 162.55 MHz	San Diego, CA

7. **Access.** For the duration of this Lease, and at no additional cost to the Government, the Lessor is responsible for ensuring the Government, its employees, contractors, subcontractors and licensees will have access to the Premises at all times. If access to the Property is ever denied by the Lessor or a third-party, the Government shall have the right to immediately terminate this Lease. When applicable, the Lessor will provide the Government with at least two keys or the combination or code for any security fencing.
8. **Equipment.** Lessor covenants and agrees that no part of the Equipment placed or affixed to the Property by the Government will become, or be considered part of, the Premises; the Government's Equipment will remain the Property of the Government. Upon termination of the Lease, Government will remove equipment at Lessor's request in accordance with applicable Federal law and regulations.
9. **Operations, Maintenance & Utilities.** (a) the Government will keep and maintain the Government's equipment in good condition, reasonable wear and tear excepted; (b) the Lessor will maintain, repair, and keep in good and tenantable condition, the Premises, the equipment building along with its air conditioning, and the access onto the Property; and (c) the Lessor shall provide for electricity, and seasonal maintenance (landscaping) as part of the rental consideration.
10. **Taxes and Assessments.** The rent includes all taxes and assessments levied on the Premises. The Government shall not be responsible for the payment of any tax escalations or special assessments.
11. **Hazardous Materials.** Any hazardous materials located on the Property shall be installed and stored pursuant to applicable federal, state and local environmental laws and regulations.
12. **Authority to Lease.** Lessor covenants that Lessor's interest in the Property is sufficient to enter into this Lease, and that the Government may reasonably request evidence of said interest.
13. **Successors Bound.** This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.
14. **Claims.** For the purposes of this Lease, the Government is considered to be self-insured. The Government agrees to promptly consider and adjudicate any claims which may arise out of use of the Lessor's Property/Premises by the Government or duly authorized representatives or contractors of the Government and to pay for any damage or injury as may be required by applicable law. Such adjudication may be pursued under the Federal Tort Claims Act, 28 U.S.C. §2671 et seq., the Federal Employees' Compensation Act, 5 U.S.C. §8101 et seq., or such other legal authority as may be pertinent.

15. **Correspondence.**

Correspondence to the Lessor shall be Sent to:	Correspondence to the Government shall be sent to:
City of San Diego Real Estate Assets Department Attention: Real Estate Assets Director 1200 Third Avenue, Suite 1700, MS 51A San Diego, CA 92101-4155	United States Department of Commerce NOAA Real Property Management Division 7600 Sand Point Way NE, Seattle, WA 98115

16. Exhibits and Attachments. The following are attached and made a part hereof:

- I. Exhibit "A", Depiction of the Premises (4 Pages)
- II. Exhibit "B", Description of Government's Equipment (1 Page)
- III. General Clauses (FEB 2017), NOAA (1 Page)
- IV. Representations and Certifications, GSA Form 3518SAM (01/16) (2 pages plus screen shot of SAM)
- V. Exhibit "C" City's Mandatory Clauses and Provisions (9 pages)
- VI. Exhibit "D" Emergency Maintenance Procedures

17. Lessor's DUNS. 826399297

18. Unique Requirements.
NONE

19. This Lease number 17WSW0228C replaces and succeeds Lease number 13WSW0226C.

20. In the event that there is any conflict or inconsistency between the terms and conditions of the Lease and the Government's General Clauses and those of the City's Mandatory Clauses and Provisions (Exhibit E) and Emergency Maintenance Procedures (Exhibit F), the terms and conditions of the Lease and General Terms and Clauses shall control and govern the rights and obligations of the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR:

BY

Signature

Name (Print), Title, & Date

CYNTHIA THOMPSON 8/10/20
On behalf, RCM GSNR ASSAULT

~~IN THE PRESENCE OF AND APPROVED AS TO FORM:~~

BY

Signature

Name (Print), Title, & Date

Melissa Ables, Deputy City Attorney
3/6/2020

UNITED STATES OF AMERICA

Signature

Department of Commerce
Real Property Contracting Officer

Name of Contracting Officer (Print) & Date

Molly Kunze 1/7/2020

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

THIS ACTIVITY IS CATEGORICALLY EXEMPT FROM CEQA PURSUANT TO STATE CEQA GUIDELINES, SECTION 15301

(Existing Facilities)

BY:

Name:

Title:

HEIDI VONBLUM

Program Manager

Date:

2/24/2020

EXHIBIT A -- Legal Description

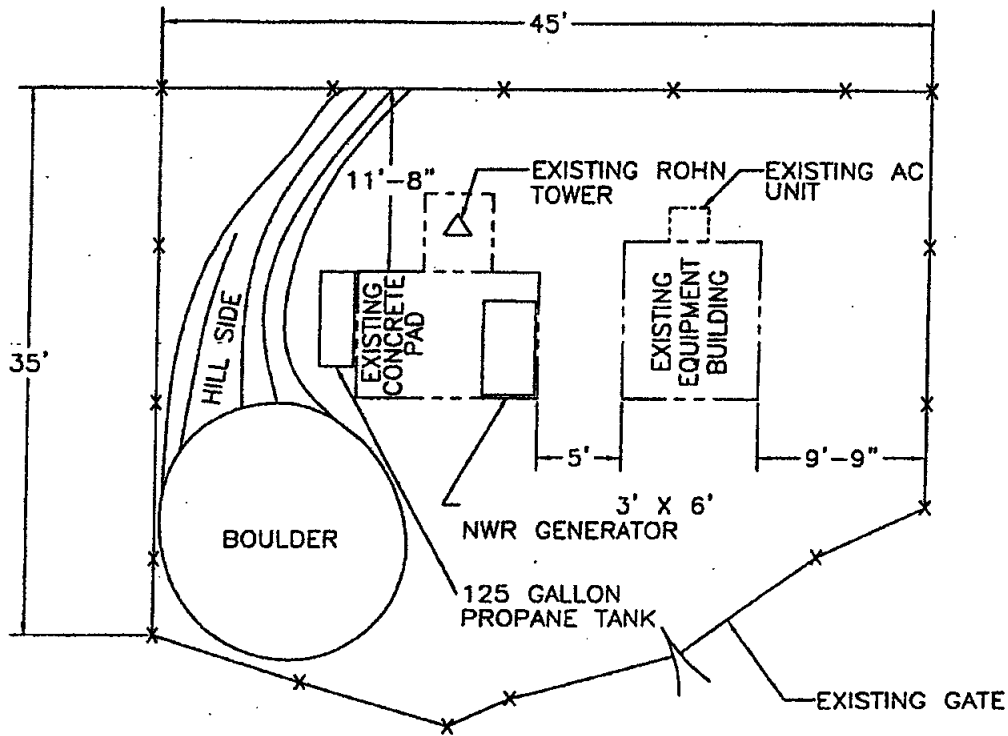
MOUNT WOODSON TELECOMMUNICATIONS CENTER

All that portion of Section 27, T13S, Range 1 West, San Bernardino Base and Meridian, according to the U.S. Government Survey, in the County of San Diego, State of California described as follows:

COMMENCING at the south quarter of said Section 27 from which the United States Coast and Geodetic Station "Woodson 1953" having the Lambert Zone 6, NAD83 coordinates of North 1,947,522.38 and East 6,340,730.94, bears North 23E43'31" W.406.11 feet; Thence South 89E19'37" West 177.51 feet along the South line of said Section 27; Thence North 19E48'36" West 376.84 feet, to a point having the Lambert Zone 6 NAD84 coordinates of North 1,947,532.05 and East 6,340,588.61, said point being the TRUE POINT OF BEGINNING; Thence South 89E11'09" West 410.94 feet; Thence North 20E08'21" West 83.00 feet; Thence South 89E11'09" West 250.00 feet; Thence South 20E08'21" East 100.00 feet; Thence South 89E11'09" West 450 feet; Thence North 20E08'21" West 200.00 feet; Thence North 89E11'09" East 250.00 feet; Thence North 20E08'21" West 50.00 feet; Thence North 89E11'09" East 450.00 feet; Thence North 20E08'21" West 53.22 feet; Thence North 89E11'09" East 210.94 feet; Thence South 20E08'21" East 64.55 feet; Thence North 89E11'09" East 201.37 feet; Thence South 19E48'36" East 221.22 feet to the TRUE POINT OF BEGINNING.

Above described exception parcel contains 5.2503 Acres.

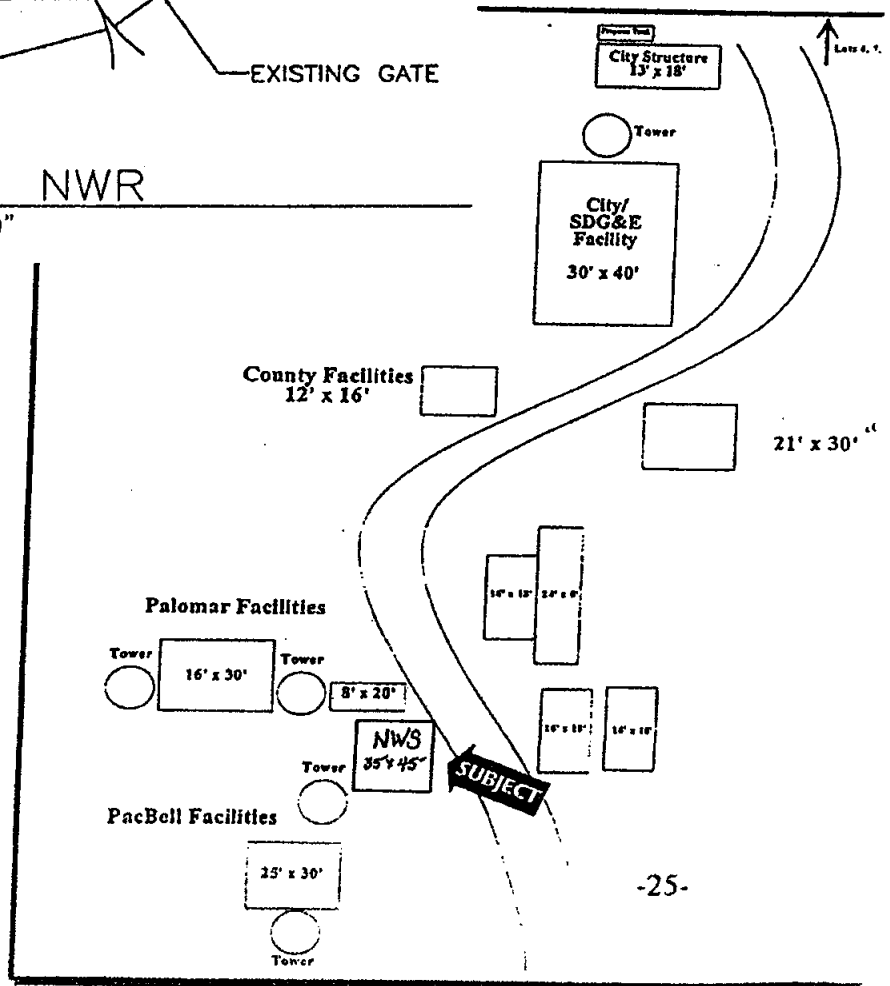
TOGETHER WITH the right of ingress and egress thereto over and along an existing road, or its future relocation, running easterly from the Mt. Woodson/Palomar Telecommunications facility, through portions of Section 26, 34 and 35 to the existing location of the old Ramona-Poway Road. Said existing access road described in City of San Diego Field Survey notes by Lorne de Pron, January 26, 2000, L.C. Index 302-1733, W.O. 110013, on file in the Field Engineering office of the City of San Diego Land Surveyor.



SAN DIEGO MT WOODSON NWR

SCALE: 1/8"=1'-0"

City/US Dept. of Commerce-NOAA @ Mt Woodson



-25-

MT. WOODSON SITE PLAN

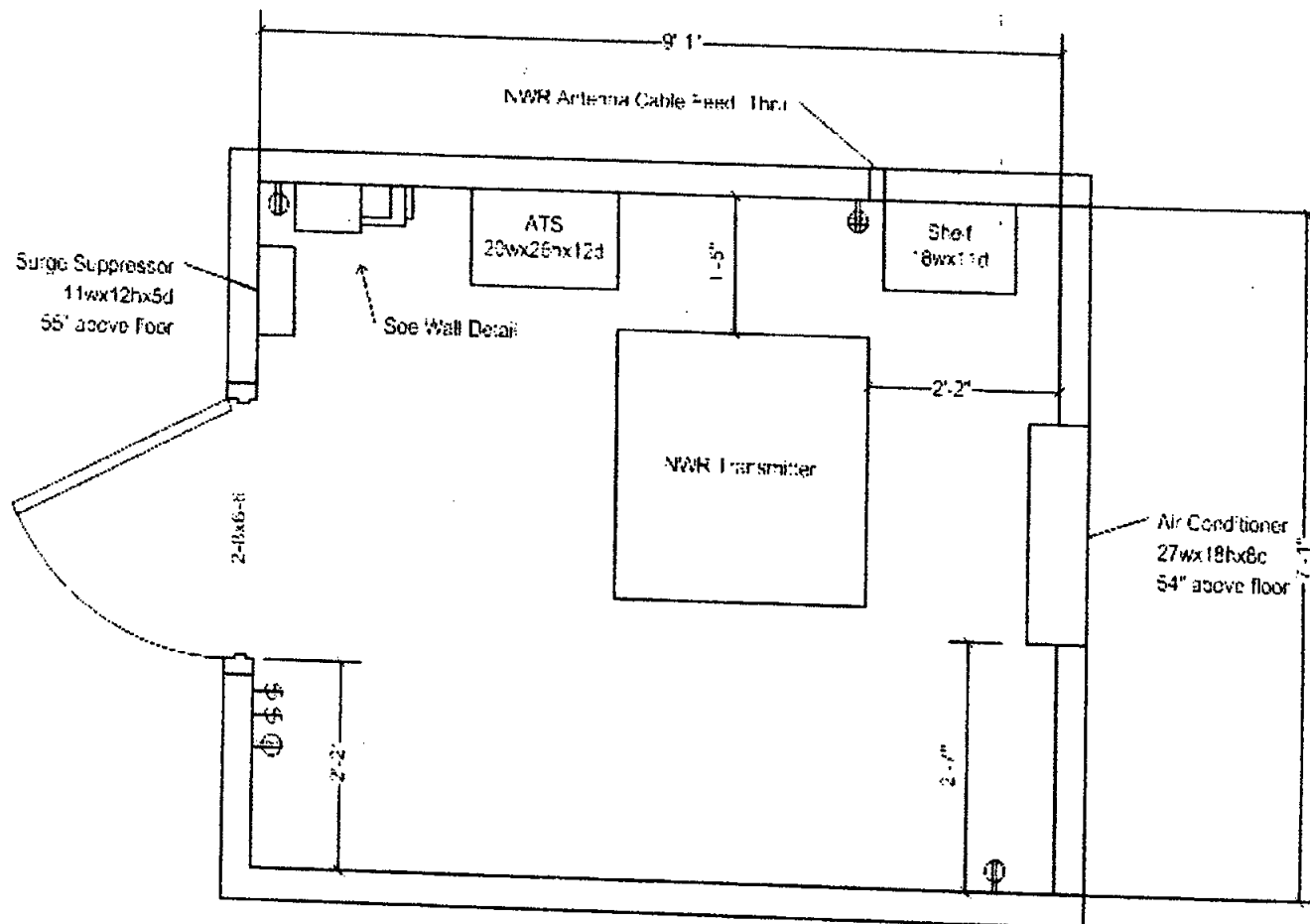


EXHIBIT A - Page 3 of 4

REVISIONS	DATE	02/16/2009	SITE NAME	San Diego, CA
	SCALE	1/2" = 1'-0"	CONCEPTUAL SKETCH OF	
	PAGE	2 of 5	NWR TRANSMITTER BUILDING FLOOR PLAN	
DATE RECEIVED			DRAWN BY	Roland Devoe



Mt. Woodson

PRINT**FCC**

Coordinates: 33.0089,-116.9728
33-00-32.1 N 116-58-22.1 W

Structure: TOWER

Elevation: 853m

Height: 49m

AGL: 49m

FCC #: 1200993

FAA #: 99-AWP-0577-OE

Date Constructed: 06-10-86

Proximity: Woodson Mountain, 4 mi SE Ramona, CA

Location: Poway, CA

County: San Diego



Role	Licensee ID	Address
Owner	L00136939	San Diego, City of, California Attn: Ken Norton 1220 Caminito Centro San Diego, CA 92102 Phone:6195258655 E-Mail:knorton@sandiego.gov Phone:6195258655
Representative		Ken Norton Phone:6195258655 E-Mail:knorton@sandiego.gov Phone:6195258655

EXHIBIT B – Equipment

One (1) rack of equipment located in an equipment shelter.

One (1) Omni Whip antenna (18').

One (1) reflector (3').

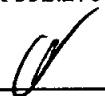
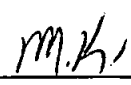
One (1) concrete pad for approximately 3'x6' emergency backup generator

One (1) Emergency Backup Generator

GENERAL CLAUSES**(Acquisition of Leasehold Interests in Real Property for Leases Up to \$150,000 Net Annual Rent)**

1. The Government reserves the right, at any time after the lease is signed and during the term of the lease, to inspect the leased premises and all other areas of the building to which access is necessary to ensure a safe and healthy work environment for the Government tenants and the Lessor's performance under this lease.
2. **GSAR 552.270-7 FIRE AND CASUALTY DAMAGE (JUN 2011)**
If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within fifteen (15) calendar days after such determination. If so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.
3. The Lessor shall maintain the demised premises, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and tenantable condition. Upon request of the Contracting Officer, the Lessor shall provide written documentation that building systems have been maintained, tested, and are operational.
4. In the event the Lessor fails to perform any service, to provide any items, or meet any requirement of this lease, the Government may perform the service, provide the item, or meet the requirement, either directly or through a contract. The Government may deduct any costs incurred for the service or item, including administrative costs, from rental payments.
5. **FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (VARIATION)**
This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make the full text available, or the full text may be accessed electronically at: <https://www.acquisition.gov>
6. The following FAR (48 C.F.R. part 52) and GSAR (48 C.F.R. part 552) clauses are incorporated by reference:

FAR 52.204-7	SYSTEM FOR AWARD MANAGEMENT (OCT 2016)
FAR 52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2016) (Applicable to leases over \$25,000; not applicable to individuals)
FAR 52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2016)
FAR 52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015) (Applicable to leases over \$35,000)
FAR 52.219-28	POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUL 2013) (Applicable to leases over \$3,500 and 5 years)
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (Applicable to leases over \$10,000)
FAR 52.222-26	EQUAL OPPORTUNITY (SEPT 2016) (Applicable to leases over \$10,000)
FAR 52.222-35	EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (Applicable to leases over \$10,000)
FAR 52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014) (Applicable to leases over \$10,000)
FAR 52.222-37	EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (Applicable to leases over \$10,000; not applicable to a State or local government agency)
FAR 52.232-23	ASSIGNMENT OF CLAIMS (MAY 2014) (Applicable to leases over \$3,500)
FAR 52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT (JUL 2013)
FAR 52.233-1	DISPUTES (MAY 2014)
GSAR 552.270-8	COMPLIANCE WITH APPLICABLE LAW (SEP 1999)
GSAR 552.270-23	SUBORDINATION, NONDISTURBANCE AND ATTORNMEN (SEP 1999)
GSAR 552.270-24	STATEMENT OF LEASE (SEP 1999)
GSAR 552.270-28	MUTUALITY OF OBLIGATION (SEP 1999)
GSAR 552.270-30	PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JUN 2011)
GSAR 552.270-31	PROMPT PAYMENT (JUN 2011)
GSAR 552.270-32	COVENANT AGAINST CONTINGENT FEES (JUN 2011)

Initials:  & 

Lessor

Government (Lessee)

General Clauses DOC NOAA FEB 2017

**ADDENDUM to the System for Award Management (SAM)
REPRESENTATIONS AND CERTIFICATIONS (Acquisitions
of Leasehold Interests in Real Property)**

Request for Lease
Proposals Number
17WSW0228C

Dated

2/06/2020

Complete appropriate boxes, sign the form, and attach to offer.

The Offeror makes the following additional Representations. NOTE: The "Offeror," as used on this form, is the owner of the property offered; not an individual or agent representing the owner.

**1. ANNUAL REPRESENTATIONS AND CERTIFICATIONS FOR LEASEHOLD ACQUISITIONS
(APR 2015)**

- (a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 531120, unless the real property is self-storage (#531130), land (#531190), or residential (#531110).
- (2) The small business size standard is 38.5 Million in annual average gross revenue of the concern for the last 3 fiscal years.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (b) The System for Award Management (SAM) is a centrally located, searchable database which assists in the development, maintenance, and provision of sources for future procurements. The Offeror, by signing this addendum, hereby certifies he is registered in SAM.

☐ Registration Active and Copy Attached

**2. 552.203-72 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID
DELINQUENT FEDERAL TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW
(DEVIATION) (OCT 2013)**

- (a) In accordance with Sections 630 and 631 of Division of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), and Section 101 of the Continuing Appropriations Act, 2014 (Pub. L. 113-16) none of the funds made available by the Continuing Appropriations Act 2014 may be used to enter into a contract action with any corporation that---
- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government, or
- (2) Was convicted, or had an officer or agent of such corporation acting on behalf of the corporation convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation or such officer or agent and made a determination that this action is not necessary to protect the interests of the Government.
- (b) The Contractor represents that---
- (1) It is ☐ is not ☒ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or

have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

- (2) It is ☐ is not ☐ a corporation that was convicted, or had an officer or agent of the corporation acting on behalf of the corporation, convicted of a felony criminal violation under any Federal law within the preceding 24 months.

3. OFFEROR'S DUNS NUMBER

(a) Enter number: 826399297

(b) An offeror may obtain a DUNS number (i) via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

OFFEROR OR LEGALLY AUTHORIZED REPRESENTATIVE	NAME, ADDRESS (INCLUDING ZIP CODE) SHELLEY REDMAN 1200 THIRD AVENUE SUITE 1100 SAN DIEGO, CA 92101 <u>Shelley Redman</u> Signature	TELEPHONE NUMBER <u>3/06/2020</u> Date
--	--	--

EXHIBIT C

CITY'S MANDATORY CLAUSES AND PROVISIONS

- A. **Surrender.** Upon the termination of this Lease, the Government shall surrender the Premises to Lessor in a decent, safe, and sanitary condition, and free and clear of all liens and encumbrances caused by or resulting from the Government's occupancy and use, except those liens and encumbrances which: (1) existed on the Effective Date, and (2) exist after the Effective Date and are not the result of the Government's use or occupancy of the Premises. The Premises shall be surrendered in the same condition as they were in, prior to the Government's lease of the Premises, normal wear and tear, damage from the elements, and circumstances over which the Government has no control excepted.
- B. **Hold Harmless.** For the purposes of this Lease, the Government is considered to be self-insured. In conformity with, and to the fullest extent permitted by the Federal Anti-Deficiency Act (31 U.S.C. section 1341), Federal Tort Claims Act (28 U.S.C. section 2671-2680), and other applicable federal law, the Government agrees to release and hold Lessor, its elected officials, officers, employees, representatives, and agents harmless from all claims asserted or liability established for damages or injuries to any person or property, including to injury of Government's officers and agents, which arise out of or are in any manner directly or indirectly connected with this Lease, except for the Lessor's gross negligence or willful misconduct. Nothing in this Lease shall be construed to preclude or affect any investigation, prosecution, or proceeding that may occur under Title 18 of the U.S. Code or other Federal criminal or civil regulatory law, including the assessment of fines and penalties.
- C. **Acceptance of Site.** The Government represents and warrants that the Government has independently inspected the Property and Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Property and Premises as applicable. The Government agrees that it is relying solely on its independent inspections, tests, investigations, and observations in entering into this Lease. The Government acknowledges that the Property and Premises are in the condition called for herein and that Government shall not hold the Lessor responsible for any defects, whether apparent or latent at the Premises. The Government has been given the opportunity to investigate the Property and Premises for the presence of any Hazardous Substances, including without limitation the opportunity to perform soil boring and other tests. The Government shall notify the Lessor, if its investigations indicate the presence of any Hazardous Substances on the Property or Premises. To the extent permitted by applicable federal law, the Government waives any claims against Lessor that may result from the presence of Hazardous Substances on the Property or Premises.
- D. **Site Plans.** The Government shall maintain the Premises in accordance with Site Plans attached hereto as Exhibit B. Any modifications, upgrades, or changes to equipment shall be reflected on updated Site Plans, which shall be provided to Lessor as an Amended Exhibit B.

- E. Improvements and Alterations. Other than as depicted in the approved Site Plans, the Government shall not construct any improvements, structures or installations on the Premises or make any alterations to the Premises without the written consent of the Lessor, which consent shall be in the Lessor's sole discretion.
- F. Competent Management. The Government shall provide competent management of the Sites for the permitted uses to the reasonable satisfaction of each party. "Competent management" shall mean demonstrated ability in the management and operation of a wireless communication facility and related activities in a responsible manner and in accordance with industry standards
- G. Compliance with Laws and Policies.
1. General. The Government's operations shall at all time be in compliance with all applicable laws, statutes, ordinances, and regulations of city, county, state and Federal Government, at the Government's sole cost and expense. The Government shall comply with all notices issued by any such government under the authority of all current or future laws, statutes, ordinances, or regulations. Upon receipt of same, the Government shall promptly deliver to the Lessor copies of all documentary evidence of such compliance received by or otherwise available to the Government.
 2. Nondiscrimination. The Government shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender orientation, sexual orientation, medical status, national origin, age, marital status, or physical disability in Government's operations, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations and the obtain and holding of employment.
- H. Telecommunications Provisions.
1. Radio Frequency Radiation. The Government shall maintain any radio frequency ("RF") radiation associated with the wireless communications facility within Section 1.1310 of Title 47 of the Code of Federal Regulations. Any area within one thousand (1,000) feet of any RF transmitting antenna on the wireless communications facility, casually accessible by the general public or by any worker at ground level, shall be maintained below limits stated in CFR Title 47 for General Population/Uncontrolled Exposure. The Government shall report to Lessor any areas discovered to exceed such federally mandated limits. To the extent legally permissible under federal law, the Government shall hold Lessor harmless for any liabilities, fines or other penalties claimed or imposed against the Lessor that result from the existence of excessive levels of radiation that are caused in whole or in part, or contributed to, by the Government's operations. Hazardous RF radiation levels may be encountered when climbing on antenna structures (refer to FCC OET Bulletin 65). Protection of employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is of primary concern. Any areas in which such employees may be subjected to radiation levels that exceed the General Population/Uncontrolled Exposure

limits must be clearly identified as required by CAL-OSHA. Additional information regarding these exposure limits can be found in the FCC's OET Bulletin 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields," and in supplements to Bulletin 65, all available at the FCC's Internet Web site: <http://www.fcc.gov/oet/rfsafety>.

2. Radio Frequency Interference. Government shall comply with all applicable requirements set forth in Exhibit D for Government installations on the Premises, which may be updated from time to time in Lessor's sole discretion. Government warrants that Government's operations shall not result in degraded performance or RF interference with any Lessor-authorized uses at the Premises.
3. Industry Standards. The Government shall perform their operations in adherence to applicable industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© Manual, or any succeeding regulations or standards. In addition to the requirements of the Motorola R56© publication, the Government shall comply with the following supplemental requirements:
 - a. The Government shall remove all trash and debris generated by Government's operations from the Property at the end of each workday;
 - b. Tower and structure climbing shall be done in compliance with all applicable CAL-OSHA requirements;
 - c. All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to other users on the Property; and
4. Other Facilities. The Government shall not access any other wireless communication facility or other communications equipment (including any towers) located on the Property without the other Lessor's prior written consent.
5. Interference with other Lessor Operations or Public Use. The Government operations shall not interfere with the Lessor operations or the public's use of the Property.

Waste, Damage or Destruction. The Government shall immediately give notice to Lessor of any fire or any other damage that occurs on the Property or Premises, either during or after the completion of construction of approved improvements. The Government shall not commit, or allow to be committed, any waste or injury or any public or private nuisance in connection with the Government's use or occupancy of the Premises. The Government shall deposit any refuse and/or obstructions on the Property or Premises, and the Government shall dispose of all of its garbage, trash, and rubbish in a manner satisfactory to Lessor. If it is found that the Premises are damaged by the intentional or negligent acts or omissions of the Government, and such damage puts the Premises or the Property into a condition which is not decent, safe, healthy, and sanitary, the Government shall pay the actual cost to replace, repair, and/or restore any damage to the Premises or Property including the equipment (ordinary wear and tear, damage from the elements, and circumstances over which the Government has no control excepted) caused by the Government, its agents, contractors, employees, exhibitors, or invitees, all subject to the

procedures and limitations of the Federal Tort Claims Act (28 U.S.C §§2671-2680). Any Government equipment that is damaged, regardless of the cause of the damage, shall be removed from the premises.

- I. The Government shall commence preliminary steps toward performing repairs and/or restoration of the Premises or Property as soon as practicable, but no later than ten (10) calendar days after the occurrence of the fire or damage, and shall complete the required repairs and/or restoration of the Premises or Property within sixty (60) calendar days after such occurrence. Failure to timely repair damage to the Premises or Property will be considered a default under this Lease.
- J. Hazardous Materials. The Government shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under, or from the Premises or Property by any of the Government's officers, employees, agents, contractors, invitees and guests. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum related substances and their chemical constituents. For the purpose of this Lease, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a Hazardous Substance. The Government and its officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises or Property without Lessor's prior written consent. The Government shall obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

If the Government's operations result in a release of a Hazardous Substance, the Government shall pay all costs of remediation and removal to the Lessor's satisfaction for the unrestricted reuse of the Premises and Property, and in accordance with all applicable laws, rules, and regulations of governmental authorities, subject to the availability of appropriated funds.

If the Government or its officers employees, agents, contractors, invitees and guests has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, the Government shall remove all Hazardous Substances in any type of container, equipment or device from the Premises and Property immediately upon termination of this Lease. The Lessor reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances, wastes, or other containers, equipment or devices from the Premises and Property. The Government shall be responsible for any and all costs incurred by the Lessor to remove any container, equipment or device requiring disposal or removal as required by this provision.

To the extent provided in the Federal Tort Claims Act, 28 U.S.C. sections 1345(b) and 2671-2680, the Government shall be liable for, and shall hold harmless, its Council, officers, employees and agents any and all damages, liabilities, losses, fines, penalties, judgments, demand or actions and costs and expenses suffered or incurred related to environmental liabilities resulting from, and proportionate to, the Government's own activities on the Premises, including, without limitation, (i) costs of environmental assessments, (ii) costs of regulatory remediation oversight, (iii) costs of remediation and removal, (iv) any necessary Lessor or Government response costs, damages for injury to natural resources or the public, (v) all fines, penalties, and fees assessed by any regulatory agency, (vi) damages for injury to natural resources, Government's or Lessor's officers, employees, agents, contractors, invitees and guests, or the public, and (vii) costs of any health assessments or health effect studies.

If the Government knows or has reasonable cause to believe that a Hazardous Substance has been released on or beneath the Premises or the Property, the Government shall immediately notify the Lessor and any appropriate regulatory agency or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. The Government shall deliver a written report thereof to the Lessor within three (3) calendar days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If the Government knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and/or safety, the Government may take all actions necessary to alleviate the danger. The Government shall notify the Lessor immediately in writing of any violation, notice to comply, or notice of violation received, or the initiation of environmental actions or private suits related to the Site(s).

- K. Entry and Inspection. The Lessor may, at any time, without any obligation to do so, enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect the Lessor's interest in the Premises, or to inspect the operations conducted on the Premises. If Lessor's entry or inspection discloses that the Premises is not in a decent, safe, healthy, and sanitary condition, which has been caused by the Government's intentional or negligent acts or omissions related to the use and/or occupancy of the Premises, the Lessor may, after ten (10) calendar days written notice to the Government, have any necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition, provided, however, nothing in this Lease prevents the Government from challenging the Lessor's determination that the repairs are needed due to the Government's intentional or negligent acts or omissions. Lessee shall not be liable for the costs of any maintenance or repair service incurred by Lessor, unless Lessor informs Lessee of the costs of such maintenance or repair prior to the performance of the maintenance or repair in writing, and Lessee agrees in writing to be liable for the costs thereof. The rights reserved in this section shall not create any obligation on the Lessor or increase the Lessor's obligations elsewhere in this Lease.
- L. Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. The Government shall obtain all licenses, permits, and agreements from such third parties as may be or may become necessary or reasonably advisable to allow that Government's occupancy and use of the Premises, relative to any

such superior interest. If the Government's occupancy and use are or become inconsistent or incompatible with a preexisting, superior interest, the Government shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest, or either party may choose to terminate the Lease.

M. Other Governmental Actions. By entering into this lease, Lessor is not in any way obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development, occupancy, use, or maintenance of the Premises. Discretionary action includes but is not limited to any rezoning, variance, environmental clearance or any other governmental approval that may be required for the Government's allowed uses of the Premises. The Government shall diligently seek, at its sole costs and expense, all entitlements and actions from Lessor and any other governmental agencies with jurisdiction over the Premises as are necessary for the Government's use of the Premises.

N. Reservation of Rights.

1. Resources. Lessor reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Property.
2. Use. Lessor reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Lessor Property for utilities, thoroughfares, or access as Lessor deems advisable, in its sole discretion, for the public good.
3. Entry. Lessor may enter the Premises to develop and/or make repairs to municipal resources and services. Lessor shall not unreasonably interfere with Government's use of the Premises and shall reimburse Government for physical damages, if any, to the permanent improvements located on the premises or to Government's communications equipment resulting from Lessor exercising the rights reserved in this section. Lessor shall pay the costs of maintenance and repair of all Lessor installations made pursuant to these reserved rights.

O. Reassignment of Space. At any time during this Lease, Lessor, in its sole discretion, may request that the Government be reassigned to a different location within the Property ("Relocation Premises").

1. Timing and Costs. If the Government agrees to be relocated, the Government shall relocate its communications equipment to the Relocation Premises either within ninety (90) calendar days after the execution of a written agreement between the Parties concerning the location and dimensions of the Relocation Premises, or otherwise as soon as possible after receipt of all necessary permits and approvals required for any construction or redevelopment project which requires such relocation, and receipt of all permits and approvals required for the Government's use of the Relocation Premises. The Government shall cooperate fully with the Lessor and its contractors during any reassignment.

2. Physical Relocation of Equipment. The physical relocation of all or any part of the Government's communications equipment shall only be done by the Government or its contractors.
 3. Broadcast and/or Receiving Capability. During physical relocation of the communications equipment to the Relocation Premises, the Lessor will work with the Government to attempt to secure an alternative Lessor approved site for the Government to operate temporary installed communications equipment, which may include a Lessor approved temporary wireless communication facility on the Property and which will be installed and maintained at the Government's sole cost and expense.
 4. No Agreement. If the Parties are unable to agree on an acceptable Relocation Premises, then either Party may terminate this Lease, without further obligation thereto.
 5. Premises Redefined. After a reassignment and relocation as provided in this section, the Exhibit A shall be amended to reflect the Relocation Premises. The parties agree that "as built" drawings of the Relocation Premises, including any access and utility easements, may be prepared by a licensed architect at the Government's sole cost and expense. Except as expressly provided in this section, any such reassignment and relocation shall not alter, modify, or otherwise change any of the terms or conditions of this Lease.
- P. Waiver. Either Parties' waiver of a default shall not constitute a waiver of any other default. Any waiver of a default shall be in a writing executed by the non-defaulting Party in order to constitute a valid and binding waiver. The non-defaulting Party's delay or failure to exercise a remedy or right shall not be a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default shall not waive the use of another remedy or right for the same or any other default. The property constituting the Premises are publicly owned lands, held in trust for the benefit of the citizens of the City of San Diego, as applicable. A Party's failure to discover a breach or default or take prompt action to require the cure of any breach or default shall not result in an equitable estoppel, but a non-defaulting Party may, at all times, require the cure of any breach or default regardless of when discovered.
- Q. Ownership of Improvements and Personal Property. Except as otherwise provided in this section, all improvements constructed on the Premises by the Government or the Government's contractors and/or subcontractors at any time during the Term, or under any previous Lease between the Parties, including any tower structure, equipment shelters, conduit, and fence, as well as all communications equipment, machines, and appliances brought to the Premises by the Government's contractors and/or subcontractors at any time during the Term shall be the property of the Government.
- R. Water Quality - Best Management Practices. The Lessor and Government are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the Government's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San

Diego Municipal Code Section 43.0301 to 43.0312).

Therefore, Government shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately the Government's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the Government will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- S. Accessibility Assessment. In accordance with California Civil Code section 1938, Lessor hereby states that the Premises have not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), Lessor is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

- T. Signs. Government shall only post signs required by Federal, state, or local regulations, including without limitation, safety signs required by OSHA FAA, and/or FCC. Government shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises and/or Property without Lessor's prior written consent, which consent shall be in Lessor's sole discretion. If any such unauthorized item is found on the Premises and/or Property, Government shall remove the item at Government's sole cost and expense. Government shall post a clearly marked sign at the Premises indicating Government's name and emergency telephone number.

- U. Maintenance. Government shall, at its sole cost and expense, continuously maintain the Government's equipment and property throughout the Term. In doing so, Government shall, at its sole cost and expense, make all repairs, restoration, and replacements (including repairs and restoration of damaged or worn Government owned improvements) necessary to maintain and preserve the Government's equipment and property in a decent, safe, healthy, and sanitary condition. All such maintenance, repairs, restoration, and replacements shall be in compliance with all applicable codes and standards of Lessor, state, and Federal agencies.

1. Lessor Maintenance. Lessor reserves the right to perform any needed maintenance on the Premises or Property at any time. If Lessor performs such maintenance, Lessor shall provide Government with at least forty-eight (48) hours notice prior to commencing the work (except in the event of an emergency, in which case, no prior

notice shall be required, but Lessor shall give Government notice as soon as reasonably possible thereafter), and Government shall comply with all applicable safety requirements issued by Lessor to ensure the safety of Lessor personnel performing such maintenance on the Premises or Property.

2. Emergency Maintenance Procedures. The Parties shall comply with the emergency maintenance procedures set forth in Exhibit D, including the requirement to notify the other party, in writing, of any changes to its emergency contacts and telephone numbers.

V. Utilities. Utilities shall be included in the Rent.

W. Assignment and Subletting. Government shall not assign this Lease, or any interest in this Lease, without Lessor's prior written consent, which consent shall be in Lessor's sole discretion. Government shall not assign this Lease, or any interest in this Lease, to any person or entity engaged in the design, development, construction, operation, sale, and/or leasing of telecommunication towers or poles.

1. For the purposes of this section, "Assignment" shall include, without limitation, the transfer of any interest in this Lease by Government or by any partners, principals, or controlling shareholders of Government, and, if Government is other than a natural person, the transfer of a controlling interest in Government or any of Government's general partners, principals, or controlling shareholders.
2. Lessor's consent to any Assignment pursuant to this section shall be conditioned upon the assignee agreeing, in writing, that it will assume the rights and obligations assigned, and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired.
3. Government shall not permit any person or entity (other than the employees, agents, contractors, and/or guests of Government) to use or occupy the Premises, or any part of the Property.
4. Consent by Lessor to any Assignment of this Lease pursuant to this section shall not be deemed to be consent to any subsequent Assignment to the same or any other person.
5. Neither this Lease nor any interest herein shall be assignable as to Government's interest herein by operation of law, without Lessor's prior written consent.
6. Any Assignment of this Lease, or any use or occupancy of the Premises and/or Property by any other person or entity, in violation of the foregoing provisions shall be void and a default of this Lease, and Lessor may thereupon terminate this Lease.
7. Subletting. Government shall not sublet, in whole or in part, the Premises, or any right or appurtenant privilege to the Premises without Lessor's consent.

Any subletting, in whole or in part, of the Premises shall be void and shall be a default of this Lease, and CITY may thereupon terminate this Lease.

8. Provisions Binding on Successors. Except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

Exhibit D

Emergency Maintenance Procedures

If the Government discovers that any of its equipment within the Premises is damaged, or becomes aware of another emergency situation while at the Premises, LESSEE shall immediately notify **CITY'S Station 38 at (619) 527-7660**. If there is any emergency on the access road or at the Mt. Woodson Communication Center, please also telephone **9-1-1**.

If CITY discovers that any of the Government's equipment is damaged, CITY shall immediately notify **LESSEE'S Network Operation Call Center at (801) 524-5120**.

CITY may require any replacement antenna facility(ies) to be relocated, as provided for in this Lease.

If LESSEE'S antenna facility(ies) causes any interference to CITY'S telecommunications equipment and/or system, CITY may require such antenna facility(ies) to be removed permanently and replaced at another location, as provided for in this Lease.

LESSEE shall not unreasonably interfere with pedestrian or vehicle traffic while installing or maintaining its antenna facility(ies).

If a party changes its emergency contact telephone information, that party shall immediately notify the other party of the new contact information at the telephone number provided above, and, within ten (10) calendar days, provide the other party with written notice of the new contact information, in accordance with this Lease.