

ORIGINAL



**CITY OF SAN DIEGO
TELECOMMUNICATIONS LEASE**

between

THE CITY OF SAN DIEGO

and

**STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES**

At

**Point Loma Reservoir
1057 ½ Catalina Boulevard**

DOCUMENT NO. **RR-312297**
FILED **APR 09 2019**
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**CITY OF SAN DIEGO
TELECOMMUNICATIONS LEASE**

This CITY OF SAN DIEGO TELECOMMUNICATIONS LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and the CALIFORNIA HIGHWAY PATROL, by and through the Department of General Services ("LESSEE"), hereinafter collectively referred to as the "Parties," to be effective on the first day of the first month following the date of execution by CITY and approval by the San Diego City Attorney ("Effective Date").

RECITALS

A. CITY owns certain real property commonly known as "1057 ½ Catalina Boulevard", located in the County of San Diego and in the City of San Diego, California, and more particularly described in **Exhibit A, Property**, attached hereto and incorporated herein by reference (the "Premises").

B. LESSEE and CITY desire to enter into this Lease in order to grant LESSEE the right to operate and maintain a wireless communications facility on portion of the Premises (the "Site"), including LESSEE owned 10'8 x 12' metal building (vault), tower, three poles (10', 15', 20'), as described and depicted in the Site plans attached hereto as **Exhibit B** and incorporated herein by reference (the "Site Plans").

C. LESSEE and the CITY desire to establish their respective rights and responsibilities for LESSEE'S continued operation of the wireless communications facility and LESSEE'S use of the Site.

AGREEMENT

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS.

For the purposes of this Lease, the terms listed below are defined as follows:

- 1.1 "Communications Equipment" means the antenna support structure, antenna equipment, cable wiring, utility lines, transmission lines, air-conditioned equipment shelters, back-up power sources (that may include back-up power generators with connected fuel storage tanks for emergency power), and related fixtures that LESSEE will maintain on the Site, more particularly described and depicted in the Site Plans attached hereto as **Exhibit B**.
- 1.2 "Hazardous Substances" means 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.
- 1.3 "CITY Contact" means the CITY's Building Facilities Supervisor or designee. For purposes of this Lease, the CITY Contact is currently Kim Andersen, Senior Communications Engineer, who can be contacted at (619) 525-8656.

2. LEASED PROPERTY.

- 2.1 Lease of Site. Under the terms and conditions of this Lease, CITY leases to LESSEE and LESSEE leases from CITY, the Site.
- 2.2 Access to Site. Unless otherwise provided, LESSEE, its agents, employees, contractors, guests, and invitees may enter the Premises on a 24-hour, non-exclusive basis to access the Site.
- 2.3 Memorandum of Lease. Upon LESSEE'S request, CITY shall execute and deliver to LESSEE a "Memorandum of Lease," substantially in the form attached hereto as **Exhibit C**, which LESSEE may record in the Office of the San Diego County Recorder.

3. USES.

LESSEE shall use the Site solely and exclusively for the purposes, with proper permits and approvals obtained, of installing, constructing, modifying, maintaining, operating, and removing, all at LESSEE'S sole cost and expense, LESSEE'S Communications Equipment ("LESSEE'S Operations").

- 3.1 Continuous Use. LESSEE shall continuously occupy and use the Site throughout the "Term" (defined below) of this Lease.
- 3.2 Unauthorized Use. The use of the Premises or Site for any unauthorized, illegal, or non-permitted purpose shall constitute a default of this Lease.

4. TERM.

The term of this Lease ("Term") shall be ten (10) years, commencing on the Effective Date. "Lease Year" shall mean each twelve (12) month period during the Term, commencing on the month and day of the Effective Date and continuing to the same month and day of the following year, minus one (1) calendar day.

- 4.1 Early Termination Right. Either party may terminate this Lease at any time by giving written notice to the other party at least one hundred eighty (180) days prior to the date when such termination shall become effective.
- 4.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the Site after expiration or termination shall be month-to-month, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover at will. Calculation of all prorated rents under this section shall be based on a 30-day month. Notice of any such increase in rent shall be given in writing at least thirty (30) days prior to becoming effective.

- 4.3 Surrender. Upon the expiration or earlier termination of this Lease, LESSEE shall surrender the Site to CITY in a decent, safe, and sanitary condition, and free and clear of all liens and encumbrances caused by or resulting from LESSEE'S Operations. Except otherwise stated in Section 30, below, LESSEE shall surrender the Site in the same condition as it was on the Effective Date, normal wear and tear excepted.

5. RENT.

LESSEE shall pay rent from legally available funds to CITY in the amount of \$23,911.20 (Twenty Three Thousand, Nine Hundred Eleven Dollars and 20/100) per year, in advance, subject to annual adjustments as of the first day of the second Lease Year and each Lease Year thereafter, as follows:

Lease Year Two	\$24,748.09
Lease Year Three	\$25,614.28
Lease Year Four	\$26,510.77
Lease Year Five	\$27,438.65
Lease Years Six – Ten	Market Rent Adjustments by Appraisal

The above rent schedule reflects an annual rent escalation equal to three and one-half percent (3.5%) above the annual rent for each preceding Lease Year. For the sixth through the tenth Lease Years, the rent may be adjusted upward pursuant to the "Market Rent Adjustments by Appraisal" section, below.

- 5.1. Market Rent Adjustments by Appraisal. At the end of the fifth Lease Year, the annual rent for the sixth Lease Year shall be adjusted to equal the then existing market rent as determined by an appraisal, which adjustment shall be effective as of the first day of the sixth Lease Year ("Adjustment Date"). Such appraisal shall be performed by a staff appraiser of CITY'S Real Estate Assets Department ("READ") or by a California State Certified General Real Estate Appraiser who is confirmed by READ as being competent in determining market rent for telecommunications sites, properties, and leases ("Qualified Appraiser") and shall be in conformance with Uniform Standards of Professional Appraisal Practice. In establishing the market rent for the Site, the Qualified Appraiser shall base the valuation on an appraisal not more than six (6) months old, as of the Adjustment Date, prepared by surveying comparable market rents for similar leased facilities in Southern California or other comparable market areas. If the appraisal is not completed prior to the Adjustment Date, LESSEE shall continue to pay rent in accordance with the then-existing Lease rates, and the adjustment, when determined, shall be retroactive to the Adjustment Date. Any deficiency shall be paid by LESSEE to CITY within thirty (30) calendar days after determination of the new rental rate. In no event shall the adjusted rent be less than the rent in effect immediately prior to the Adjustment Date. Once adjusted, the annual rent shall increase on each anniversary of the Adjustment Date by an amount equal to three and one-half percent (3.5%) of the annual rent paid in the preceding Lease Year. In lieu of the above adjustment to market rent, CITY may determine that no market value adjustment is necessary and waive the requirement for an appraisal, in which case, the rent for each year of the remaining five (5) Lease Years shall be set at three and one-half percent (3.5%) above the annual rent for each

preceding Lease Year. In no event shall the rent ever decrease from the rental rate established for the previous Lease Year.

- 5.2. Time and Place of Payment. Rent is due annually in advance on or before the first day of each Lease Year. All rents required by this Lease shall be made payable to the City Treasurer and mailed to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

LESSEE shall include CITY'S customer account number for LESSEE on the rent payment so CITY can apply the rent to the appropriate account. The place of payment may be changed at any time by CITY upon thirty (30) calendar days' prior written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 5.3. Invoicing Courtesy. CITY may invoice LESSEE for amounts payable under this Lease. However, any such invoicing shall be deemed a courtesy only; LESSEE shall make all payments under this Lease on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Lease.
- 5.4. Delinquent Rent. If LESSEE fails to pay rent when due, LESSEE shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If the rent is still unpaid after fifteen (15) days past due, LESSEE shall pay an additional five percent (5%) (being a total of ten percent (10%)), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account. In no event shall the charge for late payments of rent be less than Twenty-Five Dollars (\$25.00). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.
- 5.5. Financial Records. LESSEE shall maintain, in accordance with generally accepted accounting practices, complete and accurate financial records showing all receipts from its use of the Site. LESSEE shall make any and all of its records and accounts relating to its use of the Site available to CITY for inspection at a reasonable

location and time so that CITY can determine LESSEE'S compliance with this Lease. LESSEE'S failure to keep and maintain records and make them available for inspection by CITY shall be a default of this Lease. LESSEE shall maintain all records and accounts for a minimum period of five (5) years past the expiration or earlier termination of this Lease. This section shall survive the expiration or earlier termination of this Lease.

6. QUIET POSSESSION.

LESSEE, paying the rent and performing its obligations under this Lease, shall, at all times during the Term, peaceably and quietly have, hold, and enjoy the Site. If during the Term, LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, this Lease shall not be voided thereby, and CITY shall not be liable to LESSEE for any loss or resulting damage, but there shall be determined and stated by CITY, in writing, a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Site.

7. INSURANCE.

7.1 LESSEE shall obtain and maintain throughout the term of this Permit, at its sole cost and expense, all insurance required by this Permit. LESSEE'S liabilities under this Permit, including without limitation LESSEE'S indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE'S maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Permit. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's reasonable written approval of same):

- (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence and general aggregate of Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability.
- (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit.
- (c) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE'S employees who are subject to this Permit, with employers' liability

coverage with a limit of at least One Million Dollars (\$1,000,000), including a waiver of the right of subrogation against The City of San Diego and its elected officials, officers, employees, and representatives.

- 7.1.1 **Additional Insureds.** To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy excluding workers' compensation and employer's liability shall include as an insured "The City of San Diego and its elected officials, officers, employees, and representatives" with respect to liability arising out of: (a) ongoing operations performed by LESSEE or on LESSEE'S behalf; (b) LESSEE'S products; (c) LESSEE'S work, including without limitation LESSEE'S completed operations performed by LESSEE or on LESSEE'S behalf; or (d) the Permit Area.
- 7.1.2 **Primary & Non-Contributory.** The Commercial General Liability policy is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, and representatives as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, and representatives shall be in excess of LESSEE'S insurance and shall not contribute to it.
- 7.1.3 **Severability of Interest.** Each policy shall provide that LESSEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 7.1.4 **Qualified Insurer(s).** Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VII" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 7.1.5 **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE shall be commercially reasonable.
- 7.1.6 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. Within thirty (30) days after the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's

request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately obtain replacement insurance as soon as possible.

7.1.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permit Use.

7.1.8 Accident Reports. LESSEE shall immediately, or as soon as practicable and not more than 48 hours after LESSEE becomes aware of such accident, report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permit Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

Self Insurance. Notwithstanding the insurance provision of this section 7 to the contrary, LESSEE shall have the right to self-insure with respect to any of the insurance required to be carried by LESSEE under this section.

8. ACCEPTANCE OF SITE.

LESSEE represents and warrants that LESSEE has independently inspected the Site and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Site. LESSEE agrees that LESSEE is relying solely on its independent inspections, tests, investigations, and observations in entering into this Lease. LESSEE acknowledges that the Site is in the condition called for herein and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, at the Site. LESSEE has been given the opportunity to investigate the Site for the presence of any Hazardous Substances, including, without limitation, the opportunity to perform soil borings and other tests. LESSEE shall notify CITY if LESSEE'S investigations indicate the presence of any Hazardous Substances on the Site. LESSEE waives any claims against CITY which may result from the presence of Hazardous Substances on the Premises or Site prior to the LESSEE'S tenancy.

9. SITE PLANS.

LESSEE shall maintain and operate the Site in accordance with the Site Plans, which are attached as Exhibits B and B1. LESSEE'S failure to comply with the Site Plans shall be a default of this Lease.

10. IMPROVEMENTS AND ALTERATIONS.

Other than as approved by the Site Plans, LESSEE shall not construct any improvements, structures, or installations on the Site, or make any alterations to the Site (with the exception of necessary maintenance and/or repairs that do not involve the swapping out or replacement of equipment) without CITY'S prior written consent. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the Site without CITY'S prior written consent.

10.1 Reserved.

10.2 Alterations to Communications Equipment. LESSEE shall not make any alterations, additions or improvements to the Communications Equipment, except for routine maintenance unless: (1) LESSEE obtains CITY'S prior written consent, which shall be granted in the CITY'S sole discretion; (2) the alterations, additions or improvements do not damage or interfere with any adjacent improvements on the Site and/or Premises existing at such time; and (3) the alterations, additions or improvements comply with the requirements set forth in **Exhibits D: Interference Protection Requirements** and **E: Installation Standards** attached hereto. Nothing in this section shall be construed to eliminate LESSEE'S obligation to obtain development related permits and approvals for any alterations to the Communications Equipment that may be required by CITY'S Development Services Department or any other governmental agency having jurisdiction over LESSEE'S Operations.

10.3 Information to Permitting Authorities. In obtaining any required permits for improvements, structures, installations, and/or alterations on the Site, LESSEE shall inform permitting authorities, in writing, that the Premises are CITY-owned property.

10.4 Repair and Restoration. Nothing in this Section 10 shall relieve LESSEE of any obligation under this Lease to maintain the Site in a decent, safe, healthy, and sanitary condition, including, without limitation, structural repair and restoration of damaged or worn improvements.

11. COMPETENT MANAGEMENT.

Throughout the Term, LESSEE shall provide competent management of the Site for the permitted uses to the reasonable satisfaction of CITY. 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.

12. COMPLIANCE WITH LAWS AND POLICIES.

12.1 General. LESSEE'S Operations shall, at all times, comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. LESSEE shall comply with all notices issued by CITY under the authority of all current or future laws, statutes, ordinances, or regulations. Upon receipt of same, LESSEE shall promptly deliver to City copies of all documentary evidence of such compliance received by or otherwise available to LESSEE.

12.2 Nondiscrimination. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S Operations, including, but not limited to, the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 12.3 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. To the extent so required by the San Diego Municipal Code, LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease.

13. WATER QUALITY ASSURANCES.

The CITY and LESSEE 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 LESSEE'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 Sections 43.0301 to 43.0312).

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

14. TELECOMMUNICATIONS PROVISIONS.

- 14.1 Radio Frequency Radiation. LESSEE shall maintain any radio frequency ("RF") radiation associated with the Communications Equipment within the levels allowed by federal regulations set forth in 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 located within the Site and 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. LESSEE shall report to CITY any area of the Site discovered by LESSEE to exceed such federally mandated limits. LESSEE shall indemnify, defend and hold the CITY harmless for any liabilities, fines, or other penalties claimed or imposed against the CITY that result from the existence of levels of radiation that exceed such federally mandated limits, which are caused in whole or in part, or contributed to, by LESSEE'S Operations; provided, however, that the duty to indemnify shall not extend to any liabilities, fines, or other penalties claimed or imposed against the CITY arising from the CITY's established sole negligence or willful misconduct. 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>.

- 14.2 Radio Frequency Interference. LESSEE shall comply with all requirements set forth in **Exhibit D** attached hereto, which may be updated from time to time in CITY'S sole discretion. LESSEE warrants that LESSEE'S Operations shall not result in degraded performance or RF interference with any CITY-authorized uses at the Premises.
- 14.3 Industry Standards. LESSEE shall perform LESSEE'S Operations in adherence to 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, LESSEE shall comply with the following supplemental requirements:
- 14.3.1 LESSEE shall remove all trash and debris from the Site and/or Premises caused by LESSEE at the end of each workday;
- 14.3.2 Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements;
- 14.3.3 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 at the Premises; and
- 14.3.4 LESSEE shall comply with the requirements set forth in **Exhibit E** attached hereto with respect to LESSEE'S Operations. CITY may, in its sole discretion, update Exhibit E from time to time.
- 14.4 Other Facilities. LESSEE shall not access any other wireless communication facility or CITY-owned communications equipment (including any towers) located on the Premises without CITY'S prior consent.
- 14.5 Interference with CITY Operations or Public Use. LESSEE'S Operations shall not unreasonably interfere with CITY operations or the public's use of CITY-owned property.

15. WASTE, DAMAGE, OR DESTRUCTION.

LESSEE shall immediately give notice to CITY of any fire or any other damage created by LESSEE'S own Operations, that occurs on the Site and/or Premises, either during or after the completion of construction of approved improvements. LESSEE shall not commit, or allow to be committed, any waste or injury or any public or private nuisance in connection with LESSEE'S Operations. LESSEE shall keep the Site and/or Premises clean and clear of refuse and obstructions created by LESSEE'S Operations, and dispose of all garbage, trash, and rubbish generated by LESSEE'S Operations in a manner satisfactory to CITY. If the Site and/or Premises is damaged by any cause that puts the Site and/or Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make, or cause to be made, full repair of the damage and restore the Site and/or Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and remove

from the Site and/or Premises all debris resulting from the damage and restore the Site and/or Premises in accordance with the Site Plans previously submitted to and approved by CITY, in writing, in order to replace in kind and scope the operation which existed prior to the damage. LESSEE shall commence preliminary steps toward performing repairs and/or restoration of the Site and/or Premises 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 Site within sixty (60) calendar days after such occurrence, provided that any and all governmental approvals and permits required for such repairs and/or restoration have been obtained by LESSEE and LESSEE has diligently acted to obtain such approvals and permits. Failure to timely repair damage to the Site and/or Premises will be considered a default under the Lease.

16. HAZARDOUS MATERIALS.

LESSEE 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 Site and/or Premises by any of LESSEE'S officers, employees, agents, contractors, invitees and guests. LESSEE and LESSEE'S officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Site and/or Premises without CITY'S prior written consent. LESSEE shall, prior to initiating any operations, 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, with the exception of batteries.

16.1 **Release.** For all purposes 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.

16.2 **Remediation.** If LESSEE'S Operations result in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY'S satisfaction for unrestricted reuse of the Premises, to the extent as required by applicable law and in accordance with all applicable laws, rules, and regulations of governmental authorities.

16.3 **Removal.** If LESSEE or LESSEE'S 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 Site and/or Premises, LESSEE shall remove all such Hazardous Substances in any type of container, equipment or device from the Site immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Site and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances or other containers, equipment or devices from the Site. If LESSEE fails to comply with the foregoing requirements, LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- 16.4 Indemnity. Pursuant to California Government Code section 14662.5, LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S Operations, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE'S officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 16.5 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Site and/or Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) 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 LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY 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.
- 16.6 Environmental Assessment. Upon reasonable cause to believe that LESSEE'S occupancy, use, development, maintenance, or restoration of the Site resulted in any Hazardous Substance being released on, from or beneath the Site or Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE'S sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE'S occupancy, use, development, maintenance, or restoration of the Site, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Site and/or Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use to the extent as required by applicable law and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Site and/or Premises and compliance with environmental laws and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

17. SIGNS.

LESSEE shall only post signs required by federal, state, or local regulations, including, without limitation, safety signs required by OSHA, FAA, and/or FCC. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises and/or Site without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. If any such unauthorized item is found on the Premises and/or Site, LESSEE shall remove the item at LESSEE'S sole cost and expense within twenty-four (24) hours after CITY'S demand therefor, or CITY may then enter the Site and/or Premises and remove the item at LESSEE'S cost and expense. LESSEE shall post a clearly marked sign at the Site indicating LESSEE'S name and emergency telephone number.

18. MAINTENANCE.

LESSEE shall, at its sole cost and expense, continuously maintain the Site throughout the Term. In doing so, LESSEE shall, at its sole cost and expense, make all repairs, restoration, and replacements (including structural repairs and restoration of damaged or worn improvements) necessary to maintain and preserve the Site in a decent, safe, healthy, and sanitary condition. All such maintenance, repairs, restoration, and replacements shall be completed to the satisfaction of CITY, in conformance with the description of the Site and Premises set forth in **Exhibit A**, the approved Site Plans set forth in **Exhibit B**, and in compliance with all applicable codes and standards of CITY, state, and federal agencies.

18.1 **CITY Maintenance.** CITY reserves the right to perform any needed maintenance on the Site at any time. If CITY performs such maintenance, CITY shall provide LESSEE 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 CITY shall give LESSEE notice as soon as reasonably possible thereafter), and LESSEE shall comply with all applicable safety requirements issued by CITY to ensure the safety of CITY personnel performing such maintenance on the Site.

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

19. ENTRY AND INSPECTION.

CITY may, at any time, without any obligation to do so, enter the Site for the purpose of viewing and ascertaining the condition of the Site, or to protect CITY'S interest in the Site, or to inspect the operations conducted on the Site. If CITY'S entry or inspection discloses that the Site are not in a decent, safe, healthy, and sanitary condition, CITY may, after ten (10) calendar days written notice to LESSEE, have any necessary maintenance work done in order to keep the Site in a decent, safe, healthy, and sanitary condition, all at LESSEE'S sole cost and expense, and LESSEE shall promptly pay any and all costs incurred by CITY in having the necessary maintenance work done. If at any time CITY determines that the Site are not in a decent, safe, healthy, and sanitary condition, CITY may, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt

correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate, in CITY'S opinion, to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligation on CITY or increase CITY'S obligations elsewhere in this Lease.

20. UTILITIES.

LESSEE shall order, obtain, and pay for all utilities, including installation and service charges, in connection with LESSEE'S Operations. All utilities on the Site shall be maintained at their current location as of the Effective Date of this Lease and shall be used for LESSEE'S Operations only. Any change in the location of the utilities shall require CITY's consent, which consent shall be in CITY's sole discretion.

21. TAXES.

LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Site, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE, or levied by reason of LESSEE'S business or other LESSEE activities related to the Site, including, without limitation, any licenses or permits. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on the leasehold interests. LESSEE shall pay all such possessory interest taxes. LESSEE'S payment of taxes, fees, and assessments shall not reduce any rent due CITY.

22. 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 Site, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or may become necessary or reasonably advisable to allow LESSEE'S Operations, relative to any such superior interest. If LESSEE'S Operations are or become inconsistent or incompatible with a preexisting, superior interest, LESSEE 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.

23. ENCUMBRANCES.

Only with CITY'S prior written consent in each instance, which consent shall be in CITY'S sole discretion, and upon the condition that LESSEE apply any Site-related loan proceeds exclusively to its installation of wireless communication facilities on the Site, LESSEE may pledge its leasehold estate hereunder to secure its performance under the subject debt instrument.

- 23.1 Use of Loan Proceeds. A reasonable portion of such loan proceeds may be disbursed for payment of incidental costs of installing LESSEE'S wireless communication facilities on the Site, including, but not limited to, the following: off-site improvements for service of the Site; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs, such as discounts, interest,

and commissions; and architectural, engineering, and attorney fees and other normal expenses incidental to such installation.

- 23.2 Subsequent Encumbrances. After the Site is fully developed, as contemplated by this Lease and to CITY'S satisfaction, if LESSEE proposes a subsequent encumbrance on its leasehold estate hereunder, then CITY'S consent thereto may be subject, in CITY'S sole discretion and without limitation, to increasing the rent to then-current market rates. LESSEE may use the proceeds from any such subsequent encumbrance for any purpose approved by CITY.
- 23.3 Acceptance of Approved Mortgagee or Beneficiary. Upon a foreclosure or transfer in lieu of foreclosure of a CITY-approved encumbrance, CITY shall accept the approved mortgagee or beneficiary as the "LESSEE" under this Lease, with all rights and obligations thereof granted and imposed herein. Such mortgagee or beneficiary may assign its interest in this Lease to its nominee if CITY deems, in its sole discretion, such nominee to be a reputable, qualified, and financially responsible person.
- 23.4 Encumbrance Approved by CITY. Any CITY-approved encumbrance shall be subject and subordinate to all of the terms, covenants, and conditions of this Lease, and shall not be deemed to amend or alter any such term, covenant, or condition. LESSEE acknowledges that pursuant to City Charter section 225, each person having an interest in this Lease shall be subject to CITY'S review and approval.
- 23.5 Liens. Pursuant to California Government Code section 14662.5, LESSEE shall at all times protect, defend, indemnify, and hold CITY harmless from and against any and all claims for labor or materials in connection with LESSEE'S use, improvement, alteration, maintenance, or repair of the Site, and all costs of defending against such claims, including, without limitation, reasonable attorney fees. If LESSEE'S use, improvement, alteration, maintenance, or repair of the Site results in a lien or notice of lien being filed against the Premises and/or Site LESSEE shall, within five (5) calendar days after such filing, either: (a) take all actions necessary to record a valid release of the lien; or (b) deliver to CITY a bond, cash, or other security acceptable to CITY in an amount sufficient to pay in full all claims of all persons seeking relief under the lien.

24. ASSIGNMENT AND SUBLETTING.

24.1 Assignment.

- 24.1.1 For the purposes of this section, "Assignment" shall include, without limitation, the transfer of any interest in this Lease by LESSEE or by any partners, principals, or controlling shareholders of LESSEE, and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE'S general partners, principals, or controlling shareholders.
- 24.1.2 LESSEE shall not assign this Lease, or any interest in this Lease, without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. Association with another State Agency will not be considered

an Assignment. LESSEE 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.

- 24.1.3 CITY'S consent to any Assignment pursuant to Section 24.1.2 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.
 - 24.1.4 LESSEE shall not permit any person or entity (other than the employees, agents, contractors, and/or guests of LESSEE) to use or occupy the Site, or any part of the Premises.
 - 24.1.5 Consent by CITY to any Assignment of this Lease pursuant to Section 24.1.2 shall not be deemed to be consent to any subsequent Assignment to the same or any other person.
 - 24.1.6 Neither this Lease nor any interest herein shall be assignable as to LESSEE'S interest herein by operation of law, without CITY'S prior written consent.
 - 24.1.7 Any Assignment of this Lease, or any use or occupancy of the Site and/or Premises by any other person or entity, in violation of the foregoing provisions (Sections 24.1.1 through 24.1.6) shall be void and a default of this Lease, and CITY may thereupon terminate this Lease.
- 24.2 Subletting. LESSEE shall not sublet, in whole or in part, the Site, or any right or appurtenant privilege to the Site, except as provided herein:
- 24.2.1 City hereby acknowledges and consents to the sublease and current use and occupancy of the Site by Metropolitan Transit System, a California public agency ("SUBLESSEE") without any additional consideration. The use and occupancy of the Site by SUBLESSEE is subject to all terms and conditions of this Lease. The sublease will be and shall remain subject and subordinate to this Lease, as may be amended from time to time. If there is a conflict between the sublease and this Lease, the terms, conditions, and obligations of this Lease shall control. CITY'S consent to the sublease with SUBLESSEE shall be subject to the following terms and conditions:
 - 24.2.1.1 The sublease shall not release LESSEE from any liability, whether past, present, or future, under this Lease as to the Site or any portion thereof;
 - 24.2.1.2 The sublease shall not authorize any additional uses of the Site, or allow additional Communications Equipment be installed on the Site, which are not authorized in this Lease;

- 24.2.1.3 The sublease shall not alter the primary liability of LESSEE to pay the rent and perform all of LESSEE's obligations under this Lease;
- 24.2.1.4 The sublease shall not be construed as a waiver of CITY's right to consent to any proposed sublease or agreement after the date hereof by LESSEE under this Lease, or as a consent to any portion of the Site in the sublease being used or occupied by any other party;
- 24.2.1.5 The sublease shall not grant any rights to the SUBLESSEE greater than those rights granted to LESSEE under this Lease;
- 24.2.1.6 The sublease shall not require CITY to recognize SUBLESSEE in the event of a default in the Lease by LESSEE;
- 24.2.1.7 The sublease shall not enlarge or in any manner increase CITY's obligations or duties under this Lease;
- 24.2.1.8 The sublease shall not create obligations or costs to CITY with regard to the sublease;
- 24.2.1.9 The sublease shall not modify, waive, amend, or otherwise affect any provision of this Lease;
- 24.2.1.10 The sublease shall not be deemed to be any type of obligation by CITY to LESSEE, SUBLESSEE or to any governmental agent, board, commission, or agency with regard to any other action relating to SUBLESSEE's occupancy, use, or maintenance of any portion of the Site or improvements thereon;
- 24.2.1.11 Prior to LESSEE allowing SUBLESSEE's use or occupancy of the Site, LESSEE shall cause to be filed with the CITY, a copy of the certificates of insurance demonstrating that SUBLESSEE is in compliance with all of the insurance requirements in Section 7, which shall name LESSEE and the "City of San Diego, its elected officials, officers, representatives, agents, and employees, as additional insureds for the entire term of the sublease agreement. CITY reserves the right to request, and LESSEE shall provide upon request, a copy of the policy of insurance if so requested.
- 24.2.1.12 SUBLESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SUBLESSEE'S officers, employees, agents, contractors, invitees and guests,

which arise out of or are in any manner directly or indirectly connected with this Lease or SUBLESSEE'S occupancy, use, development, maintenance, or restoration of the Site, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that SUBLESSEE'S duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, SUBLESSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

24.2.2 LESSEE shall not sublet, in whole or in part, the Site or any right or appurtenant privilege to the Site other than to SUBLESSEE as provided in Section 24.2.1, without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. CITY shall require that additional rent in the amount of 50% of LESSEE'S gross revenues from any additional approved sublessees to be paid pursuant to Section 5.5 herein.

24.3 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.

25. INDEMNIFICATION.

Pursuant to California Government Code section 14662.5, LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE'S Operations, including damages arising out of the release of Hazardous Substances caused by LESSEE'S Operations, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

26. OTHER GOVERNMENTAL ACTIONS.

By entering into this Lease, neither CITY nor the San Diego City Council is 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 Site. Discretionary action includes, but is not limited to any rezoning, variance, environmental clearance, or any other governmental approval that may be required for LESSEE'S Operations. LESSEE shall diligently seek, at its sole cost and expense, all entitlements and actions from both CITY and other governmental agencies with jurisdiction over the Site, as are necessary for LESSEE'S Operations.

27. CITY'S RESERVATION OF RIGHTS.

- 27.1 Resources. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Site.
- 27.2 Use. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Site for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion, for the public good.
- 27.3 Entry. CITY may enter the Site to develop and/or make repairs to municipal resources and services. CITY shall not unreasonably interfere with LESSEE'S use of the Site and shall reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Site or to LESSEE'S Communications Equipment resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage, as reasonably determined by CITY. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

28. REASSIGNMENT OF SPACE.

At any time during the Term, but only once during the Term, CITY, in its sole discretion, may reassign LESSEE to a different location within the Premises ("Relocation Site").

- 28.1 Timing and Costs. LESSEE shall relocate its Communications Equipment to the Relocation Site either within ninety (90) calendar days after the execution of a written agreement between the Parties concerning the location and dimensions of the Relocation Site, or otherwise as soon as possible after receipt of all necessary permits and approvals required for any CITY construction or redevelopment project which requires such relocation, and receipt of all permits and approvals required for LESSEE'S use of the Relocation Site. LESSEE shall cooperate fully with CITY and its contractors during any reassignment, and shall pay all expenses associated with the reassignment.
- 28.2 Physical Relocation of Equipment. The physical relocation of all or any part of LESSEE'S Communications Equipment shall only be done by LESSEE or LESSEE'S contractors.

- 28.3 Broadcast and/or Receiving Capability. During physical relocation of the Communications Equipment to the Relocation Site, CITY will work with LESSEE to attempt to secure an alternative CITY-approved site for LESSEE to operate temporary installed communications equipment, which may include a CITY-approved temporary wireless communication facility on the Premises and which will be installed and maintained at LESSEE'S sole cost and expense.
- 28.4 No Agreement. If CITY and LESSEE are unable to agree on an acceptable Relocation Site, then LESSEE or CITY may terminate this Lease upon thirty (30) calendar days prior written notice, without further obligation thereto.
- 28.5 Site Redefined. After a reassignment and relocation as provided in this section, the Site shall be redefined to be the Relocation Site. CITY and LESSEE agree that "as built" drawings of the Relocation Site, including any access and utility easements, may be prepared by a licensed architect at LESSEE'S sole cost and expense. In such event, Exhibits A and B of this Lease, as applicable, shall be amended (pursuant to Section 33.11 below) to include a full description of the Relocation Site and the new "as built" drawings. 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.

29. EMINENT DOMAIN.

If all or part of the Site is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or its beneficiary or mortgagee) shall be as follows:

- 29.1 Full Taking. If the entire Site is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 29.2 Partial Taking - Remainder Unusable. If a partial taking of the Site occurs, and in the opinion of CITY, the remaining part of the Site is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 29.3 Partial Taking - Remainder Usable. If a partial taking of the Site occurs, and in the opinion of CITY, the remaining part of the Site is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Site taken, but only to the extent that LESSEE'S use of the Site is reduced or impaired.
- 29.4 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee, or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE'S then-remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

- 29.5 Transfer. CITY may transfer CITY'S interests in the Site in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If such a transfer occurs, LESSEE shall retain whatever interest LESSEE may have in the fair market value of any improvements placed by LESSEE on the Site in accordance with this Lease.
- 29.6 No Inverse Condemnation. CITY'S exercise of any right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

30. DEFAULT AND REMEDIES.

- 30.1 Default. Each of the following shall constitute an event of default under this Lease:

- 30.1.1 LESSEE'S failure to make any payment required under this Lease when due, if the failure continues for thirty(30) calendar days past due following written notice of the failure by CITY;
- 30.1.2 LESSEE'S breach of any of its obligations under this Lease, other than those requiring payment to CITY, and LESSEE either: (i) fails to cure the breach within thirty (30) calendar days following written notice from CITY; or, (ii) if such breach is not curable within thirty (30) calendar days, fails to commence to cure the breach within thirty (30) calendar days and to diligently pursue the cure to completion;
- 30.1.3 LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law;
- 30.1.4 LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) calendar days of filing;
- 30.1.5 LESSEE is adjudicated a bankrupt;
- 30.1.6 LESSEE makes a general assignment for the benefit of creditors; and
- 30.1.7 LESSEE uses the Site for any unauthorized purpose.

- 30.2 Remedies.

- 30.2.1 General. Upon LESSEE'S default under this Lease, CITY may pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY, in law or equity. Such remedies shall be cumulative and not exclusive.
- 30.2.2 For Monetary Default. Upon LESSEE'S default for nonpayment under Section 30.1.1 of this Lease, CITY may, in its sole discretion, either give LESSEE, or any person claiming rights through LESSEE, a written Thirty-Day Notice to Pay or Quit, or CITY may terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Site

or to possession of the Site, and CITY may enter and take possession of the Site and may recover the amount set forth below.

30.2.3 For Non-Monetary Default. Upon LESSEE'S default based upon Sections 30.1.2 through 30.1.7 of this Lease, CITY may, in its sole discretion, terminate this Lease, and all rights of LESSEE and of all persons claiming rights through LESSEE to the Site or possession of the Site, and CITY may enter and take possession of the Site and may recover from LESSEE the amount set forth below. If any default described in Sections 30.1.2 through 30.1.7 of this Lease is not curable within thirty (30) calendar days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.

30.2.4 CITY'S Recovery Upon Termination. Upon termination of the Lease due to LESSEE'S default, CITY may recover the sum of:

30.2.4.1 The worth at the time of award of any unpaid rent that had been due at the time of termination; plus

30.2.4.2 The worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award minus (ii) the amount of the rent lost, if any, that LESSEE affirmatively proved could have been reasonably avoided; plus

30.2.4.3 The worth at the time of award of the amount by which (i) the unpaid rent for the balance of the Term after the time of the award minus (ii) the amount of rent lost, if any, as LESSEE affirmatively proves could be reasonably avoided; plus

30.2.4.4 Any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; plus

30.2.4.5 All other amounts in addition to or in lieu of those previously stated as may be permitted by California law.

30.2.4.6 As used in Sections 30.2.4.1 and 30.2.4.2, the "worth at time of award" shall be computed by allowing interest at the rate of ten percent (10%) per annum. As used in Section 30.2.4.3, the "worth at the time of award" shall be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include base rent and any and all other amounts that LESSEE is required to pay to CITY under this Lease.

30.2.4.7 The calculation of any sum under this section shall be based on a 30-day month and a 360-day year.

30.3 Leasehold Pledged as Security. If LESSEE is in default under this Lease and the leasehold is pledged as security for a CITY-authorized encumbrance, CITY shall notify the mortgagee or beneficiary thereof of LESSEE'S default. CITY shall allow such mortgagee or beneficiary thirty (30) calendar days to cure the default or, if the default is not curable within thirty (30) calendar days, to commence to cure the default and diligently pursue the cure to completion. CITY may, in its sole discretion, extend such time to cure the default if CITY deems that the mortgagee or beneficiary is pursuing the cure with reasonable diligence.

30.3.1 If the mortgagee or beneficiary is required to exercise its right to cure a default through litigation or foreclosure, then CITY may take the following actions to expeditiously cure the default:

30.3.1.1 CITY may correct the default and charge the costs incurred to LESSEE'S account, which charge shall be due and payable within thirty (30) days after CITY'S statement of such costs is delivered to LESSEE and mortgagee or beneficiary;

30.3.1.2 CITY may correct the default and may recover the costs incurred from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the cost of correction performed by or at the direction of CITY; or

30.3.1.3 CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any CITY-authorized encumbrance on the leasehold. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of CITY'S early payoff of the related obligations. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in entering into a new lease with the same terms and conditions as this Lease with the new tenant shall be the responsibility of the terminated LESSEE, and LESSEE shall reimburse CITY for all such costs.

30.3.2 If the default is not curable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee are approved by CITY, may substitute itself in the place of LESSEE by assuming all of LESSEE'S rights and obligations under this Lease. If such a lender notifies CITY of its intention to substitute itself in LESSEE'S place, in writing, within thirty (30) calendar days after receipt of CITY'S notice of default, and the default is cured by the lender, then this Lease will not terminate pursuant to the default. Subject to such a cure and LESSEE'S assignment to

the lender of LESSEE'S rights and obligations under this Lease, CITY shall consent to the assignment.

- 30.4 Quitclaim Deed. Upon termination of this Lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) calendar days after written demand, a valid and recordable quitclaim deed relinquishing LESSEE'S interest in the Site. If LESSEE fails or refuses to deliver any such quitclaim deed, CITY may prepare and record a notice reciting LESSEE'S failure to perform such obligation, and such notice shall be conclusive evidence of the termination of this Lease and termination of LESSEE'S rights to the Site.
- 30.5 Abandonment by LESSEE. If LESSEE breaches this Lease and abandons the Site, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including, without limitation, the right to recover the rent as it becomes due, plus damages.
- 30.6 Waiver. CITY'S 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 CITY in order to constitute a valid and binding waiver. CITY'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. CITY'S acceptance of any rent shall not be a waiver of any default preceding the rent payment. The property constituting the Site is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego.. CITY'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 CITY may, at all times, require the cure of any breach or default regardless of when discovered.

31. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY.

Except as otherwise provided in this section, all improvements constructed on the Site by LESSEE or by LESSEE'S contractors and/or subcontractors at any time during the Term, including any tower structure, equipment shelters, conduit, and fence (hereinafter referred to in this section as "LESSEE'S Improvements"), as well as all Communications Equipment, machines, and appliances brought to the Site by LESSEE or LESSEE'S contractors and/or subcontractors at any time during the Term (hereinafter referred to as "LESSEE'S Personal Property") shall be the property of LESSEE during the Term (hereinafter referred to as "LESSEE'S Property").

- 31.1 At the expiration or earlier termination of this Lease, and at CITY'S option, any and all of LESSEE'S Improvements shall be deemed to be part of the Site and shall become CITY'S property free of all liens and claims, except as otherwise provided in this Lease. As applicable, LESSEE shall present CITY with a bill of sale transferring ownership of LESSEE'S Improvements to the CITY; provided however, that such bill of sale shall transfer ownership to CITY without any representation or warranty from LESSEE regarding the condition of LESSEE'S Improvements or their fitness for any particular purpose.

- 31.1.1 If CITY elects not to assume ownership of any of LESSEE'S Improvements, CITY shall notify LESSEE at least one hundred eighty (180) calendar days prior to the expiration of this Lease, or immediately upon earlier termination of this Lease, and LESSEE shall remove all such LESSEE'S Improvements as directed by CITY, all at LESSEE'S sole cost and expense. If LESSEE fails to remove any of LESSEE'S Improvements as directed, CITY may cause their removal, and LESSEE shall reimburse CITY on demand for the full cost thereof.
- 31.2 On or before the expiration of this Lease, or as CITY may direct upon earlier termination of this Lease, LESSEE shall remove from the Site LESSEE'S Personal Property.
- 31.2.1 If LESSEE desires to dispose of any of LESSEE'S Personal Property used in the operation of its wireless communication facilities on the Site, CITY shall have the first right to acquire or purchase such property.
- 31.3 LESSEE shall repair, at its sole cost and expense, all damage to the Premises or Site resulting from the removal of LESSEE'S Property from the Premises by LESSEE or LESSEE's contractors and/or subcontractors.
- 31.3.1 If the removal of LESSEE'S Property by LESSEE or LESSEE'S contractors and/or subcontractors or by CITY takes place after expiration of this Lease, or beyond CITY'S direction upon earlier termination of this Lease, LESSEE shall pay rent to CITY at the rate in effect immediately prior to the expiration or earlier termination of this Lease, until all of LESSEE'S Property has been removed from the Site.

32. NOTICES.

Any notice required or permitted to be given under this Lease shall be in writing and may be served personally, sent by United States mail, postage prepaid, or sent by reliable overnight courier, addressed to the Parties as follows, or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated, in writing, by the respective party:

If to LESSEE:

State of California, Department of General Services
Attn: Lease Management D (5956-001)
707 Third Street, Fifth Floor
West Sacramento, CA 95605
Phone: (916) 375-4172

California Highway Patrol
Telecommunications Section – Leasing
601 North 7th Street – Building C
Sacramento, CA 95811
Phone: (916) 843-4200

If to CITY:

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

- 32.1 Address Changes. Any party entitled or required to receive notice under this Lease may, by like notice, designate a different address to which notices shall be sent.
- 32.2 When Effective. Notice shall be effective upon personal service, or five (5) calendar days after deposit in the U. S. mail.

33. MISCELLANEOUS PROVISIONS.

- 33.1 Governing Law. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California. Any lawsuit to enforce this Lease shall be filed in the Superior Court of California, County of San Diego, Central Division.
- 33.2 Entire Understanding. This Lease contains the entire understanding of the Parties. CITY and LESSEE agree that there is no other written or oral understanding between them with respect to LESSEE'S Operations. Each party has relied on its own examination of the Site, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each party to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read this Lease or other documents, inspect the Site, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.
- 33.3 Supersedure. As of the Effective Date, this Lease shall supersede and annul all prior leases, right-of-entry permits, or other agreements concerning LESSEE'S Operations, by and between CITY and LESSEE, and each such agreement shall be void and of no effect, except as to any rentals and fees that may have accrued or any rights and remedies accrued or granted to CITY under those agreements.
- 33.4 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 33.5 Time of the Essence. Time is of the essence for each and every term, covenant, and condition of this Lease.

- 33.6 Standard of Conduct. LESSEE and its employees shall, at all times, conduct themselves and LESSEE'S Operations on the Site in a creditable manner and in accordance with industry standards.
- 33.7 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 33.8 Unavoidable Delay. If the performance of any act required of CITY or LESSEE under this Lease is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of nature, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing that act for a period equal to the period of the prevention or delay. This provision shall not apply to LESSEE'S obligation to pay rent. If CITY or LESSEE claims the existence of such a delay, the party claiming the delay shall notify the other party, in writing, of the fact within ten (10) calendar days after the beginning of any such claimed delay.
- 33.9 CITY'S Consent or Approval. Whenever required under this Lease, CITY'S consent or approval shall mean the written consent or approval of CITY'S Mayor or his designee, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made at the Mayor's discretion, unless otherwise expressly provided.
- 33.10 Consent by Either Party. Except as otherwise expressly provided in this Lease, consent to be given by either party may not be unreasonably withheld or delayed.
- 33.11 Lease Modifications. This Lease shall not be modified, altered, or amended unless the modification, alteration, or amendment is in writing and signed by the Parties and approved by the City Attorney.
- 33.12 Cost Recovery. CITY collects various fees to offset the administrative costs incurred for CITY staff services. CITY shall process each of LESSEE'S service requests upon receipt of LESSEE'S payment of the applicable fee. The fee schedule, which is on file at the Office of the City Clerk, may be updated from time to time in CITY'S sole discretion.
- 33.13 Survival. Any obligation under this Lease that requires a party's performance of that obligation after the expiration or earlier termination of this Lease shall survive such expiration or termination.
- 33.14 California Public Records Act. CITY shall determine in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public records Act (CPRA). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY'S disclosure of any such information in response to a request for information under the CPRA.

- 33.15 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that neither the Site nor the Premises have been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY 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."

- 33.16 Headings and Captions. The section headings and captions used in this Lease shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. If the page numbers and/or section numbers in this Lease are not in consecutive order, the lack of consecutive numbering shall have no effect on the enforceability of this Lease.

- 33.17 Number and Gender. In this Lease, words in the singular number shall include the plural, and *vice versa*, as appropriate to the context. Words of either gender shall include the other gender.

- 33.18 Authority to Execute and Deliver Lease. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that he or she is authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association, in good standing in its home state, and that such entity is qualified to do business in the State of California.

- 33.19 Counterparts. This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

- 33.20 Exhibits Incorporated. All exhibits referenced in this Lease are incorporated into the Lease by this reference.

IN WITNESS WHEREOF, this Lease is executed by CITY and LESSEE, to be effective as of the Effective Date.

Date:

8/28/19

LESSOR: THE CITY OF SAN DIEGO,
a California municipal corporation

By:

Name: Cybele L. Thompson, Director
Real Estate Assets Department

Date:

10/22/18

LESSEE: STATE OF CALIFORNIA,
DEPARTMENT OF GENERAL SERVICES

By:

Name: TONY PSIHOPALDAS
Title: Assistant Chief

Date:

10/22/18

RECOMMENDED FOR APPROVAL:
State Owned Leasing and Development

By:

Name: CAROL LEIDY
Title: Associate Real Estate Officer

Date:

10/18/18

CONSENT:
CALIFORNIA HIGHWAY PATROL

By:

Name: PATTY SLINEY
Title: Assistant Chief, Administrative Services

Environmental Analysis Section Environmental Clearance:

Categorical exempt from CEQA pursuant to CEQA State Guidelines Section 15301 (Existing Facilities).

Date:

5/13/19

By:

Name: HEIDI VONBLOM
Title: Program Manager

APPROVED AS TO FORM:

Date:

4/23/19

MARA W. ELLIOTT, City Attorney

By:

Name: Melissa Ables
Deputy City Attorney

Exhibit A: "Property"

1057 ½ Catalina Boulevard
San Diego, CA 92107

APN 531-110-10 (POR)

Exhibit B

Site Plan

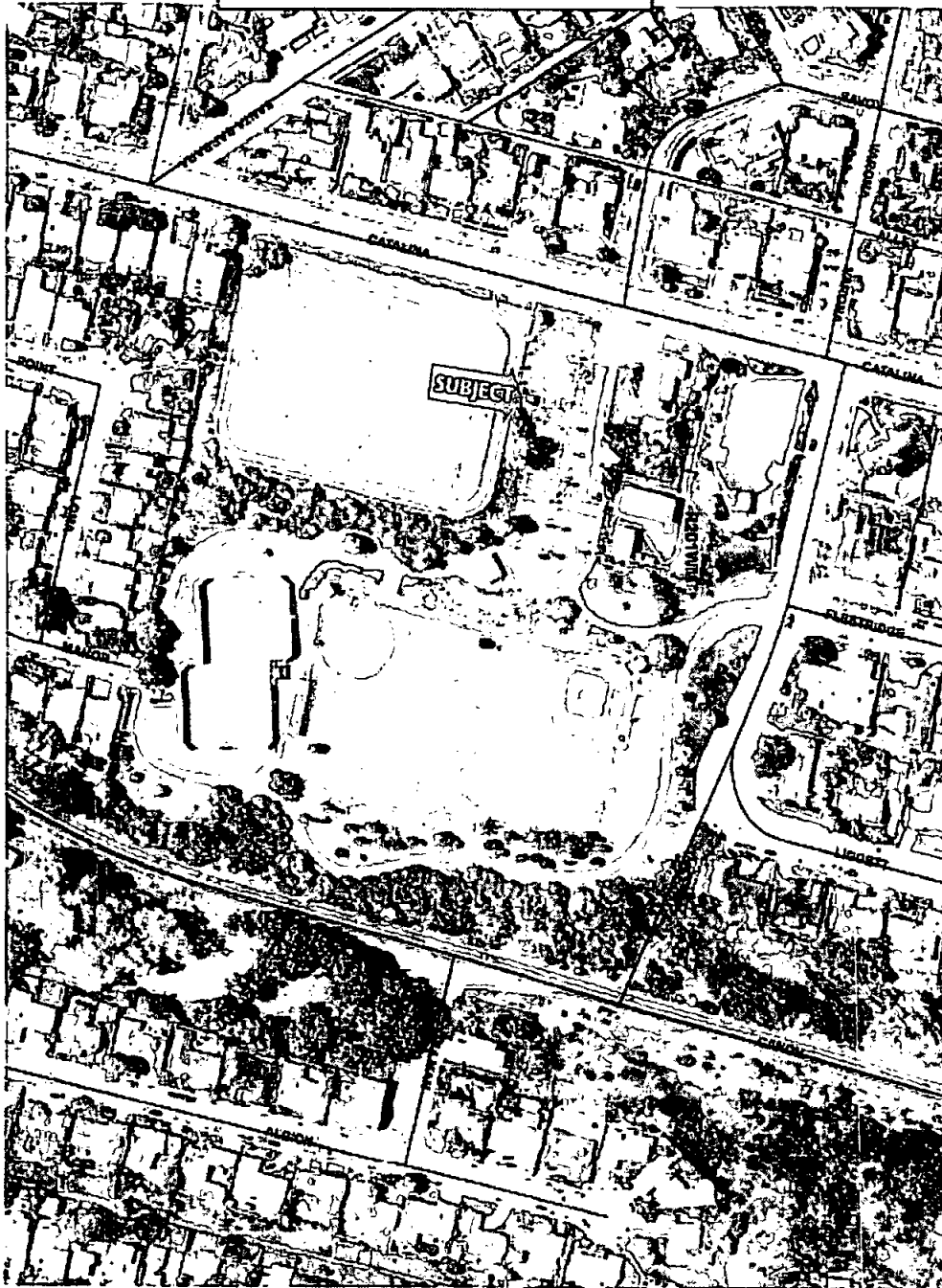


Exhibit C

Memorandum of Lease Form

Recording Requested By and
When Recorded Return To:

APN#
Site #

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is effective as of _____, 20____ (the Effective Date”).

1. THE CITY OF SAN DIEGO, a California municipal corporation (“CITY”), with an office at 1200 Third Avenue, M.S. 51A, San Diego, CA 92101-4155, and _____, entered into that certain CITY OF SAN DIEGO TELECOMMUNICATIONS LEASE (“Lease”) dated _____, 2018, for the purpose of installing, operating, and maintaining a wireless communication facility and other improvements as set forth in the Lease.
2. The term of the Lease is Ten (10) years and commenced on _____, 2018.
3. The land which is the subject of the Lease is described in attached Exhibit “A.” The portion of the land being leased to LESSEE is set forth in the Lease.

IN WITNESS WHEREOF, this Memorandum of Lease is executed to be effective as of the Effective Date:

CITY:

LESSEE:

THE CITY OF SAN DIEGO, a
California Municipal Corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:
JAN I. GOLDSMITH, CITY ATTORNEY

By: _____

Name: _____

Title: _____

Exhibit D

Interference Protection Requirements

- a. **Interference.** Prior to the Effective Date or at any time during the Term of this Lease, LESSEE may be required to provide an intermodulation report ("Report") to CITY. This Report shall include the calculation parameters used to compile the Report, all intermodulation "hits," a brief description of the results of the intermodulation calculations; a list of possible interference situations that may result from the proposed Communications Equipment; transmission frequencies that are currently being operated at the Site, and similar or other relevant data from other permittees/lessees/users operating on-site. The information required to compile the Report, including intermodulation parameters and currently known transmission frequencies at the Site may be obtained from CITY'S General Services Department, Communications Division. CITY is not responsible for any omitted data provided for the purpose of creating the Report. The Report shall be provided to CITY'S General Services Department, Communications Division ("GSDCD"), Attention: Senior Communications Engineer.
- b. **City of San Diego Land Radio/Electronic Use "ON THE AIR" Test Instructions and Procedures.** For the purpose of confirming interference situations calculated by the Report and for the discovery of any other actual interference situations, on-premises, pre-installation or pre-use tests may be required. The tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses at the Site.

Pre-installation or pre-use Testing

- (1) LESSEE shall notify all permittees/lessees/users at the Site of the tests and details of the tests, at least fourteen (14) calendar days in advance of the test. A listing of all permittees/lessees/users operating at the Site may be obtained from CITY and used to compile a notification list.
 - (a) The notification shall be in the form of a letter to each listed permittee/lessee/user giving a technical data summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the permittees/lessees/users to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the permittee/lessee/user. Technical Data Summary and Test Results Certification sheets are included below.
 - (b) A copy of these instructions, "City of San Diego Radio/Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be noted in the notification letter.
 - (c) Notification to permittees/lessees/users shall be sent via U.S. Mail, pre-paid First-Class postage, certified return receipt requested or hand delivered.

- (d) The notification letter to the GSDCD Senior Communications Engineer shall include a list of all permittees/lessees/users notified.
- (2) Following the completion of the tests, LESSEE shall provide a letter to the GSDCD Senior Communications Engineer stating the test results obtained from each permittee/lessee/user participating in the test and a list of those permittees/lessees/users who did not respond.
- (3) If a notified permittee/lessee/user fails to send a qualified representative to observe and participate in the tests, it will be assumed by CITY that the permittee/lessee/user has assured itself that their operations will not be affected.
- (4) It shall be the responsibility of LESSEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the LESSEE under the following technical conditions:

- (1) The LESSEE'S transmitting and/or receiving equipment shall be of the type planned for final use at the Site.
 - (a) The transmitted RF power shall be the maximum to be used and authorized at the Site.
 - (b) On-the-air transmitter tests shall include the use of full allowable modulation.
 - (c) Antenna height(s), location(s) and type(s) shall be the same or comparable to the final installation plan.
- (2) Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the LESSEE'S electronic equipment.
- (3) All tests shall include testing with all frequencies planned for use by the LESSEE at the Site.

d. Radio Frequency Interference to City Radio Equipment

The radio equipment use proposed by LESSEE shall not directly or indirectly result in degraded technical performance of the CITY'S existing radio equipment installed at the Site or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to:

- (1) Detectable or measurable received intermodulation;

- (2) Audio distortion or noise; and
- (3) Receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test.

e. Modifications to Equipment

LESSEE shall notify CITY prior to modifications to transmitting equipment that will change effective radiated power, transmitter frequency, transmitter modulation, or transmitter spurious and harmonic emissions. These modifications may require retest using this "ON THE AIR" testing procedure and the newly proposed equipment.

f. Resulting Interference

Should an interference problem occur at the Site or in the nearby surrounding area as a result of LESSEE'S newly installed, retuned, or modified Communications Equipment, LESSEE shall initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. CITY may recognize the right of prior authorized permittees/lessees/users and withhold consent or disallow use of a new, retuned, or modified installation pending settlement of the interference problems between LESSEE and other authorized users. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of CITY withholding consent and LESSEE waives any claim for expense or loss which LESSEE might incur as a result of CITY withholding consent.

TECHNICAL DATA SUMMARY

One form to be completed per transmitter and supplied to all permittees/lessees/users operating at the facility.

DATE _____

LOCATION _____

APPLICANT _____

CALL SIGN _____ CONTACT NAME _____

PHONE _____

TRANSMITTER

RECEIVER

Manufacturer _____ Manufacturer _____

Model _____ Model _____

Emission _____

Radiated ERP _____ Watts

Transmit Frequency _____

Receiver Frequency _____

CTCSS or DCS _____

1. _____

1. _____

1. _____

2. _____

2. _____

2. _____

3. _____

3. _____

3. _____

4. _____

4. _____

4. _____

ANTENNA

TRANSMIT CAVITY FILTER ISOLATOR

Make _____

Make _____

Make _____

Model/Type _____

Gain _____ dBd

Azimuth _____

REMARKS:

TEST RESULTS CERTIFICATION

Top section is to be completed and supplied to all permittees/lessees/users operating at the Site. Bottom section is to be completed by each existing Site permittee/lessee/user after testing is finished.

SUBJECT: "ON THE AIR" interference testing

SITE LOCATION _____

FREQUENCY _____

DATE OF TEST _____

TIME OF TEST _____

PROPOSED TRANSMITTER OWNED BY _____

TEST PERFORMED BY _____

Permittee/Lessee/User:

"On-the-air" interference testing has been completed at the above stated Site location. A qualified representative was present for the test to observe for possible interference problems.

With regard to the above test, this is to certify that objectionable radio frequency interference did ☐ did not ☐ result during this test.

Details of interference: (if applicable)

Proposed technical resolution: (if applicable)

(Tenant)

(Tenant's Representative)

(Date)

Exhibit E

Installation Standards

- a. All waveguide and coaxial cable runs shall be installed and supported on the tower, cable ladder, and ice bridges using equivalent hardware and methods to those currently used on site.
- b. All waveguide and coaxial cable shall be installed in a neat manner with sweeping bends and straight runs on the tower cable ladder and ice bridges.
- c. Three (3) ground kits shall be installed as follows: Near the antenna, where the coax transitions to horizontal at the junction between the cable ladder and ice bridge, and where the cable enters the building. Grounds shall be installed to shunt any lightning directly to earth ground.
- d. All antenna mounts and hardware utilized on towers and structures shall be hot-dip galvanized or stainless steel and of standard manufacture.
- e. All drawings submitted for installation approval shall clearly show the following items:
 - (1) A plot plan of the site to include the building and tower location with the proposed equipment shown in its proposed location.
 - (2) A tower drawing clearly showing the location of the proposed antenna and the routing of the waveguide or coax cable specifying grounding locations.
 - (3) If equipment is to be located inside the building, a drawing shall be provided showing the rack location of the equipment, an elevation drawing of the rack, and a plot plan of the equipment installed in the rack.
 - (4) A list of all equipment to be installed shall be provided. This list shall include the type and manufacturer of equipment, RF frequency, RF power, modulation type, RF filtering, antenna type, antenna model, antenna gain and azimuth, waveguide and/or coax cable length and AC power requirement including any HVAC.
- f. All transmitters shall have necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as filtering and isolators.
- g. To minimize the number of antennas and waveguide or coax cables to be mounted on the tower, transmitter combining will be required whenever possible.
- h. All cabinets and racks shall be grounded to the site grounding system.
- i. Should CITY determine that a tower loading analysis is required, the requesting user shall have the tower analysis done at its expense and provide CITY with information on how the additional load to the tower will affect tower structural integrity.

- j. Tower Climbing: All tower climbing shall be done in compliance with all CAL-OSHA requirements.
- k. RF Radiation: Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. When it is necessary to climb on the antenna structure for installation or maintenance, contact the CITY'S General Services Department, Communications Division ("GSDCD") Fixed Maintenance Supervisor at (619) 525-8650 for shutdown scheduling and procedures. Any equipment installed on the Site may at times require shutdown to allow maintenance personnel to access the antenna structure.
- l. Lessees shall provide CITY with shutdown procedures and 24-hour contact names and telephone numbers. In addition, should changes be made to the contact names and telephone numbers, the CITY shall be notified at least ten (10) calendar days before the change.
- m. Access: For access to the site, contact the GSDCD Fixed Maintenance Supervisor at (619) 525-8650. Keys will be issued as required. **DO NOT DUPLICATE KEYS.**
- n. Security: All sites are alarmed with silent alarms and monitored twenty-four (24) hours per day by the Public Service Dispatch Center. When entering or leaving a building, call (619) 527-7660 or use the order wire dial #13 and identify yourself. Police respond to all unanswered alarms.
- o. Cleanup: All trash and debris shall be removed from the site at the end of each work day and upon completion of the project.
- p. A detailed construction schedule shall be provided to GSDCD prior to any installation work.

Exhibit F

Emergency Maintenance Procedures

If LESSEE discovers that any of the Communications Equipment is damaged, LESSEE shall immediately notify **CITY'S Station 38 at (619) 527-7660**.

If CITY discovers that any of the Communications Equipment is damaged, CITY shall immediately notify **LESSEE'S Network Operation Call Center at 916-657-9999**.

CITY may require any replacement Communications Equipment to be relocated, as provided for in this Lease.

If LESSEE'S Communications Equipment causes any interference to CITY'S telecommunications equipment and/or system, CITY may require such Communications Equipment 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 Communications Equipment.

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.

Exhibit G
Maintenance Standards – Effective July 1, 2012

Park Maintenance Task	Standard of Care (90% of Time)
1. Maintain Turf	
a. Mowing	Weekly
b. Edging	Weekly
c. Sweeping	Weekly (Flexible)
d. Fertilization	None
e. Aerification	Six Times Annually
f. Renovation/Restoration	As-Needed
2. Pick-up Trash	Pick up trash daily by 10:00 a.m., plus additional pick-ups in high-use areas or during special events.
3. Maintain Planters/Shrub and Flower Beds/Groundcover	
a. Edging	Weekly
b. Mulching, Replacing Plants, Hedging	Semi-Annually
c. Pruning	As-Needed
4. Maintain Trees and Park Forest System	Respond to safety hazards within two working days. Respond to non-safety related issues within 20 working days.
a. Fertilizing	Semi-Annually
b. Planting, Trimming, Pruning, Skirting, Removing	As-Needed
5. Maintain Hardscape – Sweeping	Weekly
6. Control Pests	
a. Landscape Plant Pests	For landscape pests, respond within 14 working days of service request received by Citywide Pesticide Crew
b. Animal Pests	As Needed
7. Remove Graffiti	Removal within 2 working days
8. Repair Irrigation	Fix within 7 working days of service request received by Citywide Irrigation Crew
9. Conduct Playground Inspection and Repair	Inspect all play equipment daily in the morning
a. Identify safety hazards	Lock off hazardous play equipment upon identification of hazard
b. Respond to safety hazards – emergency	Respond immediately
c. Respond to potential safety hazards – non-emergency	Respond to potential safety hazards within two days.

d. Respond to non-safety related issues	Respond to non-safety related issues within 14 working days.
10. Maintain Ballfields and Infields	As-Needed
11. Provide Indoor and Outdoor Activity Support	As-Needed
12. Perform Routine Preventative Equipment and Tool Maintenance	Weekly
13. Repair Small/Minor Equipment	Fix within 14 working days of service request received by Citywide Maintenance Repair Facility Mechanics
14. Install, Inspect, Clean and Repair Site Furnishings	Daily
15. Perform Custodial/Maintenance Activities	Daily
16. Clean Outdoor Restrooms	
a. Balboa Park	Clean all outdoor restrooms by 10:00 a.m.
b. Community/Neighborhood Parks	Clean all outdoor restrooms by 10:00 a.m.
c. Mission Bay Park	Clean all outdoor restrooms by 10:00 a.m.
d. Pools	Clean restrooms and locker rooms twice a day, once before opening and again during the day
17. Conduct Site Safety Checks	Daily
18. Respond in the Event of an Emergency	As-Needed
19. Serve our Customers	As-Needed
20. Train Staff	As mandated by regulatory agencies
21. Perform Weed Abatement	As Needed
22. Maintain Aquatic Features (fountains and pools)	
a. Fountains	Test fountains daily to ensure water quality meets County Department of Health standards
b. Pools	Test pools hourly during operational hours to ensure water quality meets County Department of Health standards

The proposed Urban Runoff Management Plan would require additional maintenance activities, such as: Storm drain inspection:

- o Inspect the storm drain system before and after rainy season - January 31 and September 30
- o Ensure Special Event permittee has left the area clean and there was no evidence of any pollutant discharge for each

special event (75 people or more) staff supervisor must sign off on permit regarding the inspection

Storm drains (catch basins) must be inspected and cleaned at least twice annually if needed

Parking lots must be swept to pollutant free at least once annually (or by each inspection date if needed)

Storm water general refresher training (sponsored by Storm Water Division) and activity-specific training (tailgates by Department supervisors) is required annually Storm water will conduct random e-tests to measure general knowledge of staff

All permittees and contractors will be issued General Development Plans (maps of the areas they are permitting/working) with storm drains indicated, as well as the relevant Department BMP's and good housekeeping procedures

The Department has a 90% threshold for each of these maintenance standards due to issues such as inclement weather, staff shortages, and emergencies.

RESOLUTION NUMBER R- 312297

DATE OF FINAL PASSAGE APR 16 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE MAYOR OR HIS
DESIGNEE TO EXECUTE A 10-YEAR
TELECOMMUNICATIONS LEASE BETWEEN THE CITY
OF SAN DIEGO AND THE STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES FOR THE
CALIFORNIA HIGHWAY PATROL FOR A PORTION OF THE
PROPERTY LOCATED AT 1057 ½ CATALINA BOULEVARD,
SAN DIEGO, CALIFORNIA.

WHEREAS, the City of San Diego (City) owns that certain real property located at
1057½ Catalina Boulevard, San Diego, California, 92107 (Property), a 324-square foot portion
of which was originally leased to the California Department of Transportation (DOT) for
communications facilities in 1957; and

WHEREAS, in 2005, the California Highway Patrol (CHP) was assigned the DOT's
interest in the lease and in 2007, the City and the CHP through the California Department of
General Services entered into a new lease for the Property, which has continued on holdover
since expiring on July 31, 2017; and

WHEREAS, the CHP has a continued need to use the Property for communications
facilities and is not in default of their current lease, and has been an excellent lessee with respect
to compliance with the terms of the existing lease, including making rent payments promptly;
and

WHEREAS, CHP has requested a new lease with a term of (10) years; and

WHEREAS, the market value of the Property subject to this Lease was determined by a
City staff appraiser to be \$240,000; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain City of San Diego Telecommunications Lease by and between the City of San Diego, a California Municipal Corporation and State of California Department of General Services, more fully set forth in the Lease on file in the Office of the City Clerk as Document No. RR.312297.

APPROVED: MARA W. ELLIOTT, City Attorney

By Melissa Ables
Melissa Ables
Deputy City Attorney

MDA:nja
03/22/19
Or. Dept: READ
Doc. No.: 1964446

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 09 2019.

ELIZABETH S. MALAND
City Clerk

By Wh
Deputy City Clerk

Approved: 4/15/19
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 09 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage APR 15 2019

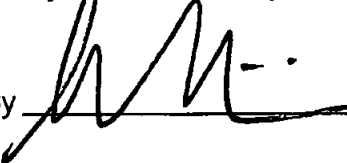
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 312297

Passed by the Council of The City of San Diego on April 9, 2019, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY KERSEY, CATE, SHERMAN,**
MORENO, GOMEZ.

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

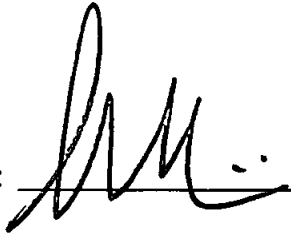
By: **Matthew R. Hilario**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312297**, approved on **April 9, 2019**. The date of final passage
is **April 15, 2019**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: , Deputy