



LEASE AGREEMENT

between

THE CITY OF SAN DIEGO

and

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

at

SAN YSIDRO, CA (MOODY CANYON)

INITIALS: *CS* and *CH*
 CITY LESSEE

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CITY OF SAN DIEGO
LEASE AGREEMENT

This City of San Diego Lease Agreement ("Lease") is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO METROPOLITAN TRANSIT SYSTEM ("LESSEE"), a California public agency, to be effective as of November 1, 2014 ("Commencement Date"), when signed by the Parties and approved by the San Diego City Attorney, as follows:

1. PREMISES

1.1. Leased Premises.

CITY owns certain real property situated in the County of San Diego, State of California, commonly known as "Moody Canyon Communications Center" and more particularly described in Exhibit A - Legal Description, attached hereto and by this reference made part of this Lease, shall hereinafter be referred to as the "Site." LESSEE leases from CITY that certain portion of the Site, described in Exhibit B - Floor Plan/Rack Location, attached hereto and by this reference made part of this Lease, which portion shall hereinafter be called the "Premises." LESSEE, its agents, employees, contractors, guests and invitees may enter the Premises shown on the attached Exhibit B - Floor Plan/Rack Location on a 24-hour nonexclusive basis.

1.2. Easements and Reservations.

- 1.2.1. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- 1.2.2. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion, for the public good.
- 1.2.3. CITY may enter the Premises to develop and/or repair municipal resources and services. CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and shall reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises or Communications Equipment (defined below) 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.

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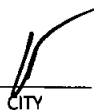

LESSEE

1.3. Eminent Domain.

If all or part of the Premises 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 beneficiary or mortgagee) shall be as follows:

- 1.3.1. Full Taking. If the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 1.3.2. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises 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.
- 1.3.3. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises 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 Premises taken, only to the extent that LESSEE'S operations are reduced or impaired.
- 1.3.4. 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.
- 1.3.5. Transfer. CITY may transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- 1.3.6. No Inverse Condemnation. The exercise of any CITY 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.

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1.4. 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 or operation of the Premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental approvals which may be required for the development and operation of the Premises. 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 Premises, as are necessary to develop and operate the uses contemplated by this Lease..

1.5. Quiet Possession.

LESSEE, paying the rent and performing its obligations under this Lease, shall at all times during the Term (defined in Section 2.1) peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE on the Commencement Date (defined on page 1), or if during the Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage; provided, however, the Commencement Date shall automatically extend until the date CITY delivers possession of the Premises to LESSEE. Notwithstanding the foregoing, if CITY is unable to deliver possession of the Premises to LESSEE within six (6) months of the full execution and delivery of this Lease, LESSEE may terminate this Lease upon written notice to CITY without further liability and any prepaid rent paid by LESSEE to CITY shall be returned in full to LESSEE.

1.6. Reassignment of Space.

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

- 1.6.1. 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.

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- 1.6.2. 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.
- 1.6.3. 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 Site and which will be installed and maintained at LESSEE'S sole cost and expense.
- 1.6.4. 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.
- 1.6.5. Site Redefined. After a reassignment and relocation as provided in this section, the Premises 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, Exhibit B of this Lease, as applicable, shall be amended (pursuant to Section 14.7, Lease Modifications, 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.

2. TERM

2.1. Term.

The Term of this Lease shall be ten (10) years ("Term"), commencing on the Commencement Date. "Lease Year" as used in this Lease shall mean the first full 12-month period following the Commencement Date, and each succeeding 12-month period thereafter during the Term.

2.2. Holdover.

LESSEE may not continue in possession of the Premises past the expiration or earlier termination of this Lease. Any extension of the Term shall require approval by the City Council pursuant to City Council Policy 700-10 ("Disposition of City-Owned Real Property").

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2.3. Quitclaim and Surrender of LESSEE'S Interest.

2.3.1. Quitclaim Deed. At termination of this Lease for any reason, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice shall be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.

2.3.2. Surrender. Upon the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises 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 those liens and encumbrances which: (1) existed on the Commencement Date, and (2) exist after the Commencement Date and are not the result of LESSEE'S Operations. LESSEE shall surrender the Premises in the same condition as it was on the Commencement Date, normal wear and tear excepted.

3. **USES**

3.1. Sole Permitted Uses.

The Premises are leased to LESSEE solely and exclusively for the purposes of installing, constructing, modifying, maintaining, operating, and removing, at its expense, a communications facility on the Premises ("LESSEE'S Operations) solely as listed in the attached Exhibit C – Equipment ("Communications Equipment"). The use of the Premises for any unauthorized, illegal or unpermitted purpose shall constitute a default and subject this Lease to termination at the sole option of CITY.

3.2. Competent Management.

Throughout the Term, LESSEE shall provide competent management of the Premises for the permitted uses to the reasonable satisfaction of the CITY. "Competent management" shall mean demonstrated ability in the management and operation of a communications facility and related activities in a responsible manner and in accordance with industry standards.

4. **RENT**

4.1. Time and Place of Payment.

Rent is due annually in arrears on or before the first day of each Lease Year. All rents required by this Lease must be made payable to the City Treasurer and mailed to:

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

or hand delivered to:

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

The place of payment may be changed at any time by CITY upon thirty (30) calendar days' prior written notice to LESSEE. Mailed rental 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. LESSEE shall clearly identify the Premises by location and include CITY'S customer account number for LESSEE on the rent payment so CITY can apply the rent to the appropriate account.

4.2. Rent.

4.2.1. Rent Amount. LESSEE shall pay CITY an initial rent of Twenty-Five Thousand Two Hundred Dollars (\$25,200) annually in arrears, subject to annual adjustments on the first day of each Lease Year as provided in the following rent schedule:

Lease Year Two	\$25,956
Lease Year Three	\$26,735
Lease Year Four	\$27,537
Lease Year Five	\$28,363
Lease Year Six	Market Rate

The above rent schedule reflects an annual rent escalation equal to three percent (3%) of the annual rent for each preceding Lease Year. At Lease Year Six the rent is subject to the adjustment provisions by appraisal described in Section 4.2.2 below.

4.2.2. Market Rent Adjustment – 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

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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 Premises, 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 3% 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 percent (3%) above the annual rent for each preceding Lease Year.

4.3. 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 at the end of fifteen (15) calendar days past due, LESSEE shall pay an additional five percent (5%), for a total of ten percent (10%), which is agreed by the Parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. 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.

4.4. Inspection of Records.

LESSEE shall maintain, in accordance with generally acceptable accounting practices, complete and accurate records and accounts showing all income and receipts from use of the Premises. LESSEE shall make any and all records and accounts relating to the use of the Premises available to CITY for inspection at a reasonable location and at all reasonable times so that CITY can determine LESSEE'S compliance with this Lease. LESSEE'S failure to keep and maintain

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records and make them available for inspection by CITY shall be a default of this Lease and cause for termination. LESSEE shall maintain all records and accounts for a minimum period of five (5) years. This section shall survive the expiration or earlier termination of this Lease.

5. ASSIGNMENT AND SUBLETTING

5.1. Assignment.

- 5.1.1. 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.
- 5.1.2. 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. 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.
- 5.1.3. CITY'S consent to any Assignment pursuant to Section 5.1.2 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.
- 5.1.4. LESSEE shall not permit any person (other than the employees, agents, contractors, and/or guests of LESSEE) to use or occupy the Premises, or any part of the Premises.
- 5.1.5. Consent by CITY to any Assignment of this Lease pursuant to Section 5.1.2 shall not be deemed to be consent to any subsequent Assignment to the same or any other person.
- 5.1.6. 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.
- 5.1.7. Any Assignment of this Lease, or any use or occupancy of the Premises by any other person, in violation of the foregoing provisions (Sections 5.1.1 through 5.1.6) shall be void and a default of this Lease, and CITY may thereupon terminate this Lease.

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5.2. Subletting. LESSEE shall not sublet, in whole or in part, the Premises, or any right or appurtenant privilege to the Premises.

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

6. DEFAULTS AND REMEDIES

6.1. Defaults and Remedies.

Upon default by LESSEE, 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. These remedies are not exclusive but cumulative.

6.1.1. Defaults. Each of the following shall constitute an event of default under this Lease:

- 6.1.1.1. LESSEE'S failure to make any payment required under this Lease when due if the failure continues for five (5) days following written notice of the failure by CITY; or
- 6.1.1.2. 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) days following written notice from CITY; or, (ii) if such breach is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion; or
- 6.1.1.3. LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or
- 6.1.1.4. 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) days of filing; or
- 6.1.1.5. LESSEE is adjudicated a bankrupt; or
- 6.1.1.6. LESSEE makes a general assignment for the benefit of creditors; or
- 6.1.1.7. LESSEE uses the Premises for any unauthorized purpose.

6.1.2. Remedies.

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6.1.2.1. For Default Based Upon Nonpayment. Upon default by LESSEE for nonpayment under Section 6.1.1.1 of this Lease, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Five-Day Notice to Pay or Quit or CITY may terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises and may recover the amount set forth below.

6.1.2.2. For Any Other Default. Upon default by LESSEE based upon Sections 6.1.1.2 through 6.1.1.7 of this Lease, CITY may, at its option, terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or possession of the Premises, and CITY may enter and take possession of the Premises and may recover from LESSEE the amount set forth below. If any default described in Sections 6.1.1.2 through 6.1.1.7 of this Lease, is not curable within thirty (30) 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.

6.1.2.3. City Recovery Upon LESSEE Default. Upon termination of the Lease due to LESSEE's default, CITY may recover the sum of:

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

6.1.2.3.2. 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

6.1.2.3.3. 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

6.1.2.3.4. 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

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

6.1.2.3.6. As used in Sections 6.1.2.3.1 and 6.1.2.3.2 of this Lease, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in Section 6.1.2.3.3 of this Lease, the "worth at the time of award" is 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 terms "rent" shall include base rent and any other payments required of LESSEE under this Lease.

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

6.1.2.4. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, 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 but not limited to the right to recover the rent as it becomes due, plus damages.

6.1.2.5. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the CITY in order to constitute a valid and binding waiver. CITY'S delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. The property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego. Any failure by the CITY to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times have the legal right to require the cure of any default when the default is discovered.

7. INSURANCE

LESSEE shall not begin any work on the Premises or Site until it has: (a) provided to CITY insurance certificates reflecting evidence of all insurance required below; however, the CITY reserves the right to request, and the LESSEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed with CITY that all policies contain the specific provisions

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required below. LESSEE'S liabilities, including but not limited to LESSEE'S indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Lease and LESSEE'S failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by the CITY. The LESSEE shall not modify any policy or endorsement thereto which increases the CITY'S exposure to loss for the Term.

7.1. Types of Insurance: At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:

a. Commercial General Liability (CGL). Insurance 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 personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

b. Commercial Automobile Liability. For all of the LESSEE'S automobiles including owned, hired and non-owned automobiles, the LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

c. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of the insurable property constructed and/or installed by LESSEE or at LESSEE'S direction on the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY'S Real Estate Assets Department.

c. Workers' Compensation. For all of the LESSEE'S employees who are subject to this Lease and to the extent required by the applicable state or federal law, the LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the LESSEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives

7.2. Deductibles: All deductibles on any policy shall be the responsibility of the LESSEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.

7.3. Acceptability of Insurers: Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a

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rating of at least "A-, VI" 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 the CITY. CITY will 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 (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.4. Modification: To assure protection from and against the kind and extent of risk existing with LESSEE'S Operations, 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 Site.

7.5. Accident Reports: LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the LESSEE'S Operations. 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.

7.6. Required Endorsements: The following endorsements to the policies of insurance are required to be provided to CITY before any work is initiated under this Lease.

7.6.1. Commercial General Liability Insurance Endorsements:

i. Additional Insured: To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

ii. Primary and Non-Contributory Coverage: The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE'S insurance and shall not contribute to it.

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iii. Severability of Interest. The policy or policies must be endorsed to provide that the 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.

7.6.2. Automobile Liability Insurance Endorsements:

i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the LESSEE.

ii. Severability Of Interest. The policy or policies must be endorsed to 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.

7.6.3. Worker's Compensation Insurance Endorsements:

i. Waiver of Subrogation: The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

8. INDEMNIFICATION

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 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 LESSEE'S duty to indemnify and hold harmless shall not include any established liability arising from the gross 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

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indemnification, LESSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

9. WASTE, DAMAGE, OR DESTRUCTION

LESSEE shall immediately give notice to CITY of any fire or any other damage 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, and dispose of all garbage, trash, and rubbish 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 plans and specifications 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. Failure to timely repair damage to the Site and/or Premises will be considered a default under the Lease.

10. IMPROVEMENTS/ALTERATIONS/REPAIRS

10.1. Acceptance of Premises.

LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on its independent inspections, tests, investigations, and observations in entering into this Lease. LESSEE acknowledges that the Premises are in the condition called for by this Lease, and that LESSEE does not hold CITY responsible for any defects, whether apparent or latent, in the Premises. It is LESSEE'S responsibility to investigate the Premises for the presence of any "Hazardous Materials," as defined in Section 11, Hazardous Materials, of this Lease, and LESSEE may perform such investigation, including any soil boring or other test. LESSEE shall notify CITY if LESSEE'S investigations indicate the presence of any Hazardous Materials on the Premises. LESSEE waives any claims against CITY which may result from the presence of Hazardous Materials on the Premises.

10.2. Entry and Inspection.

CITY may at any time, without the obligation to do so, enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its

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interests in the Premises, or to inspect the operations conducted on the Premises. If entry or inspection by CITY discloses that the Premises 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 at the expense of LESSEE, and LESSEE shall pay promptly any and all costs incurred by CITY in having the necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, 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 the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

10.3. Maintenance.

LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term of this Lease. LESSEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. All applicable codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

10.4. Improvements and Alterations.

Other than as approved by the plans, LESSEE shall not construct any improvements, structures, or installations on the Premises, or make any alterations to the Premises without CITY's prior written consent. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written consent.

- 10.4.1. Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be necessary or reasonably advisable to validate its use of the Premises, relative to any such superior interest. If LESSEE'S use of the Premises is or becomes 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.

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- 10.4.2. Alterations to Communications Equipment. LESSEE shall not make any alterations, additions or improvements to the Communications Equipment, except for routine maintenance that does not include swapping out or replacing any the Communications Equipment, 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; and (3) the alterations, additions or improvements comply with the requirements set forth in Exhibit D - Interference Protection Requirements. 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.
- 10.4.3. Information to Permitting Authorities. In obtaining any required permits for improvements, structures, installations, and/or alterations on the Premises, LESSEE shall inform permitting authorities, in writing, that the Site is CITY-owned property.
- 10.4.4. Repair and Restoration. Nothing in this provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy and sanitary condition, including without limitation structural repair and restoration of damaged or worn improvements.
- 10.4.5. Entire Installation. LESSEE represents and warrants that the Communications Equipment listed in Exhibit C - Equipment constitutes the entire installation, which LESSEE may be required to update from time to time upon the request of CITY.

10.5. Utilities.

Normal utility charges are included in the rent. Unusual utility demands by LESSEE may prompt additional charges.

10.6. Liens.

LESSEE shall at all times hold CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against claims, including reasonable attorney fees. If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall, within five (5) days of the filing, either: (a) take all actions necessary to record a valid release of lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

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10.7. Taxes.

For the purpose of this lease agreement the LESSEE is an agency of the U.S. Federal Government and is therefore immune from taxation.

10.8. 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 Site and/or Premises without CITY'S prior written consent, which consent shall be in the CITY's sole discretion. If any unauthorized item is found on the Site and/or Premises, LESSEE shall remove the item at its expense upon twenty-four (24) hours notice by CITY, or CITY may then enter the Premises and remove the item at LESSEE'S cost. LESSEE shall post a clearly marked sign at the Premises indicating LESSEE'S name and emergency telephone number.

10.9. Ownership of Improvements and Personal Property.

Except otherwise provided in this section, all improvements, trade fixtures, structures, and installations or additions to the Premises existing on the Commencement Date and owned by LESSEE or constructed on the Premises by LESSEE during the Term of this Lease shall remain the personal property of LESSEE and shall be removed by LESSEE at the expiration or earlier termination of this Lease.

10.9.1. If removal of any personal property by LESSEE results in damage to the remaining improvements on the Site and/or Premises, LESSEE shall repair all damage at LESSEE'S expense.

10.9.2. If the removal of any of LESSEE'S personal property by either CITY or LESSEE takes place after the expiration or 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 Premises.

10.10. 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 God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. This provision shall not apply to LESSEE's obligations to pay rent pursuant to this Lease. If LESSEE or

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CITY claims the existence of 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 the claimed delay.

10.11. 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 Sections 1.1310 of Title 47 of the Federal Code of Regulations ("CFR"). Any area casually accessible by the general public or by any worker at ground level shall be maintained below limits stated in CFR 47 for General Population/Uncontrolled Exposure. LESSEE shall report to CITY any areas discovered by LESSEE to exceed these federally mandated limits. LESSEE shall 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 excessive levels of radiation that are caused in whole or in part, or contributed to, by LESSEE'S Operations. Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. Any equipment installed on the Site may at times require shutdown to allow maintenance on antenna structures. LESSEE shall allow shutdown periods when required for this maintenance, provided CITY shall use reasonable efforts to ensure that these shutdowns do not occur during peak hours of operation. Protection of LESSEE'S employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled limits must be clearly identified as required by CAL-OSHA. LESSEE shall provide CITY with written shutdown procedures, contact names, and telephone numbers. LESSEE shall notify CITY in writing of any changes to the shutdown procedures, contact names or telephone numbers within seven (7) days of the change.

10.12. Radio-Frequency Interference.

LESSEE warrants that all Communications Equipment installations, modifications, and maintenance shall not result in degraded performance or radio frequency interference to any existing authorized uses of the Site by fulfilling the requirements of Exhibit D - Interference Protection Requirements, as may be updated from time to time at the sole discretion of CITY.

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10.13. Industry Standards.

LESSEE warrants that all Communications Equipment installations, modifications, and maintenance shall be performed in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© Manual, or any succeeding regulations or standards.

10.13.1. LESSEE shall remove all trash and debris from the Premises at the end of each workday.

10.13.2. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements.

10.13.3. All transmitters shall have all necessary protection to eliminate any RF degradation of the receive signal to any other user on the Site and/or Premises, such as cavity filtering and transmitter isolators.

10.13.4. LESSEE'S installation or modification of equipment at sites used by CITY'S Communications Division ("CD") must follow the additional requirements described in Exhibit D – Interference Protection Requirements, as may be updated from time to time at the sole discretion of CITY.

11. 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. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents. 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.

11.1. 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.

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- 11.2. Remediation. If LESSEE'S occupancy, use, development, maintenance, or restoration of the Site results 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, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 11.3. 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 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 materials, wastes or other containers, equipment or devices from the Site. 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.
- 11.4. Indemnity. 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 occupancy, use, development, maintenance, or restoration of the Site and/or Premises, 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.
- 11.5. 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.
- 11.6. 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

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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 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.

12. CITY POLICY IMPLEMENTATION PROVISIONS

12.1. CITY'S Consent or Approval.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Mayor or his designee unless otherwise specified, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made at the Mayor's discretion, unless otherwise provided.

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 disability in LESSEE'S use of the Premises, 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 ("SDMC") 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 SDMC, LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. Such certification shall be in substantially the form attached hereto as Exhibit E - EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE, which shall be delivered to CITY concurrently with the execution of this Lease.

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13. WATER QUALITY ASSURANCES

LESSEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.

13.1. NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Lease (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

13.2. Stormwater Management. LESSEE shall comply with all applicable requirements of the SDMC Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by CITY, in its governmental capacity, under its Stormwater Management Program.

13.3. Water Quality Assurances. LESSEE shall comply with CITY'S Storm Water Management and Discharge Control Ordinance ("Ordinance"), codified in San Diego Municipal Code sections 43.0301 et seq., and employ "Best Management Practices," including a "Storm Water Pollution Prevention Plan" (as those terms are defined in the Ordinance), hereinafter collectively referred to as the "Prevention Plan," as approved by CITY under its Stormwater Management Program. Within ninety (90) calendar days after the Effective Date, LESSEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants" (as defined in the Ordinance) and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within ninety (90) calendar days after written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan satisfactory to CITY. LESSEE shall implement all changes to the Prevention Plan as required by CITY, to ensure compliance with all applicable laws, ordinances, and regulations. LESSEE shall inform its employees, contractors, subcontractors, agents, and vendors of the Prevention Plan and ensure their compliance therewith.

14. GENERAL PROVISIONS

14.1. Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole expense. LESSEE shall comply with all notices issued by the 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

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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.

14.4. Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

14.5. Headings and Captions.

The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Lease.

14.6. Entire Understanding.

This Lease contains the entire understanding of the parties. CITY and LESSEE, by signing this Lease, agree that there is no other written or oral understanding between them with respect to the Premises. Each party has relied on its own examination of the Premises, 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 the Lease or other documents, inspect the Premises, 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.

14.7. Lease Modifications.

This Lease shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Lease and approved by the City Attorney's Office.

14.8. Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants, and conditions of this Lease. 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.

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14.9. Authority.

Each individual executing this Lease on behalf of another person or legal entity represents and warrants that he/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 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 the City Manager, 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 California.

14.10. Survival.

Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.

14.11. Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

14.12. Supersedure.

It is mutually agreed that this Lease, upon execution, supersedes and annuls that certain Lease Agreement, Federal Lease No. B089, fully executed on April 4, 2007, between CITY and LESSEE which is hereafter 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 such agreement.

14.13. Cost Recovery.

CITY maintains a schedule of fees to be paid by LESSEE as an offset to administrative costs incurred for CITY staff services that are of benefit to LESSEE. CITY shall process service requests upon receipt of LESSEE'S payment of the applicable fee. The fee schedule, which is maintained by the City Clerk's Office, may be updated from time to time at the sole discretion of CITY.

14.14. Governing Law.

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California

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14.15. 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.

14.16. Consents.

All consents to be given by either party shall not be unreasonably withheld or delayed.

15. SIGNATURES

15.1. Signature Page.

This Lease is executed by CITY, acting by and through the Mayor, and by LESSEE, acting by and through its lawfully authorized signatory.

THE CITY OF SAN DIEGO, a California municipal corporation

Date: 1/6/15

By: [Signature]
Cybele Thompson, Director of Real Estate Assets

LESSEE: SAN DIEGO METROPOLITAN
TRANSIT SYSTEM

Date: 12-17-14

By: [Signature]

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301.

Date: 12/24/14

By: [Signature]
Name: Myra Hermann
Title: Senior Planner

I:\Support Staff Group\WFO\2014\Z01.EZZ\LEASE AGREEMENT-SAN DIEGO METRO TRANSIT.doc

INITIALS: [Signature] and [Signature]
CITY LESSEE

Exhibit A-1: Permit Area

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY:

Name:

Title:

Date:

Alfredowski
Alexis Jodkowski
Deputy City Attorney
January 8, 2015

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EXHIBIT A – Legal Description.

Moody Canyon (San Ysidro) Communications Site

A parcel of land situated in the City of San Diego, County of San Diego, State of California, in the East ½ of Section 36, Township 18 South, Range 2 West, San Bernardino Meridian, described as follows, basis of bearings being California Coordinate System, Zone 6, (Chapter 1307, Statutes of 1947):

Commencing at the East 1/4 corner of said Section 36; thence South 82°59' 21" West 778.74 feet to the Point of Beginning; thence South 63°20' 56" West 59.50 feet; thence North 59° 38' 06" West 34.00 feet; thence North 26° 39' 04" feet West 77.00 feet; thence North 27° 06' 54" East, 35.00 feet; thence 33° 47' 30" West 22.17 feet; thence North 27° 06' 54" East, 36.00 feet; thence North 63° 20' 56" East 23.50 feet; thence South 26°39' 04" East, 169.50 feet to the Point of Beginning.

Containing 0.26 acre, more or less.

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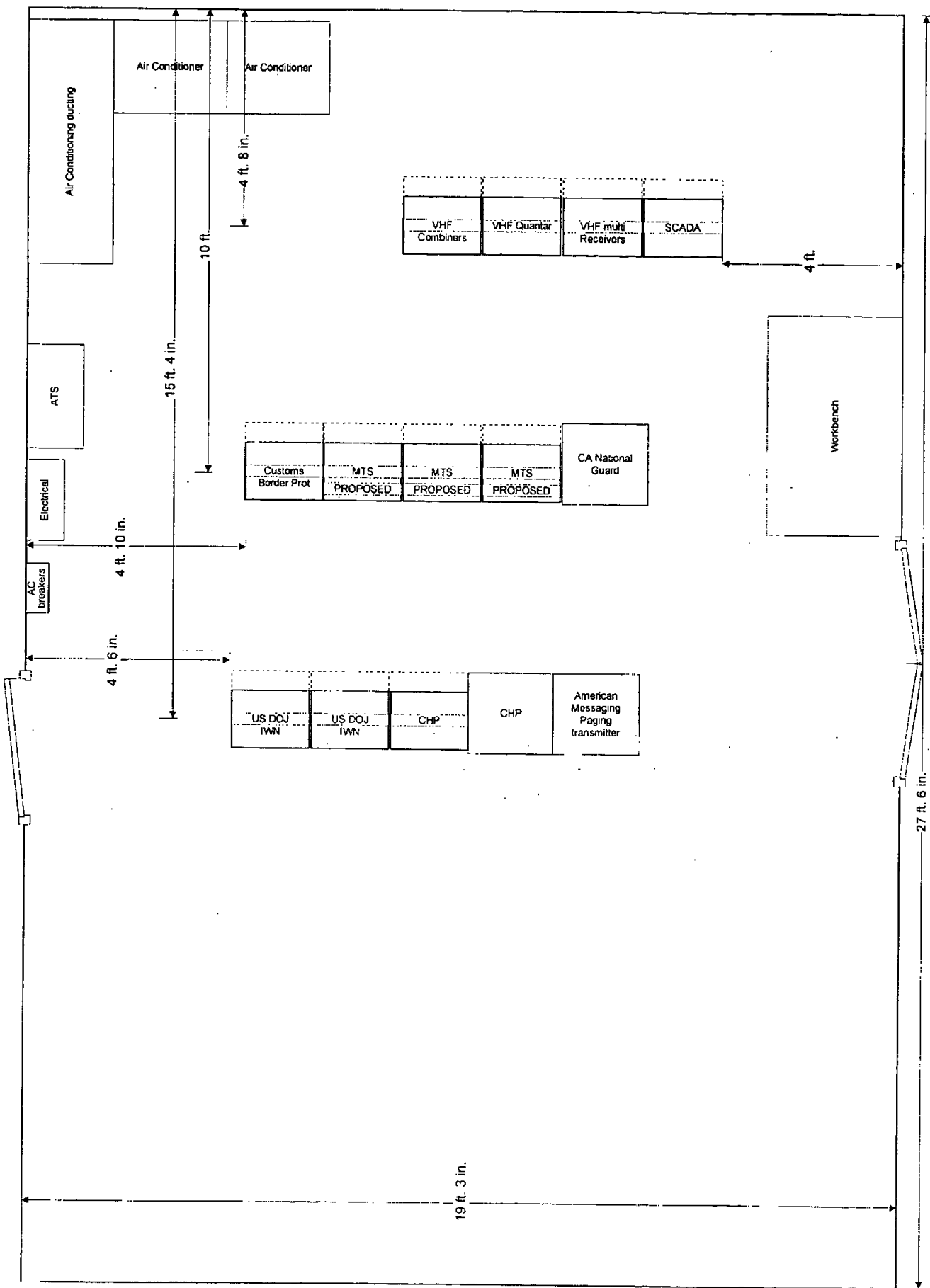

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EXHIBIT B - Floor Plans/Rack Locations.

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San Ysidro Blockhouse
VHF Equipment room
BB 9/10/2014

EXHIBIT C – MTS Radio Equipment

The San Diego Metropolitan Transit System will install three standard, open 19-inch radio system equipment racks (7-foot 6-inch in height), two panel antennas (transmit and receive), two GPS antennas, and associated cabling power and signal cabling at the San Ysidro View Park radio site. Per our understanding of the agreed to location with City representatives, the racks will be installed in the San Ysidro Block House VHF equipment room as shown in the attached drawing. The racks will be powered by connections to onsite utility power. The installed MTS equipment will be connected to onsite grounding systems as needed including master ground buss bars, ground halos, and tower ground points. Signal cabling between the antennas, telco demarcation locations, and the rack equipment will utilize the existing overhead cable trays.

Please see the attached drawing that provides the rack face elevation and rack sizing. The following equipment descriptions are provided.

Transmit & Receive Panel Antennas – Amphenol B800A085-25-4E antennas installed on the Southwest face of the 90-foot tower at elevations of approximately 26 feet transmit antenna (bottom) and 58 feet for the receive antenna (bottom) facing 245 degrees true.

GPS antennas – Two GPS antennas installed on the exterior of the San Ysidro Block House building.

Rack 1 – 16-port multicoupler, GPS rubidium standard, TeNSr channel bank, T1 interface panel, DSM interface panel, Quantar repeater 1, Quantar repeater 2, Quantar repeater 3, outlet strip, and four-channel combiner.

Rack 2 – Baytech optimization equipment, fuse and alarm panel, MUX, MOSCAD RTU, Quantar repeater 4, Quantar repeater 5, and Quantar repeater 6.

Rack 3 – Fuse panel, distribution shelf, five rectifiers, power supply, and batteries on battery trays.

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EXHIBIT D – Interference Protection Requirements.

- a. Interference. Prior to the Commencement 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 Communications Division ("CD"). CITY is not responsible for any omitted data provided for the purpose of creating the Report. The Report shall be provided to CD, 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) It will be the responsibility of LESSEE to notify all permittees/lessees/users at the Site of the tests and details of the tests, at least fourteen (14) 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

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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 CD 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 CD 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 themselves 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 LESSEE under the following technical conditions:

- (1) 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 LESSEE'S electronic equipment.

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- (3) All tests will include testing with all frequencies planned for use by LESSEE at the Site.

d. Radio Frequency Interference to City Radio Equipment

The radio equipment use proposed by the applicant shall not directly or indirectly result in degraded technical performance of 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.
- (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 be responsible for initiating 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 approval 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 approval and LESSEE waives any claim for expense or loss which LESSEE might incur as a result of CITY withholding approval.

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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:

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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)

INITIALS:


CITY

and

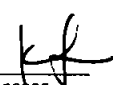

LESSEE

EXHIBIT E

EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE

For additional information, contact:

CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name: San Diego Metropolitan Transit SystemContact Name: Jeff StumboCompany Address: 1255 Imperial Avenue, Ste 1000Contact Phone: 619 557-4509San Diego, CA 92101Contact Email: Jeff.Stumbo@SDMTS.com

CONTRACT INFORMATION

Contract Title: Lease Agreement between the City of S.D. and S.D.M.T.S.Start Date: 1/1/15Contract Number (if no number, state location): Moody Canyon LeaseEnd Date: 12/31/19

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance (EBO) requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract. To maintain equal benefits a contractor shall:

- Offer equal benefits to employees with spouses and employees with domestic partners in accordance with the EBO.
Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation; employee assistance programs; credit union; or any other benefit.
- If a contractor does not offer a benefit to an employee with a spouse, that same benefit is not required to be offered to an employee with a domestic partner.
- Post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Allow City access to records, when requested, to confirm compliance with EBO requirements.
- Submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

This summary is provided for convenience. Full text of the EBO and Rules Implementing the EBO are available at www.sandiego.gov.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO by selecting A, B, or C below. The City may request supporting documentation.

A. ☒ I affirm compliance with the EBO because my firm (contractor must select one reason):

- ☐ Provides identical benefits to spouses and domestic partners.
- ☐ Provides no benefits to spouses or domestic partners.
- ☐ Has no employees.

B. ☐ I am not now in compliance, but request approval of provisional compliance with the EBO (contractor must select one):

- ☐ Until my firm completes administrative steps to implement compliance (3 month maximum).
- ☐ Until effective date of my firm's first open enrollment period (1 year maximum).
- ☐ Until expiration of current collective bargaining agreement(s) with my firm.

C. ☐ I request approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm (contractor must select all):

- ☐ Made reasonable efforts to comply, but will not be able to comply with EBO requirements before contract completion.
- ☐ Will amend policies to extend benefits for which a cash equivalent is not available to domestic partners.
- ☐ Will notify employees of the availability of a cash equivalent in lieu of equal benefits.

Under penalty of perjury under laws of the State of California, I certify I understand and will comply with requirements of the Equal Benefits Ordinance in the manner affirmed above in accordance with San Diego Municipal Code, Chapter 2, Article 2, Division 43 and the Rules Implementing the Equal Benefits Ordinance.

Jeff Stumbo, Dir of HR
Name/Title of Signatory

[Signature]
Signature

12/4/14
Date

FOR OFFICIAL CITY USE ONLY

Receipt Date

EBO Analyst

☐ Approved☐ Not Approved-Reason

INITIALS: CS and HL
CITY LESSEE

EXHIBIT F – Federal Representations and Certifications Form.

The information collection requirements contained in this solicitation/contract that are not required by regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, and assigned the OMB Control No. 3090-0163.

REPRESENTATIONS AND CERTIFICATIONS (Short Form) (Simplified Acquisition of Leasehold Interests in Real Property for Leases Up to \$100,000 Annual Rent)	Solicitation Number	Dated

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

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

1. SMALL BUSINESS REPRESENTATION (JAN 1997)
 - a. It ☐ is, ☒ is not a small business. "Small" means a concern, including affiliates, that is independently owned and operated, is not dominant in the field of operation, and has average annual gross revenues of \$15 million or less for the preceding three fiscal years.
 - b. It ☐ is, ☒ is not a small disadvantaged business (see 48 CFR 52.219-1 for definitions).
 - c. It ☐ is, ☒ is not a women-owned small business (see 48 CFR 52.219-1 for definitions).
2. 52.222-22 - PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984) (Applicable to leases which exceed \$10,000.)

The Offeror represents that:

- a. It ☒ has, ☐ has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;
- b. It ☒ has, ☐ has not filed all required compliance reports; and

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- c. Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards. (Approved by OMB under Control Number 1215-0072.)

3. 52.222-25 - AFFIRMATIVE ACTION COMPLIANCE (APR 1984)
(Applicable to leases which exceed \$10,000.)

(Applicable to contracts which include the clause at FAR 52.222-26, Equal Opportunity.)

The Offeror represents that:

- a. It ☒ has developed and has on file, ☐ has not developed and does not have on file, at each establishment affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or
- b. It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (Approved by OMB under Control Number 1215-0072.)

4. 52.222-21 - CERTIFICATION OF NONSEGREGATED FACILITIES (APR 1984)

(Applicable to leases which exceed \$10,000.)

- a. "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.
- b. By the submission of this offer, the Offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- c. The Offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
 - i. Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

- ii. Retain the certifications in the files; and

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- iii. Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
CERTIFICATIONS OF NONSEGREGATED FACILITIES.

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001. (Approved by OMB under Control Number 1215-0072.)

5. 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO
INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991) (DEVIATION)

(Applicable to leases which exceed \$100,000.)

- a. The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, are hereby incorporated by reference in paragraph (b) of this certification.
- b. The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
- i. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation.
- ii. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and,

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iii. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

c. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

6. 52.204-3 TAXPAYER IDENTIFICATION (SEP 1989) (VARIATION)

a. The Offeror is required to submit taxpayer identification information in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). Failure or refusal by the Offeror to furnish the information may result in a 20 percent reduction of payments otherwise due under the contract. Taxpayer information on the payee, if different from the Offeror, is also required; however, it may be provided at the time of award.

b. Offeror's Taxpayer Identification Number (TIN).

[X] TIN: 956000776

c. Corporate Status.

[X] Municipal Corporation

d. Common Parent.

"Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.

[X] Offeror is not owned or controlled by a common parent.

7. OFFEROR'S DUNS NUMBER (AUG 1995) (enter number, if known):

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OFFEROR OR AUTHORIZED REPRESENTATIVE	Name and Address (Including ZIP Code) «Lessor» «Address» «City», «State» «Zip Code» Signature	Telephone Number «Telephone» Date
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HP
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CITY ATTORNEY
15 JAN -7 PM 5:01
CIVIL DIVISION