

ORIGINAL

MTS Doc. No. G1293.1-10  
ADM 160.2

AMENDMENT OF SUB-LEASE AGREEMENT

This first amendment (the "Amendment") is made and entered into this 27<sup>th</sup> day of January, 2010 to that certain Lease Agreement, MTS Doc. G1293.0-10, made and entered into on the 3rd day of November, 2009, by and between the San Diego Metropolitan Transit System (MTS), hereinafter referred to as "Sub-Lessor" and the San Diego Unified Port District, hereinafter referred to as "Sub-Lessee", (the "Lease").

The Sub-Lease is hereby amended as follows:

The "Commencement Date" in the first paragraph, is hereby replaced in its entirety by the following:

"THIS SUB-LEASE is made and entered into this 24<sup>th</sup> day of March 2009 (the "Commencement Date"), by and between San Diego Metropolitan Transit System (MTS), hereinafter referred to as "Sub-Lessor", and the San Diego Unified Port District, hereinafter referred as "Sub-Lessee"."

All other terms and conditions of the Lease shall remain the same.

IN WITNESS WHEREOF, the parties hereto hereby consent to the amendment of the Lease under the terms and conditions as specified above.

Sub-Lessor:

San Diego Metropolitan Transit System

By: [Signature]  
Paul Jablonski, Chief Executive Officer

Dated: 12/22/09

Approved as to form:

By: [Signature]  
Tiffany Lorenzen, General Counsel

Dated: 12/21/09

Sub-Lessee:

San Diego Unified Port District

By: [Signature]  
Name: DIRECTOR OF REAL ESTATE

Dated: 1/25/2010



San Diego Unified Port District  
Document No. 55994  
Filed JAN 27 2010  
Office of the District Clerk

# COPY

MTS Doc. No. G1293.0-10  
ADM 160.2

## SUB-LEASE AGREEMENT

THIS LEASE is made and entered into this 3<sup>rd</sup> day of November 2009 (the "Commencement Date"), by and between San Diego Metropolitan Transit System (MTS), hereinafter referred to as "Sub-Lessor", and the San Diego Unified Port District, hereinafter referred to as "Sub-Lessee".

### PREMISES

Sub-Lessor hereby leases to Sub-Lessee and Sub-Lessee leases from Sub-Lessor for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the City of San Diego, State of California, commonly known as the Catalina Standpipe, hereinafter called the "Premises", and is shown outlined on the map marked "Exhibit A", attached hereto, and by this reference made a part hereof.

### TERM

The term of this lease shall begin on the Commencement Date and continue for two (2) years with two one (1) year options. Sub-Lessor and Sub-Lessee shall each have the right to cancel this Lease upon thirty (30) days written notice to the other party for any reason or for no reason.

### RENT

Sub-Lessee shall pay to Sub-Lessor as rent for the Premises, monthly payments of one thousand four hundred and sixty-six dollars (\$1,466.00), in advance, on the first day of each month of the term hereof. Rent for any period during the term hereof, which is for less than one month, shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein. Payment made more than ten (10) days after the due date shall be subject to a late charge of five percent (5%).

Checks payable to MTS shall be mailed to:

MTS.  
Attn: Finance Department  
1255 Imperial Avenue Ste. 1000  
San Diego, CA 92101

or to such other address as Sub-Lessor or Sub-Lessor's agent may designate by written notice to Lessee.

### RENTAL ADJUSTMENT

The monthly rent shall be increased annually beginning on the first anniversary of the Lease Commencement date, and each year thereafter, the yearly rent will increase by five percent (5%) over the rent paid during the previous year.

### USE OF PREMISES

The premises may, during the term of this Lease, be used by the Sub-Lessee for maintaining and operating three (3) radio communication racks in the 1,694 square foot building and four (4) dishes on

San Diego Unified Port District  
Document No. 55722  
Filed NOV 05 2009  
Office of the District Clerk

the City of San Diego Tower. Sub-Lessee shall make no other use of the Premises absent the prior written consent of the Sub-Lessor. Sub-Lessee shall not use or permit said Premises or any portion of said Premises to be improved, developed, used, or occupied in any manner for any purposes that are in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local government agency, body, or entity. Furthermore, Sub-Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance, storage, handling, treatment, transportation, spillage, leakage, dumping, discharge, or disposal (whether legal or illegal, accidental, or intentional) of hazardous or toxic substances, materials, or wastes regulated under local, state, or federal law.

#### **SUB-LESSOR'S WARRANTIES AND REPRESENTATIONS**

Sub-Lessor makes no warranties or representations of any kind concerning the use, suitability, or fitness of the Premises, or of available land use of the Premises. Sub-Lessor is not aware of the existence of toxic or hazardous waste on the Premises.

#### **MAINTENANCE, REPAIRS, AND ALTERATIONS**

Sub-Lessor agrees to maintain the structural soundness of the building. Sub-Lessee shall, at Sub-Lessee's sole cost and expense, keep the interior and exterior of that portion of the building leased by Sub-Lessee in good repair, including the plumbing, electrical wiring, air-conditioning and heating equipment, and be responsible for all glass, casualty damage, and maintain the Premises in as good a condition as received, normal wear and tear excepted, and pay for any repairs caused by Sub-Lessee's negligence or misuse of that of Sub-Lessee's invitees.

Sub-Lessee agrees to keep said Premises free and clear of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises.

Sub-Lessee may, but is not obligated to, make improvements to the Premises with the written consent of the Sub-Lessor. Sub-Lessee may not demolish, remove, replace, or relocate any existing improvements or alterations, whether made at Sub-Lessor's or Sub-Lessee's expense, without the prior written consent of the Sub-Lessor. All alterations shall be surrendered with the Premises upon expiration of the Lease Term, unless Sub-Lessor requires Sub-Lessee to remove the same.

#### **INDEMNITY AND INSURANCE**

Sub-Lessee shall indemnify and hold Sub-Lessor and the property of Sub-Lessor, including said Premises and any buildings or improvements now or hereafter on said Premises, free and harmless from any and all liability, claims, loss, damages, or expenses, including attorney fees and costs, resulting from Sub-Lessee's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

- A. The death or injury of any person, including Sub-Lessee or any person who is an employee, contractor, or agent of the Sub-Lessee, or by reason of the damage to or destruction of any property, including property owned by Sub-Lessee or by any person who is an employee, contractor, or agent of Sub-Lessee, from any cause whatever while such person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises.
- B. Any work performed on the Premises or materials furnished to the Premises at the request of the Sub-Lessee or any person or entity acting for or on behalf of the Sub-Lessee.

Sub-Lessee shall, at Sub-Lessee's own cost and expense, promptly secure (after execution of this Lease) and maintain during the entire term of this Lease a broad form of comprehensive coverage policy of public liability insurance acceptable to Sub-Lessor and issued by an entity authorized to issue

liability insurance in California, insuring Sub-Lessee and Sub-Lessor against loss or liability caused by or connected with Sub-Lessee's occupation and use of the Premises under this Lease in the amounts not less than:

- A. Two Million Dollars (\$2,000,000) for injury to or death to one or more persons as a result of any accident or incident; and
- B. One Million Dollars (\$1,000,000) for damages to or destruction of any property of others.

Sub-Lessee will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

All policies and coverages shall contain a provision for 30 days written notice by the Insurer(s) to MTS Contracts Specialist of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

**All such policies shall name the San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and the San Diego Transit Corporation (SDTC), their directors, officers, agents and employees as additional insureds as their interests may appear.**

Sub-Lessee agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

#### QUIET ENJOYMENT

Sub-Lessor warrants that it has sufficient title to the property affected by this Lease to make this Lease for the term set forth herein. Sub-Lessor covenants and agrees that Sub-Lessee shall have quiet and peaceful possession of the Premises and shall enjoy all the rights herein granted without interference.

#### ASSIGNMENT

Sub-Lessee has no right of assignment or subletting to others without written consent of Sub-Lessor, which consent may be withheld for any reason.

#### DEFAULT

Any of the following events shall constitute a material default under this Lease. The following shall sometimes be referred to as "events of default":

- A. If payment of any sum including, but not limited to, rent due hereunder, or any part thereof when the same is due and payable and not paid, and such nonpayment continues for a period of fifteen (15) days following written notice thereof by Sub-Lessor; or
- B. If Sub-Lessee fails in the performance of or in compliance with any of the covenants, conditions, agreements, terms, or provisions contained in this Lease, which failure is not capable of being cured; or

- C. Any act of bankruptcy caused, suffered, or permitted by Sub-Lessee. For purposes of this Lease, an "act of bankruptcy" shall include the following:
- any general assignment or general arrangement for the benefit of creditors;
  - the filing of any petition by or against Sub-Lessee to have Sub-Lessee adjudged as bankrupt; and
  - the appointment of a trustee or receiver to take possession of substantially all of the Sub-Lessee's interest in this Lease.

#### ATTORNEY'S FEES

In the event either party hereto brings or commences legal proceeding to enforce any of the terms of this Lease, the successful party shall then be entitled to receive from the other party a reasonable sum as attorney's fees and costs, to be fixed by the court in the same action.

#### NOTICES

Any notice or demand required or desired to be given in connection with this Lease shall be in writing and sent or delivered to the recipient at its notice address. A notice sent by registered or certified mail, return receipt requested, shall be deemed given five calendar days after deposited in the U.S. mail. Addresses for notices of the parties are as follows:

Sub-Lessor: San Diego Metropolitan Transit System  
Attention: Manager of Real Estate Assets  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490

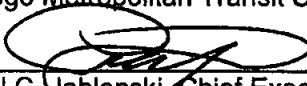
Phone: (619) 231-1466

Sub-Lessee: San Diego Unified Port District  
Attention: Karen J. Weymann, Director of Real Estate  
3165 Pacific Highway  
San Diego, CA 92112-0488  
Phone: (619) 686-6487

EXECUTED in the City of San Diego, County of San Diego, State of California.

#### LESSOR:

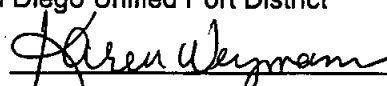
San Diego Metropolitan Transit System

By:   
Paul C. Jablonski, Chief Executive Officer

Dated: 10/26/07

#### LESSEE:

San Diego Unified Port District

By:   
Title: DIRECTOR, REAL ESTATE

Dated: NOV 5, 2007

Approved as to form:

By:   
Office of General Counsel

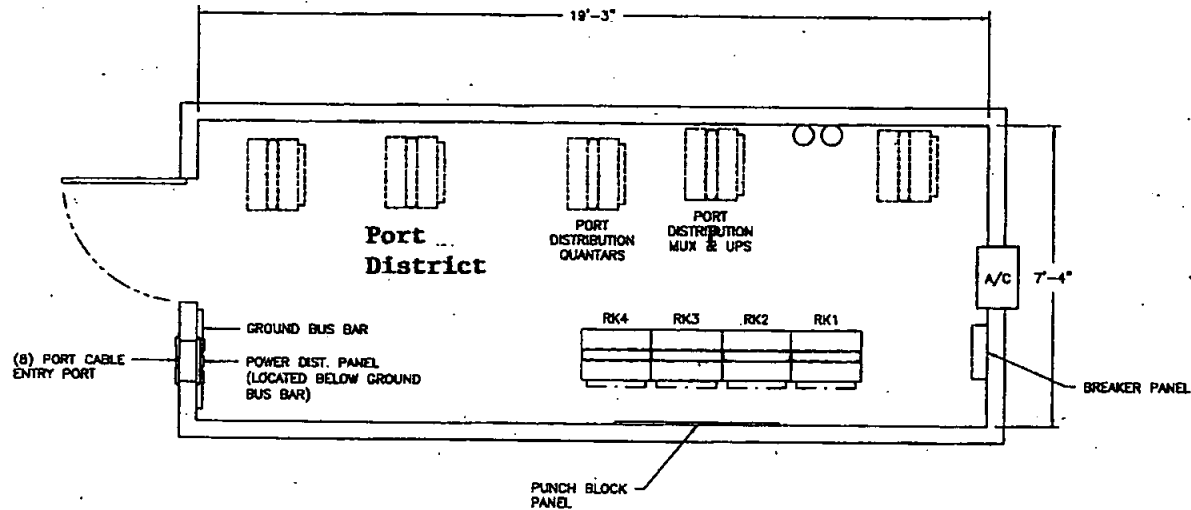
Date: 10/26/09

Attachment: Exhibit "A" (Property Layout)

EXHIBIT "A"

NOTES:

1. EQUIPMENT RACK NUMBERS ARE LOCATED ON THE FRONT SIDE OF EQUIPMENT.
2. FOR EQUIPMENT ROOM CABLE TRAY LAYOUT, SEE DWG. NO. SD-PLO-140.



EQUIPMENT ROOM EQUIPMENT LAYOUT - PLAN VIEW

| REV | DATE     | BY   | DESCRIPTION                  |
|-----|----------|------|------------------------------|
| H   |          |      |                              |
| G   |          |      |                              |
| F   |          |      |                              |
| E   |          |      |                              |
| D   |          |      |                              |
| C   | 5-02-05  | P.K. | AS BUILT                     |
| B   | 1-28-04  | P.K. | FOR UPDATE                   |
| A   | 10-31-03 | P.K. | FOR UPDATE PER MTDB COMMENTS |
| O   | 9-02-03  | P.K. | ORIGINAL RELEASE             |

|                                                                                            |                              |                                                                             |                 |
|--------------------------------------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------|-----------------|
| <b>MOTOROLA</b>                                                                            |                              | WESTERN DIVISION<br>DOCUMENTATION DEPARTMENT<br>SAN DIEGO, CALIFORNIA 92181 |                 |
| METROPOLITAN TRANSIT DEVELOPMENT BOARD (MTDB)<br>REGIONAL TRANSIT MANAGEMENT SYSTEM (RTMS) |                              |                                                                             |                 |
| POINT LOMA SITE<br>EQUIPMENT ROOM EQUIPMENT LAYOUT                                         |                              |                                                                             |                 |
| DESIGNED BY<br>PAT KELLY                                                                   | DESIGNED BY<br>SCOTT CLAYTON | SCALE<br>3/8"=1'                                                            | REV<br>B        |
| PROGRAM<br>AUTOCAD 2000                                                                    | DESIGNED BY<br>C. MAGNUSON   | DESIGNED BY<br>CHARLES O'BANNEON                                            | REV<br>C        |
| FILE NAME<br>MTDB_054.DWG                                                                  | DATE<br>8-29-03              | DATE<br>8-29-03                                                             | DATE<br>8-29-03 |
| ORIGINAL DOCUMENT SIZE IS 11x17. CORRECT SCALE IS NOT GUARANTEED IF REDUCED OR ENLARGED    |                              |                                                                             |                 |