



ANTONIO R. VILLARAIGOSA  
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RONALD O. NICHOLS  
*General Manager*

January 30, 2013

The Honorable City Council  
City of Los Angeles  
Room 395, City Hall  
Los Angeles, California 90012

Honorable Members:

Subject: Authorizes Execution of Lease No. 1517 with Vista Towers, LLC

Pursuant to Charter Section 606, enclosed for approval by your Honorable Body is Resolution No. 013 158, adopted by the Board of Water and Power Commissioners on January 25, 2013, approved as to form and legality by the City Attorney, which authorizes execution of Lease No. 1517 with Vista Towers, LLC and the City of Los Angeles Department of Water and Power – Mono County, California covering a 2,400-square foot parcel owned by the City of Los Angeles for use as a wireless communications facility, located at Crowley Lake, Mono County, California. As directed by the Board, transmitted to you are supporting documents.

If there are any questions regarding this item, please contact Ms. Winifred Yancy, Manager of Intergovernmental Affairs and Community Relations, at (213) 367-0025.

Sincerely,

A handwritten signature in blue ink, reading "Barbara E. Moschos".

Barbara E. Moschos  
Board Secretary

BEM:oja

Enclosures: LADWP Resolution  
Board Letter  
CAO Report  
Lease No. 1517 with Vista Towers, LLC

**Water and Power Conservation ...a way of life**



c/enc: Mayor Antonio Villaraigosa  
Councilmember Jose Huizar, Chair, Energy and the Environment Committee  
Gerry F. Miller, Chief Legislative Analyst  
Miguel A. Santana, City Administrative Officer  
Rafael Prieto, Legislative Analyst, CLA  
William R. Koenig, Chief Administrative Analyst  
Winifred Yancy

**WHEREAS**, the Los Angeles Department of Water and Power proposes to enter into Lease No. 1517 Between Vista Towers, LLC and the City of Los Angeles Department of Water and Power (Lease No. 1517) covering a 2,400-square-foot portion of City of Los Angeles-owned property located at Crowley Lake, Mono County, California, as a site for a wireless telecommunication facility; and

**WHEREAS**, the term of Lease No. 1517 shall be for a period of 25 years effective the first day of the month immediately following the date of full execution of the lease, at a rate of \$12,000 per year for every wireless service provider located thereon; and

**WHEREAS**, the Board finds that: (1) the property to be leased is not presently needed for Los Angeles Department of Water and Power purposes; and (2) the grant of Lease No. 1517 will not interfere with Los Angeles Department of Water and Power operations.

**NOW, THEREFORE, BE IT RESOLVED**, that Lease No. 1517, approved as to form and legality by the City Attorney and now on file with the Secretary of the Board, be and is hereby approved.

**BE IT FURTHER RESOLVED**, that the President or Vice President of this Board, or the General Manager, or such person as he shall designate in writing as his designee, and the Secretary, Assistant Secretary, or the Acting Secretary of this Board are hereby authorized, empowered, and directed to execute said Lease No. 1517 for and on behalf of the Los Angeles Department of Water and Power.

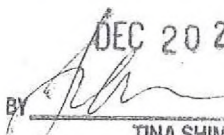
**BE IT FURTHER RESOLVED**, that upon commencement of said lease, business lease BL-1519 shall terminate and be superseded by business lease BL-1517.

**BE IT FURTHER RESOLVED**, that City Council is requested to approve Lease No. 1517 by order of a Resolution pursuant to City Charter Section 606.

**I HEREBY CERTIFY** that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Water and Power Commissioners of the City of Los Angeles at its meeting held **JAN 25 2013**

APPROVED AS TO FORM AND LEGALITY  
CARMEN A. TRUTANICH, CITY ATTORNEY

  
Secretary

DEC 20 2012  
  
BY **TINA SHIM**  
DEPUTY CITY ATTORNEY



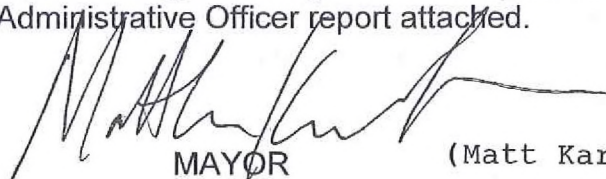
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**TRANSMITTAL**

TO Ronald O. Nichols, General Manager Department of Water and Power	DATE JUN 21 2012	COUNCIL FILE NO.
FROM The Mayor		COUNCIL DISTRICT NA; Mono County, CA

**LEASE AGREEMENT NO. 1517 WITH VISTA TOWERS, LLC FOR 2,400 SQUARE  
FEET OF LAND LOCATED IN MONO COUNTY FOR USE AS A WIRELESS  
COMMUNICATIONS FACILITY**

Transmitted for further processing, including Council consideration. See the  
City Administrative Officer report attached.



MAYOR

(Matt Karatz)

MAS:RPR:10100134t



REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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
Date: June 19, 2012

CAO File No.: 0150-09755-0000

Council File No.:

Council District: NA; Mono County, CA

To: The Mayor

From: Miguel A. Santana, City Administrative Officer 

Reference: Transmittal from the Department of Water and Power dated March 19, 2012; referred by the Mayor for report on April 9, 2012

Subject: **PROPOSED LEASE AGREEMENT NO. 1517 WITH VISTA TOWERS, LLC FOR 2,400 SQUARE FEET OF LAND LOCATED IN MONO COUNTY FOR USE AS A WIRELESS COMMUNICATIONS FACILITY**

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### SUMMARY

Department of Water and Power (DWP; Department) requests approval of a proposed resolution which authorizes the Department to execute Lease Agreement No. 1517 (Agreement) between the City of Los Angeles (City) and Vista Towers, LLC (Vista Towers; Lessee), for approximately 2,400 square feet of City owned land located at Crowley Lake in Mono County, California.

Approval of the proposed Agreement provides for a 25 year lease consisting of five five-year terms with base rent of \$12,000 per year and an additional \$12,000 per year for each sub-tenant as the City's share of any sub-lease fees. The rental amounts and terms negotiated are based on the Department's telecommunications rental rates policy. Annual adjustments to the base rent and sub-lease rent amount total three percent, compounding each year. Subsequent to the first five-year term, the rental fees will be renegotiated periodically to reflect market rates; although, in no case will the period between adjustments exceed five years, in accordance with Charter Section 607(b)-Compensation Adjustments.

The proposed resolution and lease agreement is pending City Attorney approval as to form and legality. Pursuant to City Charter Section 606 and Los Angeles Administrative Code Section 10.5, Council approval is required because the lease agreement exceeds five years.

Vista Towers, based in Santa Ana, California, is a developer of wireless antenna sites. It provides construction and project management services on projects throughout California and Nevada. DWP states that the long-term lease is in consideration of the remote location of the land and to allow the Lessee adequate time to recoup the investment costs from building on difficult terrain, as well as a quarter-mile road needed to access the site.

The Mono County Planning Commission prepared an initial study of the associated environmental impacts and adopted a Mitigated Negative Declaration (MND) on January 12, 2012. Under the

California Environmental Quality Act (CEQA), DWP is the responsible agency whose discretionary approval of the project is required. As a responsible agency, and pursuant to CEQA Guidelines Section 15050(b), the Department is requested to consider the MND from Mono County in determining whether to approve the lease.

DWP may terminate the proposed lease agreement with 30 days written notice if the lessee is in default with the contract provisions or if the lease interferes with Department operations or the public interest.

The above mentioned aspects of the proposed resolution, agreement, and this report, are based upon revised information received from the Department subsequent to the initial request submittal.

## **RECOMMENDATION**

That the Mayor:

1. Approve, pending City Attorney approval as to form and legality, the proposed resolution which authorizes the Department of Water and Power to execute Lease Agreement No. 1517 with the Vista Towers, LLC, for approximately 2,400 square feet of City of Los Angeles owned land that is located at Crowley Lake in Mono County, California, for a term of 25 years; and
2. Return the proposed Agreement to the Department for further processing, including Council consideration.

## **FISCAL IMPACT STATEMENT**

Approval of the proposed resolution will result in revenue to the Water Revenue Fund initially totaling \$12,000 annually for base rent and an addition \$12,000 per year for each sub-tenant. Vista Towers is responsible for any related property tax increases. Subsequent to the first five-year term, the rental fees will be renegotiated periodically; although, in no case will the period between adjustments exceed five years, in accordance with Charter Section 607(b). Since the Department of Water and Power is bound only by the City Debt Management Policies, the City Financial Policies are not applicable. Approval of the proposed Lease Agreement will have no impact on the City's General Fund.

## **TIME LIMIT FOR COUNCIL ACTION**

Pursuant to Charter Section 675(d)(2), "Powers and Duties of the Board – Real Estate Interests," subject to the water rights of the City, there is no time limit for Council action on agreements for real property or any rights in real property held by DWP that will be sold, leased or withdrawn from the Department's control.

MAS:RPR:10120134

Attachments

LEASE NO. 1517

BETWEEN

VISTA TOWERS, LLC

AND

THE CITY OF LOS ANGELES  
DEPARTMENT OF WATER AND POWER



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### EXHIBITS

Exhibit A	Lease Map
Exhibit B	Insurance



## ARTICLE I. SPECIFIC TERMS AND PROVISIONS

The Department of Water and Power of the City of Los Angeles, hereinafter Lessor, Department or City, and:

### Vista Towers, LLC

hereinafter Lessee, agree as follows:

1. **LEASED PREMISES:** Lessor leases to Lessee the premises located at Hilton Creek Pack Station Road, Crowley Lake, Mono County, California, more particularly shown on the drawing marked *Exhibit A*, attached hereto and made a part hereof.
2. **TERM:**
  - 2.1. **Term:** The term of this lease shall commence on \_\_\_\_\_ (the first day of the month immediately following the date of full execution of this lease ("Commencement Date") and shall terminate July 31, 2037, unless sooner terminated as herein provided.
    - 2.1.1. Said term shall be divided into five (5) rental periods, the first such period shall commence on the Commencement Date and expire on July 31, 2017 and shall represent the current term of use of the property, unless sooner terminated as herein provided.
    - 2.1.2. Each successive rental period shall consist of sixty (60) months and shall commence at the expiration of the immediately preceding rental period.
    - 2.1.3. For each successive rental period of this lease, the rental shall be a sum agreed upon by Lessor and Lessee as provided in this lease in Article I, *Renegotiation of Rent* section.
  - 2.2. **Full Execution:** Full execution shall mean the first date upon which this lease has been signed by the Department by the person authorized by the Department to sign on its behalf and also signed by the Lessee's authorized representative; this lease has been approved by the Los Angeles City Council or by the Board of Water and Power Commissioners, or by the City's or the Board's officer or employee authorized to give such approval; and the Office of the City Attorney has indicated in writing its approval of this lease as to form and legality.
  - 2.3. **Renewal:** The term of this lease is for a period of 25 years only and no longer. Further, this lease is subject to the prior approval by the Board of Water and Power Commissioners, by resolution, and the Los Angeles City Council. Lessee further acknowledges that Lessor has no power or authority to agree to a renewal of this lease. Any approval for a lease after this lease term is not within the contemplation or understanding of the parties and would also similarly be subject to prior approval by the Board of Water and Power Commissioners and the Los Angeles City Council as to which approval no inference, understanding, or expression is hereby made.
3. **DESIGNATED USE:** The subject premises shall be used as a site for a wireless telecommunication facility only, and for no other purpose.



#### 4. RENT:

- 4.1. Base Rental Rate: Lessee agrees to pay Lessor the sum of One Thousand and No/100 Dollars (\$1,000) per month, in advance, payable on the first day of each month commencing on the lease Commencement Date.
- 4.2. Sublet Rent: Throughout the term of any sublease, Lessee shall pay to Lessor on the first of each month during the term hereof, in addition to the base rent, One Thousand and No/100 Dollars (\$1,000) per month or the base rent adjusted per Subsection 4.3 (*Annual Rent Increase*), whichever is greater, beginning on the installation of a second tenant to sublease space within the facility. Sublet rent, adjusted per Subsection 4.3, will be paid to the lessor for each tenant to sublease space thereafter.
- 4.3. Annual Rent Increase: Subject to a reduction in Sublet Rent to the extent any sublessee's term expires or is terminated, the Base Rent, as well as the Sublet Rent, shall be increased on each anniversary of the Commencement Date throughout the lease term by an amount equal to three percent (3%) of the Base Rent and Sublet Rent for the previous year. Therefore, the beginning Sublet Rent for an additional subtenant being added in lease year two would be \$1,030 per month, \$1,063 per month in lease year three, and so forth throughout the term.
- 4.4. Rent Payment:
  - 4.4.1. Lessee agrees to pay all rent, or any other amount due under the terms of this lease, promptly when due and without deduction, offset, prior notice, or demand, to the Department of Water and Power, 300 Mandich Street, Bishop, California 93514-3449. All payments shall reference Account No. 17593.
    - 4.4.1.1. Prompt payment shall mean payment at the office of Lessor not more than five (5) days after the due date for the rent as set forth in this lease. Rent due and not paid promptly shall be deemed delinquent.
  - 4.4.2. Lessor is not required to make any demand on the Lessee for the payments, whether on the premises or elsewhere. Billing for any payment shall be for the convenience of the Lessee and not required of the Lessor.
  - 4.4.3. Rent not paid when due shall bear interest from due date until paid, at the rate of 10/12<sup>th</sup> of 1% per month (10% per annum) from the date rent is due. Said sum shall be deemed additional rent.
  - 4.4.4. If any check offered by the Lessee in payment of rent or any other amount due under this agreement is returned for any reason other than that caused by the Lessor's negligence, Lessee shall pay to Lessor a check return processing charge in the amount of Thirty and No/100 Dollars (\$30.00).
- 4.5. Renegotiation of Rent:
  - 4.5.1. The rental to be paid by Lessee to Lessor for each five (5) year period or any portion thereof following and succeeding the first five (5) year period of the term of this lease shall be subject to readjustment. Six months prior to each fair market rent adjustment period described above, Lessee and Lessor shall attempt to agree upon what the new fair market rent will be on the adjustment date. Such rental shall be mutually agreed upon between Lessee and Lessor within 30 days. In the event Lessee and Lessor cannot agree upon the amount



of such rental within 30 days, then, the same shall be determined in the following manner:

- 4.5.1.1. Both Lessor and Lessee shall each immediately make a reasonable determination of the fair market rent and submit such determination, in writing, to arbitration in accordance with the following provisions:
  - 4.5.1.1.1. Within 30 days, Lessor and Lessee shall each select an appraiser of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable appraiser to act as a third arbitrator.
  - 4.5.1.1.2. The three arbitrators shall, within 30 days of the appointment of the third arbitrator, reach a decision as to what the actual fair market rent for the premises is, and whether Lessor's or Lessee's submitted fair market rent is the closest thereto. The decision of a majority of the arbitrators shall be binding on the parties. The submitted fair market value, which is determined to be the closest to the actual fair market value, shall thereafter be used by the parties.
  - 4.5.1.1.3. If either of the parties fails to appoint an arbitrator within the specified 30 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the parties.
  - 4.5.1.1.4. The entire cost of such arbitration shall be paid by the party whose submitted fair market value is not selected (i.e., the one that is NOT the closest to the actual fair market value).
- 4.5.2. Notwithstanding the foregoing, the new fair market value shall not be less than the rent payable for the month immediately preceding the rent adjustment.
- 4.5.3. If for any reason said rent shall not be finally determined until after the beginning of any period for which the rent is to be adjusted, Lessee shall continue to pay at the former rate as a credit against the amount of the new rent when fixed, provided, however, that the amount fixed as new rent shall accrue from the beginning of said period, and proper adjustment shall be made for any payments made by Lessee at the former rates in the interim.

## 5. NOTICES:

- 5.1. Any notice to be given hereunder by either party to the other shall be in writing, and either served personally or sent by prepaid first-class mail, or overnight courier. Any such notice shall be addressed as follows:

To Lessor:

Los Angeles Department of Water and Power  
Real Estate Group  
300 Mandich Street  
Bishop, California 93514-3449



To Lessee:

Vista Towers, LLC  
Property Management  
10161 Broadview Place  
North Tustin, CA 92705

5.2. Or to such other address as Lessor and Lessee may hereafter designate by written notice. Notice shall be deemed communicated within twenty-four (24) hours from the time of mailing if mailed as provided in this paragraph.

6. **TELECOMMUNICATION SITE REQUIREMENTS:** Telecommunication site uses are subject to the following conditions:

6.1. Use of communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) authorization, and that the operation of the equipment is in strict compliance with applicable requirements of FCC.

6.1.1. An applicable license or authorization shall be maintained at all times by each sublessee for each transmitter being operated.

6.1.2. The sublessee(s) shall provide Lessor, when requested, with proof of a license for equipment in or on facilities covered by this lease.

6.2. Lessee shall ensure that equipment within its facility operates in a manner which will not cause harmful interference with the operation of equipment on or adjacent to the communications site.

6.2.1. If Lessor or an authorized official of the FCC determines that the Lessee's use interferes with Lessor's equipment, the Lessee shall promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of Lessor or the FCC official. Lessee shall be responsible for all costs of such removal or mitigation.

6.3. Lessee or sublessee(s) will furnish technical information concerning the equipment located on the leased premises when requested by Lessor.

## ARTICLE II. STANDARD TERMS AND PROVISIONS

### 1. LIMITATIONS/RESERVATIONS/RISKS:

- 1.1. Limitations on Use of Leased Premises: Lessee shall not use the premises, nor any portion thereof, for any purpose other than that hereinabove set forth in Article 1 without first having had and obtained the written consent of the Board of Water and Power Commissioners of the City of Los Angeles (Board), whose consent may be withheld in the Board's sole discretion, and whose written consent is approved as to form by the City Attorney.
- 1.2. Reservations: This lease is subject to all existing uses, all matters of record, and to the reservations hereinafter set out.
  - 1.2.1. There is excepted from this lease and reserved to the Lessor all water and water rights, whether surface, subsurface, or of any other kind; and all water and water rights appurtenant or in anywise incident to the lands or premises leased herein, or used thereon or in connection therewith, together with the right to develop, take, transport, control, regulate, and use all such water and water rights.
  - 1.2.2. There is also excepted and reserved to the Lessor the right to use, operate, and maintain any ways, waterways, ditches, pipelines, canals, wells, and appurtenances thereto, or desirable in connection therewith, together with the right to grant easements, rights of way, licenses, and permits for other purposes that will not unreasonably interfere with Lessee's use of the premises.
  - 1.2.3. The right, from time to time, to raise or lower the water level underlying the leased premises by taking, or failing to take, water from the Mono Basin or Owens River watersheds or drainage areas, or both such areas, or by the importation or nonimportation of such water into the watershed within which said premises are located.
  - 1.2.4. The right to develop, take, collect, import, store, control, regulate, and use any and all such waters and, from time to time, at the option and discretion of Lessor, to transport and export any and all such waters to places and areas outside the Mono Basin or Owens River watersheds and drainage areas, or both such areas (including, but not limited to, the City of Los Angeles, Lessor herein), for any and all of the reasonable and beneficial uses and purposes of Lessor.
  - 1.2.5. The right to construct, maintain, control, and operate upon and within said premises dikes, dams, reservoirs, ponds, and settling basins, together with appurtenant facilities (including, but not limited to, ditches, pipelines, conduits, and wells), and to affect said premises in any way by raising or lowering, from time to time, the level of the water of any such reservoirs, ponds, or settling basins, or all of them.
  - 1.2.6. The right to use any and all existing easements, servitudes, ways, waterways, and ditches on said premises; to make inspections, investigations, and surveys thereon; and to construct, maintain, and operate thereon works and structures in connection with Lessor's management and control of its works and properties.



- 1.2.7. The right to have ingress and egress to, from, in, and over, and enter upon said premises and every part thereof and thereon to do all things necessary or convenient in the exercise of the rights herein reserved.

1.3. Risks:

- 1.3.1. Lessee expressly assumes any and all risks arising out of or in any way related to the use of the leased premises, including, but not limited to, flooding, fire, and wildlife.
- 1.3.2. Lessee acknowledges that the leased premises may be adjacent to rivers, located in a floodplain, and present exposure to many unusual and unsafe conditions, including fires, floods, disease, wild animals, and wildlife, which pose a risk to persons and property.
- 1.3.3. Lessee acknowledges that the lease premises may be subject to flooding from time to time.
- 1.3.4. Lessee acknowledges that any improvements constructed on the leased premises may be damaged or destroyed by water, and in using or placing any improvements on the leased premises, Lessee expressly assumes these risks.
- 1.3.5. Lessee acknowledges that Lessor does not provide security for the lease premises, and the responsibility for providing for the safety of all of the persons who enter onto the lease premises, with the exception of Lessor's employees, belongs solely to Lessee.

2. **IMPROVEMENTS:**

2.1. Lessee Improvements and Alterations:

- 2.1.1. Lessee shall make no structural improvements, additions, or alterations in, to or upon the leased premises, nor erect, construct, or place any sign upon said leased premises, without first obtaining the written consent of the Aqueduct Manager of the Los Angeles Department of Water and Power (Manager). Any conditions, restrictions, or limitations placed upon the approval by the Lessor shall be conditions of this lease as though fully set forth herein once the document is fully executed by both parties. Lessee shall hold Lessor harmless from liability with respect to any claims regarding any improvements, additions, or alterations made thereto.
- 2.1.2. Prior to the construction of any improvements, Lessee shall submit to Lessor's Real Estate Section in Bishop, California (Real Estate Section), for concept approval, the preliminary plans and estimated construction cost for such improvements. Said approval, subject to the conditions set forth herein, shall be given in writing, in a reasonably timely manner. Upon approval by the Manager of Lessee's preliminary plans, Lessee shall prepare working drawings and specifications, which shall be true and correct developments of the preliminary plans so approved. Lessee shall cause the construction called for by the approved working drawings and specifications to be commenced and completed promptly. No substantial changes, additions, or alterations shall be made in said working drawings or specifications, or in the construction called for thereby, without first obtaining the Manager's approval in writing. Upon completion of the



improvements, Lessee shall furnish to the Real Estate Section, at no charge, one complete set of "as-built" drawings. These drawings must include any applicable permit numbers, the structural and other improvements installed by Lessee in the leased premises, and the location and details of installation of all improvements, equipment, utility lines, heating, ventilating, and air-conditioning ducts and related matters. Lessee shall keep said drawings current by updating them in order to reflect any changes or modifications, which may be made in or to the leased premises.

2.1.3. For each and every construction or alteration project undertaken on the leased premises, Lessee shall prepare a construction report. This report shall contain the following elements: (1) type of improvement constructed or altered; (2) floor area or capacity of improvement constructed or altered; (3) total cost of construction or alteration; (4) completion date for construction or alteration; and (5) a copy of the certificate of occupancy. The construction report shall be mailed to the Lessor at the address provided in this lease in Article I, Section 5 (*Notices*), not later than sixty (60) days following completion of the construction or alteration.

2.1.4. Lessee shall also keep the leased premises and any improvements constructed thereon free and clear of liens for labor and material expended by or for Lessee or on its behalf in accordance with Article II, Section 3 (*Liens*).

2.2. Ownership of Improvements:

2.2.1. During the term the property is leased, title to all structures, improvements, facilities, or alterations constructed or installed by Lessee shall be vested to Lessee.

2.2.2. Upon the termination of the lease tenancy, said structures, improvements, facilities, or alterations, other than machines, equipment, trade fixtures, buildings, equipment buildings, and similar installations of a type commonly removed without structural damage to the leased premises, shall become a part of the land upon which they are constructed, and title thereto shall thereupon vest in the Lessor unless, however, Lessor may request Lessee to remove some or all of said structures, improvements, facilities, or alterations, in which case Lessee shall promptly remove said items at Lessee's sole cost and expense. In the event the removal of any fixture damages any part of the leased premises, Lessee shall repair such damage and restore the leased premises to as good condition as the same was in prior to said damage, reasonable wear and tear excepted.

2.2.3. During the term of this lease, title to all structures, improvements, facilities, or alterations constructed or installed by Lessee for which Lessee has been reimbursed by the Lessor shall thereupon vest in the Lessor.

2.2.4. Upon vesting of title to said structures, improvements, facilities, or alterations in the Lessor, Lessor shall be entitled to additional reasonable rent, fees and/or other charges, as determined by the Board, and Lessee shall be obligated to pay same for as long as Lessee occupies said structures, improvements, facilities and alterations.



2.3. Damage to or Destruction of Improvements:

- 2.3.1. If, during the term of this lease, any buildings, structures, or improvements on the leased premises, whether such improvements are Lessee- or Lessor-owned, are partially or totally destroyed from a risk covered by the insurance described in Article II, Section 10 (*Insurance*), herein, thereby rendering said leased premises partially or totally inaccessible or unusable, such destruction shall not automatically terminate this lease, and Lessee, unless otherwise directed by the Lessor, shall be obligated to restore the leased premises to substantially the same condition as they were immediately before destruction. Approval from the Lessor for reconstruction of such improvements shall be in accordance with Article II, Subsection 2.1 (*Lessee Improvements and Alterations*) of this lease and shall not unreasonably be withheld.
- 2.3.2. If, during the term of this lease, any improvements on the leased premises, whether such improvements are Lessee- or Lessor-owned, are partially or totally destroyed from a risk not covered by the insurance described in Article II, Section 10 (*Insurance*), herein, thereby rendering said leased premises partially or totally inaccessible or unusable, such destruction shall not automatically terminate this lease. If, however, the cost of restoration exceeds ten percent (10%) of the full replacement value of improvements, as said value existed immediately before said destruction, Lessee may, at Lessee's option, terminate this lease by giving written notice to the Lessor within ninety (90) days from the date of destruction. If Lessee elects to terminate as above provided, Lessee shall be obligated, unless otherwise directed by the Lessor, to demolish all damaged improvements and remove all debris from the leased premises at Lessee's sole cost. If Lessee fails to exercise its right to terminate this lease, this lease shall continue in full force and effect for the remainder of the term specified herein and Lessee shall restore the leased premises to substantially the same condition as they were in immediately before destruction. Approval from the Lessor for reconstruction of such improvements shall be in accordance with Article II, Subsection 2.1 (*Lessee Improvements and Alterations*) of this lease and shall not unreasonably be withheld.
- 2.3.3. Lessee expressly waives the provisions of Civil Code Sections 1932.2 and 1933.4.

3. **LIENS:** During the term of this lease, the fee interest in the real property underlying the leased premises shall not be used as security for any loans or mortgages nor otherwise have any liens placed on it. Additionally, Lessee shall keep any City-owned improvements on the leased premises free and clear of any liens or other encumbrances. By way of specification without limitation, Lessee shall keep the leased premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Lessee, and shall indemnify, hold harmless, and defend Lessor from any liens and encumbrances arising out of any work performed or materials furnished by or at the request of Lessee. In the event that Lessee does not, within thirty (30) calendar days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Lessor shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause upon ten (10) business days prior written notice to Lessee the same to be released by such means as it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. All



such sums paid by Lessor and all expenses incurred by it in connection therewith, including costs and attorney's fees, shall be paid by Lessee to Lessor on demand. Nothing in this Section shall be construed to limit any rights of Lessee to use its leasehold interest as security for any loans to the extent that such use is permitted under this lease. Nothing in this Section shall be construed to place any obligations upon Lessee with respect to liens, loans, or mortgages placed upon the leased premises by the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, its Board of Water and Power Commissioners, officers, agents, or employees.

**4. SIGNS:**

- 4.1. Except for signs required by law, no identification signs pertaining to Lessee's operations shall be installed or placed in or on the leased premises until Lessee has submitted to the Real Estate Section drawings, sketches, design dimensions, and type and character of such identification signs proposed to be placed thereon or therein and has received written approval from Lessor. Lessor's written approval and any conditions related to the subject signs shall become a part of the lease as though fully set forth herein once the document is fully executed by both parties.
- 4.2. Other than approved identification signs, Lessee shall not, at any time, under any circumstances, install, place, or maintain any type of advertising, on the leased premises.

**5. LAWS, RULES, AND REGULATIONS:**

- 5.1. Lessee shall be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state, and/or local government authority.
- 5.2. Lessee shall be solely responsible for any and all civil and/or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations and/or restrictions related to its use or operation of the leased premises, or with any ordinances, statutes, laws, orders, directives and or conditions.

**6. CARE, MAINTENANCE, AND REPAIR OF LEASED PREMISES:**

**6.1. Care of Premises:**

- 6.1.1. Lessee is the current tenant and has examined the premises, knows the condition thereof, and accepts possession thereof in its present condition relying solely on its own inspection and not on any representations that may have been made by the Lessor or any of its agents.
- 6.1.2. Lessee agrees at its cost to keep the premises in good, clean, orderly, and sanitary condition, and shall not commit nor allow to be committed any waste, nuisance, or disposal of hazardous material or wastes upon the premises. Lessee further agrees to remove from the leased premises anything placed or stored there which Lessor considers to be undesirable or unsightly.
- 6.1.3. Any restoration of or repairs to the premises made necessary by the installation or removal of any structure, personal property, alteration, or trade fixture owned, placed, attached, or installed by Lessee on the premises shall be made at Lessee's sole cost and expense.



6.2. Maintenance and Repair:

- 6.2.1. As part of the consideration for this lease, Lessee agrees, at all times hereunder and at its own expense, to keep, maintain, paint, and repair the leased premises and all improvements thereon, if there be any whether owned by Lessor or Lessee, in as good and substantial condition and state of repair as the same now are or in such improved condition as the same may hereafter be placed, reasonable wear and tear and damages by causes beyond Lessee's control excepted, except that regardless of the present condition or state of repair and regardless of the reasonableness or cause of wear, tear, or damages, Lessee shall keep and maintain, at all times hereunder and at its own expense, the premises and all improvements and facilities thereon in as good condition and repair as may be necessary for the safety of all persons who may lawfully enter thereupon.
- 6.2.2. If Lessee fails to so maintain or repair the leased premises, Lessor may serve a "Notice to Cure" upon Lessee. Said Notice shall prescribe the work to be accomplished by Lessee in order to correct the maintenance deficiencies and Lessee shall have thirty (30) days from receipt of such Notice to complete the work as prescribed in the Notice. In addition, a copy of the "Notice to Cure" shall be posted on the leased premises in a conspicuous place.
- 6.2.2.1. If, in the opinion of Lessor, any default is of such nature that it cannot physically be corrected within the period specified, and if the party in default has responded with a course of action and has commenced to remedy such default promptly after the receipt of such Notice, and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete the same.
- 6.2.2.2. If the work prescribed in the "Notice to Cure" is not completed by Lessee in a manner reasonably satisfactory to Lessor, and Lessee fails to correct such work within the time specified above, or as set forth in Article II, Subsection 6.2.2.1 above, Lessor may, at its sole option, and at Lessee's sole cost and expense, enter upon the leased premises and perform whatever work may, in the opinion of Lessor, be required to correct the maintenance deficiencies. If Lessor exercises this option, Lessee shall pay to Lessor a sum equal to the direct cost of labor and materials expended for said work, plus a surcharge equal to thirty percent (30%) of said direct cost. Payment shall be made within thirty (30) days of the date of Lessor's invoice date for such costs and charges.
- 6.2.3. In the absence of a written agreement to the contrary, Lessor shall not be required at any time to maintain, paint, or make repairs, improvements, alterations, or additions on or to the leased premises. Lessor reserves the right, however, at any time to remove trees, weeds, and other things which Lessor may deem to be unsightly or undesirable; but such works performed by Lessor shall constitute, in no event, a waiver of Lessee's obligation



hereunder to keep said premises in good repair and free from rubbish, noxious weeds, and other unsightly matter.

- 6.2.4. Should Lessor make or perform any repairs, removals, or maintenance, or agree at the request of Lessee to perform maintenance, repairs, alterations, construction, or other works of improvement on the leased premises, Lessor may, at its option, perform such works and either bill Lessee for the entire costs of same, which Lessee agrees to pay on demand, or Lessor may, upon thirty (30) days' written notice to Lessee, increase the lease rental by an amount necessary for Lessor to recover all or part of the cost of such works, as Lessor shall determine, over the remaining term of this lease, or any lesser portion thereof as Lessor shall determine.

## **7. DISABLED ACCESS:**

- 7.1. Lessee shall be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access to improvements on the leased premises, including any services, programs, or activities provided by Lessee. Lessee shall be solely responsible for any and all damages caused by, and/or penalties levied as the result of, Lessee's noncompliance.
- 7.2. Should Lessee fail to comply with Subsection 7.1, then Lessor shall have the right, but not the obligation, to perform, or have performed, whatever work is necessary to achieve equal access compliance. Lessee will then be required to reimburse Lessor for the actual cost of achieving compliance, plus a fifteen percent (15%) administrative charge.

## **8. HAZARDOUS SUBSTANCES:**

- 8.1. Indemnification – Environmental: Lessee, on behalf of itself and its successors, assigns, and sub-lessees, further undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers, agents, successors in interest, insurers, assigns and/or employees (individually and collectively, "Indemnitees"), and at the option of Lessor, defend, by counsel satisfactory to Lessor, the Indemnitees from and against any and all liens and claims of lien, suits, causes of action, claims, charges, damages, demands, judgments, civil fines, penalties (including, but not limited to, costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation, penalties, and fines arising from the violation of any local, regional, state, or federal law, or regulation, disbursements, and other environmental response costs), or losses of any kind or nature whatsoever that are incurred by or asserted against the Indemnitees, for death, bodily injury or personal injury to any person, including Lessee employees and agents, or damage or destruction or loss of use of any property of either party hereto, or third persons in any manner arising by reason of, incident to, or connected in any manner to the acts, errors, omissions to act, willful misconduct, or non-performance or breach by Lessee of any term and/or condition of this lease, relating directly or indirectly to the release or spill of any legally designated hazardous material or waste, resulting from or incident to the presence upon or performance of activities by Lessee or its personnel with respect to the subject area/property covered under this lease, on the part of the



Lessee, or Lessee's officers, agents, employees, or sub-lessees of any tier, regardless of any negligence on the part of Indemnitees, except for the sole active negligence or willful misconduct of the Indemnitees. It is the specific intent of this paragraph that this Indemnification shall apply and be effective for all accidents, occurrences, and/or events occurring during the term of this agreement that give rise to future claims, even if the actual claim comes against the Indemnitees after the agreement has expired or terminated. This Indemnification shall be in addition to any other rights or remedies that Indemnitees have under law or under this agreement.

- 8.2. Survival of Obligations: This Section 8, and the obligations herein, shall survive the expiration or earlier termination of this lease.

9. **LESSOR'S RIGHT OF ACCESS AND INSPECTION:** Lessor, by and through its officers, employees, agents, representatives, and contractors, shall have the right at all reasonable times and in a reasonable manner, upon notice to Lessee, to enter upon the leased premises for the purpose of inspecting the same or for doing any act or thing that Lessor may be obligated or have the right to do under this lease, or otherwise, and no abatement of rental shall be claimed by or allowed to Lessee by reason of the exercise of such rights. In the exercise of its rights under this Section, Lessor, its officers, employees, agents, and contractors shall not unreasonably interfere with the conduct of Lessee's business on the leased premises as herein authorized. Notwithstanding the foregoing, Lessor shall not access or open any equipment shelter building or equipment cabinet.

#### **10. INSURANCE:**

- 10.1. Additional Insured Status Required: Lessee shall procure at its own expense, and keep in effect at all times during the term of this lease, the types and amounts of insurance specified on the attached *Exhibit B (Contract Insurance Requirements)*. The specified insurance shall also, either by provisions in the policies, by Lessor's own endorsement form, or by other endorsement attached to such policies, include and insure the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, its Board of Water and Power Commissioners, and all of its officers, employees, and agents, their successors and assigns, as additional insureds (except for Professional Liability and Workers' Compensation), against the area(s) of risk described herein as respects Lessee's acts or omissions in its performance of the lease, use and occupancy of the premises hereunder, or other related functions performed by or on behalf of Lessee. Such insurance shall not limit or qualify the liabilities and obligations of the Lessee assumed under the lease.
- 10.2. Severability of Interests and Cross Liability Required: Each specified insurance policy (other than Workers' Compensation and Employers' Liability and Property coverages) shall contain a Severability of Interest and Cross Liability clause that states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability"; and a Contractual Liability Endorsement that shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."
- 10.3. Primary and Non-Contributory Insurance Required: All such insurance shall be Primary and Noncontributory with any other insurance held by Lessor where liability arises out of, or results from, the acts or omissions of Lessee, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Lessee. Any insurance carried by Lessor that may be applicable shall be deemed to be excess



insurance, and Lessee's insurance is primary for all purposes despite any conflicting provision in Lessee's policies to the contrary.

- 10.4. Deductibles Subject to Lessor's Discretion: Deductibles and/or self-insured retentions shall be at the sole risk of Lessee. Lessor shall have no liability for any premiums charged for such coverage(s). The inclusion of the Department of Water and Power of the City of Los Angeles, its Board of Water and Power Commissioners, and all of its officers, employees and agents, and their agents and assigns, as additional insureds, is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Lessee in its operations.
- 10.5. Proof of Insurance for Renewal or Extension Required: At least ten (10) days prior to the expiration date of any of the policies required on the attached *Exhibit B (Contract Insurance Requirements)*, documentation showing that the insurance coverage has been renewed or extended shall be filed with Lessor. If such coverage is canceled or reduced in coverage, Lessee shall, within fifteen (15) days of such cancellation or reduction of coverage, file with Lessor evidence that the required insurance has been reinstated or provided through another insurance company or companies.
- 10.6. Submission of Acceptable Proof of Insurance and Notice of Cancellation: Lessee shall provide proof to the Risk Manager of the Los Angeles Department of Water and Power of the City of Los Angeles (Risk Manager) all specified insurance and related requirements either by production of the actual insurance policy(ies), by use of Lessor's own endorsement form(s), by other written evidence of insurance acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager and the Office of the City Attorney. The documents evidencing all specified coverages shall be filed with Lessor prior to Lessee beginning operations or occupying the premises hereunder. Said proof shall contain, at a minimum, the applicable policy number, the inclusive dates of policy coverages, the date the protection begins for Lessor, and the insurance carrier's name. Such documents shall bear an original signature of an authorized representative of said carrier(s), and they shall provide that such insurance shall not be subject to cancellation, material reduction in coverage or non-renewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) calendar days prior to the effective date thereof. The notification shall be sent by registered mail to: The Office of the City Attorney, Water and Power Division, Post Office Box 51111, JFB – Room 340, Los Angeles, California 90051-0100.
- 10.7. Claims-Made Insurance Conditions: Should any portion of the required insurance be on a "Claims Made" policy, the Lessee shall, at the policy expiration date following the lease term, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended three (3) years discovery period has been purchased on the expiring policy.
- 10.8. Failure to Maintain and Provide Proof as Cause for Termination: Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of the lease, upon which Lessor may immediately terminate or suspend the lease.
- 10.9. Sub-Contractor Compliance: The Lessee shall be responsible for all sub-Lessee's compliance with the insurance requirements set forth herein.



10.10. Periodic Right to Review/Update Insurance Requirements: Lessor and Lessee agree that the insurance policy limits specified on the attached *Exhibit B (Contract Insurance Requirements)* may be reviewed for adequacy annually throughout the term of this lease by the Risk Manager/City Attorney, who may thereafter require Lessee to adjust the amounts and types of insurance coverage(s) to whatever extent the Risk Manager/City Attorney deems to be adequate and necessary. Lessor reserves the right to have submitted to it, upon request, all pertinent information about the agent(s) and carrier(s) providing such insurance, including applicable license(s) and ratings.

11. **CITY HELD HARMLESS / INDEMNIFICATION**: In addition to the requirements of Article II, Section 10 (*Insurance*) herein, Lessee acknowledges that it has inspected the premises, knows the condition thereof, and on behalf of itself and its successors, assigns and sub-lessees undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers, agents, successors in interest, insurers, assigns and/or employees (individually and collectively, "Indemnitees"), and at the option of Lessor, defend, by counsel satisfactory to Lessor, the Indemnitees from and against any and all liens and claims of lien, suits, causes of action, claims, charges, damages (including but not limited to indirect, consequential, and incidental), demands, judgments, civil fines, penalties, or losses of any kind or nature whatsoever that are incurred by or asserted against the Indemnitees, for death, bodily injury or personal injury to any person, including but not limited to Lessee's employees, customers, invitees and agents, or persons who enters onto the premises, or damage (including environmental damage) or destruction or loss of use of any property of either party hereto, or third persons in any manner arising by reason of, incident to, or connected in any manner to this agreement or to the premises covered under this agreement, regardless of any negligence on the part of Indemnitees, except for the sole active negligence or willful misconduct of the Indemnitees. It is the specific intent of this paragraph that this Indemnification shall apply and be effective for all accidents, occurrences, and/or events occurring during the term of this agreement that give rise to future claims, even if the actual claim comes against the Indemnitees after the agreement has expired or terminated. This Indemnification shall be in addition to any other rights or remedies that Indemnitees have under law or under this agreement.

12. **CITY OF LOS ANGELES ORDINANCE-MANDATED PROVISIONS**

12.1. Non-Discrimination: During the term of this lease, the Lessee shall not discriminate in its employment practices against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, sexual orientation, age disability, marital status, domestic partner status, or medical condition. Any subleases shall contain a like nondiscrimination clause in accordance with the applicable provisions of Executive Order No. 11246 of September 24, 1965; Part 60-741 of 41 CFR pertaining to handicapped workers, including 60-741.4 Affirmative Action Clause; and Sections 10.8 to 10.13 of the Los Angeles Administrative Code pertaining to nondiscrimination in employment in the performance of City contracts.

12.2. Affirmative Action Plan: Lessee shall have, as per Los Angeles Administrative Code Section 10.8.4, an Affirmative Action Plan on file with the Director of Corporate Purchasing Services. Lessee's Plan shall be submitted on the Lessor's form, available from the Director of Corporate Purchasing Services.



- 12.3. Child Support Assignment Orders: Lessee shall comply with Section 10.10, of the Los Angeles Administrative Code ("Child Support Assignment Orders"). Lessor requires all lessees and sublessees entering into a contract with Lessor to comply with all reporting requirements and court-ordered wage earning assignments.
- 12.4. Service Contractor Worker Retention Ordinance (SCWRO) and Living Wage Ordinance: Under provisions of Section 10.36 et seq., and Section 10.37 et seq. of the Los Angeles Administrative Code, all employers (except where specifically exempted) under contracts primarily for the furnishing of services to or for the Lessor and that involve an expenditure in excess of \$25,000 and a contract term of at least three months; leases; licenses; or, certain recipients of Lessor financial assistance, shall comply with all applicable provisions of the Ordinances. Lessor shall have the authority, under appropriate circumstances, to terminate the contract and otherwise pursue legal remedies that may be available, if Lessor determines that the subject contractor or financial recipient violated the provisions of the referenced Code Section.
- 12.5. Equal Benefits Ordinance: This lease is subject to Section 10.8.2.1 of the Los Angeles Administrative Code related to equal benefits to employees. Lessee agrees to comply with the provisions of Section 10.8.2.1.
- 12.6. Slavery Disclosure Ordinance: This lease is subject to the applicable provisions of the Slavery Disclosure Ordinance (SDO) Section 10.41, et seq., of the Los Angeles Administrative Code. Unless otherwise exempt in accordance with the provisions of this Ordinance, Lessee certifies that it has complied with the applicable provisions of the Ordinance. Under the provisions of Section 10.41.2(b) of the Los Angeles Administrative Code, Lessee has the authority, under appropriate circumstances, to terminate this lease and otherwise pursue legal remedies that may be available to Lessor if Lessor determines that the Lessee failed to fully and accurately complete the SDO affidavit or otherwise violated any provision of the SDO.

### 13. TAXES

#### 13.1. General:

- 13.1.1. Lessee shall pay any and all taxes of whatever character that may be levied or charged upon the leased premises, or upon Lessee's improvements, fixtures, equipment, or other property thereon or upon Lessee's use thereof. Lessee shall also pay all license or permit fees necessary or required by law or regulation for the conduct of Lessee's business or use of the leased premises.
- 13.1.2. If a claim is made against Lessor for any of the above charges, Lessor shall promptly notify Lessee in writing; provided, however, that failure by Lessor to give such notice shall not constitute a waiver of Lessee's obligation to pay such taxes, license and/or permit fees.

- 13.2. Special Assessments: In the event any special assessments or taxes are levied against the leased premises by a district, special district, assessment district, or any other political entity or public corporation with power to levy taxes and/or assessments, such as a watermaster service or a water district, Lessor shall pay said taxes and/or assessments, and said payment, unless Lessor shall otherwise find and determine, will be added to the basic rental at the beginning of any rental period.



- 13.3. Substitute and Additional Taxes: If at any time during the term of this lease the State of California or any political subdivision of the state, including any county, city, public corporation, district, or any other political entity or public corporation of this state, levies or assesses against Lessor a tax, fee, or excise on rents on the square footage of the premises on the act of entering into this lease or on the occupancy of Lessee, or levies or assesses against Lessor any other tax, fee, or excise, however described, including, without limitation, a so-called value-added tax, as a direct substitution in whole or in part for or in addition to any real property taxes, Lessee shall pay before delinquency that tax, fee, or excise. Lessee's share of any such tax, fee, or excise shall be substantially the same as Lessee's proportionate share of real property taxes as provided in this lease.
- 13.4. Possessory Interest Tax: By executing this agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest," and such property interest will be subject to property taxation. Lessee, as the party in whom the possessory interest is vested, will be subject to the payment of the property taxes levied upon such interest. Lessee herewith acknowledges that by this paragraph, the Lessor has provided notice of possessory liability as required by Revenue and Taxation Code Section 107.6.
- 13.5. The obligations of Lessee under this Section 13, however, shall not prevent Lessee from contesting the validity and/or applicability of any of the above charges and during the period of any such lawful contest, Lessee may refrain from making, or direct the withholding of, any such payment without being in breach of the above provisions. Upon a final determination in which Lessee is held responsible for such taxes and/or fees, Lessee shall promptly pay the required amount plus all legally imposed interest, penalties and surcharges. If all or any part of such taxes and/or fees, penalties, or surcharges are refunded to Lessor, Lessor shall remit to Lessee such sum(s) to which Lessee is legally entitled.

#### 14. UTILITIES:

- 14.1. Lessee agrees to promptly pay all charges for public utility services furnished for use on the premises and any other charges accruing or payable in connection with Lessee's use and occupancy of the premises.
- 14.2. Subject to Lessor's approval of the location, Lessee shall have the right to place utilities on (or to bring utilities across) the property in order to service the premises and Lessee's facility.
- 14.3. Upon Lessor's approval of the utility run and Lessee's request, Lessor shall execute recordable easement(s) to the service provider evidencing this right.

#### 15. ASSIGNMENTS AND SUBLEASES:

- 15.1. Sublease: Lessee shall have the right to sublet a portion of the premises at any time upon written notice to Lessor; provided, however, that the use of said premises by an sublessee must be consistent with the use authorized herein.
- 15.2. Voluntary Assignment/Transfer: Lessee shall not, in any manner, assign, transfer, or encumber this lease, or any portion thereof or any interest therein without the prior written consent of Lessor. Any attempts to transfer or assign without the consent required by this Section shall be void and shall transfer no rights to the leased premises. Consent to one assignment, use, or occupation shall not be deemed to be a



consent to any subsequent assignment, occupation, or use. This lease shall not, nor shall any interest therein, be assignable as to the interest of Lessee by operation of law without the prior written consent of Lessor.

15.3. Involuntary Assignment:

15.3.1. No interest of Lessee in this lease shall be assignable by operation of law (including, without limitation, the transfer of this lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment:

15.3.1.1. If Lessee is or becomes bankrupt or insolvent; makes an assignment for the benefit of creditors; institutes, or is a party to, a proceeding under the Bankruptcy Act in which Lessee is the bankrupt or debtor; or, if Lessee is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

15.3.1.2. If a writ of attachment or execution is levied on this lease; or

15.3.1.3. If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the premises.

15.3.2. An involuntary assignment shall constitute a default by Lessee, and Lessor shall have the right to elect to terminate this lease, in which case this lease shall not be treated as an asset of Lessee. If a writ of attachment or execution is levied on this lease, Lessee shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

15.4. Corporation or Partnership:

15.4.1. If Lessee is a corporation, this lease is to the corporation as it currently exists. Any dissolution, merger, consolidation, or other reorganization of Lessee, or the sale or other transfer of stock ownership of the corporation, voluntary, involuntary, or by operation of law, greater than ten percent (10%) shall be deemed a voluntary assignment of this lease and, therefore, subject to the provisions of this lease as to voluntary assignment thereof, including that provision requiring Lessor's prior written consent. This paragraph shall not apply to corporations the stock of which is traded through an exchange.

15.4.2. If Lessee is a partnership, this lease is to the partnership as it currently exists. A withdrawal or change, voluntary, involuntary, or by operation of law, of any partner, or the dissolution of the partnership shall be deemed a request to assign this lease and, therefore, subject to the provisions of this lease as to voluntary assignment thereof.

15.5. Each request for consent to an assignment shall be in writing, accompanied by the following:

15.5.1. A copy of the purchase/sale agreement, which shall include a detailed list of the assets that comprises the sales price.

- 15.5.2. A copy of the escrow instructions pertaining to the transaction.
  - 15.5.3. Information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee, including but not limited to the intended use and/or required modification of the premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request.
  - 15.5.4. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.
  - 15.6. In the case of an assignment, Lessee shall pay to Lessor any monetary or other economic consideration received by Lessee that is attributed to the leasehold as an asset. Said amount shall be over and above the amount of Lessee's rental and other payments due Lessor pursuant to this lease.
  - 15.7. In the case of a sublease, it shall not be deemed to be an unreasonable restraint by Lessor, as a condition to the Consent to Sublease, for Lessor to require that Lessee pay to Lessor a percentage, to be negotiated, of any monetary or other economic consideration received by Lessee as a result of the sublease over and above the amount of Lessee's rental and other payments due Lessor pursuant to this lease.
16. **CONDEMNATION:** The parties hereby agree that if the leased premises, or any portion thereof, or any interest therein, are taken by eminent domain for public use, or otherwise, by any governmental authority, or by a "quasi-public entity" having the power of condemnation, or sold to a governmental authority threatening to exercise the power of eminent domain, this lease, and Lessee's obligation to pay rent hereunder, shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs, and the rent, fees and/or other charges hereunder shall be apportioned and paid to the date of such taking. A taking of the leased premises includes the taking of easements for air, light and any other easements in the land, including, but not limited to an impairment or taking of access to adjoining streets.
- 16.1. Effect of Partial Condemnation: In the event a portion of the leased premises are appropriated or taken and Lessee, at its sole discretion, determines that the remainder thereof is not suitable for the continued use of the leased premises by Lessee for conducting Lessee's operations thereon in the same manner and extent as carried on prior to such taking, Lessee shall have the right to terminate this lease upon giving Lessor written notice of its intent to exercise said right. Said notice shall be given not more than one hundred twenty (120) days following the date of service of a complaint in eminent domain upon Lessee, or one hundred twenty (120) days following Lessor's demand that Lessee acknowledge its intent to terminate this lease, unless Lessor and Lessee agree, in writing, to an earlier termination or to extend said period. If Lessee exercises its right to terminate this lease pursuant to this Subsection 16.1, Lessee shall give Lessor thirty (30) days prior written notice of the effective date of said termination.
- 16.1.1. If, in the event of such taking of a portion of the leased premises, Lessee does not terminate this lease, this lease shall continue in full force and effect as to the part not taken, and the rent to be paid by Lessee during the remainder of the term, subject to adjustment as provided elsewhere in this lease, shall be as follows: the land and improvement rental shall be reduced in the same proportion as the land taken by eminent domain bears to the area of the leased premises before the taking.

- 16.1.2. In determining whether a partial condemnation renders the remainder of the leased premises unsuitable for the use then being made of the leased premises by Lessee, Lessee, among other things, shall take into consideration the cost of restoration, the rentable area of the remaining improvements and the suitability of the remaining leased premises for conducting Lessee's operations thereon in the same manner and extent as carried on prior to such taking.
- 16.1.3. Except as provided for in Article II, Subsection 2.2 (*Ownership of Improvements*) hereof, should Lessee terminate this lease pursuant to this Section 16, title to all improvements, additions or alterations constructed or installed by Lessee upon the leased premises and which have not already vested in Lessor shall thereupon vest in Lessor.
- 16.2. Application of Award Upon a Total or Partial Taking:
- 16.2.1. If this lease is terminated pursuant to Subsection 16.1 herein, or, if all or a portion of the leased premises are taken, then the entire award or compensation paid for land, improvements, and buildings owned by Lessor, the amortized portion of the value of buildings and improvements built by Lessee and which will become the property of Lessor upon termination of this lease, shall be the property of Lessor.
- 16.2.2. Lessee shall have the right to receive compensation for the unamortized value of the buildings and any improvements that are still owned by Lessee and that were placed on the leased premises by Lessee and located thereon at the time of such taking or appropriation, and for its trade fixtures, equipment, and supplies, and for loss or damage to Lessee's business goodwill. The "amortized value" that Lessor shall be entitled to receive is a portion of the award for said Lessee-owned buildings and improvements equal to an amount determined by a ratio equal to the number of years the building and/or improvements have been in existence over the original term of the lease, without consideration of any possibility or probability of renewal, or of options, if any. There shall be no amortization of partially constructed improvements authorized by Lessor, if said construction is incomplete within the time period set forth in the approval granted by Lessor. The value, to be determined by Lessor, of such partially constructed improvements shall be paid to Lessee.
- 16.3. Severance Damages: The entire award of compensation paid for any severance damages, whether paid for impairment of access, for land, buildings, and/or improvements shall be the property of Lessor, regardless of whether any buildings or improvements so damaged are owned or were constructed by Lessor or Lessee. However, should Lessor determine that improvements are to be restored, that portion of the severance damages necessary to pay the cost of restoration, as set forth in Subsection 16.4 hereof, shall be paid to Lessee upon the written request of Lessee, accompanied by evidence that the sum requested has been paid for said restoration and is a proper item of such cost and used for such purpose.
- 16.4. Partial Taking; Restoration: In case of a taking of the leased premises other than a total taking and/or should Lessee elect not to terminate this lease pursuant to this Section, Lessor and Lessee may mutually agree that Lessee shall restore any improvements on the leased premises, and Lessee shall, at Lessee's expense, whether or not the awards or payments, if any, on account of such taking are sufficient



for the purpose, promptly commence and proceed with reasonable diligence to effect (subject to Force Majeure) restoration of the improvements on the remaining portion of the leased premises as nearly as possible to their condition and character immediately prior to such taking, except for any reduction in area caused thereby, or with such changes or alterations as may be made at the election of Lessee in accordance with Article II, Subsection 2.1 (*Lessee Improvements and Alterations*) of this lease.

16.4.1. In the event the improvements damaged and/or taken belong to Lessor, Lessor shall not be obligated to restore said improvements should Lessor, in its sole discretion, determine not to do so.

16.5. Taking for Temporary Use: In the event of a taking of all or any portion of the leased premises for temporary use, this lease shall continue in full force and effect without reduction or abatement of rental or other sum payable hereunder, and Lessee shall be entitled to make claim for, recover and retain any awards or proceeds made on account thereof, whether in the form of rent or otherwise, unless such period of temporary use or occupancy extends beyond the term of this lease, in which case such awards or proceeds shall be apportioned between Lessor and Lessee as heretofore specified. Lessee shall restore or cause to be restored any such areas temporarily taken to the condition existing before the taking.

## 17. DEFAULT:

17.1. Default Events: The following events shall be deemed to be events of default by Lessee under the lease:

17.1.1. Lessee fails to pay any rent due under this lease, which failure continues for a period of ten (10) days after written Notice that such payment should have been paid pursuant to the terms and conditions of this lease;

17.1.2. Lessee fails to comply with any term, provision or covenant of this lease, other than paying rent, and does not cure such failure within thirty (30) days after Lessor has sent written notice to Lessee specifying such failure or such longer period of time as may be granted by Lessor to cure such default as long as Lessee commences to cure such default within such thirty (30) day period and diligently proceeds to cure such default;

17.1.3. Lessee makes an assignment of this lease, or any rights granted to Lessee hereunder, to, and for the benefit of, Lessee's creditors;

17.1.4. Lessee, within thirty (30) days after the commencement of any proceeding against Lessee seeking adjudication of bankruptcy or reorganization, rearrangement, composition, readjustment, liquidation, dissolution or similar relief, fails to cause such proceedings to be dismissed; and/or

17.1.5. Lessee, within sixty (60) days after the appointment without Lessee's consent or acquiescence of any trustee, receiver, or liquidator of the Lessee or a material part of its assets, causes such appointment to be vacated.

17.1.6. The interests of Lessee under this lease shall not, except at Lessor's option and with its written consent, be assignable by operation of law. In case of the bankruptcy of Lessee, or the appointment of a receiver for Lessee and such receiver is not removed within one hundred twenty (120) days from the date of appointment, or if a receiver is appointed to take possession of the leased premises as a result of any act or omission of Lessee and such



receiver is not removed within one hundred twenty (120) days from the date of appointment, or if Lessee makes an assignment of this lease for the benefit of creditors, or if possession of the leased premises is taken by virtue of any attachment, execution, or the levy of any judicial process, Lessor, at its election, may, after written notice to Lessee, terminate this lease.

17.2. Lessor's Remedies: Upon the occurrence of a Default Event, Lessor, in addition to any other rights or remedies available to Lessor at law or in equity, shall have the right to:

- 17.2.1. Terminate this lease and all rights of Lessee under this lease, by giving Lessee thirty (30) days written notice that this lease is terminated, in which case, Lessor may recover from Lessee the aggregate sum of (as used in Subsections 17.2.1.1 and 17.2.1.2, the "worth at the time of award" shall refer to an award as a result of a legal claim and shall be computed by allowing interest at the rate of ten percent [10%] per annum):
  - 17.2.1.1. The worth at the time of award of any unpaid rent that had been earned at the time of termination;
  - 17.2.1.2. The worth at the time of award of the amount by which (A) the unpaid rent that would have been earned after termination until the time of award exceeds (B) the amount of rental loss, if any, that Lessee affirmatively proves could be reasonably avoided;
  - 17.2.1.3. The worth at the time of award of the amount by which (A) the unpaid rent for the balance of the term after the time of award exceeds (B) the amount of rental loss, if any, that Lessee affirmatively proves could be reasonably avoided;
  - 17.2.1.4. Any other amount necessary to compensate Lessor for all the detriment caused by Lessee's failure to perform Lessor's obligations or that, in the ordinary course of things, would be likely to result from Lessee's failure; and
  - 17.2.1.5. All other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California law.
  - 17.2.1.6. As used in Subsections 17.2.1.1 and 17.2.1.2 of this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum.
  - 17.2.1.7. As used in Subsection 17.2.1.3 of this Section, 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 the award plus one percent (1%).
  - 17.2.1.8. As used in this Section, the term "rent" shall include the Rent and any and all other payments required by Lessee under this lease.
- 17.2.2. Continue this lease, and from time to time, without terminating this lease, either:



- 17.2.2.1. Recover all rent and other amounts payable as they become due; or
- 17.2.2.2. Re-let the leased premises or any part on behalf of Lessee on terms and at the rent that Lessor, in Lessor's sole discretion, may deem advisable, all with the right to make alterations and repairs to the leased premises, at Lessee's sole cost, and apply the proceeds of re-letting to the rent and other amounts payable by Lessee. To the extent that the rent and other amounts payable by Lessee under this lease exceed the amount of the proceeds from re-letting, Lessor may recover the excess from Lessee as and when due.
- 17.2.3. Upon the occurrence of a Default Event, Lessor shall also have the right, with or without terminating this lease, to re-enter the leased premises and remove all property from the leased premises. Lessor may store the property removed from the leased premises at the expense and for the account of Lessee.
- 17.2.4. None of the following remedial actions, alone or in combination, shall be construed as an election by Lessor to terminate this lease unless Lessor has in fact given Lessee written notice that this lease is terminated or unless a court of competent jurisdiction decrees termination of this lease: any act by Lessor to maintain or preserve the leased premises; any efforts by Lessor to re-let the leased premises; any re-entry, repossession, or re-letting of the leased premises by Lessor pursuant to this Section. If Lessor takes any of the previous remedial actions without terminating this lease, Lessor may nevertheless, at any later time, terminate this lease by written notice to Lessee.
- 17.2.5. If Lessor re-lets the leased premises, Lessor shall apply the revenue from the re-letting as follows: first, to the payment of any indebtedness other than rent due from Lessee to Lessor; second, to the payment of any cost of re-letting; third, to the payment of the cost of any maintenance and repairs to the leased premises; and fourth, to the payment of rent and other amounts due and unpaid under this lease. Lessor shall hold and apply the residue, if any, to payment of future amounts payable under this lease as the same may become due, and shall be entitled to retain the eventual balance with no liability to Lessee. If the revenue from re-letting during any month, after application pursuant to the previous provisions, is less than the sum of (a) Lessor's expenditures for the leased premises during that month and (b) the amounts due from Lessee during that month, Lessee shall pay the deficiency to Lessor immediately upon demand.
- 17.2.6. After the occurrence of a Default Event, Lessor, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Default Event for the account and at the expense of Lessee. However, Lessor must by prior written notice first allow Lessee a reasonable opportunity to cure, except in cases of emergency, where Lessor may proceed without prior notice to Lessee. Lessee shall, upon demand, immediately reimburse Lessor for all costs, including costs of settlements, defense, court costs, and attorney fees that Lessor may incur in the course of any cure.



- 17.2.7. No security or guaranty for the performance of Lessee's obligations that Lessor may now or later hold shall in any way constitute a bar or defense to any action initiated by Lessor or unlawful detainer or for the recovery of the leased premises, for enforcement of any obligation of Lessee, or for the recovery of damages caused by a breach of this lease by Lessee or by a Default Event.
- 17.2.8. Except where this is inconsistent with or contrary to any provisions of this lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given now or later existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by a party of any violation or nonperformance by the other party of any obligations, agreements, or covenants under this lease shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of the rights or remedies with respect to that violation or nonperformance.

#### **18. TERMINATION BY PARTIES:**

- 18.1. This lease may be terminated by either party by giving to the other party not less than thirty (30) days' advance written notice of such termination; but, for reasons other than nonpayment of rent, such right of termination shall be exercised by Lessor only when Lessee is in default with respect to the terms, conditions, or covenants of this lease, or in the event the Board determines that the operations of Lessor or the public interest require such termination.
- 18.2. Upon termination of the lease for whatever reason, the Lessee shall be responsible, to the extent caused by or introduced onto the property as a result of the use of the property by Lessee, for all cleanup costs and expenses including, but not limited to, any fines, penalties, judgments, litigation costs, and attorneys' fees incurred as a result of any and all discharge, leakage, spillage, emission of material which is, or becomes, defined as any pollutant, contaminant, hazardous waste or hazardous substance, under all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, or imposing liability or standards of conduct concerning any hazardous substance on, under, or about the property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USCS §§9601 et seq.); the Resource Conservation and Recovery Act of 1976 (42 USCS §§6901 et seq.); the Clean Water Act, also known as the Federal Water Pollution Control Act (33 USCS §§1251 et seq.); the Toxic Substances Control Act [15 USCS §§2601 et seq.); the Hazardous Materials Transportation Act [49 USCS §§1801 et seq.); the Insecticide, Fungicide, Rodenticide Act (7 USCS §§136 et seq.); the Superfund Amendments and Reauthorization Act (42 USCS §§6901 et seq.); the Clean Air Act (42 USCS §§7401 et seq.); the Safe Drinking Water Act (42 USCS §§300f et seq.); the Solid Waste Disposal Act (42 USCS §§6901 et seq.); the Surface Mining Control and Reclamation Act (30 USCS §§1201 et seq.); the Emergency Planning and Community Right to Know Act (42 USCS §§11001 et seq.); the Occupational Safety and Health Act (29 USCS §§655 and 657); the California Underground Storage of Hazardous



Substances Act (H&SC §§25280 et seq.); the California Hazardous Substances Account Act (H&SC §§25300 et seq.); the California Hazardous Waste Control Act (H&SC §§25100 et seq.); the California Safe Drinking Water and Toxic Enforcement Act (H&SC §§24249.5 et seq.); the Porter-Cologne Water Quality Act (Wat. C. §§13000 et seq.); together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to hazardous substances on, under, or about the property, including ambient air, soil, soil vapor, groundwater, surface water, or land use. Said cleanup shall be accomplished to the satisfaction of Lessor and any governmental body having jurisdiction there over.

**19. SURRENDER OF PREMISES:**

19.1. Upon the expiration of the term of this lease or sooner termination as herein provided, Lessor has the right to discontinue leasing the premises and has no obligation to Lessee to renew, extend, transfer, or re-lease the premises. If this right is exercised by Lessor, Lessee shall vacate the premises and shall peaceably surrender the same. Lessee is obliged to, and shall remove any and all Lessee-owned personal property, trade fixtures, and goods, and hazardous materials and wastes located in or upon the leased premises, except for trees and shrubs, and structures and improvements, title to which automatically passes to Lessor pursuant to this lease. Lessee shall leave the premises in a level, graded condition.

19.2. Lessor may waive the obligation to remove and restore, in writing, upon prior written request therefor by Lessee. If the obligation is waived, Lessee shall quit and surrender possession of the premises to Lessor in at least as good and usable condition as the same are required to be maintained under this lease. In this event, Lessor shall acquire title to any and all such personal property, trade fixtures and goods, located in or upon the leased premises and remaining there upon the expiration or any termination of this lease, and Lessee agrees that title to same shall and by this agreement does vest in Lessor, and that Lessee shall thereafter have no rights whatsoever in any such personal property, trade fixtures, and goods left on the premises.

19.3. Should Lessee fail to remove any Lessee-owned or sublessee-owned personal property, trade fixtures, and goods or fail to request Lessor's waiver of removal, Lessor can elect to retain or dispose of, in any manner, any such personal property, trade fixtures, and goods that Lessee does not remove from the premises on expiration or termination of the term as allowed or required by this lease by giving thirty (30) days' written notice to Lessee. Title to any such personal property, trade fixtures, and goods shall vest in Lessor on the expiration of the thirty (30) day notice. Lessee waives all claims against Lessor for any damage to Lessee resulting from Lessor's retention or disposal of any such property. Lessee shall be liable to Lessor for Lessor's costs for storing, removing, or disposing of any property of the Lessee or sublessees.

**20. HOLDING OVER:** If Lessee shall hold over after expiration or other termination of this lease, whether with the apparent consent or without the consent of Lessor, such shall not constitute a renewal or extension of this lease, nor a month-to-month tenancy, but only a tenancy at will with liability for reasonable rent, and in all other respects on the same terms and conditions as are herein provided. The term reasonable rent as used in this Section shall be no less than 1/12<sup>th</sup> of the total yearly rents, taxes, and assessments provided for elsewhere in this lease, per month,

and said reasonable rent during the holdover period shall be paid, in advance, on the first day of each month.

21. **QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION:** Upon termination of this lease for any reason, including, but not limited to, termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to Lessor immediately upon written demand therefor a good and sufficient deed whereby all right, title, and interest of Lessee in the demised premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed, and said notice shall be conclusive evidence of the termination of this lease and of all right of Lessee or those claiming under Lessee in and to the demised premises.
22. **SUCCESSORS IN INTEREST:** This lease shall inure to the benefit of, and be binding upon the parties hereto and any heirs, successors, executors, administrators, and any permitted assigns, as fully and to the same extent specifically mentioned in each instance, and every term, covenant, condition, stipulation, and agreement contained in this lease shall extend to and bind any heir, successor, executor, administrator, and assign, all of whom shall be jointly and severally liable hereunder.
23. **RECORDING:** Neither this lease nor a memorandum thereof shall be recorded without Lessor's consent in writing.
24. **WAIVER:** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.
25. **ESTOPPEL CERTIFICATES:**
  - 25.1. Estoppel Certificate From Lessee: Within fifteen (30) days following any written request that Lessor may make from time to time pursuant to the request of a lender or prospective purchaser, Lessee shall execute and deliver to Lessor a statement certifying: (a) the Lease Commencement Date; (b) the fact that this lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this lease is in full force and effect as modified, and stating the date and nature of the such modifications); (c) the date to which the rental and other sums payable under the lease have been paid; and (d) the fact that there are no current defaults under the lease by either party except as specified in Lessee's statement. The parties intend that any statement delivered pursuant to this Subsection may be relied on by any mortgagee, beneficiary, purchaser or prospective purchaser of the demised premises or any interest therein.
  - 25.2. Lessee's Failure to Provide Statement: Lessee's failure to deliver such statement within such time shall be conclusive upon Lessee that (a) this lease is in full force and effect, without modification except as may be represented by Lessor; and that (b) there are no uncured defaults in Lessor's performance.



- 25.3. Estoppel Certificate From the Lessor: Within forty-five (45) business days following any written request that Lessee may make from time to time pursuant to the request of a prospective assignee or sublessee, Lessor shall execute and deliver to Lessee a statement certifying: (a) the Commencement Date of the lease; (b) the fact that this lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rental and other sums payable under this lease have been paid; and (d) the fact that there are no current defaults under this lease by Lessee, except as specified in Lessor's statement. The parties intend that any statement delivered pursuant to this Section may be relied upon by the proposed assignee or sublessee for whom it was requested. Lessor's failure to deliver such statement within such time shall be conclusive upon Lessor that (1) this lease is in full force and effect without modification, except as represented by Lessee; and that (2) there are no uncured defaults of Lessee under the lease; provided, however, that such conclusive effect is applicable only to the failure of Lessor to respond after an additional five (5) working days' notice to Lessor and only with respect to the proposed assignee or sublessee for whom it was requested.

## 26. MISCELLANEOUS PROVISIONS:

- 26.1. Fair Meaning: The language of this lease shall be construed according to its fair meaning, and not strictly for or against either Lessor or Lessee.
- 26.2. Section Headings: The section headings appearing herein are for the convenience of Lessor and Lessee, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this lease.
- 26.3. Void Provisions: If any provision of this lease is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this lease, and all such other provisions shall remain in full force and effect.
- 26.4. Two Constructions: It is the intention of the parties hereto that if any provision of this lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
- 26.5. Laws of California: This lease shall be construed and enforced in accordance with the laws of the State of California.
- 26.6. Lessor's Consent: In each instance herein where Lessor's approval or consent is required before Lessee may act, such approval or consent shall not be unreasonably withheld, unless otherwise provided.
- 26.7. Gender: The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.
- 26.8. Time: Time shall be of the essence in complying with the terms, conditions, and provisions of this lease.
- 26.9. Integration Clause: It is understood that no alteration or variation of the terms of this lease shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement, not incorporated herein in writing, shall be binding on any of the parties hereto.



- 26.10. Approvals: Any approvals required by Lessor under this lease shall not relate to, constitute a waiver or, supersede or otherwise limit or affect the governmental approvals or rights of Lessor as a governmental agency, including the approval of any permits required for construction or maintenance of the leased premises and the passage of any laws including those relating to zoning, land use, building and safety.
- 26.11. Conflicts in this Lease: If there are any direct conflicts between the provisions of Article I and Article II of the lease, the provisions of Article 1 shall be controlling.
- 26.12. Ordinance and Los Angeles Administrative Code (hereinafter referred to as "Code") Language Governs: Ordinance and Code Exhibits are provided as a convenience to the parties only. In the event of a discrepancy between the Exhibits and the applicable ordinance and/or code language, or amendments thereto, the language of the ordinance and/or code shall govern.
- 26.13. Amendments to Ordinances and Codes: The obligation to comply with any Ordinances and Codes, which have been incorporated into this lease by reference, shall extend to any amendments, which may be made to those Ordinances and Codes during the term of this lease.
- 26.14. Days: Unless otherwise specified, "days" shall mean calendar days.
- 26.15. Deprivation of Lessee's Rights: Lessor shall not be liable to Lessee for any diminution or deprivation of Lessee's rights under this lease that may result from Lessee's obligation to comply with any and all applicable laws, rules, regulations, restrictions, ordinances, statutes, and/or orders of any federal, state and/or local government authority and/or court hereunder on account of the exercise of any such authority as is provided in this Section, nor shall Lessee be entitled to terminate the whole or any portion of the lease by reason thereof.

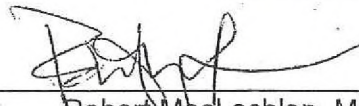
27. **OTHER AGREEMENTS NOT AFFECTED**: Except as specifically stated herein, this lease, and the terms, conditions, provisions and covenants hereof, shall apply only to the leased premises herein particularly described, and shall not in any way change, amend, modify, alter, enlarge, impair, or prejudice any of the rights, privileges, duties, or obligations of either of the parties hereto, under or by reason of any other agreement between said parties, except that nothing contained in such other agreement shall limit the use by Lessee of the within leased premises for the herein referred to purpose.
28. **SUPERSEDURE**: This lease, upon becoming effective, shall supersede and annul any and all permits, leases, or rent agreements heretofore made or issued for the leased premises between Lessor and Lessee; and any such permits, leases, or rental agreements shall hereafter be void and of no effect except as to any rentals, royalties, or fees that may have accrued thereunder.
29. **ENTIRE UNDERSTANDING**: This lease contains the entire understanding of the parties, and Lessee, by accepting the same, acknowledges that it supersedes and annuls any writings or oral discussions, statements, understandings, or representations that may have been made concerning the subject matter hereof; and that there is no other written or oral understanding between the parties in respect to the leased premises or the rights and obligations of the parties hereto. No modification, amendment, or alteration of this lease shall be valid unless it is in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have themselves, or through their duly authorized officers, caused this lease to be executed as of the day and year herein below written.

The signature affixed hereto of the Lessee, or the authorized representative of the Lessee, certifies that Lessee has read and does understand each and every section and paragraph contained in this lease and agrees to abide by and be bound by same.

**Vista Towers, LLC**

Date 9/27/12

By   
Robert MacLachlan, Managing Member

Vista Towers, LLC  
Property Management  
10161 Broadview Place  
North Tustin, CA 92705

LESSEE

DEPARTMENT OF WATER AND POWER  
OF THE CITY OF LOS ANGELES  
BY  
BOARD OF WATER AND POWER COMMISSIONERS  
OF THE CITY OF LOS ANGELES

Date \_\_\_\_\_ By: \_\_\_\_\_  
RONALD O. NICHOLS  
General Manager

Date \_\_\_\_\_ And: \_\_\_\_\_  
BARBARA E. MOSCHOS  
Secretary

LESSOR

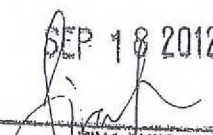
AUTHORIZED BY:

Resolution No. \_\_\_\_\_  
Adopted \_\_\_\_\_

APPROVED BY COUNCIL ON:

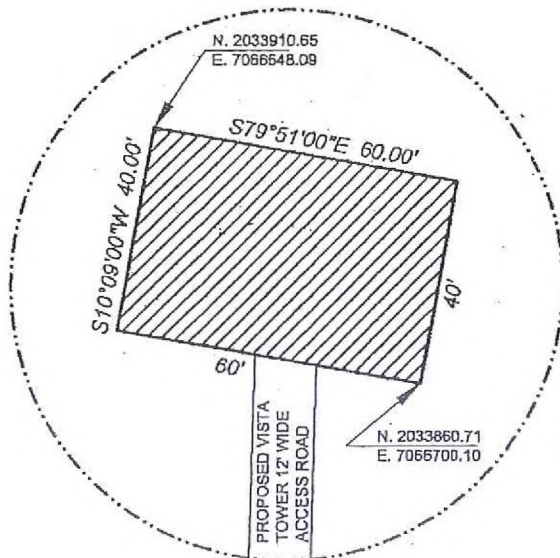
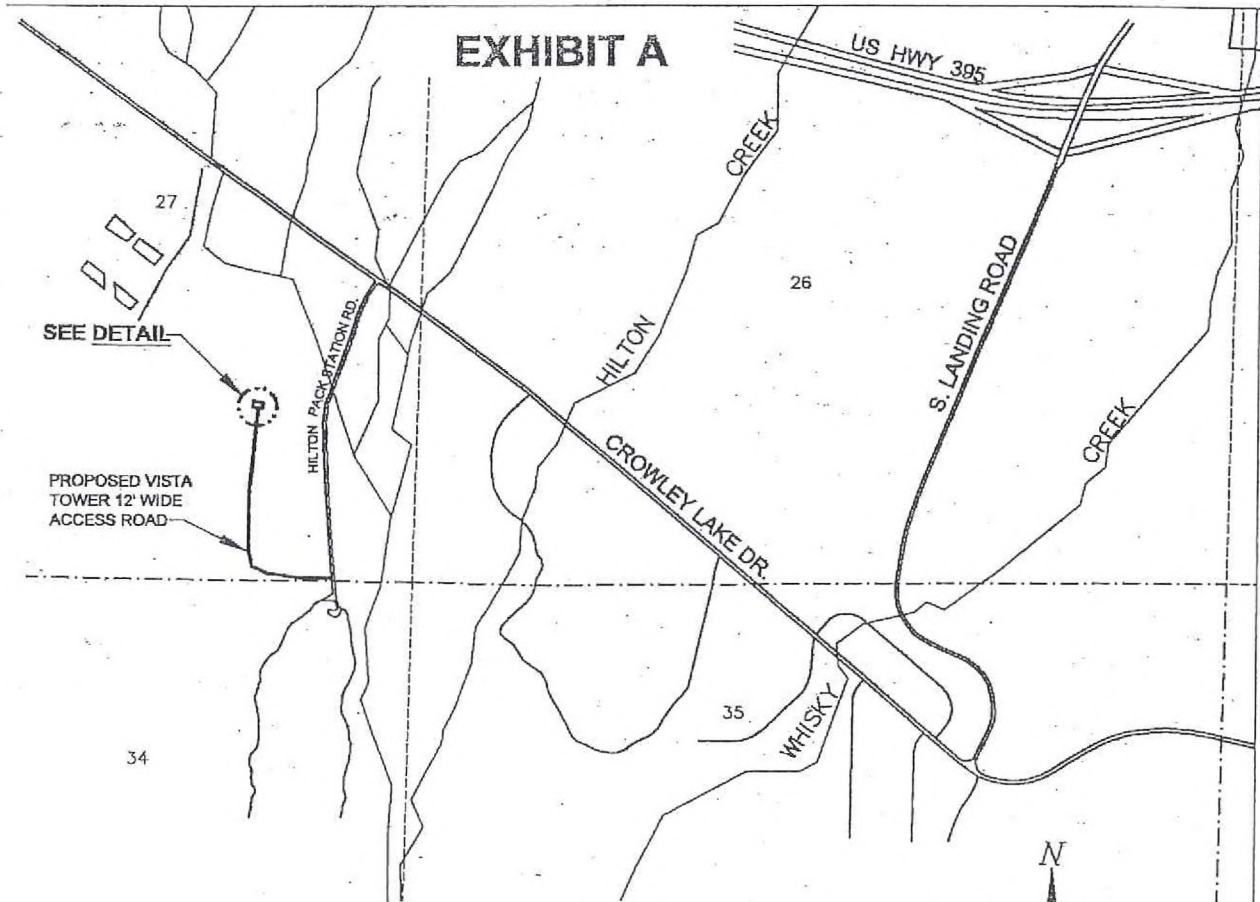
\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
CARMEN A. TRUTANICH, CITY ATTORNEY

SEP 18 2012  
BY   
TINA SHIM  
DEPUTY CITY ATTORNEY



# EXHIBIT A



**DETAIL**  
1" = 30'

**LEASED PREMISES**  
**0.055 Ac.**

**M23-110-04**

# EXHIBIT B

## CONTRACT INSURANCE REQUIREMENTS -- DEPARTMENT OF WATER AND POWER For Contractors, Service Providers, Vendors, and Tenants

Agreement/Activity/Operation:	a site for a wireless telecommunication facility.
Reference/Agreement:	BL-1517 Vista Towers, LLC
Term of Agreement:	25 yrs - November 1, 2012 through October 30, 2037
Contract Administrator and Phone:	Elsa Jimenez / Bishop / Ext. 30201
Buyer and Phone Number:	

Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated. Firm 30 day Notice of Cancellation required by Receipted Delivery.

### PER OCCURRENCE LIMITS

#### (✓) WORKERS' COMPENSATION (Stat. Limits)/Employer's Liability: (\$1,000,000.00)

- |                                       |  |
|---------------------------------------|--|
| (✓) Broad Form All States Endorsement | ( ) US L&H (Longshore and Harbor Workers)    |
| ( ) Jones Act (Maritime Employment)   | ( ) Outer Continental Shelf                  |
| (✓) Waiver of Subrogation             | ( ) Black Lung (Coal Mine Health and Safety) |
| ( ) Other: _____                      | ( ) Other: _____                             |

#### (✓) AUTOMOBILE LIABILITY: (\$1,000,000.00)

- |                           |                        |
|---------------------------|------------------------|
| (✓) Owned Autos           | ( ) Any Auto           |
| (✓) Hired Autos           | (✓) Non-Owned Auto     |
| ( ) Contractual Liability | ( ) Additional Insured |
| ( ) MCS-90 (US DOT)       | ( ) Trucker's Form     |
| ( ) Waiver of Subrogation | ( ) Other: _____       |

#### (✓) GENERAL LIABILITY: ( ) Limit Specific to Project ( ) Per Project Aggregate (\$1,000,000.00)

- |                                  |                               |                               |
|----------------------------------|-------------------------------|-------------------------------|
| (✓) Broad Form Property Damage   | (✓) Contractual Liability     | (✓) Personal Injury           |
| (✓) Premises and Operations      | (✓) Products/Completed Ops.   | (✓) Independent Contractors   |
| (✓) Fire Legal Liability         | ( ) Garagekeepers Legal Liab. | ( ) Child Abuse/Molestation   |
| ( ) Corporal Punishment          | ( ) Collapse/Underground      | ( ) Explosion Hazard          |
| ( ) Watercraft Liability         | ( ) Pollution                 | (✓) Addition Insured Status   |
| ( ) Waiver of Subrogation        | ( ) Airport Premises          | ( ) Hangarkeepers Legal Liab. |
| ( ) Marine Contractors Liability | ( ) Other: _____              | ( ) Other: _____              |

#### ( ) PROFESSIONAL LIABILITY: ( ) ( ) (\$ )

- |                           |                               |                           |
|---------------------------|-------------------------------|---------------------------|
| ( ) Contractual Liability | ( ) Waiver of Subrogation     | ( ) 3 Year Discovery Tail |
| ( ) Additional Insured    | ( ) Vicarious Liability Endt. | ( ) Other: _____          |

#### ( ) AIRCRAFT LIABILITY: ( ) (\$ )

- |                                  |                           |                                |
|----------------------------------|---------------------------|--------------------------------|
| ( ) Passenger Per Seat Liability | ( ) Contractual Liability | ( ) Hull Waiver of Subrogation |
| ( ) Pollution                    | ( ) Additional Insured    | ( ) Other: _____               |

#### ( ) PROPERTY DAMAGE: ( ) Loss Payable Status (AOIMA) ( ) (\$ )

- |                                      |                                     |                                  |
|--------------------------------------|-------------------------------------|----------------------------------|
| ( ) Replacement Value                | ( ) Actual Cash Value               | ( ) Agreed Amount                |
| ( ) All Risk Form                    | ( ) Named Perils Form               | ( ) Earthquake: _____            |
| ( ) Builder's Risk: \$ _____         | ( ) Boiler and Machinery            | ( ) Flood: _____                 |
| ( ) Transportation Floater: \$ _____ | ( ) Contractors Equipment: \$ _____ | ( ) Loss of Rental Income: _____ |
| ( ) Scheduled Locations/Propt.       | ( ) Other: _____                    | ( ) Other: _____                 |

#### ( ) WATERCRAFT: ( ) (\$ )

- |                              |                  |                        |
|------------------------------|------------------|------------------------|
| ( ) Protection and Indemnity | ( ) Pollution    | ( ) Additional Insured |
| ( ) Waiver of Subrogation    | ( ) Other: _____ | ( ) Other: _____       |

#### ( ) POLLUTION: ( ) (\$ )

- |                           |                            |                        |
|---------------------------|----------------------------|------------------------|
| ( ) Incipient/Long-Term   | ( ) Sudden and Accidental  | ( ) Additional Insured |
| ( ) Waiver of Subrogation | ( ) Contractor's Pollution | ( ) Other: _____       |

#### ( ) CRIME: ( ) Joint Loss Payable Status ( ) (\$ )

- |                         |                                |                                 |
|-------------------------|--------------------------------|---------------------------------|
| ( ) Fidelity Bond       | ( ) Financial Institution Bond | ( ) Additional Insured          |
| ( ) Employee Dishonesty | ( ) In Transit Coverage        | ( ) Loss of Monies/Securities   |
| ( ) Computer Fraud      | ( ) Commercial Crime           | ( ) Wire Transfer Fraud         |
| ( ) Other: _____        | ( ) Other: _____               | ( ) Forgery/Alteration of Docs. |

#### ( ) ASBESTOS LIABILITY: ( ) Additional Insured ( ) (\$ )