

**COMMUNICATION FACILITY PERMIT AGREEMENT
(NO. 5309)**

This Permit, dated for reference purposes only, this _____ day of _____, 2006, between County of San Mateo, a political subdivision of the State of California, ("County"), whose address is:

County of San Mateo
County Manager's Office
455 County Center
Redwood City, California, 94063
Attention: Real Property Services Manager

and San Mateo County Transit District, ("District"), whose address is:

San Mateo County Transit District
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attn: Michael Scanlon, General Manager/CEO

In consideration of the agreements set forth herein , the parties agree as follows:

1. **Use of Facilities and Permit Fee.** County is the owner of those certain radio communication facilities in San Mateo County that are identified below (the "Premises" or "Facilities"). District is hereby granted permission to use and occupy such Facilities, for the installation, repair, replacement, operation and maintenance of communications equipment. Installation, repair, replacement, and maintenance of District's equipment shall be coordinated with and at the direction of the County's Communication Systems Manager.

FACILITIES:

1. 555 Guadalupe Canyon Parkway ("Nike Site")
2. North Peak (Lon. 33-37-41, Lat. 122-29-10)
3. Rolph Peak (Lon. 37-19-51, Lat. 122-12-46)
4. 3470 E. 3rd Avenue, Foster City ("Foster City Cable")
5. 400 County Center, Redwood City ("Hall of Justice")

District will install, operate, repair, replace, maintain and remove all communications equipment located on County premises or facilities under the provisions of this Permit as shown on the attached Exhibit "A." In consideration of the County's permission to do so, District will pay County a total fixed annual cost in twelve equal monthly payments in advance of the month for which permission is granted. For the first year of the permit and any subsequent years in which County does not adjust the total fixed annual cost as described in this paragraph, the total fixed annual cost is Thirty-Nine Thousand Eight Hundred Sixty Six dollars (\$39,866.00). Effective July 1 for each year of this Permit,

County may adjust the total fixed annual cost for site use based on increase or decrease in the actual cost of maintaining the Facilities. County will provide the District with at least sixty (60) days advance written notice prior to any increase in the total fixed annual cost. District will pay a pro rata share of the fixed annual cost for any portion of a year that the District uses the Facilities.

2. **Access to Facilities.** District agrees to coordinate all access to Facilities through the County's Communications Maintenance Supervisor at the following address and telephone number:

Steve Dupre
Information Services Department
Radio Services
455 County Center 3rd Floor
Redwood City, CA 94063
Telephone No. (650) 363-4442

County will require at least one (1) day prior notice to arrange site access during normal work hours. In the event of an emergency, site access shall be provided by County within 2 hours of notice. In addition to the total fixed annual fee, District will pay County for labor required to provide District with site access outside of normal work hours. Said costs will be limited to the County's actual costs including, without limitation, wages and benefits associated with such labor, but without any administrative mark up, and County will provide District with an invoice describing in detail the specific costs incurred by County by employee position, hourly rate, and services performed.

3. **Term.** The term of this Permit shall commence on the 1st day of April 2006 and expire on the 30th of June of 2011, unless sooner terminated pursuant to the provisions of this Permit. District will remove all communications equipment not later than sixty (60) days after termination of this Permit.

4. **Equipment Conflict.** District agrees to use equipment of a type and frequency that will not cause interference with County's communications equipment. County acknowledges that District equipment installed and used at the Facilities at the time this Agreement is entered into does not cause interference with County's communications system. If District modifies, changes, or replaces its equipment and the new equipment causes interference, District agrees to correct such interference and if it cannot be corrected, District agrees to remove such new equipment in a timely manner and at District's sole cost and expense. County agrees that it will not install, or allow any other party to install, equipment that interferes with District's pre-existing equipment at the Facilities without the written consent of District.

5. **Option to Terminate.** Either party shall have the option to terminate this Permit at any time, at will and without cause by giving written notice to the other party one hundred twenty (120) days in advance.

6. **Nature of Permit.** This Permit does not constitute the grant of a lease, deed, easement, or a conveyance or transfer of any property interest by County.
7. **Utilities.** County shall supply both electrical power and generator back-up power for the operation of District's equipment on the same basis as County uses for its equipment.
8. **Costs to Recover Facilities.** District agrees to pay County all costs and expenses in any action brought by County to recover possession of the Facilities after the expiration or termination of this Permit if District does not remove its equipment as required by this Permit or to enforce any rights of County hereunder.
9. **Relationship.** County shall not become or be deemed a partner or joint venturer with District by reason of this Permit or any provision hereof.
10. **Licenses.** District shall secure any necessary licenses, permits and approvals applicable to the use of the Premises for which this Permit is granted. County acknowledges that as of the date this Permit is entered into, the District has all necessary licenses, permits, and approvals required to operate District equipment installed at the Facilities.
11. **Reservations.** This Permit is subsequent to and subject to all prior exceptions, reservations, grants, leases, easements or licenses of any kind whatsoever as the same appear on record in the San Mateo Recorder's Office, or in the other public records of County. District covenants that its use of the Premises will at all times be conducted with property regard for any party having prior rights, title or privileges in the Premises.
12. **Law and Regulation.** District shall at all times maintain, occupy and use the Premises in compliance with all laws, rules and regulations which may be applicable thereto.
13. **Maintenance.**
 - A. **DISTRICT'S RESPONSIBILITIES.** District expressly agrees to clean and repair the Premises, at District's sole expense, of all debris and damage caused by District to the complete satisfaction of County and in compliance with all applicable laws, rules and regulations.

District will not put, store, or have any offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, nor any material detrimental to the public health on the Premises. District hereby accepts the Facilities "AS IS."
 - B. **COUNTY'S RESPONSIBILITIES.** Except as limited above, County will maintain the County facilities in good repair and tenantable condition, so as to minimize breakdowns and loss of District's use of the Facilities caused by deferred or inadequate maintenance including, but not limited to:

- (1) Generally maintaining the Facilities in good, operating condition and appearance.
- (2) Furnishing prompt, good quality repair of the Facilities, equipment and appurtenances.
- (3) Furnishing preventive maintenance, including but not limited to, manufacturer's recommended servicing of equipment, electrical, ventilating equipment, and fixtures.
- (4) Furnishing and promptly replacing any inoperative light bulbs, fluorescent tubes, ballast's, starters, and filters for ventilating, and air conditioning equipment as required.
- (5) Maintaining all licenses and permits required to operate the Facilities in which the District's equipment is installed and operated.

14. Indemnification and Insurance.

A. Indemnity.

- (1) It is agreed that the District shall defend, save harmless, and indemnify the County, its officers and employees from any and all claims for injuries or damage to persons and/or property which arise out of the performance of the obligations under the terms and conditions of this Permit and which result from the negligent acts or omissions of District, its officers and/or employees.
- (2) It is agreed that County shall defend, save harmless and indemnify the District, its officers and employees from any and all claims which arise out of the performance of the obligations under the terms and conditions of this Permit and which result from the negligent acts or omissions of County, its officers and/or employees.
- (3) In the event of concurrent negligence of the County, its officers and/or employees, and the District, its officers and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Permit shall be apportioned according to the California theory of comparative negligence.
- (4) The duty of each party to indemnify and save harmless the other as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

B. Insurance.

- (1) General Liability and Property Damage Insurance. District at its cost shall maintain combined general liability and property damage insurance with liability limits of not less than One Million Dollars (\$1,000,000) insuring against all liability of District and its authorized representatives arising out of and in connection with District's use or occupancy of the Facilities.

(2) Worker's Compensation and Employer's Liability Insurance. During the Primary Term and any Extended Term of this Permit, District shall have in effect Workers' Compensation and Employer's Liability Insurance providing full statutory coverage for all its employees. In executing this Permit, District makes the following certification:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer (1) to be insured against liability for Workers' Compensation, or (2) to undertake self-insurance in accordance with the provisions of the Code. I will comply with such provisions.

A valid Workers' Compensation Certificate shall be deposited with the County within ten (10) days of written request of County after the execution of this Permit Agreement by County.

(3) Miscellaneous Insurance Provisions. District shall pay the premiums for maintaining the insurance required herein. All the insurance required under this Permit shall:

- (1) Be issued by insurance companies authorized to do business in the State of California, with a financial rating of at least an AV status as rated in the most recent edition of Bests Insurance Reports.
- (2) Be issued as a primary policy.
- (3) Require thirty (30) days' notice from the insurance company to both parties before cancellation or change in the coverage, scope or amount of any policy.
- (4) County shall be named as "additional insured" as respects this Facility Permit Agreement on the general liability policy.
- (5) The general liability policy should contain a cross-liability provision.
- (6) Self-insurance. The District's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

(4) Certification of Insurance. A certificate of insurance evidencing coverage as required under this Section shall be deposited with County within ten (10) days of written request of County after the execution of this Permit by County.

In the event District fails to deliver the certificate of insurance verifying insurance coverage as required, and fails to cure this default within 30 days written notice from County, County shall have the option to terminate this Permit immediately.

15. Operations Liability. District agrees that County shall not be responsible in any way for any loss, damage, or interruption to operations which may take place from any

cause whatsoever while the District's equipment is housed at the Facilities, except for damages caused by the negligence of County.

16. **Alterations or Additions.** District shall not make, construct, install or suffer to be made any alterations, additions (including antennas, wires, supports, poles, or towers) or improvements to or of the Facilities or any part thereof without the written consent of County first had and obtained. District shall be permitted to repair and replace the equipment as well as to perform routine equipment upgrade as long as said upgrade or replacement occupies the same or comparable space, without such County consent. In the event County consents to the making of any alterations, additions or improvements to the Facilities by District, the same shall be made by District at District's sole expense, and such consent shall specify whether such alterations are to be removed upon District's surrender of the Facilities. Upon the expiration or termination of this Permit, District shall, upon demand by County, given at least sixty (60) days written notice prior to the expiration or termination of this Permit, at County's sole expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by District which County specified in its consent to such alterations, was to be removed at the termination of this Permit. District shall, forthwith and with all due diligence at its sole expense, repair any damage to the Facilities caused by such removal. Should the District fail to remove said alterations, additions, or improvements required to be removed hereunder in a reasonable period of time, the County may perform this work or have it done, after providing the District with thirty (30) days advance written notice, and the District shall assume liability for the cost of this removal and restoration of the site.

17. **Fixtures.** County covenants and agrees that no part of the improvements constructed, erected, or placed by District on the Facilities or other real property owned by County shall be or become, or be considered as being, affixed to, or a part of County's real property, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of County to covenant and agree that all improvements of every kind and nature constructed, erected, or placed by District on the Facilities, or other real property owned by County, shall be and remain the property of the District.

18. **Human Exposure to Radio Frequency Fields.** District is required by the Federal Communications Commission ("FCC") to comply with the FCC's Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, ET Docket No. 93-62, adopted August 25, 1997, and any amendments thereto, (the "Order"). County shall allow District to take all steps necessary to ensure that District's equipment installed at the Facilities complies with the Order, and agrees to require all parties transmitting radio frequency signals at the Facilities to cooperate with each other and assist each other, including District, in obtaining all information, measurements, and data necessary to comply with the Order. The Order in brief, establishes Maximum Permissible Exposure (MPE) limits for electro-magnetic field strength and power density for transmitters operating at frequencies up to 100 GHZ. The guidelines have been adopted to protect the public and workers from exposure to potentially harmful RF fields. The entire text of this document may be found on the Internet at <http://www.fcc.gov/oet/dockets/et93-62/>. County shall also require all parties transmitting at the Facilities to notify County when any changes or modifications are made to their facilities located at the Facilities, and County shall immediately

communicate those changes and modifications to District. County shall ensure that the location of District's transmitting station and antenna system is not accessible by the general public and shall preserve all required notices installed by District at the Facilities, in compliance with all applicable standards, regulations, and requirements. County acknowledges and agrees that County administratively manages and maintains the microwave network used at the Facilities by District and others pursuant to an agreement with the San Mateo Emergency Services Council Joint Powers Authority, which network supports radio communications for various agencies throughout the County. County is responsible for maintaining the microwave network in full compliance with federal, state and local laws, regulations, and rules, including FCC orders.

19. **Default; Remedies.**

A. **Events of Default**

Any of the following shall constitute an event of default (the "Event of Default") by District hereunder:

- (1) a failure to comply with any covenant, condition or representation made under this Permit and such failure continues for fifteen (15) days after the date of written notice by County, provided that if such default is not capable of cure within such 15-day period, District shall have a reasonable period to complete such cure if District promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion within thirty (30) days after the receipt of notice of default from County.
- (2) a vacation or abandonment of the Facilities for a continuous period in excess of thirty (30) business days (it is hereby understood that the Facilities and the District's communication facility will be unmanned and unoccupied by any of District's employees, however, if District otherwise fails to use or occupy the Facilities for thirty (30) consecutive days, such failure shall be deemed a vacation or abandonment) and such vacation or abandonment continues for 30 days after the date County provides District with written notice of County's intention to declare an Event of Default; or
- (3) an appointment of a receiver to take possession of all or substantially all of the assets of District, or an assignment by District for the benefit of creditors, or any action taken or suffered by District under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

B. Remedies

Upon the occurrence of an Event of Default County shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law or in equity:

- (1) County may terminate District's right to possession of the Facilities at any time after written notice required by Section 20.A of this Permit to District. Upon such termination in writing of District's right to possession of the Facilities, this Permit shall terminate and County shall be entitled to recover damages from District as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for such breach, including but not limited to the following:
 - (a) The reasonable cost of recovering the Facilities; plus
 - (b) The reasonable cost of removing District's Alterations, trade fixtures and improvements; plus
 - (c) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other amount necessary to compensate County for all the detriment proximately caused by District's failure to perform its obligations under this Permit which in the ordinary course of things would be likely to result therefrom.

- (2) Subsequent to termination of this Permit for any reason, and after County provides the District with 30 days advance written notice, County may enter the Facilities and remove all District's Personal Property, Alterations and trade fixtures from the Facilities and store them at District's risk and expense. If County removes such property from the Facilities and stores it at District's risk and expense, and if District fails to pay the cost of such removal and storage after 30 days advance written demand therefore and/or to pay any rent then due, then after the property has been stored for a period of thirty (30) days or more County may sell such property at public or private sale, in the manner and at such times and places as County deems commercially reasonable following 30 days advance written notice to District of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for and the conducting of such sale, and for attorneys' fees and other legal expenses incurred by County in connection therewith. Any remaining proceeds from the sale will be provided to the District.

District hereby waives all claims for damages that may be caused by County's re-entering and taking possession of the Facilities or removing

and storing District's Personal Property pursuant to this Section, and District shall hold County harmless from and against any and all Claims resulting from any such act. No re-entry by County, after advance written notice to District as required by this Permit, shall constitute or be construed as a forcible entry by County.

- (3) County may require District to remove any and all Alterations from the Facilities or, if District fails to do so within (30) days after County's request, County may do so at District's expense.

20. **Liability - Vandalism.** District agrees that County shall not be responsible for any damage to District's property due to vandalism or natural disasters or for the cost of repair or replacement thereof.

21. **Severability.** Any provision of this Permit which shall prove to be invalid, void, illegal or unenforceable shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

22. **Choice of Law.** This Permit shall be construed, interpreted and governed in accordance with the laws of the State of California.

23. **Authorized Representatives of parties** The County Manager or his designee shall be the only authorized agent of the County of San Mateo for purposes of giving or receiving any notices or exercising any rights, options, privileges, or obligations of the County of San Mateo under this Permit. The Chief Information Officer of the Information Services Department shall be responsible for the day-to-day operations of the Facilities.

The General Manager/CEO or his designee shall be the only authorized agent of the District for purposes of giving or receiving any notices or exercising any rights, options, privileges, or obligations of the District under this Permit. The Manager of Operations Technology shall be the day-to-day contact for the District.

24. **Notice.** All notices or demands must be provided in writing and are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as set forth herein above. All notices or written demands must be sent to the addresses set forth on page 1 of this Permit. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made.

25. **Assignment By District.** District shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of District's interest in this Permit or in the Facilities, without County's prior written consent. Any assignment or encumbrance without County's consent shall be voidable and, at County's election, shall constitute a default. No consent to any assignment or encumbrance shall constitute a further waiver of provisions of this Section. Notwithstanding the foregoing,

County's consent to an assignment of this Permit shall not be required if and only if the assignment is (1) to any parent or subsidiary of District, or subsidiary of District's parent, or of the parent or parents of District's parent corporation (ii) in the event of a merger or consolidation of District with another corporation, or (iii) in the event that District has a public or private offering of its shares pursuant to the Security and Exchange Act of 1933 or any other comparable federal or state securities act, provided that such assignee assumes in full all of District's obligations under this Permit.

26. **Consent.** Whenever under this Permit the consent or approval of either party is required or a determination must be made by either party, no such consent or approval shall be unreasonably withheld or unreasonably delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

27. **Survival of Indemnities.** Termination of this Permit shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Permit, nor shall it affect any provision of this Permit that expressly states it shall survive termination hereof.

28. **Time.** Time is of the essence of this Permit and each and all of its provisions in which performance is a factor.

29. **Entire Agreement.** The foregoing, including attached exhibits, constitutes the entire agreement between the parties and may be modified only by a writing executed by both parties.

IN WITNESS WHEREOF, County and District have executed this Permit as of the date and year first above written.

All parties executing this Permit acknowledge receipt of a copy thereof.

DISTRICT: San Mateo County Transit District

By: *MJ Santos*
ITS: GENERAL MANAGER

Approved as to Form:
Patrick T. Mignola
Attorney for District *Patrick T. Mignola*

COUNTY: COUNTY OF SAN MATEO,
a political subdivision of the State of
California

ATTESTED:

By: _____
Rose Jacobs Gibson, President
Board of Supervisors

Clerk of Said Board

Sam Trans Site Use Agreement
Exhibit A

Sam Trans Equipment identified by location.

555 Guadalupe Canyon Parkway ("Nike Site")

Description	Quantity
Rack Count	2
Ant Combiner	1
Antenna	3
Repeater	4
Power Plant	1

North Peak (33-37-41, 122-29-10)

Description	Quantity
Rack Count	2
Ant Combiner	1
Antenna	3
Repeater	4
Power Plant	1

Rolph Peak (37-19-51, 122-12-46)

Description	Quantity
Rack Count	2
Ant Combiner	1
Antenna	3
Repeater	4
Power Plant	1

3470 East 3rd Ave (Foster City Cable Site)

Description	Quantity
Rack Count	2
Ant Combiner	1
Antenna	3
Repeater	4
Power Plant	1

400 County Center, RWC (Hall of Justice)

Description	Quantity
Rack Count	2
Ant Combiner	1

Antenna	1
Repeater	3
Power Plant	1