

**COUNTY OF SAN MATEO**

**PERMIT AGREEMENT**

**(No. 5244)**

Pigeon Point Communication Site

440 Pigeon Point Road

Pescadero, California

**PERMITTEE: CALIFORNIA HIGHWAY PATROL**

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EXHIBIT A

# PERMIT AGREEMENT

No. 5244

## PIGEON POINT COMMUNICATION SITE

1. **PARTIES.** This Permit Agreement ("Permit"), dated for reference purposes only this 23rd day of February, 2010, is made by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County" or "Permitter"), and the STATE OF CALIFORNIA, acting by and through its Director of the Department of General Services ("State" or "Permittee" or "Contractor"). Permitter and Permittee agree as follows:

2. **PREMISES.** The County of San Mateo entered into a Lease with Allan J. Bernardi and Carolyn S. Bernardi, Landlord, as successor in interest to Mary E. Leeman, on January 20, 1987, amended by the First Amendment of Lease Agreement dated May 21, 1996, the Second Amendment dated April 24, 2001, the Third Amendment dated November 9, 2004, and the Fourth Amendment dated August 4, 2009, for approximately 400 square feet of land as shown on Exhibit "A" attached and made a part hereof ("Premises") located in the County of San Mateo, commonly known as 440 Pigeon Point Road, Pescadero, California, for the installation, maintenance and operation of a Radio Communication Facility. Under the terms of the Lease, the Permitter has the right to sublease all or any part of the Premises at anytime, with notice to Landlord.

The State is hereby granted permission to use and maintain the following equipment on Permitter's existing antenna tower located within the Premises:

One-half rack space (for two receivers); and

Two (2) microwave channels (MUX); and

One (1) antenna space for one (1) 18-foot Omni directional antenna to be located at the 20-foot level of the east leg of the tower; and

12V DC power source for the equipment.

and shall install no other equipment without the prior written consent of Permitter. Maintenance of Permittee's equipment shall be coordinated with and at the direction of the Permitter's Communication Systems Manager.

3. **PERMIT SUBJECT TO MASTER LEASE.** Permittee acknowledges that this Permit is subject to the terms and conditions of the Agreement between County and Allan J. Bernardi and Carolyn S. Bernardi, Lease No. 1147, dated January 20, 1987 and expiring on July 31, 2014 ("Lease") all previous amendments, and any future amendments or Master Leases. Should the Master Lease, future amendments or Master Leases be terminated for any reason during the term of this Permit, this Permit shall be immediately terminated.

4. **USE.** Permittee may use and occupy the Premises for the maintenance and operation of a wireless communication site, and for no other equipment or purposes without the prior written consent of Permitter, which consent shall not be unreasonably withheld, conditioned or delayed.

Permittee acknowledges that, subject to the limitations set forth in Section 20 (Equipment Conflict) but otherwise without effecting the rights and obligations of the Parties hereunder, Permitter may, in its sole discretion, grant to other operators the right to install and use similar facilities in the Building.

Permittee shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein, which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises, the Building or any of its contents, or cause cancellation of any insurance policy covering the Premises, the Building, or any part thereof or any of its contents. Permittee shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Permittee cause, maintain or permit any nuisance in, on or about the Premises or the Building. Permittee shall not commit or suffer to be committed any waste in or upon the Premises or the Building.

PERMITTEE ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. PERMITTEE REPRESENTS AND WARRANTS TO PERMITTOR THAT PERMITTEE HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF PERMITTEE'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR PERMITTEE'S INTENDED USE. PERMITTEE HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR PERMITTEE'S BUSINESS AND INTENDED USE. PERMITTEE ACKNOWLEDGES AND AGREES THAT NEITHER PERMITTOR NOR ANY OF ITS AGENTS HAVE MADE, AND PERMITTOR HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR PERMITTEE'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. **PRIMARY TERM.** Unless sooner terminated pursuant to the provisions hereof, the primary term of this Permit shall be for five (5) years commencing on the date the County Board of Supervisors shall have authorized the execution of the Permit, in its sole and absolute discretion ("Primary Term") subject to the Master Lease as specified in Section 3 of this Permit. Payment of the Base Permit Fee and System Replacement Special Assessment due hereunder shall commence on the date of commencement. In the event the Effective Date falls on a day other than the first day of a calendar month, said partial month, together with the first twelve (12) full calendar months, shall be deemed to be the first year of the Primary Term and each successive twelve (12) full calendar months shall be the successive year of the Term.

**6. EXTENDED TERM.** Subject to the limitations set forth in this section and the Master Lease as specified in Section 3 of this Permit, Permittee shall have the option to renew this Permit for a total of one additional five (5) year term beyond the primary term (the "Extended Term"). Said renewal shall be under the same terms, covenants and conditions as the initial agreement, except for adjustment of the Permit Fee as specified in Section 7(D) of this Permit, provided; however, if Permittee is in material default under this Permit on the date of giving such notice and fails to cure such default as set forth in Section 22, Permitter may reject such exercise by delivering written notice thereof to Permittee promptly after such failure to cure.

Notwithstanding anything to the contrary contained in this Permit, Permittee's right to extend the Primary Term by exercise of the foregoing option shall be conditioned upon the following:

- A. **NOTICE:** Permittee shall give Permitter written notice of its election to exercise its option not later than one hundred twenty (120) days prior to the expiration of the Primary Term.
- B. **ASSIGNMENT:** Except for the permitted assignment pursuant to Section 29 hereof (Assignment by Permittee), if all or a portion of the Premises under this Permit has been assigned, this option shall be deemed null and void and neither Permittee nor any assignee shall have the right to exercise such option during the term of such assignment.
- C. **CONTINUOUS OPERATION:** Permittee must have been in continuous operation in accordance with Section 4 herein (Use) except for reasonable periods of downtime and to the extent within Permittee's reasonable control during the Primary Term in effect at the time Permittee exercises its option.
- D. **PERMITTOR'S RIGHT TO TERMINATE OPTION:** In the event Permitter receives written notice from Permittee of Permittee's intent to exercise its Option to Extend, and Permitter determines, in its sole and absolute judgment, that the Premises or the Building have a more appropriate use including, but not limited to, any County or public use, the Permitter (or its authorized agent as set forth in Section 28), shall have the right to refuse to grant Permittee's option to extend by giving Permittee written notice within thirty (30) days of receipt of Permittee's notice exercising its Option to Extend, and this Permit shall terminate at the expiration of the Primary Term.

**7. PERMIT FEE.**

- A. **BASE PERMIT FEE.** Subject to the adjustments hereinafter set forth, Permittee shall pay to Permitter in arrears, from legally available funds, without prior demand and without any deduction setoff or counterclaim whatsoever, as base Permit Fee for the Premises, the annual sum of SIX THOUSAND FOUR HUNDRED SIXTY DOLLARS AND 44/100 (\$6,460.44) payable in equal monthly installments of FIVE HUNDRED THIRTY EIGHT AND 37/100 DOLLARS (\$538.37) on or before the first day of each and every calendar month ("Base Permit Fee"). Within ten (10) days after the parties execute this Permit, Permittee shall pay to Permitter the Base Fee for the first full month. All payments shall be delivered to Permitter at the following address, or such other address as Permitter shall designate in writing to Permittee:

Information Services Department  
Accounts Receivable (Ref. No. 5244)  
455 County Center, 3rd Floor  
Redwood City, CA 94063

- B. **PRORATED PERMIT FEE.** The Base Permit Fee and all other fees and charges for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of that calendar month.
- C. **BASE PERMIT FEE ADJUSTMENT.** The permit fee payable by Permittee to Permitter hereunder shall be increased annually by two percent (2%) effective on each "Anniversary Date". By definition herein, the first Anniversary Date shall occur on the first day of the first full month following the first twelve (12) months after the Effective Date of the Primary Term. By example, if the Effective Date of this Permit is February 9, 2010, the first Anniversary Date for the permit fee adjustment would be March 1, 2011, and annually thereafter on each March 1<sup>st</sup> throughout the Primary Term, or any extensions thereof as provided in Section 6 herein (Extended Term) of this Permit.

Said adjusted Base Permit Fee shall be rounded in accordance with normal rounding practice to the closest dollar. In no event shall the adjusted Base Permit Fee be less than the permit fee in effect at the time of adjustment.

- D. **EXTENDED TERM FEE ADJUSTMENT.** During the first year of the Extended Term as set forth in Section 6, the Base Permit Fee for the first year of the Extended Term shall be based upon the then current fair market permit fees for like space and shall be subject to adjustment commencing the second year of the Extended Term and each year thereafter of in accordance with Section 7 (C) above. Current fair market permit fee shall be established in accordance with the County's radio site equipment rates or any replacement schedule formulated by the County of San Mateo. The permit fee for the initial year of the Extended Term shall be determined and agreed to by both parties at least one hundred twenty (120) days prior to the commencement date of the Extended Term. If an agreement on fair market permit fees cannot be reached by the parties within sixty (60) days prior to the commencement date of the Extended Term, the Base Permit Fee for the Extended Term shall be the rate proposed by the Permitter provided, however, that Permittee may, at any time during the subsequent twelve months, terminate this Permit by giving Permitter thirty (30) days written notice. If Permittee does not, within such twelve-month period, deliver to Permitter written notice of termination, this Permit shall continue in full force and effect for the entire Extended Term. All other terms and conditions of this Permit shall remain in full force and effect.
- E. **LATE CHARGES.** Permittee hereby acknowledges that late payment by Permittee to Permitter of the Permit Fee or other sums due under the provisions of this Permit will cause Permitter to incur costs not contemplated by this Permit, the exact amount of which would be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices and accounting charges. Accordingly, if any installment of the Permit Fee or of any sum due from Permittee is not received by Permitter or postmarked within five (5) days after said amount is due, then Permittee shall pay to Permitter a late charge equal to five percent

(5%) of the permit fee in effect at that time or Fifty Dollars (\$50.00), whichever is greater. A late charge shall be applied each month that the permit fee or any sum due is delinquent. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Permitter will incur by reason of the late payment by Permittee. Acceptance of late charges by Permitter shall in no event constitute a waiver of Permittee's default with respect to such overdue amount, nor prevent Permitter from exercising any of the other rights and remedies granted under the provisions of this Permit.

Any Fee, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Permittee nor on any amounts on which late charges are paid by Permittee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Permittee.

**8. SYSTEM REPLACEMENT SPECIAL ASSESSMENT.** In December 2003 the County completed replacement of the Emergency Services Microwave Network. Each user of the system will pay to the County of San Mateo an assessment for system replacement, which assessment is based on the number of channels used. The total assessment for the State of California in connection with this Permit is \$32,974.79 (the "Assessment"). The Assessment will be paid in arrears over the five-year term of this Agreement in sixty equal monthly installments of \$549.57 due on or before the first day of each and every calendar month, which sum shall be due in addition to the Base Permit Fee. In the event this Permit is terminated prior to the five-year term of this Agreement, the monthly installments shall cease and the Assessment shall be cancelled as of the termination date and no further debt incurred.

## **9. TERMINATION.**

- A. **BY PERMITTEE:** Permittee shall have the right to terminate this Permit at any time upon thirty (30) days prior written notice to Permitter.
- B. **BY PERMITTOR:** Permitter shall have the right to terminate this Permit at any time upon thirty (30) days prior written notice to Permittee only for any of the following reasons:
  - 1. If Permittee's communication equipment causes interference with Permitter's communication equipment located on the Property and Permittee's communication equipment cannot be corrected, or
  - 2. If Permitter determines that the Property or any portion thereof, including the Premises, has a more appropriate use including, but not limited to, any County or public use, or sale; or
  - 3. If Permitter remains in default under Section 22 of this Permit after the applicable cure periods.
- C. **NOTICE.** Upon termination as provided for under the terms of Section 9(A) herein (Termination by Permittee), or Section 9(B) herein (Termination By Permitter), neither party will owe the other party any further obligation under the terms of this Permit, except as may otherwise be specifically provided herein and except for Permittee's responsibility to remove all of Permittee's

communications equipment from the Premises and restore the Premises to its original condition, as near as practicable, save and except normal wear and tear and acts beyond Permittee's control.

In the event of any damage to, destruction of or condemnation of all or any part of the Premises which renders the Premises unusable or inoperable, either party shall have the right, but not the obligation, to terminate this Permit and all of its duties and obligations hereunder by giving written notice to the other party within thirty (30) days after such damage, destruction or condemnation unless said damage was caused by the negligence or willful misconduct of the party issuing such notice. Permittee acknowledges that it has no property interest in the Premises and that Permitter alone shall be entitled to any condemnation proceeds paid as a result of any condemnation of the Premises. Upon the expiration or termination of this Permit for any reason, Permittee shall remove its equipment and all personal property in accordance with Section 18 hereof.

**10. HAZARDOUS MATERIALS ACTIVITY.** Permittee shall not store, handle or generate hazardous materials/waste/underground tanks on the Premises except for fuel, batteries, and solvents used in connection with an emergency generator and only in the event of disruption of electrical service to the Premises. In the event that Permittee does store, handle, or generate hazardous materials on the Premises, Permittee shall be deemed to be in breach of this Permit and shall be subject to such remedies as are available to Permitter under law, and as provided herein. Additionally, Permittee shall be liable for the payment of all costs of investigation and remediation of hazardous materials on the Premises that may be required in the event that Permittee does store, handle, or generate hazardous materials on the Premises.

Hazardous material means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the work place or the environment. Hazardous materials include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the work place or the environment. Examples of such hazardous materials are, but are not limited to: waste oil, solvents, gasoline and compressed gases.

Permitter represents and warrants to Permittee that there is no pending claim, lawsuits, proceeding or other legal, quasi-legal or administrative challenge concerning the Property or Premises, the operation thereof, or any condition existing thereon which relates to the presence of any Hazardous Materials in, under or around the Property. Permitter further represents and warrants, to the best of Permitter's knowledge, that there are no Hazardous Materials present in, on, under or around the Property and/or Premises in violation of any Applicable Law.

**11. NATURE OF PERMIT:** This Permit does NOT constitute the grant of a lease, deed, easement, or conveyance or transfer of any property interest.

**12. ACCESS.** Permittee agrees to coordinate all access to the premises through the County's Radio Services Supervisor at the following address:



- 13. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS.** In the event of damage to or destruction of the Premises or any portion thereof by reason of the negligence or willful misconduct of Permittee, its agents, officers, employees or invitees, Permittee shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Premises at Permittee's sole cost.
- 14. PERMITS.** Permitter acknowledges that Permittee will contact the appropriate governmental agencies for the purpose of obtaining all permits and approvals necessary for the construction, operation, and maintenance of Permittee's communication facility. Permitter agrees to fully cooperate with Permittee in obtaining the necessary permits and, without limiting the generality of the foregoing, to execute any applications, maps, certificates, or other documents that may be required in connection with the permits.
- 15. MAINTENANCE.** Permittee expressly agrees to maintain the Premises of Permittee's area of the Building at Permittee's sole expense, in a safe, clean, wholesome, and sanitary condition, to the reasonable satisfaction of Permitter and in compliance with all laws, rules, and regulations applicable to Permittee's specific use thereof.
- Permittee shall not allow any offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, nor any material detrimental to the public health to accumulate or remain on the Premises. It is expressly understood that Permitter shall have no responsibility whatsoever to make any improvements or repairs or perform any maintenance to Permittee's Premises.
- 16. UTILITIES.** Permitter agrees to provide a 12V DC power source to the Premises for Permittee's use at no additional cost to Permittee.
- 17. ALTERATIONS OR ADDITIONS.** Permittee shall not make, construct, install or suffer to be made any alterations, additions (including antennas, wires, supports, poles or towers) or improvements to or on the Premises, the monopole, or any part thereof, without the written consent of Permitter first had and obtained, except that Permittee may exchange or replace the communication equipment located on the Premises which has been previously approved by Permitter with similar equipment of substantially the same (or smaller) size and weight. In the event Permitter consents to the making of any alterations, additions or improvements to the Premises and/or the Building by Permittee, the same shall be made by Permittee at Permittee's sole expense.
- 18. REMOVAL OF IMPROVEMENTS UPON EXPIRATION OR TERMINATION.** Upon the expiration, or termination of this Permit for any reason, including but not limited to bankruptcy, Permittee shall immediately (and in no event later than thirty (30) days after termination) remove from the Premises the Equipment and any other property placed on the Premises by Permittee or any of Permittee's Agents. Such removal shall be performed in such a manner as to not interfere with the continuing use of the Premises by Permitter and others. Permittee shall, at Permittee's sole expense,

repair any damage to the Premises, or any facilities or equipment on the Premises, caused by such removal. Upon any failure of Permittee to remove the Equipment and any other possessions of Permittee pursuant to this Section, Permitter shall have the option, but not the obligation, to remove the Equipment from the Premises and store the Equipment, all at Permittee's expense, upon thirty (30) days advance written notice to Permittee. Any damages to the Equipment occasioned by such removal and storage are expressly waived by Permittee. Any Equipment so removed will be returned to Permittee upon payment in full of all removal and storage costs and any past due Permit Fees, plus an administrative charge equal to ten percent (10%) of the total of said removal, storage, and past due Permit Fee costs. Notwithstanding the foregoing, any Equipment not retrieved by Permittee within sixty (60) days after removal from the Premises by Permitter shall be deemed abandoned by Permittee and shall become the property of Permitter without further action by either party. Such abandonment shall not relieve Permittee of liability for the costs of removal and storage of the Equipment.

**19. FIXTURES.** Permitter covenants and agrees that no part of the improvements constructed, erected, or placed by Permittee on the Premises and/or Building or other real property owned by Permitter shall be or become, or be considered as being, affixed to, or a part of Permitter's real property, and any and all provisions and principles of law to the contrary withstanding, it being the specific intention of Permitter to covenant and agree that all improvements of every kind and nature constructed, erected, or placed by Permittee on the Premises or other real property owned by Permitter, shall be and remain the property of the Permittee except as provided in Section 18 herein (Removal of Improvement) of this Permit. Permittee has the right to remove all Permittee's Equipment at its sole expense on or before the expiration or termination of this Permit. Permitter acknowledges that Permittee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Permittee's Equipment (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith Permitter (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Permittee's Equipment; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any permit fee due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

**20. EQUIPMENT CONFLICT.** Permittee agrees to use equipment of a type and frequency which will not cause interference with communications equipment currently under the operation and control of Permitter or any other communications provider under an existing Permit with Permitter as of the Effective Date hereof. If the Permitter's communication equipment involves public safety communications and if the Permittee's equipment causes any interference to public safety communications, the Permittee's equipment will be immediately taken out of service without exception by Permittee. If Permittee's equipment interferes with the Permitter's public safety communications, the determination to take out of service the Permittee's equipment shall be at the Permitter's sole discretion. Except as provided above:

- A. Permittee will not cause radio frequency and/or electrical interference to the existing equipment of Permitter or to any other occupant, tenant, or any other user ("Existing User") of the Property whose equipment was located at the Property upon the earlier of: (i) the Effective Date; or (ii) the date Permittee installs its Communications Equipment, provided that the equipment used by any

Existing User or Permitter is operating within the technical parameters specified by its manufacturers and as defined by the FCC. Upon written notice from Permitter to Permittee of such interference, Permittee will take all reasonable steps to correct such interference in a timely manner. If such interference cannot be corrected within five (5) business days from receipt of Permitter's Notice, Permittee will cease using its Communications Equipment, except for testing, until such time as Permittee corrects the interference to Permitter's satisfaction. In the event Permittee cannot correct the interference, Permittee will have the option to terminate this Permit without further liability hereunder, upon (30) days written Notice to Permitter and Permittee shall remove its equipment in a timely manner and at Permittee's sole cost and expense.

- B. After the date of this Permit, Permitter will not grant a Permit to any other party for use of the Property or modify any existing agreement for use of the Property, or change its use of the Property or permit an existing occupant, tenant, permittee or other user of the Property to make any changes to its use of the Property, if such use would in any way materially adversely affect or interfere with the operation of Permittee's Communication Equipment. If another occupant, tenant, permittee or other user of the Property causes uncorrected radio frequency and/or electrical interference with Permittee's Communication Equipment, Permitter will require the party causing such interference to either correct such interference or stop using the equipment that is causing the interference. If the interference cannot be corrected within five (5) business days from receipt of Permittee's Notice, Permitter will cause the party creating the interference to cease using its equipment, except for testing, until the interference has been corrected. If after thirty (30) days such interference has not been completely corrected to Permittee's reasonable satisfaction, Permittee will have the option to terminate this Permit without further liability hereunder.
- C. Permittee shall not, subsequent to its initial installation of equipment, make any modification to its equipment or the use thereof during the Term that will cause radio frequency and/or electrical interference to the equipment of Permitter then in operation, nor to that of any other occupant, tenant, permittee or other user of the Building. Any such user in operation at the time of such modification or change in use shall be considered an Existing User as set forth in Section 20(A) above, and the provisions of that Section shall apply.

## 21. TAXES.

- A. REAL PROPERTY TAXES. Permitter shall pay all real property taxes, if any, levied against the Premises. Permittee shall pay its share of any general and special assessments, if any, to the extent assessed against the Premises as a result of Permittee's improvements thereto or use thereof during the term of this Permit.
- B. PERSONAL PROPERTY TAXES. Permittee shall pay, or cause to be paid, before delinquency, any and all taxes and assessments levied against Permittee's personal property in the Premises.

## 22. DEFAULT; REMEDIES

- A. EVENTS OF DEFAULT. Any of the following shall constitute an event of default (the "Event of Default") by Permittee 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 it is not feasible to cure such default within such 15-day period, Permittee shall have a reasonable period to complete such cure if Permittee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Permitter. Permitter shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Permittee during such 12-month period shall constitute an Event of Default hereunder;

2. A vacation or abandonment of the Premises for a continuous period in excess of five (5) business days; or

3. An appointment of a receiver to take possession of all or substantially all of the assets of Permittee, or an assignment by Permittee for the benefit of creditors, or any action taken or suffered by Permittee 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 Permitter 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. Permitter may terminate Permittee's right to possession of the Premises at any time by written notice to Permittee. Upon such termination in writing of Permittee's right to possession of the Premises, this Permit shall terminate and Permitter shall be entitled to recover damages from Permittee 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.

2. Permitter may continue this Permit in full force and effect and may enforce all of its rights and remedies under this Permit, including, but not limited to, the right to recover any fee as it becomes due.

3. During the continuance of an Event of Default, Permitter may enter the Premises without terminating this Permit and remove all Permittee's Personal Property, Alterations and trade fixtures from the Premises and store them at Permittee's risk and expense. If Permitter removes such property from the Premises and stores it at Permittee's risk and expense, and if Permittee fails to pay the cost of such removal and storage after written demand therefor and/or to pay any fee then due, then after the property has been stored for a period of thirty (30) days or more Permitter may sell such property at public or private sale, in the manner and at such times and places as Permitter deems commercially reasonable following reasonable notice to Permittee 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 any delinquent amount due under this Permit.

Permittee hereby waives all claims for damages that may be caused by Permitter's re-entering and taking possession of the Premises or removing and storing Permittee's Personal Property pursuant to this Section. No re-entry by Permitter shall constitute or be construed as a forcible entry by Permitter.

4. Permitter may require Permittee to remove any and all Alterations from the Premises or, if Permittee fails to do so within ten (10) days after Permitter's request, Permitter may do so at Permittee's expense.

C. PERMITTOR'S DEFAULT. Permitter shall not be considered to be in default under this Permit unless:

1. Permittee has given written notice specifying the default; and
2. Permitter has failed for thirty (30) days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective acts for defaults that cannot be reasonably cured within sixty (60) days.

This Permit may be terminated without further liability on thirty (30) days prior written notice by Permittee if Permitter does not cure a default as set forth herein.

**23. LIABILITY - VANDALISM.** Permittee agrees that Permitter shall not be responsible for any damage to Permittee's property due to vandalism or natural disasters or for the cost of repair or replacement thereof.

#### **24. INDEMNIFICATION AND INSURANCE.**

A. State does hereby agree to indemnify and save Lessor harmless from any damage proximately caused by State, or arising out of, or in any way connected with the exercise by State of any rights herein granted or that may arise from use of the Premises by State, to the extent legally permissible by Government Code Section 14662.5 et seq. except to the extent that any such damages or expenses suffered by Lessor are the result of any persons acting under or on behalf of Lessor; except where Lessor or State, as applicable, are found to have no liability by reason of any immunity arising by statute or common law.

If any party to this lease is held liable upon any judgment for damages caused to third parties by a negligent, intentional or wrongful act or omission occurring in the performance of this lease and pays excess of its pro rata share in satisfaction of such judgment, such party shall be entitled to contribution from the other party to this lease. The pro rata share of each party shall be determined according to the comparative fault of the respective party(ies), as between them.

B. The State of California has elected to be insured for its motor vehicle and general liability exposures through a self-insurance program. The State Attorney General administers the general liability program through an annual appropriation from the General Fund. The Office of Risk and Insurance Management administers the motor vehicle liability program.

Under this form of insurance, the State and its employees (as defined in Section 810.2 Government Code) are insured for any tort liability that may develop through carrying out official activities, including State official operations on non State owned property. Should any claims

arise by reason of such operations or under an official contract or license agreement, they should be referred to the: Attorney General, State of California, Tort Liability Section, 1300 I Street, Sacramento, California 95814. Claims arising from operations of a State owned vehicle should be forwarded to the: Office of Risk and Insurance Management, Auto Self Insurance, 707 Third Street, West Sacramento, California 95605.

The State of California has entered into a Master Agreement with the State Compensation Insurance Fund to administer worker compensation benefits for all State employees, as required by the Labor Code.

## **25. ENTRY BY PERMITTOR/PERMITTEE.**

- A. BY PERMITTEE. Subject to the provisions of Section 12 herein (Access) and Section 14 herein (Permits) of this Permit, Permittee has the right to enter the Premises at any time without prior notice being given to Permittor for the maintenance, operation, modification or addition of Permittee's existing communications facilities.
- B. BY PERMITTOR. Permittor reserves and shall have the right to enter the Premises at any and all reasonable times, to inspect same, supply any services to be provided by Permittor to Permittee hereunder, to show the Premises to any prospective purchasers or Permittees, to post notices of non-responsibility, and to alter, improve, repair or restore the Premises as Permittor may deem necessary or desirable, without abatement of permit fee, so long as Permittor does not unreasonably interfere with Permittee's operations. For each of the aforesaid purposes, Permittor shall at all times have and retain a key with which to unlock all of the gates and/or doors in, upon and about the Premises, excluding Permittee's vaults, cabinets, safes and files. Permittor's right to enter the Premises is subject to: (a) Permittor having given not less than twenty-four (24) hours prior notice to Permittee, and (b) an employee or agent of Permittee being present during each and any entry to the Premises.
- C. EMERGENCY - BY PERMITTOR. Other provisions of this Section notwithstanding, in the event of an emergency, Permittor shall have the right to use any and all means which Permittor may deem proper to gain entry to the Premises without liability to Permittor except for any failure to exercise due care for Permittee's property. Any entry to the Premises obtained by Permittor by any said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Permittee from the Premises or any portion thereof.

**26. HOLDING OVER.** In the event that Permittee, with Permittor's consent, holds possession of the Premises or any portion thereof after the date upon which the Premises are to be surrendered, Permittee shall pay to Permittor a monthly permit fee increase of ten (10) percent above the monthly permit fee in effect upon the date of such expiration and otherwise subject to all provisions of this Permit except those pertaining to the duration of the term of this Permit or any extensions thereof. Permittee's use and occupancy will continue from month-to-month, at will, until terminated by Permittor or Permittee by the giving of thirty (30) days' written notice to the other. Nothing in this Section is to be construed as consent by Permittor to the occupancy or possession of the Premises by Permittee after the expiration of the term or any extension thereof.

**27. AUTHORIZED REPRESENTATIVE OF THE COUNTY OF SAN MATEO.** The County Manager, or the designee of the County Manager, shall be the only authorized agent of the County of San Mateo for purposes of giving any notices (including, but not limited to, termination under the terms hereof), enforcing any provision, or exercising any rights, options, privileges, or obligations of the County of San Mateo under this Permit. This Permit shall not be valid or have legal effect unless executed by the President of the Board of Supervisors of the County of San Mateo pursuant to a Resolution adopted in accordance with the California Government Code.

**28. NOTICE.** All notices or demands 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 follows:

Permitter:  
County of San Mateo  
County Manager's Office  
Real Property Division  
455 County Center, 4th Floor  
Redwood City, CA 94063  
Phone: (650) 363-4047

Permittee:  
State of California  
Department of General Services  
Real Estate Services Division  
Lease Management A 2884-001  
707 Third Street, 5<sup>th</sup> Floor  
West Sacramento, CA 95605  
Phone: (916) 375-4025  
Fax: (916) 375-4029

With a copy to:

California Highway Patrol  
Telecommunications Section  
Radio Systems Support Unit  
P.O. Box 942898  
Sacramento, CA 94298-0001  
Phone: (916) 375-2900  
Fax: (916) 375-2906

The address to which any notice or demand may be given to either party may be changed by written notice.

**29. ASSIGNMENT BY PERMITTEE.** The Permittee shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Permittee's interest in this Permit or in the Premises without Permitter's prior written consent. Any assignment or encumbrance without Permitter's consent shall be voidable and, at Permitter'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, Permittee shall have the right to assign this Permit, without Permitter's consent to any corporation which controls, is controlled by, or is under common control with Permittee, to any corporation resulting from merger or consolidation with Permittee, or to any partnership in which Permittee, the general partner of Permittee, or any corporation which controls, is controlled by, or is under common control with the general partner of Permittee, is a general partner, or to any person or entity which acquires substantially all of Permittee's assets, provided that such assignee assumes in full all of Permittee's obligations under this Permit. Notwithstanding anything to the contrary contained in this Agreement, Permittee may assign, mortgage, pledge, hypothecate or otherwise transfer without

consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Permittee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

**30. 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 delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

**31. ENTIRE AGREEMENT AND BINDING EFFECT.** This Permit and any attached exhibits, as signed by the parties hereto, constitute the entire agreement between Permittor and Permittee; no prior written promises, and no prior, contemporaneous or subsequent, oral promises or representations shall be binding. This Permit shall not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience only and neither limit nor amplify the provisions of this instrument. The provisions of this Permit shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of said Permittor and Permittee. This Permit shall not be effective or binding on any party until fully executed by both parties hereto.

**32. RESERVATIONS.** This Permit shall at all time be subject to such rights-of-way for such sewers, pipe lines, conduits, and for such telephone, telegraph, light, heat or power lines, as shall have been duly established or as may from time to time be reasonably determined by Permittor.

This Permit is subsequent to and subject to all prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever as the same appear on record in the office of the County Recorder, County of San Mateo, State of California. Permittee covenants not to disturb the quiet and peaceful enjoyment of any and all parties having any legal right, title, interest or privilege in and to the Premises and that the use of the Premises by Permittee shall at all times be conducted with proper regard for such rights, titles, interests and privileges.

**33. LIENS.**

- A. Permittee shall keep the Property free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Permittee.
- B. If any lien is filed against the Property as a result of the acts or omissions of Permittee, or Permittee's employees, agents, or contractors, Permittee must discharge the lien or bond the lien off in a manner reasonably satisfactory to Permittor within thirty (30) days after Permittee receives written notice from any party that the lien has been filed.
- C. If Permittee fails to discharge or bond any lien within such period, then, in addition to any other right or remedy of Permittor, Permittor may, at Permittor's election, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding, or by such other methods reasonably acceptable to Permittor provided that such methods are specified in writing by Permittor to Permittee.



- D. Permittee must pay on demand any amount paid by Permitter for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of Permitter incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary disbursements in connection therewith.

**34. SAN MATEO COUNTY NO SMOKING ORDINANCE.** Permittee acknowledges that on April 18, 2006, the County of San Mateo modified its Ordinance Code, adopting Section 4.96.040, which prohibits smoking in all County facilities whether owned or leased. Permittee understands that said Ordinance authorizes County to enforce the provisions contained therein and Permittee agrees to enforce the provisions of said ordinance on the Premises.

**35. GENERAL PROVISIONS.**

- A. **COMPLIANCE WITH LAW.** Permittee shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Permittee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Permittee in any action against Permittee, whether Permitter be a party thereto or not, that Permittee has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Permitter and Permittee.
- B. **RULES AND REGULATIONS.** Permittee shall faithfully observe and comply with the rules and regulations that Permitter shall from time to time promulgate. Permitter reserves the right from time to time to make all reasonable modifications to said rules. The additions and modifications to those rules shall be binding upon Permittee upon delivery of a copy of them to Permittee. Permitter shall not be responsible to Permittee for the nonperformance of any said rules by any other Permittees or occupants, or the public.
- C. **AUTHORITY OF PARTIES.**
  - 1. **Corporate Authority.** If either party hereto is a corporation, each party executing this Permit on behalf of the corporation represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of the corporation or in accordance with the by-laws of the corporation, and that this Permit is binding upon the corporation in accordance with its terms.
  - 2. **Partnership.** If either party hereto is a partnership or other unincorporated association, each party executing this Permit on behalf of the partnership or other association represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of the partnership or association, in accordance with the partnership agreement or the agreement of said association.

- D. **WAIVER.** The waiver by either party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of the permit fee hereunder by Permitter shall not be deemed to be a waiver of any preceding breach by Permittee of any term, covenant or condition of this Permit, other than the failure of the Permittee to pay the particular permit fee so accepted, regardless of Permitter's knowledge of such preceding breach at the time of the acceptance of such permit fee.
- E. **JOINT OBLIGATION.** "Party" shall mean Permitter or Permittee; and if there be more than one Permittee or Permitter, the obligations hereunder imposed upon Permittees or Permitters shall be joint and several.
- F. **TIME.** Time is of the essence of this Permit and each and all of its provisions in which performance is a factor.
- G. **RECORDATION.** Neither Permitter nor Permittee shall record this Permit, except that if either party requests the other party to do so, the parties shall execute a short form memorandum hereof in recordable form.
- H. **QUIET POSSESSION.** Upon Permittee paying the permit fee and other fees or charges reserved hereunder and observing and performing all of the terms, covenants and conditions on Permittee's part to be observed and performed hereunder, Permittee shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Permit.
- I. **INABILITY TO PERFORM.** This Permit and the obligations of Permittee hereunder shall not be affected or impaired because Permitter is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of Permitter.
- J. **NEGATION OF PARTNERSHIP.** Permitter shall not become or be deemed a partner or a joint venturer with Permittee by reasons of the provisions of this Permit.
- K. **SALE OR TRANSFER OF PREMISES.** In the event of any sale or transfer of the Premises, Permitter shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Permit arising out of any act, occurrence or omission occurring after the consummation of such sale or transfer; and the purchaser or transferee, at such sale or transfer or any subsequent sale or transfer of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties or their successors in interest or between the parties and any such purchaser or transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of Permitter under this Permit.
- L. **NAME.** Permittee shall not use the name of the Premises or of the development, building or facility in which the Premises may be situated for any purpose other than as an address of the business to be conducted by Permittee in the Premises.
- M. **SEPARABILITY.** 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.

- N. CUMULATIVE REMEDIES. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- O. SIGNS AND AUCTIONS. Permittee shall not place any sign upon the Premises or conduct any auction thereon without Permitter's prior written consent.
- P. PROVISIONS, COVENANTS AND CONDITIONS. All provisions herein, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.
- Q. CAPTIONS, TABLE OF CONTENTS. The captions and the Table of Contents of this Permit (if any) shall have no effect on the interpretation of this Permit.
- R. PAYMENTS IN U.S. MONEY. Permit fee and all sums payable under this Permit must be paid in lawful money of the United States of America.
- S. SINGULAR AND PLURAL. When required by the context of this Permit, the singular shall include the plural.
- T. CHOICE OF LAW. This Permit shall be construed, interpreted and governed in accordance with the laws of the State of California.
- U. VENUE. The venue for any court action to interpret or enforce this Agreement or to litigate any claim arising out of this Agreement shall be held in State Court of the County of San Mateo.

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

PERMITTEE:

STATE OF CALIFORNIA  
Department of General Services

Date 2-4-10

By Mike Butler, FOR  
MIKE BUTLER  
Assistant Section Chief

Approval Recommended:  
Department of General Services  
Real Estate Services Division

By Beth Blair  
BETH BLAIR  
Senior Real Estate Officer

PERMITTOR:

COUNTY OF SAN MATEO

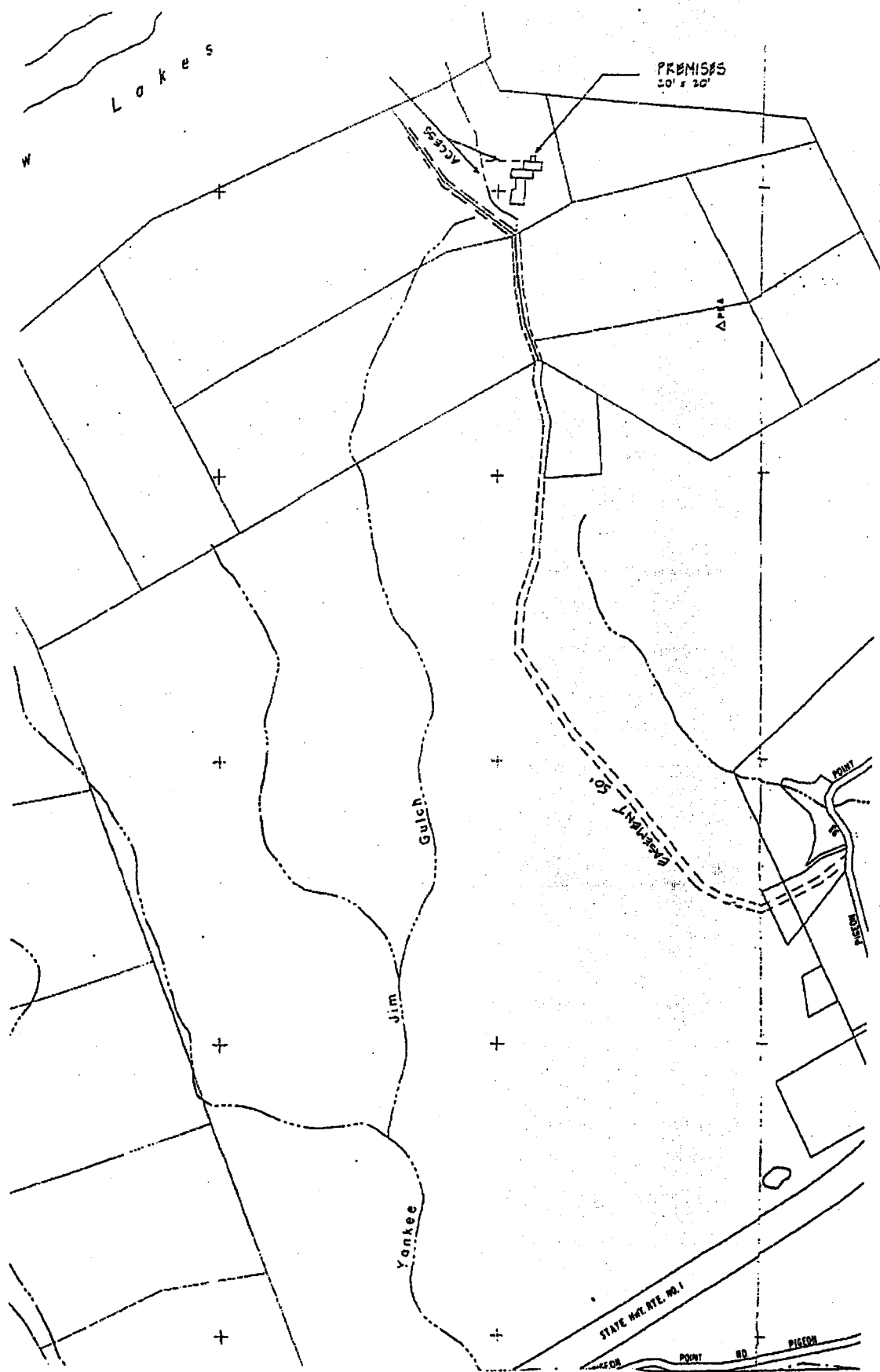
Date \_\_\_\_\_

By \_\_\_\_\_  
RICHARD S. GORDON  
President, Board of Supervisors

ATTEST:

Clerk of the Board

Exhibit "A"



**COUNTY OF SAN MATEO**

**PERMIT AGREEMENT**

**(No. 5220)**

**Rolph Hill Communication Site**

**Skyline Blvd**

**Woodside, California**

**PERMITTEE: CALIFORNIA HIGHWAY PATROL**

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**NO. 5220**

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EXHIBIT A

# PERMIT AGREEMENT

No. 5220

## ROLPH HILL COMMUNICATION SITE

**1. PARTIES.** This Permit Agreement ("Permit"), dated for reference purposes only this 23rd day of February, 2010, is made by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County" or "Permitter"), and the STATE OF CALIFORNIA, acting by and through its Director of the Department of General Services ("State" or "Permittee" or "Contractor"). Permitter and Permittee agree as follows:

**2. PREMISES.** The County of San Mateo entered into a Lease with Midpeninsula Regional Open Space District on October 27, 1992 as amended by the First Amendment to Lease on January 10, 1995 and the Second Amendment on October 28, 2003, to erect, operate and maintain a radio communication antenna and appurtenant building, including the right to fence the County's permitted area and facilities. The Amendment allows the County to issue permits for communication facilities at the site.

The State is hereby granted permission to use and occupy a portion of such facilities and to maintain the following equipment in the existing building and on the existing antenna tower located at Rolph Hill Radio Station and shown on Exhibit "A" attached hereto:

Permission to operate one 100-watt transmitter on 42.08 Mhz and one receiver on 42.82 Mhz, both CTCSS 131.8 Hz.

Space for one simulcast transmitter equipment rack (2'L x 2'W x 7.5'H)

Space for one receiver/power supply equipment rack (2'L x 2'W by 7.5'H)

Space for one transmitter cavity (1'L x 1'W x 7.5'H)

Space for one transmitter antenna 18 feet long, spaced 6 feet from tower, located on the north or northwest side of the tower, between 20 feet and 40 feet above ground level. Separated from CHP receiver antenna by at least 40 feet.

Space for one receiver antenna 18 feet long, spaced 6 feet from tower, located on the north or northwest side of the tower, between 20 and 40 feet above ground level. Separated from CHP receiver antenna by at least 40 feet.

One 20 ampere, 120 volt A.C. circuit with a duplex outlet.

Five (5) microwave mux circuits as follows:

Simul TX, Simulcast CTCSS TX, Maintenance & Alarm (TX/RX), Mode 3 (TX/RX), and Remote Alignment (TX/RX).



and shall install no other equipment without the prior written consent of Permitter. Maintenance of Permittee's equipment shall be coordinated with and at the direction of the Permitter's Communications Systems Manager.

**3. PERMIT SUBJECT TO MASTER LEASE.** Permittee acknowledges that this Permit is subject to the terms and conditions of the Agreement between County and MidPeninsula Regional Open Space District, Lease No. 1013, dated October 27, 1992 ("Master Lease") and the First Amendment of Lease dated May 21, 1996 and any future amendments or future Master Leases. Should the Master Lease, future amendments or Master Leases be terminated for any reason during the term of this Permit, this Permit shall be immediately terminated.

**4. USE.** Permittee may use and occupy the Premises for the maintenance and operation of a wireless communication site, and for no other equipment or purposes without the prior written consent of Permitter, which consent shall not be unreasonably withheld, conditioned or delayed.

Permittee acknowledges that, subject to the limitations set forth in Section 20 (Equipment Conflict) but otherwise without effecting the rights and obligations of the Parties hereunder, Permitter may, in its sole discretion, grant to other operators the right to install and use similar facilities in the Building.

Permittee shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein, which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises, the Building or any of its contents, or cause cancellation of any insurance policy covering the Premises, the Building, or any part thereof or any of its contents. Permittee shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Permittee cause, maintain or permit any nuisance in, on or about the Premises or the Building. Permittee shall not commit or suffer to be committed any waste in or upon the Premises or the Building.

PERMITTEE ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. PERMITTEE REPRESENTS AND WARRANTS TO PERMITTOR THAT PERMITTEE HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF PERMITTEE'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR PERMITTEE'S INTENDED USE. PERMITTEE HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR PERMITTEE'S BUSINESS AND INTENDED USE. PERMITTEE ACKNOWLEDGES AND AGREES THAT NEITHER PERMITTOR NOR ANY OF ITS AGENTS HAVE MADE, AND PERMITTOR HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR PERMITTEE'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**5. PRIMARY TERM.** Unless sooner terminated pursuant to the provisions hereof, the primary term of this Permit shall be for five (5) years commencing on the date the County Board of Supervisors shall have authorized the execution of the Permit, in its sole and absolute discretion ("Primary Term") subject to the Master Lease as specified in Section 3 of this Permit. Payment of the Base Permit Fee and System Replacement Special Assessment due hereunder shall commence on the date of commencement. In the event the Effective Date falls on a day other than the first day of a calendar month, said partial month, together with the first twelve (12) full calendar months, shall be deemed to be the first year of the Primary Term and each successive twelve (12) full calendar months shall be the successive year of the Term.

**6. EXTENDED TERM.** Subject to the limitations set forth in this section and the Master Lease as specified in Section 3 of this Permit, Permittee shall have the option to renew this Permit for a total of one additional five (5) year term beyond the primary term (the "Extended Term"). Said renewal shall be under the same terms, covenants and conditions as the initial agreement, except for adjustment of the Permit Fee as specified in Section 7(D) of this Permit, provided; however, if Permittee is in material default under this Permit on the date of giving such notice and fails to cure such default as set forth in Section 22, Permitter may reject such exercise by delivering written notice thereof to Permittee promptly after such failure to cure.

Notwithstanding anything to the contrary contained in this Permit, Permittee's right to extend the Primary Term by exercise of the foregoing option shall be conditioned upon the following:

- A. **NOTICE:** Permittee shall give Permitter written notice of its election to exercise its option not later than one hundred twenty (120) days prior to the expiration of the Primary Term.
- B. **ASSIGNMENT:** Except for the permitted assignment pursuant to Section 29 hereof (Assignment by Permittee), if all or a portion of the Premises under this Permit has been assigned, this option shall be deemed null and void and neither Permittee nor any assignee shall have the right to exercise such option during the term of such assignment.
- C. **CONTINUOUS OPERATION:** Permittee must have been in continuous operation in accordance with Section 4 herein (Use) except for reasonable periods of downtime and to the extent within Permittee's reasonable control during the Primary Term in effect at the time Permittee exercises its option.
- D. **PERMITTOR'S RIGHT TO TERMINATE OPTION:** In the event Permitter receives written notice from Permittee of Permittee's intent to exercise its Option to Extend, and Permitter determines, in its sole and absolute judgment, that the Premises or the Building have a more appropriate use including, but not limited to, any County or public use, the Permitter (or its authorized agent as set forth in Section 28), shall have the right to refuse to grant Permittee's option to extend by giving Permittee written notice within thirty (30) days of receipt of Permittee's notice exercising its Option to Extend, and this Permit shall terminate at the expiration of the Primary Term.

## 7. PERMIT FEE.

A. **BASE PERMIT FEE.** Subject to the adjustments hereinafter set forth, Permittee shall pay to Permitter in arrears, from legally available funds, without prior demand and without any deduction setoff or counterclaim whatsoever, as base Permit Fee for the Premises, the annual sum of SIXTEEN THOUSAND THREE HUNDRED EIGHTY THREE DOLLARS AND 24/100 (\$16,383.24) payable in equal monthly installments of ONE THOUSAND THREE HUNDRED SIXTY FIVE AND 27/100 DOLLARS (\$1,365.27) on or before the first day of each and every calendar month ("Base Permit Fee"). Within ten (10) days after the parties execute this Permit, Permittee shall pay to Permitter the Base Fee for the first full month. All payments shall be delivered to Permitter at the following address, or such other address as Permitter shall designate in writing to Permittee:

Information Services Department  
Accounts Receivable (Ref. No. 5220)  
455 County Center, 3rd Floor  
Redwood City, CA 94063

B. **PRORATED PERMIT FEE.** The Base Permit Fee and all other fees and charges for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of that calendar month.

C. **BASE PERMIT FEE ADJUSTMENT.** The permit fee payable by Permittee to Permitter hereunder shall be increased annually by two percent (2%) effective on each "Anniversary Date". By definition herein, the first Anniversary Date shall occur on the first day of the first full month following the first twelve (12) months after the Effective Date of the Primary Term. By example, if the Effective Date of this Permit is February 9, 2010, the first Anniversary Date for the permit fee adjustment would be March 1, 2011, and annually thereafter on each March 1<sup>st</sup> throughout the Primary Term, or any extensions thereof as provided in Section 6 herein (Extended Term) of this Permit.

Said adjusted Base Permit Fee shall be rounded in accordance with normal rounding practice to the closest dollar. In no event shall the adjusted Base Permit Fee be less than the permit fee in effect at the time of adjustment.

D. **EXTENDED TERM FEE ADJUSTMENT.** During the first year of the Extended Term as set forth in Section 6, the Base Permit Fee for the first year of the Extended Term shall be based upon the then current fair market permit fees for like space and shall be subject to adjustment commencing the second year of the Extended Term and each year thereafter of in accordance with Section 7 (C) above. Current fair market permit fee shall be established in accordance with the County's radio site equipment rates or any replacement schedule formulated by the County of San Mateo. The permit fee for the initial year of the Extended Term shall be determined and agreed to by both parties at least one hundred twenty (120) days prior to the commencement date of the Extended Term. If an agreement on fair market permit fees cannot be reached by the parties within sixty (60) days prior to the commencement date of the Extended Term, the Base Permit Fee for the Extended Term shall be the rate proposed by the Permitter provided, however, that Permittee may, at any time during the subsequent twelve months, terminate this Permit by giving

Permitter thirty (30) days written notice. If Permittee does not, within such twelve-month period, deliver to Permitter written notice of termination, this Permit shall continue in full force and effect for the entire Extended Term. All other terms and conditions of this Permit shall remain in full force and effect.

E. **LATE CHARGES.** Permittee hereby acknowledges that late payment by Permittee to Permitter of the Permit Fee or other sums due under the provisions of this Permit will cause Permitter to incur costs not contemplated by this Permit, the exact amount of which would be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices and accounting charges. Accordingly, if any installment of the Permit Fee or of any sum due from Permittee is not received by Permitter or postmarked within five (5) days after said amount is due, then Permittee shall pay to Permitter a late charge equal to five percent (5%) of the permit fee in effect at that time or Fifty Dollars (\$50.00), whichever is greater. A late charge shall be applied each month that the permit fee or any sum due is delinquent. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Permitter will incur by reason of the late payment by Permittee. Acceptance of late charges by Permitter shall in no event constitute a waiver of Permittee's default with respect to such overdue amount, nor prevent Permitter from exercising any of the other rights and remedies granted under the provisions of this Permit.

Any Fee, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Permittee nor on any amounts on which late charges are paid by Permittee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Permittee.

**8. SYSTEM REPLACEMENT SPECIAL ASSESSMENT.** In December 2003 the County completed replacement of the Emergency Services Microwave Network. Each user of the system will pay to the County of San Mateo an assessment for system replacement, which assessment is based on the number of channels used. The total assessment for the State of California in connection with this Permit is \$91,322.54 (the "Assessment"). The Assessment will be paid in arrears over the five-year term of this Agreement in sixty equal monthly installments of \$1,522.04 due on or before the first day of each and every calendar month, which sum shall be due in addition to the Base Permit Fee. In the event this Permit is terminated prior to the five-year term of this Agreement, the monthly installments shall cease and the Assessment shall be cancelled as of the termination date and no further debt incurred.

## **9. TERMINATION.**

- A. **BY PERMITTEE:** Permittee shall have the right to terminate this Permit at any time upon thirty (30) days prior written notice to Permitter.
- B. **BY PERMITTOR:** Permitter shall have the right to terminate this Permit at any time upon thirty (30) days prior written notice to Permittee only for any of the following reasons:

1. If Permittee's communication equipment causes interference with Permitter's communication equipment located on the Property and Permittee's communication equipment cannot be corrected, or
2. If Permitter determines that the Property or any portion thereof, including the Premises, has a more appropriate use including, but not limited to, any County or public use, or sale; or
3. If Permitter remains in default under Section 22 of this Permit after the applicable cure periods.

C. NOTICE. Upon termination as provided for under the terms of Section 9(A) herein (Termination by Permittee), or Section 9(B) herein (Termination By Permitter), neither party will owe the other party any further obligation under the terms of this Permit, except as may otherwise be specifically provided herein and except for Permittee's responsibility to remove all of Permittee's communications equipment from the Premises and restore the Premises to its original condition, as near as practicable, save and except normal wear and tear and acts beyond Permittee's control.

In the event of any damage to, destruction of or condemnation of all or any part of the Premises which renders the Premises unusable or inoperable, either party shall have the right, but not the obligation, to terminate this Permit and all of its duties and obligations hereunder by giving written notice to the other party within thirty (30) days after such damage, destruction or condemnation unless said damage was caused by the negligence or willful misconduct of the party issuing such notice. Permittee acknowledges that it has no property interest in the Premises and that Permitter alone shall be entitled to any condemnation proceeds paid as a result of any condemnation of the Premises. Upon the expiration or termination of this Permit for any reason, Permittee shall remove its equipment and all personal property in accordance with Section 18 hereof.

**10. HAZARDOUS MATERIALS ACTIVITY.** Permittee shall not store, handle or generate hazardous materials/waste/underground tanks on the Premises except for fuel, batteries, and solvents used in connection with an emergency generator and only in the event of disruption of electrical service to the Premises. In the event that Permittee does store, handle, or generate hazardous materials on the Premises, Permittee shall be deemed to be in breach of this Permit and shall be subject to such remedies as are available to Permitter under law, and as provided herein. Additionally, Permittee shall be liable for the payment of all costs of investigation and remediation of hazardous materials on the Premises that may be required in the event that Permittee does store, handle, or generate hazardous materials on the Premises.

Hazardous material means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the work place or the environment. Hazardous materials include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the work place or the environment. Examples of such hazardous materials are, but are not limited to: waste oil, solvents, gasoline and compressed gases.

Permitter represents and warrants to Permittee that there is no pending claim, lawsuits, proceeding or other legal, quasi-legal or administrative challenge concerning the Property or Premises, the operation thereof, or any condition existing thereon which relates to the presence of any Hazardous Materials in, under or around the Property. Permitter further represents and warrants, to the best of Permitter's knowledge, that there are no Hazardous Materials present in, on, under or around the Property and/or Premises in violation of any Applicable Law.

**11. NATURE OF PERMIT.** This Permit does NOT constitute the grant of a lease, deed, easement, or conveyance or transfer of any property interest.

**12. ACCESS.** Permittee agrees to coordinate all access to the premises through the County's Radio Services Supervisor at the following address:

Information Services, Radio Services Supervisors  
Telephone No. (650) 363-4443

**13. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS.** In the event of damage to or destruction of the Premises or any portion thereof by reason of the negligence or willful misconduct of Permittee, its agents, officers, employees or invitees, Permittee shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Premises at Permittee's sole cost.

**14. PERMITS.** Permitter acknowledges that Permittee will contact the appropriate governmental agencies for the purpose of obtaining all permits and approvals necessary for the construction, operation, and maintenance of Permittee's communication facility. Permitter agrees to fully cooperate with Permittee in obtaining the necessary permits and, without limiting the generality of the foregoing, to execute any applications, maps, certificates, or other documents that may be required in connection with the permits.

**15. MAINTENANCE.** Permittee expressly agrees to maintain the Premises of Permittee's area of the Building at Permittee's sole expense, in a safe, clean, wholesome, and sanitary condition, to the reasonable satisfaction of Permitter and in compliance with all laws, rules, and regulations applicable to Permittee's specific use thereof.

Permittee shall not allow any offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, nor any material detrimental to the public health to accumulate or remain on the Premises. It is expressly understood that Permitter shall have no responsibility whatsoever to make any improvements or repairs or perform any maintenance to Permittee's Premises.

**16. UTILITIES.** Permitter shall supply both commercial power and emergency power for operation of Permittee's equipment on the same basis as Permitter uses for its equipment at no additional cost to Permittee.

**17. ALTERATIONS OR ADDITIONS.** Permittee shall not make, construct, install or suffer to be made any alterations, additions (including antennas, wires, supports, poles or towers) or improvements to

or on the Premises, the monopole, or any part thereof, without the written consent of Permittor first had and obtained, except that Permittee may exchange or replace the communication equipment located on the Premises which has been previously approved by Permittor with similar equipment of substantially the same (or smaller) size and weight. In the event Permittor consents to the making of any alterations, additions or improvements to the Premises and/or the Building by Permittee, the same shall be made by Permittee at Permittee's sole expense.

**18. REMOVAL OF IMPROVEMENTS UPON EXPIRATION OR TERMINATION.** Upon the expiration, or termination of this Permit for any reason, including but not limited to bankruptcy, Permittee shall immediately (and in no event later than thirty (30) days after termination) remove from the Premises the Equipment and any other property placed on the Premises by Permittee or any of Permittee's Agents. Such removal shall be performed in such a manner as to not interfere with the continuing use of the Premises by Permittor and others. Permittee shall, at Permittee's sole expense, repair any damage to the Premises, or any facilities or equipment on the Premises, caused by such removal. Upon any failure of Permittee to remove the Equipment and any other possessions of Permittee pursuant to this Section, Permittor shall have the option, but not the obligation, to remove the Equipment from the Premises and store the Equipment, all at Permittee's expense, upon thirty (30) days advance written notice to Permittee. Any damages to the Equipment occasioned by such removal and storage are expressly waived by Permittee. Any Equipment so removed will be returned to Permittee upon payment in full of all removal and storage costs and any past due Permit Fees, plus an administrative charge equal to ten percent (10%) of the total of said removal, storage, and past due Permit Fee costs. Notwithstanding the foregoing, any Equipment not retrieved by Permittee within sixty (60) days after removal from the Premises by Permittor shall be deemed abandoned by Permittee and shall become the property of Permittor without further action by either party. Such abandonment shall not relieve Permittee of liability for the costs of removal and storage of the Equipment.

**19. FIXTURES.** Permittor covenants and agrees that no part of the improvements constructed, erected, or placed by Permittee on the Premises and/or Building or other real property owned by Permittor shall be or become, or be considered as being, affixed to, or a part of Permittor's real property, and any and all provisions and principles of law to the contrary withstanding, it being the specific intention of Permittor to covenant and agree that all improvements of every kind and nature constructed, erected, or placed by Permittee on the Premises or other real property owned by Permittor, shall be and remain the property of the Permittee except as provided in Section 18 herein (Removal of Improvement) of this Permit. Permittee has the right to remove all Permittee's Equipment at its sole expense on or before the expiration or termination of this Permit. Permittor acknowledges that Permittee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Permittee's Equipment (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith Permittor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Permittee's Equipment; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any permit fee due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

**20. EQUIPMENT CONFLICT.** Permittee agrees to use equipment of a type and frequency which will not cause interference with communications equipment currently under the operation and control of Permitter or any other communications provider under an existing Permit with Permitter as of the Effective Date hereof. If the Permitter's communication equipment involves public safety communications and if the Permittee's equipment causes any interference to public safety communications, the Permittee's equipment will be immediately taken out of service without exception by Permittee. If Permittee's equipment interferes with the Permitter's public safety communications, the determination to take out of service the Permittee's equipment shall be at the Permitter's sole discretion. Except as provided above:

- A. Permittee will not cause radio frequency and/or electrical interference to the existing equipment of Permitter or to any other occupant, tenant, or any other user ("Existing User") of the Property whose equipment was located at the Property upon the earlier of: (i) the Effective Date; or (ii) the date Permittee installs its Communications Equipment, provided that the equipment used by any Existing User or Permitter is operating within the technical parameters specified by its manufacturers and as defined by the FCC. Upon written notice from Permitter to Permittee of such interference, Permittee will take all reasonable steps to correct such interference in a timely manner. If such interference cannot be corrected within five (5) business days from receipt of Permitter's Notice, Permittee will cease using its Communications Equipment, except for testing, until such time as Permittee corrects the interference to Permitter's satisfaction. In the event Permittee cannot correct the interference, Permittee will have the option to terminate this Permit without further liability hereunder, upon (30) days written Notice to Permitter and Permittee shall remove its equipment in a timely manner and at Permittee's sole cost and expense.
- B. After the date of this Permit, Permitter will not grant a Permit to any other party for use of the Property or modify any existing agreement for use of the Property, or change its use of the Property or permit an existing occupant, tenant, permittee or other user of the Property to make any changes to its use of the Property, if such use would in any way materially adversely affect or interfere with the operation of Permittee's Communication Equipment. If another occupant, tenant, permittee or other user of the Property causes uncorrected radio frequency and/or electrical interference with Permittee's Communication Equipment, Permitter will require the party causing such interference to either correct such interference or stop using the equipment that is causing the interference. If the interference cannot be corrected within five (5) business days from receipt of Permittee's Notice, Permitter will cause the party creating the interference to cease using its equipment, except for testing, until the interference has been corrected. If after thirty (30) days such interference has not been completely corrected to Permittee's reasonable satisfaction, Permittee will have the option to terminate this Permit without further liability hereunder.
- C. Permittee shall not, subsequent to its initial installation of equipment, make any modification to its equipment or the use thereof during the Term that will cause radio frequency and/or electrical interference to the equipment of Permitter then in operation, nor to that of any other occupant, tenant, permittee or other user of the Building. Any such user in operation at the time of such modification or change in use shall be considered an Existing User as set forth in Section 20(A) above, and the provisions of that Section shall apply.



## 21. TAXES.

- A. REAL PROPERTY TAXES. Permitter shall pay all real property taxes, if any, levied against the Premises. Permittee shall pay its share of any general and special assessments, if any, to the extent assessed against the Premises as a result of Permittee's improvements thereto or use thereof during the term of this Permit.
- B. PERSONAL PROPERTY TAXES. Permittee shall pay, or cause to be paid, before delinquency, any and all taxes and assessments levied against Permittee's personal property in the Premises.

## 22. DEFAULT; REMEDIES

- A. EVENTS OF DEFAULT. Any of the following shall constitute an event of default (the "Event of Default") by Permittee 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 it is not feasible to cure such default within such 15-day period, Permittee shall have a reasonable period to complete such cure if Permittee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Permitter. Permitter shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Permittee during such 12-month period shall constitute an Event of Default hereunder;
  - 2. A vacation or abandonment of the Premises for a continuous period in excess of five (5) business days; or
  - 3. An appointment of a receiver to take possession of all or substantially all of the assets of Permittee, or an assignment by Permittee for the benefit of creditors, or any action taken or suffered by Permittee 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 Permitter 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. Permitter may terminate Permittee's right to possession of the Premises at any time by written notice to Permittee. Upon such termination in writing of Permittee's right to possession of the Premises, this Permit shall terminate and Permitter shall be entitled to recover damages from Permittee 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.

2. Permittor may continue this Permit in full force and effect and may enforce all of its rights and remedies under this Permit, including, but not limited to, the right to recover any fee as it becomes due.

3. During the continuance of an Event of Default, Permittor may enter the Premises without terminating this Permit and remove all Permittee's Personal Property, Alterations and trade fixtures from the Premises and store them at Permittee's risk and expense. If Permittor removes such property from the Premises and stores it at Permittee's risk and expense, and if Permittee fails to pay the cost of such removal and storage after written demand therefor and/or to pay any fee then due, then after the property has been stored for a period of thirty (30) days or more Permittor may sell such property at public or private sale, in the manner and at such times and places as Permittor deems commercially reasonable following reasonable notice to Permittee 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 any delinquent amount due under this Permit.

Permittee hereby waives all claims for damages that may be caused by Permittor's re-entering and taking possession of the Premises or removing and storing Permittee's Personal Property pursuant to this Section. No re-entry by Permittor shall constitute or be construed as a forcible entry by Permittor.

4. Permittor may require Permittee to remove any and all Alterations from the Premises or, if Permittee fails to do so within ten (10) days after Permittor's request, Permittor may do so at Permittee's expense.

C. **PERMITTOR'S DEFAULT.** Permittor shall not be considered to be in default under this Permit unless:

1. Permittee has given written notice specifying the default; and
2. Permittor has failed for thirty (30) days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective acts for defaults that cannot be reasonably cured within sixty (60) days.

This Permit may be terminated without further liability on thirty (30) days prior written notice by Permittee if Permittor does not cure a default as set forth herein.

**23. LIABILITY - VANDALISM.** Permittee agrees that Permittor shall not be responsible for any damage to Permittee's property due to vandalism or natural disasters or for the cost of repair or replacement thereof.

#### **24. INDEMNIFICATION AND INSURANCE.**

- A. State does hereby agree to indemnify and save Lessor harmless from any damage proximately caused by State, or arising out of, or in any way connected with the exercise by State of any rights herein granted or that may arise from use of the Premises by State, to the extent legally permissible by Government Code Section 14662.5 et seq. except to the extent that any such

damages or expenses suffered by Lessor are the result of any persons acting under or on behalf of Lessor; except where Lessor or State, as applicable, are found to have no liability by reason of any immunity arising by statute or common law.

If any party to this lease is held liable upon any judgment for damages caused to third parties by a negligent, intentional or wrongful act or omission occurring in the performance of this lease and pays excess of its pro rata share in satisfaction of such judgment, such party shall be entitled to contribution from the other party to this lease. The pro rata share of each party shall be determined according to the comparative fault of the respective party(ies), as between them.

- B. The State of California has elected to be insured for its motor vehicle and general liability exposures through a self-insurance program. The State Attorney General administers the general liability program through an annual appropriation from the General Fund. The Office of Risk and Insurance Management administers the motor vehicle liability program.

Under this form of insurance, the State and its employees (as defined in Section 810.2 Government Code) are insured for any tort liability that may develop through carrying out official activities, including State official operations on non State owned property. Should any claims arise by reason of such operations or under an official contract or license agreement, they should be referred to the: Attorney General, State of California, Tort Liability Section, 1300 I Street, Sacramento, California 95814. Claims arising from operations of a State owned vehicle should be forwarded to the: Office of Risk and Insurance Management, Auto Self Insurance, 707 Third Street, West Sacramento, California 95605.

The State of California has entered into a Master Agreement with the State Compensation Insurance Fund to administer worker compensation benefits for all State employees, as required by the Labor Code.

## **25. ENTRY BY PERMITTOR/PERMITTEE.**

- A. BY PERMITTEE. Subject to the provisions of Section 12 herein (Access) and Section 14 herein (Permits) of this Permit, Permittee has the right to enter the Premises at any time without prior notice being given to Permitter for the maintenance, operation, modification or addition of Permittee's existing communications facilities.
- B. BY PERMITTOR. Permitter reserves and shall have the right to enter the Premises at any and all reasonable times, to inspect same, supply any services to be provided by Permitter to Permittee hereunder, to show the Premises to any prospective purchasers or Permittees, to post notices of non-responsibility, and to alter, improve, repair or restore the Premises as Permitter may deem necessary or desirable, without abatement of permit fee, so long as Permitter does not unreasonably interfere with Permittee's operations. For each of the aforesaid purposes, Permitter shall at all times have and retain a key with which to unlock all of the gates and/or doors in, upon and about the Premises, excluding Permittee's vaults, cabinets, safes and files. Permitter's right to enter the Premises is subject to: (a) Permitter having given not less than twenty-four (24) hours prior notice to Permittee, and (b) an employee or agent of Permittee being present during each and any entry to the Premises.

C. **EMERGENCY - BY PERMITTOR.** Other provisions of this Section notwithstanding, in the event of an emergency, Permittor shall have the right to use any and all means which Permittor may deem proper to gain entry to the Premises without liability to Permittor except for any failure to exercise due care for Permittee's property. Any entry to the Premises obtained by Permittor by any said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Permittee from the Premises or any portion thereof.

**26. HOLDING OVER.** In the event that Permittee, with Permittor's consent, holds possession of the Premises or any portion thereof after the date upon which the Premises are to be surrendered, Permittee shall pay to Permittor a monthly permit fee increase of ten (10) percent above the monthly permit fee in effect upon the date of such expiration and otherwise subject to all provisions of this Permit except those pertaining to the duration of the term of this Permit or any extensions thereof. Permittee's use and occupancy will continue from month-to-month, at will, until terminated by Permittor or Permittee by the giving of thirty (30) days' written notice to the other. Nothing in this Section is to be construed as consent by Permittor to the occupancy or possession of the Premises by Permittee after the expiration of the term or any extension thereof.

**27. AUTHORIZED REPRESENTATIVE OF THE COUNTY OF SAN MATEO.** The County Manager, or the designee of the County Manager, shall be the only authorized agent of the County of San Mateo for purposes of giving any notices (including, but not limited to, termination under the terms hereof), enforcing any provision, or exercising any rights, options, privileges, or obligations of the County of San Mateo under this Permit. This Permit shall not be valid or have legal effect unless executed by the President of the Board of Supervisors of the County of San Mateo pursuant to a Resolution adopted in accordance with the California Government Code.

**28. NOTICE.** All notices or demands 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 follows:

Permittor:  
County of San Mateo  
County Manager's Office  
Real Property Division  
455 County Center, 4th Floor  
Redwood City, CA 94063  
Phone: (650) 363-4047

Permittee:  
State of California  
Department of General Services  
Real Estate Services Division  
Lease Management A 2882-001  
707 Third Street, 5<sup>th</sup> Floor  
West Sacramento, CA 95605  
Phone: (916) 375-4025  
Fax: (916) 375-4029

With a copy to:

California Highway Patrol  
Telecommunications Section  
Radio Systems Support Unit  
P.O. Box 942898  
Sacramento, CA 94298-0001  
Phone: (916) 375-2900  
Fax: (916) 375-2906

The address to which any notice or demand may be given to either party may be changed by written notice.

**29. ASSIGNMENT BY PERMITTEE.** The Permittee shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Permittee's interest in this Permit or in the Premises without Permitter's prior written consent. Any assignment or encumbrance without Permitter's consent shall be voidable and, at Permitter'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, Permittee shall have the right to assign this Permit, without Permitter's consent to any corporation which controls, is controlled by, or is under common control with Permittee, to any corporation resulting from merger or consolidation with Permittee, or to any partnership in which Permittee, the general partner of Permittee, or any corporation which controls, is controlled by, or is under common control with the general partner of Permittee, is a general partner, or to any person or entity which acquires substantially all of Permittee's assets, provided that such assignee assumes in full all of Permittee's obligations under this Permit. Notwithstanding anything to the contrary contained in this Agreement, Permittee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Permittee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

**30. 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 delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

**31. ENTIRE AGREEMENT AND BINDING EFFECT.** This Permit and any attached exhibits, as signed by the parties hereto, constitute the entire agreement between Permitter and Permittee; no prior written promises, and no prior, contemporaneous or subsequent, oral promises or representations shall be binding. This Permit shall not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience only and neither limit nor amplify the provisions of this instrument. The provisions of this Permit shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of said Permitter and Permittee. This Permit shall not be effective or binding on any party until fully executed by both parties hereto.

**32. RESERVATIONS.** This Permit shall at all time be subject to such rights-of-way for such sewers, pipe lines, conduits, and for such telephone, telegraph, light, heat or power lines, as shall have been duly established or as may from time to time be reasonably determined by Permitter.

This Permit is subsequent to and subject to all prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever as the same appear on record in the office of the County Recorder, County of San Mateo, State of California. Permittee covenants not to disturb the quiet and peaceful enjoyment of any and all parties having any legal right, title, interest or privilege in and to the Premises

and that the use of the Premises by Permittee shall at all times be conducted with proper regard for such rights, titles, interests and privileges.

### **33. LIENS.**

- A. Permittee shall keep the Property free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Permittee.
- B. If any lien is filed against the Property as a result of the acts or omissions of Permittee, or Permittee's employees, agents, or contractors, Permittee must discharge the lien or bond the lien off in a manner reasonably satisfactory to Permitter within thirty (30) days after Permittee receives written notice from any party that the lien has been filed.
- C. If Permittee fails to discharge or bond any lien within such period, then, in addition to any other right or remedy of Permitter, Permitter may, at Permitter's election, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding, or by such other methods reasonably acceptable to Permitter provided that such methods are specified in writing by Permitter to Permittee.
- D. Permittee must pay on demand any amount paid by Permitter for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of Permitter incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary disbursements in connection therewith.

**34. SAN MATEO COUNTY NO SMOKING ORDINANCE.** Permittee acknowledges that on April 18, 2006, the County of San Mateo modified its Ordinance Code, adopting Section 4.96.040, which prohibits smoking in all County facilities whether owned or leased. Permittee understands that said Ordinance authorizes County to enforce the provisions contained therein and Permittee agrees to enforce the provisions of said ordinance on the Premises.

### **35. GENERAL PROVISIONS.**

- A. **COMPLIANCE WITH LAW.** Permittee shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Permittee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Permittee in any action against Permittee, whether Permitter be a party thereto or not, that Permittee has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Permitter and Permittee.
- B. **RULES AND REGULATIONS.** Permittee shall faithfully observe and comply with the rules and regulations that Permitter shall from time to time promulgate. Permitter reserves the right from time to time to make all reasonable modifications to said rules. The additions and modifications to those rules shall be binding upon Permittee upon delivery of a copy of them to

Permittee. Permitter shall not be responsible to Permittee for the nonperformance of any said rules by any other Permittees or occupants, or the public.

C. AUTHORITY OF PARTIES.

1. Corporate Authority. If either party hereto is a corporation, each party executing this Permit on behalf of the corporation represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of the corporation or in accordance with the by-laws of the corporation, and that this Permit is binding upon the corporation in accordance with its terms.

2. Partnership. If either party hereto is a partnership or other unincorporated association, each party executing this Permit on behalf of the partnership or other association represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of the partnership or association, in accordance with the partnership agreement or the agreement of said association.

D. WAIVER. The waiver by either party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of the permit fee hereunder by Permitter shall not be deemed to be a waiver of any preceding breach by Permittee of any term, covenant or condition of this Permit, other than the failure of the Permittee to pay the particular permit fee so accepted, regardless of Permitter's knowledge of such preceding breach at the time of the acceptance of such permit fee.

E. JOINT OBLIGATION. "Party" shall mean Permitter or Permittee; and if there be more than one Permittee or Permitter, the obligations hereunder imposed upon Permittees or Permitters shall be joint and several.

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

G. RECORDATION. Neither Permitter nor Permittee shall record this Permit, except that if either party requests the other party to do so, the parties shall execute a short form memorandum hereof in recordable form.

H. QUIET POSSESSION. Upon Permittee paying the permit fee and other fees or charges reserved hereunder and observing and performing all of the terms, covenants and conditions on Permittee's part to be observed and performed hereunder, Permittee shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Permit.

I. INABILITY TO PERFORM. This Permit and the obligations of Permittee hereunder shall not be affected or impaired because Permitter is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of Permitter.

J. NEGATION OF PARTNERSHIP. Permitter shall not become or be deemed a partner or a joint venturer with Permittee by reasons of the provisions of this Permit.

- K. **SALE OR TRANSFER OF PREMISES.** In the event of any sale or transfer of the Premises, Permitter shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Permit arising out of any act, occurrence or omission occurring after the consummation of such sale or transfer; and the purchaser or transferee, at such sale or transfer or any subsequent sale or transfer of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties or their successors in interest or between the parties and any such purchaser or transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of Permitter under this Permit.
- L. **NAME.** Permittee shall not use the name of the Premises or of the development, building or facility in which the Premises may be situated for any purpose other than as an address of the business to be conducted by Permittee in the Premises.
- M. **SEPARABILITY.** 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.
- N. **CUMULATIVE REMEDIES.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- O. **SIGNS AND AUCTIONS.** Permittee shall not place any sign upon the Premises or conduct any auction thereon without Permitter's prior written consent.
- P. **PROVISIONS, COVENANTS AND CONDITIONS.** All provisions herein, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.
- Q. **CAPTIONS, TABLE OF CONTENTS.** The captions and the Table of Contents of this Permit (if any) shall have no effect on the interpretation of this Permit.
- R. **PAYMENTS IN U.S. MONEY.** Permit fee and all sums payable under this Permit must be paid in lawful money of the United States of America.
- S. **SINGULAR AND PLURAL.** When required by the context of this Permit, the singular shall include the plural.
- T. **CHOICE OF LAW.** This Permit shall be construed, interpreted and governed in accordance with the laws of the State of California.
- U. **VENUE.** The venue for any court action to interpret or enforce this Agreement or to litigate any claim arising out of this Agreement shall be held in State Court of the County of San Mateo.

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

PERMITTEE:

STATE OF CALIFORNIA  
Department of General Services

Date 2-4-10

By Mike Butler, FIR  
MIKE BUTLER  
Assistant Section Chief

Approval Recommended:  
Department of General Services  
Real Estate Services Division

By Beth Blair  
BETH BLAIR  
Senior Real Estate Officer

PERMITTOR:

COUNTY OF SAN MATEO

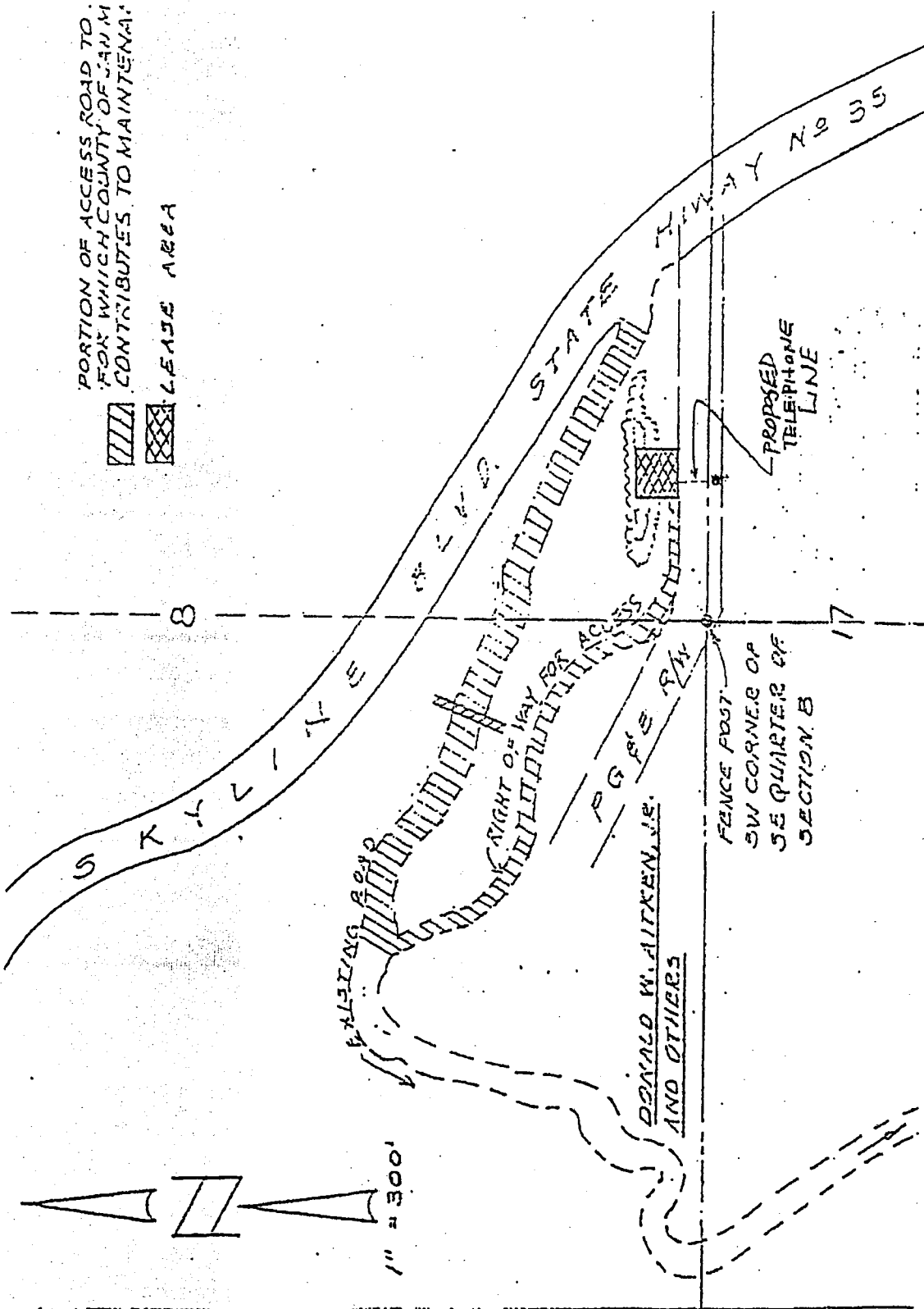
Date \_\_\_\_\_

By \_\_\_\_\_  
RICHARD S. GORDON  
President, Board of Supervisors

ATTEST:

Clerk of the Board

Exhibit "A"



ACCESS ROAD (20-foot-wide easement)  
to Ralph Mt. Repeater Station

**COUNTY OF SAN MATEO**

**PERMIT AGREEMENT**

**(No. 5219)**

**North Peak Radio Station Communication Site**

**PERMITTEE: CALIFORNIA HIGHWAY PATROL**

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**NO. 5219**

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EXHIBIT A

# PERMIT AGREEMENT

No. 5219

## NORTH PEAK RADIO STATION COMMUNICATION SITE

- 1. PARTIES.** This Permit Agreement ("Permit"), dated for reference purposes only this 23rd day of February, 2010, is made by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County" or "Permitter"), and the STATE OF CALIFORNIA, acting by and through its Director of the Department of General Services ("State" or "Permittee" or "Contractor"). Permitter and Permittee agree as follows:
- 2. PREMISES.** The County of San Mateo was granted a revocable permit by the City and County of San Francisco Public Utilities Commission to erect, operate, and maintain a radio communications antenna and appurtenant building commonly known as the County of San Mateo North Peak Communication Site, and more particularly described in Exhibit "A" which is attached hereto and made a part hereof (the "Building").

The State is hereby granted permission to use a portion of the Building as herein described and to maintain the following equipment in the Building and on the County's existing antenna tower:

One 100-watt transmitter on 42.08 Mhz and one 100-watt transmitter on 42.34 Mhz both with CTCSS 131.8 Hz.

Space for one simulcast transmitter equipment rack (2'L x 2'W x 7.5'H)

Space for one link receiver/power supply equipment rack (2'L x 2'W x 7.5'H)

Space for two transmitter cavities (2'L x 2'W x 7.5'H)

Space for one transmitter antenna 18 feet long, spaced 6 feet from tower, located on the south or southeast side of the tower, between 40 feet and 50 feet above ground level.

Space for one link receiver directional antenna with an azimuth of 37.9 MN to Mt. Diablo, located at the 20' level.

One 20 ampere, 120 volt A.C. circuit with a duplex outlet.

Seven (7) microwave mux circuits as follows:

Simul 3/23/95 cast TX (Amber), Simulcast CTCSS TX (Amber), Maintenance & Alarm (Amber TX/RX), Mode 3 (Amber TX), Remote Alignment (TX/RX), Maintenance & Alarm (Blue TX/RX) and Mode 3 (Blue TX/Voter RX).

and shall install no other equipment without the prior written consent of Permittor. Maintenance of Permittee's equipment shall be coordinated with and at the direction of the Permittor's Communication Systems Manager.

**3. PERMIT SUBJECT TO MASTER PERMIT.** Permittee acknowledges that this Permit is subject to the terms and conditions of the permit between the County and the City and County of San Francisco Public Utilities Commission. Should the master permit be terminated for any reason during the term of this Permit, this Permit shall be immediately terminated.

**4. USE.** Permittee may use and occupy the Premises for the maintenance and operation of a wireless communication site, and for no other equipment or purposes without the prior written consent of Permittor, which consent shall not be unreasonably withheld, conditioned or delayed.

Permittee acknowledges that, subject to the limitations set forth in Section 20 (Equipment Conflict) but otherwise without effecting the rights and obligations of the Parties hereunder, Permittor may, in its sole discretion, grant to other operators the right to install and use similar facilities in the Building.

Permittee shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein, which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises, the Building or any of its contents, or cause cancellation of any insurance policy covering the Premises, the Building, or any part thereof or any of its contents. Permittee shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Permittee cause, maintain or permit any nuisance in, on or about the Premises or the Building. Permittee shall not commit or suffer to be committed any waste in or upon the Premises or the Building.

PERMITTEE ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. PERMITTEE REPRESENTS AND WARRANTS TO PERMITTOR THAT PERMITTEE HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF PERMITTEE'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR PERMITTEE'S INTENDED USE. PERMITTEE HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR PERMITTEE'S BUSINESS AND INTENDED USE. PERMITTEE ACKNOWLEDGES AND AGREES THAT NEITHER PERMITTOR NOR ANY OF ITS AGENTS HAVE MADE, AND PERMITTOR HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR PERMITTEE'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**5. PRIMARY TERM.** Unless sooner terminated pursuant to the provisions hereof, the primary term of this Permit shall be for five (5) years commencing on the date the County Board of Supervisors shall have authorized the execution of the Permit, in its sole and absolute discretion ("Primary Term") subject to the Master Permit as specified in Section 3 of this Permit. Payment of the Base Permit Fee and System Replacement Special Assessment due hereunder shall commence on the date of commencement. In the event the Effective Date falls on a day other than the first day of a calendar month, said partial month, together with the first twelve (12) full calendar months, shall be deemed to be the first year of the Primary Term and each successive twelve (12) full calendar months shall be the successive year of the Term.

**6. EXTENDED TERM.** Subject to the limitations set forth in this section and the Master Permit as specified in Section 3 of this Permit, Permittee shall have the option to renew this Permit for a total of one additional five (5) year term beyond the primary term (the "Extended Term"). Said renewal shall be under the same terms, covenants and conditions as the initial agreement, except for adjustment of the Permit Fee as specified in Section 7(D) of this Permit, provided; however, if Permittee is in material default under this Permit on the date of giving such notice and fails to cure such default as set forth in Section 22, Permitter may reject such exercise by delivering written notice thereof to Permittee promptly after such failure to cure.

Notwithstanding anything to the contrary contained in this Permit, Permittee's right to extend the Primary Term by exercise of the foregoing option shall be conditioned upon the following:

- A. **NOTICE:** Permittee shall give Permitter written notice of its election to exercise its option not later than one hundred twenty (120) days prior to the expiration of the Primary Term.
- B. **ASSIGNMENT:** Except for the permitted assignment pursuant to Section 29 hereof (Assignment by Permittee), if all or a portion of the Premises under this Permit has been assigned, this option shall be deemed null and void and neither Permittee nor any assignee shall have the right to exercise such option during the term of such assignment.
- C. **CONTINUOUS OPERATION:** Permittee must have been in continuous operation in accordance with Section 4 herein (Use) except for reasonable periods of downtime and to the extent within Permittee's reasonable control during the Primary Term in effect at the time Permittee exercises its option.
- D. **PERMITTOR'S RIGHT TO TERMINATE OPTION:** In the event Permitter receives written notice from Permittee of Permittee's intent to exercise its Option to Extend, and Permitter determines, in its sole and absolute judgment, that the Premises or the Building have a more appropriate use including, but not limited to, any County or public use, the Permitter (or its authorized agent as set forth in Section 28), shall have the right to refuse to grant Permittee's option to extend by giving Permittee written notice within thirty (30) days of receipt of Permittee's notice exercising its Option to Extend, and this Permit shall terminate at the expiration of the Primary Term.

## 7. PERMIT FEE.

A. **BASE PERMIT FEE.** Subject to the adjustments hereinafter set forth, Permittee shall pay to Permitter in arrears, from legally available funds, without prior demand and without any deduction setoff or counterclaim whatsoever, as base Permit Fee for the Premises, the annual sum of SEVENTEEN THOUSAND THREE HUNDRED SEVENTY SEVEN DOLLARS AND 92/100 (\$17,377.92) payable in equal monthly installments of ONE THOUSAND FOUR HUNDRED FORTY EIGHT DOLLARS AND 16/100 DOLLARS (\$1,448.16) on or before the first day of each and every calendar month ("Base Permit Fee"). Within ten (10) days after the parties execute this Permit; Permittee shall pay to Permitter the Base Fee for the first full month. All payments shall be delivered to Permitter at the following address, or such other address as Permitter shall designate in writing to Permittee:

Information Services Department  
Accounts Receivable (Ref. No. 5219)  
455 County Center, 3rd Floor  
Redwood City, CA 94063

- B. **PRORATED PERMIT FEE.** The Base Permit Fee and all other fees and charges for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of that calendar month.
- C. **BASE PERMIT FEE ADJUSTMENT.** The permit fee payable by Permittee to Permitter hereunder shall be increased annually by two percent (2%) effective on each "Anniversary Date". By definition herein, the first Anniversary Date shall occur on the first day of the first full month following the first twelve (12) months after the Effective Date of the Primary Term. By example, if the Effective Date of this Permit is February 9, 2010, the first Anniversary Date for the permit fee adjustment would be March 1, 2011, and annually thereafter on each March 1<sup>st</sup> throughout the Primary Term, or any extensions thereof as provided in Section 6 herein (Extended Term) of this Permit.

Said adjusted Base Permit Fee shall be rounded in accordance with normal rounding practice to the closest dollar. In no event shall the adjusted Base Permit Fee be less than the permit fee in effect at the time of adjustment.

- D. **EXTENDED TERM FEE ADJUSTMENT.** During the first year of the Extended Term as set forth in Section 6, the Base Permit Fee for the first year of the Extended Term shall be based upon the then current fair market permit fees for like space and shall be subject to adjustment commencing the second year of the Extended Term and each year thereafter of in accordance with Section 7 (C) above. Current fair market permit fee shall be established in accordance with the County's radio site equipment rates or any replacement schedule formulated by the County of San Mateo. The permit fee for the initial year of the Extended Term shall be determined and agreed to by both parties at least one hundred twenty (120) days prior to the commencement date of the Extended Term. If an agreement on fair market permit fees cannot be reached by the parties within sixty (60) days prior to the commencement date of the Extended Term, the Base Permit Fee for the Extended Term shall be the rate proposed by the Permitter provided, however, that Permittee may, at any time during the subsequent twelve months, terminate this Permit by giving



Permitter thirty (30) days written notice. If Permittee does not, within such twelve-month period, deliver to Permitter written notice of termination, this Permit shall continue in full force and effect for the entire Extended Term. All other terms and conditions of this Permit shall remain in full force and effect.

- E. **LATE CHARGES.** Permittee hereby acknowledges that late payment by Permittee to Permitter of the Permit Fee or other sums due under the provisions of this Permit will cause Permitter to incur costs not contemplated by this Permit, the exact amount of which would be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices and accounting charges. Accordingly, if any installment of the Permit Fee or of any sum due from Permittee is not received by Permitter or postmarked within five (5) days after said amount is due, then Permittee shall pay to Permitter a late charge equal to five percent (5%) of the permit fee in effect at that time or Fifty Dollars (\$50.00), whichever is greater. A late charge shall be applied each month that the permit fee or any sum due is delinquent. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Permitter will incur by reason of the late payment by Permittee. Acceptance of late charges by Permitter shall in no event constitute a waiver of Permittee's default with respect to such overdue amount, nor prevent Permitter from exercising any of the other rights and remedies granted under the provisions of this Permit.

Any Fee, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Permittee nor on any amounts on which late charges are paid by Permittee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Permittee.

**8. SYSTEM REPLACEMENT SPECIAL ASSESSMENT.** In December 2003 the County completed replacement of the Emergency Services Microwave Network. Each user of the system will pay to the County of San Mateo an assessment for system replacement, which assessment is based on the number of channels used. The total assessment for the State of California in connection with this Permit is \$94,969.67 (the "Assessment"). The Assessment will be paid in arrears over the five-year term of this Agreement in sixty equal monthly installments of \$1,582.83 due on or before the first day of each and every calendar month, which sum shall be due in addition to the Base Permit Fee. In the event this Permit is terminated prior to the five-year term of this Agreement, the monthly installments shall cease and the Assessment shall be cancelled as of the termination date and no further debt incurred.

## **9. TERMINATION.**

- A. **BY PERMITTEE:** Permittee shall have the right to terminate this Permit at any time upon thirty (30) days prior written notice to Permitter.
- B. **BY PERMITTOR:** Permitter shall have the right to terminate this Permit at any time upon thirty (30) days prior written notice to Permittee only for any of the following reasons:

1. If Permittee's communication equipment causes interference with Permitter's communication equipment located on the Property and Permittee's communication equipment cannot be corrected, or
2. If Permitter determines that the Property or any portion thereof, including the Premises, has a more appropriate use including, but not limited to, any County or public use, or sale; or
3. If Permitter remains in default under Section 22 of this Permit after the applicable cure periods.

C. NOTICE. Upon termination as provided for under the terms of Section 9(A) herein (Termination by Permittee), or Section 9(B) herein (Termination By Permitter), neither party will owe the other party any further obligation under the terms of this Permit, except as may otherwise be specifically provided herein and except for Permittee's responsibility to remove all of Permittee's communications equipment from the Premises and restore the Premises to its original condition, as near as practicable, save and except normal wear and tear and acts beyond Permittee's control.

In the event of any damage to, destruction of or condemnation of all or any part of the Premises which renders the Premises unusable or inoperable, either party shall have the right, but not the obligation, to terminate this Permit and all of its duties and obligations hereunder by giving written notice to the other party within thirty (30) days after such damage, destruction or condemnation unless said damage was caused by the negligence or willful misconduct of the party issuing such notice. Permittee acknowledges that it has no property interest in the Premises and that Permitter alone shall be entitled to any condemnation proceeds paid as a result of any condemnation of the Premises. Upon the expiration or termination of this Permit for any reason, Permittee shall remove its equipment and all personal property in accordance with Section 18 hereof.

**10. HAZARDOUS MATERIALS ACTIVITY.** Permittee shall not store, handle or generate hazardous materials/waste/underground tanks on the Premises except for fuel, batteries, and solvents used in connection with an emergency generator and only in the event of disruption of electrical service to the Premises. In the event that Permittee does store, handle, or generate hazardous materials on the Premises, Permittee shall be deemed to be in breach of this Permit and shall be subject to such remedies as are available to Permitter under law, and as provided herein. Additionally, Permittee shall be liable for the payment of all costs of investigation and remediation of hazardous materials on the Premises that may be required in the event that Permittee does store, handle, or generate hazardous materials on the Premises.

Hazardous material means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the work place or the environment. Hazardous materials include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the work place or the environment.

Examples of such hazardous materials are, but are not limited to: waste oil, solvents, gasoline and compressed gases.

Permitter represents and warrants to Permittee that there is no pending claim, lawsuits, proceeding or other legal, quasi-legal or administrative challenge concerning the Property or Premises, the operation thereof, or any condition existing thereon which relates to the presence of any Hazardous Materials in, under or around the Property. Permitter further represents and warrants, to the best of Permitter's knowledge, that there are no Hazardous Materials present in, on, under or around the Property and/or Premises in violation of any Applicable Law.

**11. NATURE OF PERMIT.** This Permit does NOT constitute the grant of a lease, deed, easement, or conveyance or transfer of any property interest.

**12. ACCESS.** Permittee agrees to coordinate all access to the premises through the County's Radio Services Supervisor at the following address:

Information Services, Radio Services Supervisors  
Telephone No. (650) 363-4443

**13. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS.** In the event of damage to or destruction of the Premises or any portion thereof by reason of the negligence or willful misconduct of Permittee, its agents, officers, employees or invitees, Permittee shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Premises at Permittee's sole cost.

**14. PERMITS.** Permitter acknowledges that Permittee will contact the appropriate governmental agencies for the purpose of obtaining all permits and approvals necessary for the construction, operation, and maintenance of Permittee's communication facility. Permitter agrees to fully cooperate with Permittee in obtaining the necessary permits and, without limiting the generality of the foregoing, to execute any applications, maps, certificates, or other documents that may be required in connection with the permits.

**15. MAINTENANCE.** Permittee expressly agrees to maintain the Premises of Permittee's area of the Building at Permittee's sole expense, in a safe, clean, wholesome, and sanitary condition, to the reasonable satisfaction of Permitter and in compliance with all laws, rules, and regulations applicable to Permittee's specific use thereof.

Permittee shall not allow any offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, nor any material detrimental to the public health to accumulate or remain on the Premises. It is expressly understood that Permitter shall have no responsibility whatsoever to make any improvements or repairs or perform any maintenance to Permittee's Premises.

**16. UTILITIES.** Permitter shall supply both commercial power and emergency power for operation of Permittee's equipment on the same basis as Permitter uses for its equipment at no additional cost to Permittee.

**17. ALTERATIONS OR ADDITIONS.** Permittee shall not make, construct, install or suffer to be made any alterations, additions (including antennas, wires, supports, poles or towers) or improvements to or on the Premises, the monopole, or any part thereof, without the written consent of Permittor first had and obtained, except that Permittee may exchange or replace the communication equipment located on the Premises which has been previously approved by Permittor with similar equipment of substantially the same (or smaller) size and weight. In the event Permittor consents to the making of any alterations, additions or improvements to the Premises and/or the Building by Permittee, the same shall be made by Permittee at Permittee's sole expense.

**18. REMOVAL OF IMPROVEMENTS UPON EXPIRATION OR TERMINATION.** Upon the expiration, or termination of this Permit for any reason, including but not limited to bankruptcy, Permittee shall immediately (and in no event later than thirty (30) days after termination) remove from the Premises the Equipment and any other property placed on the Premises by Permittee or any of Permittee's Agents. Such removal shall be performed in such a manner as to not interfere with the continuing use of the Premises by Permittor and others. Permittee shall, at Permittee's sole expense, repair any damage to the Premises, or any facilities or equipment on the Premises, caused by such removal. Upon any failure of Permittee to remove the Equipment and any other possessions of Permittee pursuant to this Section, Permittor shall have the option, but not the obligation, to remove the Equipment from the Premises and store the Equipment, all at Permittee's expense, upon thirty (30) days advance written notice to Permittee. Any damages to the Equipment occasioned by such removal and storage are expressly waived by Permittee. Any Equipment so removed will be returned to Permittee upon payment in full of all removal and storage costs and any past due Permit Fees, plus an administrative charge equal to ten percent (10%) of the total of said removal, storage, and past due Permit Fee costs. Notwithstanding the foregoing, any Equipment not retrieved by Permittee within sixty (60) days after removal from the Premises by Permittor shall be deemed abandoned by Permittee and shall become the property of Permittor without further action by either party. Such abandonment shall not relieve Permittee of liability for the costs of removal and storage of the Equipment.

**19. FIXTURES.** Permittor covenants and agrees that no part of the improvements constructed, erected, or placed by Permittee on the Premises and/or Building or other real property owned by Permittor shall be or become, or be considered as being, affixed to, or a part of Permittor's real property, and any and all provisions and principles of law to the contrary withstanding, it being the specific intention of Permittor to covenant and agree that all improvements of every kind and nature constructed, erected, or placed by Permittee on the Premises or other real property owned by Permittor, shall be and remain the property of the Permittee except as provided in Section 18 herein (Removal of Improvement) of this Permit. Permittee has the right to remove all Permittee's Equipment at its sole expense on or before the expiration or termination of this Permit. Permittor acknowledges that Permittee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Permittee's Equipment (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith Permittor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Permittee's Equipment; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress

for any permit fee due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

**20. EQUIPMENT CONFLICT.** Permittee agrees to use equipment of a type and frequency which will not cause interference with communications equipment currently under the operation and control of Permitter or any other communications provider under an existing Permit with Permitter as of the Effective Date hereof. If the Permitter's communication equipment involves public safety communications and if the Permittee's equipment causes any interference to public safety communications, the Permittee's equipment will be immediately taken out of service without exception by Permittee. If Permittee's equipment interferes with the Permitter's public safety communications, the determination to take out of service the Permittee's equipment shall be at the Permitter's sole discretion. Except as provided above:

- A. Permittee will not cause radio frequency and/or electrical interference to the existing equipment of Permitter or to any other occupant, tenant, or any other user ("Existing User") of the Property whose equipment was located at the Property upon the earlier of: (i) the Effective Date; or (ii) the date Permittee installs its Communications Equipment, provided that the equipment used by any Existing User or Permitter is operating within the technical parameters specified by its manufacturers and as defined by the FCC. Upon written notice from Permitter to Permittee of such interference, Permittee will take all reasonable steps to correct such interference in a timely manner. If such interference cannot be corrected within five (5) business days from receipt of Permitter's Notice, Permittee will cease using its Communications Equipment, except for testing, until such time as Permittee corrects the interference to Permitter's satisfaction. In the event Permittee cannot correct the interference, Permittee will have the option to terminate this Permit without further liability hereunder, upon (30) days written Notice to Permitter and Permittee shall remove its equipment in a timely manner and at Permittee's sole cost and expense.
- B. After the date of this Permit, Permitter will not grant a Permit to any other party for use of the Property or modify any existing agreement for use of the Property, or change its use of the Property or permit an existing occupant, tenant, permittee or other user of the Property to make any changes to its use of the Property, if such use would in any way materially adversely affect or interfere with the operation of Permittee's Communication Equipment. If another occupant, tenant, permittee or other user of the Property causes uncorrected radio frequency and/or electrical interference with Permittee's Communication Equipment, Permitter will require the party causing such interference to either correct such interference or stop using the equipment that is causing the interference. If the interference cannot be corrected within five (5) business days from receipt of Permittee's Notice, Permitter will cause the party creating the interference to cease using its equipment, except for testing, until the interference has been corrected. If after thirty (30) days such interference has not been completely corrected to Permittee's reasonable satisfaction, Permittee will have the option to terminate this Permit without further liability hereunder.
- C. Permittee shall not, subsequent to its initial installation of equipment, make any modification to its equipment or the use thereof during the Term that will cause radio frequency and/or electrical interference to the equipment of Permitter then in operation, nor to that of any other occupant, tenant, permittee or other user of the Building. Any such user in operation at the time of such

modification or change in use shall be considered an Existing User as set forth in Section 20(A) above, and the provisions of that Section shall apply.

## **21. TAXES.**

- A. **REAL PROPERTY TAXES.** Permitter shall pay all real property taxes, if any, levied against the Premises. Permittee shall pay its share of any general and special assessments, if any, to the extent assessed against the Premises as a result of Permittee's improvements thereto or use thereof during the term of this Permit.
- B. **PERSONAL PROPERTY TAXES.** Permittee shall pay, or cause to be paid, before delinquency, any and all taxes and assessments levied against Permittee's personal property in the Premises.

## **22. DEFAULT; REMEDIES**

- A. **EVENTS OF DEFAULT.** Any of the following shall constitute an event of default (the "Event of Default") by Permittee 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 it is not feasible to cure such default within such 15-day period, Permittee shall have a reasonable period to complete such cure if Permittee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Permitter. Permitter shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Permittee during such 12-month period shall constitute an Event of Default hereunder;

- 2. A vacation or abandonment of the Premises for a continuous period in excess of five (5) business days; or

- 3. An appointment of a receiver to take possession of all or substantially all of the assets of Permittee, or an assignment by Permittee for the benefit of creditors, or any action taken or suffered by Permittee 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 Permitter 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. Permitter may terminate Permittee's right to possession of the Premises at any time by written notice to Permittee. Upon such termination in writing of Permittee's right to possession of the Premises, this Permit shall terminate and Permitter shall be entitled to recover damages from Permittee 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.

2. Permitter may continue this Permit in full force and effect and may enforce all of its rights and remedies under this Permit, including, but not limited to, the right to recover any fee as it becomes due.

3. During the continuance of an Event of Default, Permitter may enter the Premises without terminating this Permit and remove all Permittee's Personal Property, Alterations and trade fixtures from the Premises and store them at Permittee's risk and expense. If Permitter removes such property from the Premises and stores it at Permittee's risk and expense, and if Permittee fails to pay the cost of such removal and storage after written demand therefor and/or to pay any fee then due, then after the property has been stored for a period of thirty (30) days or more Permitter may sell such property at public or private sale, in the manner and at such times and places as Permitter deems commercially reasonable following reasonable notice to Permittee 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 any delinquent amount due under this Permit.

Permittee hereby waives all claims for damages that may be caused by Permitter's re-entering and taking possession of the Premises or removing and storing Permittee's Personal Property pursuant to this Section. No re-entry by Permitter shall constitute or be construed as a forcible entry by Permitter.

4. Permitter may require Permittee to remove any and all Alterations from the Premises or, if Permittee fails to do so within ten (10) days after Permitter's request, Permitter may do so at Permittee's expense.

C. **PERMITTOR'S DEFAULT.** Permitter shall not be considered to be in default under this Permit unless:

1. Permittee has given written notice specifying the default; and
2. Permitter has failed for thirty (30) days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective acts for defaults that cannot be reasonably cured within sixty (60) days.

This Permit may be terminated without further liability on thirty (30) days prior written notice by Permittee if Permitter does not cure a default as set forth herein.

**23. LIABILITY - VANDALISM.** Permittee agrees that Permitter shall not be responsible for any damage to Permittee's property due to vandalism or natural disasters or for the cost of repair or replacement thereof.

**24. INDEMNIFICATION AND INSURANCE.**

- A. State does hereby agree to indemnify and save Lessor harmless from any damage proximately caused by State, or arising out of, or in any way connected with the exercise by State of any rights herein granted or that may arise from use of the Premises by State, to the extent legally permissible by Government Code Section 14662.5 et seq. except to the extent that any such

damages or expenses suffered by Lessor are the result of any persons acting under or on behalf of Lessor; except where Lessor or State, as applicable, are found to have no liability by reason of any immunity arising by statute or common law.

If any party to this lease is held liable upon any judgment for damages caused to third parties by a negligent, intentional or wrongful act or omission occurring in the performance of this lease and pays excess of its pro rata share in satisfaction of such judgment, such party shall be entitled to contribution from the other party to this lease. The pro rata share of each party shall be determined according to the comparative fault of the respective party(ies), as between them.

- B. The State of California has elected to be insured for its motor vehicle and general liability exposures through a self-insurance program. The State Attorney General administers the general liability program through an annual appropriation from the General Fund. The Office of Risk and Insurance Management administers the motor vehicle liability program.

Under this form of insurance, the State and its employees (as defined in Section 810.2 Government Code) are insured for any tort liability that may develop through carrying out official activities, including State official operations on non State owned property. Should any claims arise by reason of such operations or under an official contract or license agreement, they should be referred to the: Attorney General, State of California, Tort Liability Section, 1300 I Street, Sacramento, California 95814. Claims arising from operations of a State owned vehicle should be forwarded to the: Office of Risk and Insurance Management, Auto Self Insurance, 707 Third Street, West Sacramento, California 95605.

The State of California has entered into a Master Agreement with the State Compensation Insurance Fund to administer worker compensation benefits for all State employees, as required by the Labor Code.

## **25. ENTRY BY PERMITTOR/PERMITTEE.**

- A. BY PERMITTEE. Subject to the provisions of Section 12 herein (Access) and Section 14 herein (Permits) of this Permit, Permittee has the right to enter the Premises at any time without prior notice being given to Permittor for the maintenance, operation, modification or addition of Permittee's existing communications facilities.
- B. BY PERMITTOR. Permittor reserves and shall have the right to enter the Premises at any and all reasonable times, to inspect same, supply any services to be provided by Permittor to Permittee hereunder, to show the Premises to any prospective purchasers or Permittees, to post notices of non-responsibility, and to alter, improve, repair or restore the Premises as Permittor may deem necessary or desirable, without abatement of permit fee, so long as Permittor does not unreasonably interfere with Permittee's operations. For each of the aforesaid purposes, Permittor shall at all times have and retain a key with which to unlock all of the gates and/or doors in, upon and about the Premises, excluding Permittee's vaults, cabinets, safes and files. Permittor's right to enter the Premises is subject to: (a) Permittor having given not less than twenty-four (24) hours prior notice to Permittee, and (b) an employee or agent of Permittee being present during each and any entry to the Premises.



C. **EMERGENCY - BY PERMITTOR.** Other provisions of this Section notwithstanding, in the event of an emergency, Permittor shall have the right to use any and all means which Permittor may deem proper to gain entry to the Premises without liability to Permittor except for any failure to exercise due care for Permittee's property. Any entry to the Premises obtained by Permittor by any said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Permittee from the Premises or any portion thereof.

**26. HOLDING OVER.** In the event that Permittee, with Permittor's consent, holds possession of the Premises or any portion thereof after the date upon which the Premises are to be surrendered, Permittee shall pay to Permittor a monthly permit fee increase of ten (10) percent above the monthly permit fee in effect upon the date of such expiration and otherwise subject to all provisions of this Permit except those pertaining to the duration of the term of this Permit or any extensions thereof. Permittee's use and occupancy will continue from month-to-month, at will, until terminated by Permittor or Permittee by the giving of thirty (30) days' written notice to the other. Nothing in this Section is to be construed as consent by Permittor to the occupancy or possession of the Premises by Permittee after the expiration of the term or any extension thereof.

**27. AUTHORIZED REPRESENTATIVE OF THE COUNTY OF SAN MATEO.** The County Manager, or the designee of the County Manager, shall be the only authorized agent of the County of San Mateo for purposes of giving any notices (including, but not limited to, termination under the terms hereof), enforcing any provision, or exercising any rights, options, privileges, or obligations of the County of San Mateo under this Permit. This Permit shall not be valid or have legal effect unless executed by the President of the Board of Supervisors of the County of San Mateo pursuant to a Resolution adopted in accordance with the California Government Code.

**28. NOTICE.** All notices or demands 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 follows:

Permittor:  
County of San Mateo  
County Manager's Office  
Real Property Division  
455 County Center, 4th Floor  
Redwood City, CA 94063  
Phone: (650) 363-4047

Permittee:  
State of California  
Department of General Services  
Real Estate Services Division  
Lease Management A 2891-003  
707 Third Street, 5<sup>th</sup> Floor  
West Sacramento, CA 95605  
Phone: (916) 375-4025  
Fax: (916) 375-4029

With a copy to:

California Highway Patrol  
Telecommunications Section  
Radio Systems Support Unit  
P.O. Box 942898  
Sacramento, CA 94298-0001  
Phone: (916) 375-2900  
Fax: (916) 375-2906

The address to which any notice or demand may be given to either party may be changed by written notice.

**29. ASSIGNMENT BY PERMITTEE.** The Permittee shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Permittee's interest in this Permit or in the Premises without Permitter's prior written consent. Any assignment or encumbrance without Permitter's consent shall be voidable and, at Permitter'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, Permittee shall have the right to assign this Permit, without Permitter's consent to any corporation which controls, is controlled by, or is under common control with Permittee, to any corporation resulting from merger or consolidation with Permittee, or to any partnership in which Permittee, the general partner of Permittee, or any corporation which controls, is controlled by, or is under common control with the general partner of Permittee, is a general partner, or to any person or entity which acquires substantially all of Permittee's assets, provided that such assignee assumes in full all of Permittee's obligations under this Permit. Notwithstanding anything to the contrary contained in this Agreement, Permittee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Permittee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

**30. 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 delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

**31. ENTIRE AGREEMENT AND BINDING EFFECT.** This Permit and any attached exhibits, as signed by the parties hereto, constitute the entire agreement between Permitter and Permittee; no prior written promises, and no prior, contemporaneous or subsequent, oral promises or representations shall be binding. This Permit shall not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience only and neither limit nor amplify the provisions of this instrument. The provisions of this Permit shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of said Permitter and Permittee. This Permit shall not be effective or binding on any party until fully executed by both parties hereto.

**32. RESERVATIONS.** This Permit shall at all time be subject to such rights-of-way for such sewers, pipe lines, conduits, and for such telephone, telegraph, light, heat or power lines, as shall have been duly established or as may from time to time be reasonably determined by Permittor.

This Permit is subsequent to and subject to all prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever as the same appear on record in the office of the County Recorder, County of San Mateo, State of California. Permittee covenants not to disturb the quiet and peaceful enjoyment of any and all parties having any legal right, title, interest or privilege in and to the Premises and that the use of the Premises by Permittee shall at all times be conducted with proper regard for such rights, titles, interests and privileges.

**33. LIENS.**

- A. Permittee shall keep the Property free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Permittee.
- B. If any lien is filed against the Property as a result of the acts or omissions of Permittee, or Permittee's employees, agents, or contractors, Permittee must discharge the lien or bond the lien off in a manner reasonably satisfactory to Permittor within thirty (30) days after Permittee receives written notice from any party that the lien has been filed.
- C. If Permittee fails to discharge or bond any lien within such period, then, in addition to any other right or remedy of Permittor, Permittor may, at Permittor's election, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding, or by such other methods reasonably acceptable to Permittor provided that such methods are specified in writing by Permittor to Permittee.
- D. Permittee must pay on demand any amount paid by Permittor for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of Permittor incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary disbursements in connection therewith.

**34. SAN MATEO COUNTY NO SMOKING ORDINANCE.** Permittee acknowledges that on April 18, 2006, the County of San Mateo modified its Ordinance Code, adopting Section 4.96.040, which prohibits smoking in all County facilities whether owned or leased. Permittee understands that said Ordinance authorizes County to enforce the provisions contained therein and Permittee agrees to enforce the provisions of said ordinance on the Premises.

**35. GENERAL PROVISIONS.**

- A. **COMPLIANCE WITH LAW.** Permittee shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Permittee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the

Premises. The judgment of any court of competent jurisdiction or the admission of Permittee in any action against Permittee, whether Permitter be a party thereto or not, that Permittee has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Permitter and Permittee.

B. RULES AND REGULATIONS. Permittee shall faithfully observe and comply with the rules and regulations that Permitter shall from time to time promulgate. Permitter reserves the right from time to time to make all reasonable modifications to said rules. The additions and modifications to those rules shall be binding upon Permittee upon delivery of a copy of them to Permittee. Permitter shall not be responsible to Permittee for the nonperformance of any said rules by any other Permittees or occupants, or the public.

C. AUTHORITY OF PARTIES.

1. Corporate Authority. If either party hereto is a corporation, each party executing this Permit on behalf of the corporation represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of the corporation or in accordance with the by-laws of the corporation, and that this Permit is binding upon the corporation in accordance with its terms.

2. Partnership. If either party hereto is a partnership or other unincorporated association, each party executing this Permit on behalf of the partnership or other association represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of the partnership or association, in accordance with the partnership agreement or the agreement of said association.

D. WAIVER. The waiver by either party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of the permit fee hereunder by Permitter shall not be deemed to be a waiver of any preceding breach by Permittee of any term, covenant or condition of this Permit, other than the failure of the Permittee to pay the particular permit fee so accepted, regardless of Permitter's knowledge of such preceding breach at the time of the acceptance of such permit fee.

E. JOINT OBLIGATION. "Party" shall mean Permitter or Permittee; and if there be more than one Permittee or Permitter, the obligations hereunder imposed upon Permittees or Permitters shall be joint and several.

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

G. RECORDATION. Neither Permitter nor Permittee shall record this Permit, except that if either party requests the other party to do so, the parties shall execute a short form memorandum hereof in recordable form.

H. QUIET POSSESSION. Upon Permittee paying the permit fee and other fees or charges reserved hereunder and observing and performing all of the terms, covenants and conditions on Permittee's

part to be observed and performed hereunder, Permittee shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Permit.

- I. **INABILITY TO PERFORM.** This Permit and the obligations of Permittee hereunder shall not be affected or impaired because Permitter is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of Permitter.
- J. **NEGATION OF PARTNERSHIP.** Permitter shall not become or be deemed a partner or a joint venturer with Permittee by reasons of the provisions of this Permit.
- K. **SALE OR TRANSFER OF PREMISES.** In the event of any sale or transfer of the Premises, Permitter shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Permit arising out of any act, occurrence or omission occurring after the consummation of such sale or transfer; and the purchaser or transferee, at such sale or transfer or any subsequent sale or transfer of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties or their successors in interest or between the parties and any such purchaser or transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of Permitter under this Permit.
- L. **NAME.** Permittee shall not use the name of the Premises or of the development, building or facility in which the Premises may be situated for any purpose other than as an address of the business to be conducted by Permittee in the Premises.
- M. **SEPARABILITY.** 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.
- N. **CUMULATIVE REMEDIES.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- O. **SIGNS AND AUCTIONS.** Permittee shall not place any sign upon the Premises or conduct any auction thereon without Permitter's prior written consent.
- P. **PROVISIONS, COVENANTS AND CONDITIONS.** All provisions herein, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.
- Q. **CAPTIONS, TABLE OF CONTENTS.** The captions and the Table of Contents of this Permit (if any) shall have no effect on the interpretation of this Permit.
- R. **PAYMENTS IN U.S. MONEY.** Permit fee and all sums payable under this Permit must be paid in lawful money of the United States of America.
- S. **SINGULAR AND PLURAL.** When required by the context of this Permit, the singular shall include the plural.
- T. **CHOICE OF LAW.** This Permit shall be construed, interpreted and governed in accordance with the laws of the State of California.
- U. **VENUE.** The venue for any court action to interpret or enforce this Agreement or to litigate any claim arising out of this Agreement shall be held in State Court of the County of San Mateo.

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

PERMITTEE:

STATE OF CALIFORNIA  
Department of General Services

Date 2-4-10

By Mike Butler, For  
MIKE BUTLER  
Assistant Section Chief

Approval Recommended:  
Department of General Services  
Real Estate Services Division

By Beth Blair  
BETH BLAIR  
Senior Real Estate Officer

PERMITTOR:

Date \_\_\_\_\_

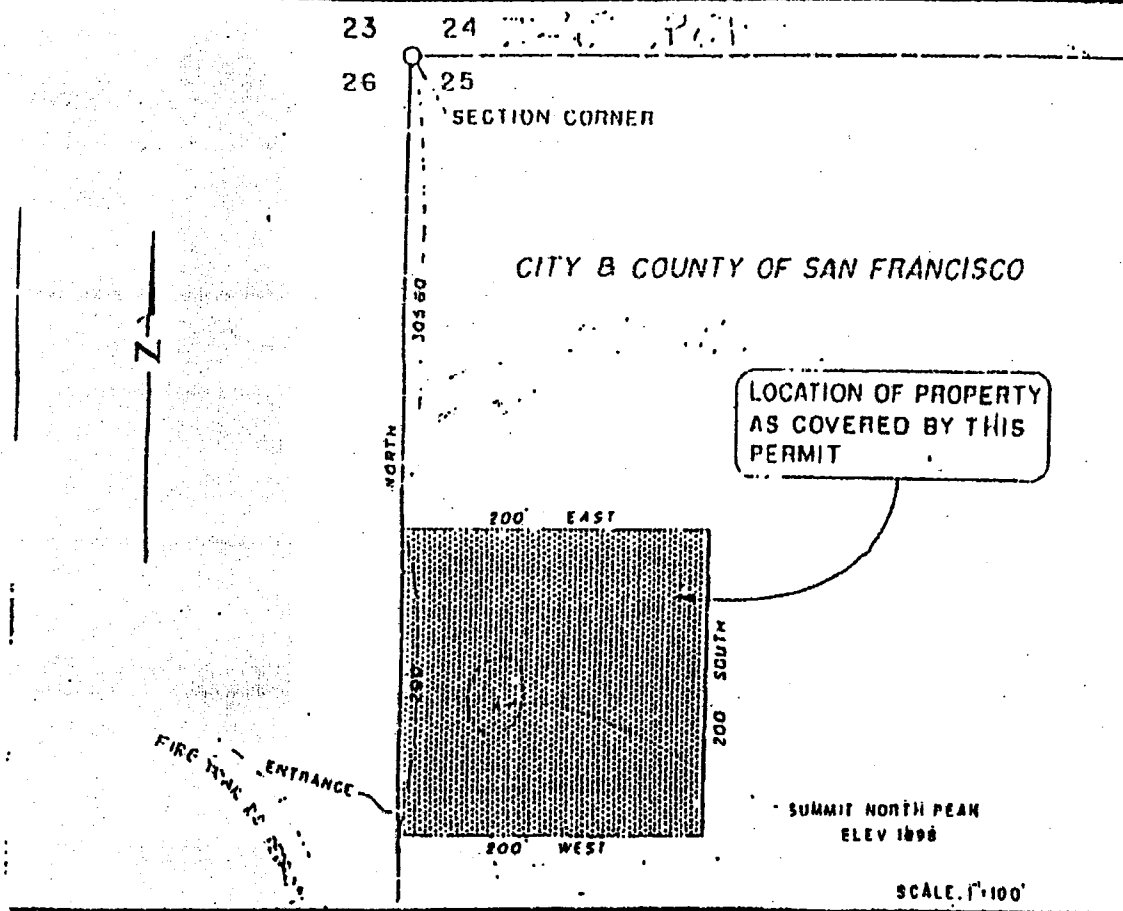
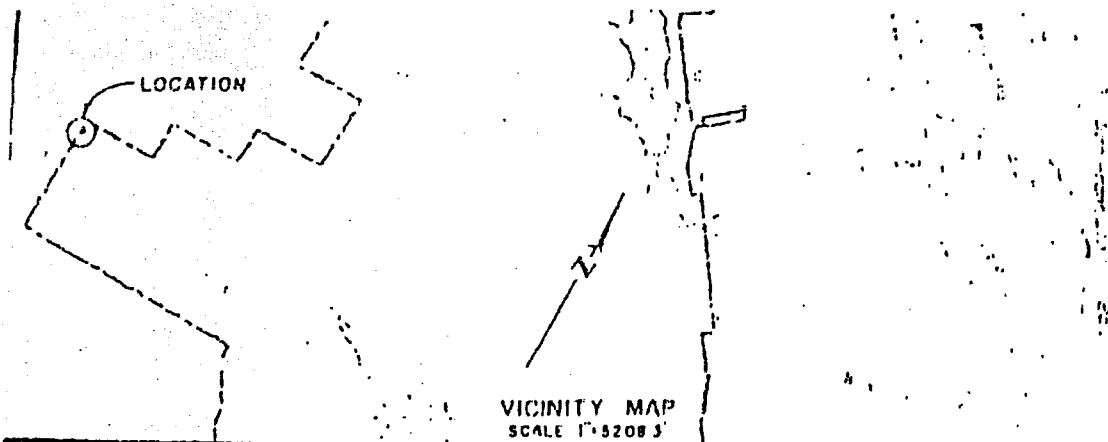
COUNTY OF SAN MATEO

By \_\_\_\_\_  
RICHARD S. GORDON  
President, Board of Supervisors

ATTEST:

Clerk of the Board

Exhibit "A"



CITY AND COUNTY OF SAN FRANCISCO  
 PUBLIC UTILITIES COMMISSION  
 SAN FRANCISCO WATER DEPARTMENT

REVOCABLE PERMIT TO COUNTY OF SAN MATEO  
 FOR RADIO COMMUNICATION SITE

PENINSULA WATERSHED

SAN MATEO CO.

APPROVED <i>[Signature]</i>	SCALE <i>[Signature]</i>	BY TH. J. O.	DN. CH.	DRAWING NO. B-2496
GENERAL MANAGER AND CHIEF ENGINEER		DATE 3-11-63	<i>[Signature]</i>	