



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Manager's Office



DATE: September 22, 2011
BOARD MEETING DATE: October 4, 2011
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Steve Alms, Manager, Real Property Division

SUBJECT: Ground Lease with NSMG California LLC, a Delaware limited liability company, of a portion of Skylawn Memorial Park located at 10600 Skyline Blvd in San Mateo, for the use of an existing communications facility. (Lease No. 1293)

RECOMMENDATION:

Adopt a Resolution authorizing the:

1. President of the Board of Supervisors to execute a Ground Lease with NSMG California LLC, a Delaware limited liability company, of a portion of Skylawn Memorial Park located at 10600 Skyline Blvd in San Mateo, for the use of an existing communications facility, for a term of three years commencing retroactively to June 1, 2010 and expiring May 31, 2013 at an initial monthly base rent of \$2,520, increasing to \$2,700 per month effective June 1, 2011, with 3% annual increases thereafter; and
2. County Manager or his designee to accept or execute notices, options and documents associated with the Lease including, but not limited to, extension or termination of the Lease under the terms set forth therein.

BACKGROUND:

In 2000, the County Information Services Department constructed several new emergency communication sites, including one at Skylawn Memorial Park, as part of the Countywide upgrade of the public safety communications system. The construction of the Skylawn site was completed concurrently with negotiations for a lease, which negotiations stretched over more than a year and were never completed. The County has utilized the site since completion of construction without an executed agreement in place. In June 2010, the property was sold to NSMG, and at that time the County was approached by the former owners about the incomplete agreement and payment for the past use of the facility. The County and NSMG desired to enter into an agreement to govern the ongoing use of the site, while ISD, County Counsel and Real Property Services work with NSMG and the former owners on the settlement of the County's past use. NSMG is also working on a long-term master plan for Skylawn Memorial Park, and desires that the County identifies a new site on their property to relocate the communications facility to make way for their future development plans.

DISCUSSION:

Real Property Services has negotiated a Ground Lease for a term of three years, commencing retroactively to June 1, 2010 and expiring May 31, 2013. The back rent for the period June 1, 2010 through October 31, 2011 totals \$43,740 and will be paid as a lump-sum upon execution of the lease. The current monthly base rent of \$2,700 is subject to 3% annual increases each June 1.

The Information Services Department is currently working with the Landlord to identify an appropriate location to relocate the site. Once an alternative location has been identified, Real Property Services will negotiate a new lease and upon completion of construction of the new site, the existing Lease will be terminated.

County Counsel has reviewed and approved the Lease and Resolution as to form. The Chief Information Officer concurs in this recommendation.

Approval of the Permit contributes to the Shared Vision 2025 outcome of a Healthy Community by establishing an agreement that allows the County of San Mateo to continue to provide emergency and communication services to personnel in the region.

FISCAL IMPACT:

The back rent of \$43,740 and current base rent of \$2,700 per month are included in the adopted FY 2011-12 budget of the Information Services Department.

cc:/enc: Glenn Levy, Deputy County Counsel
cc: Chris Flatmoe, Chief information Officer
Eugene Whitlock, Deputy County Counsel

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

**RESOLUTION AUTHORIZING THE 1) PRESIDENT OF THE BOARD OF SUPERVISORS TO EXECUTE A GROUND LEASE WITH NSMG CALIFORNIA LLC, A DELAWARE LIMITED LIABILITY COMPANY, OF A PORTION OF SKYLAWN MEMORIAL PARK LOCATED AT 10600 SKYLINE BLVD IN SAN MATEO, FOR THE USE OF AN EXISTING COMMUNICATIONS FACILITY, FOR A TERM OF THREE YEARS COMMENCING RETROACTIVELY TO JUNE 1, 2010 AND EXPIRING MAY 31, 2013 AT AN INITIAL MONTHLY BASE RENT OF \$2,520, INCREASING TO \$2,700 PER MONTH EFFECTIVE JUNE 1, 2011, WITH 3% ANNUAL INCREASES THEREAFTER; AND 2) COUNTY MANAGER OR HIS DESIGNEE TO ACCEPT OR EXECUTE NOTICES, OPTIONS AND DOCUMENTS ASSOCIATED WITH THE LEASE INCLUDING, BUT NOT LIMITED TO, EXTENSION OR TERMINATION OF THE LEASE UNDER THE TERMS SET FORTH THEREIN.
(LEASE NO. 1293)**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, since 2000, the County has utilized an emergency communications facility constructed at Skylawn Memorial Park in San Mateo, and

WHEREAS, in June 2010, the property was sold to NSMG California LLC, and NSMG requested that County enter into a lease agreement for the continued use of the facility, and

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance a Ground Lease, reference to which is hereby made for further particulars, whereby the County of San Mateo shall lease from NSMG California LLC, a Delaware limited liability company, a portion of Skylawn Memorial Park located at 10600 Skyline Blvd in San Mateo, for the use of an existing communications facility, for a term of three years commencing retroactively to June 1, 2010 and expiring May 31, 2013 at an initial monthly base rent of \$2,520, increasing to \$2,700 per month effective June 1, 2011, in accordance with the terms and conditions contained in the Lease, and

WHEREAS, this Board has been presented with the Ground Lease and has examined and approved same as to both form and content and desires to enter into same.

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors be, and is hereby, authorized and directed to execute said Lease Agreement for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature thereto; and

IT IS FURTHER DETERMINED AND ORDERED that the County Manager or his designee is hereby authorized to accept or execute on behalf of the County, any and all notices, options and documents associated with the Lease including, but not limited to, extension or termination of the Lease under the terms set forth therein.

* * * * *

GROUND LEASE

(No. 1293)

between

NSMG CALIFORNIA, LLC
as Landlord

and

COUNTY OF SAN MATEO,
as Tenant

For the lease of a portion of:

Skylawn Memorial Park
10600 Skyline Blvd
San Mateo, California

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EXHIBIT A -- Site Plan

GROUND LEASE
NO. 1293

THIS GROUND LEASE (this "Lease"), dated for reference purposes only as of October 4, 2011, is between NSMG CALIFORNIA, LLC, a Delaware limited liability company doing business as the LIFEMARK GROUP ("Landlord"), and the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County" or "Tenant").

Landlord and Tenant hereby covenant and agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	October 4, 2011
Landlord:	NSMG CALIFORNIA, LLC, a Delaware limited liability company
Tenant:	COUNTY OF SAN MATEO, a political subdivision of the State of California (and permitted successors and assigns)
Property (Section 2.1):	That certain real property being assessor's parcel 056-550-020, commonly known as Skylawn Memorial Park, located at 10600 Skyline Blvd, San Mateo, California
Premises (Section 2.1):	A portion of the Property as shown on the site plan(s) attached as <u>Exhibit A</u> .
Term (Section 3.1):	Commencement date: June 1, 2010; Expiration date: May 31, 2013
Base Rent (Section 4.1):	Monthly Base Rent: \$ 2,520.00 per month for the period June 1, 2010 to May 31, 2011; \$2,700.00 per month commencing June 1, 2011.

Rent Adjustment Dates (Section 4.2):	The Base Rent shall be adjusted on the first anniversary of June 1, 2011, and each successive anniversary date during the term.
Use (Section 5.1):	Removal, replacement, maintenance, and operation of a wireless communication site.
Tenant Improvements (Section 6.1):	The Leasehold Improvements as set forth and described in Section 6 hereof..
Utilities and Services (Section 10.1):	Tenant shall pay the cost of all utilities provided to the Premises for the benefit of Tenant, and for all services required by Tenant.
Security Deposit (Section 23):	None
Notice Address of Landlord (Section 27.1):	1900 St. James Place, Suite 300 Houston, Texas 77056
Key Contact for Landlord:	General Counsel
Telephone No.:	(832) 308-2783
Alternate Contact for Landlord:	Chief Financial Officer
Telephone No.:	(832) 308-2794
Address for Tenant (Section 27.1):	County Manager Attn: Real Property Services 455 County Center, 4 th Floor Redwood City, California 94063
	Fax No.: (650) 363-4832
With a copy to:	Office of County Counsel 400 County Center, 6 th Floor Redwood City, California 94063
	Fax No.: (650) 363-4034
Key Contact for Tenant:	Radio Services Supervisor
Telephone No.:	(650) 599-1069

Telephone No.:	(650) 599-1069
Alternate Contact for Tenant:	Real Property Services Manager
Telephone No.:	(650) 363-4047
Brokers (Section 27.8):	None
Other Noteworthy Provisions:	None

2. PREMISES; AS IS CONDITION

2.1. Lease Premises

Subject to the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord those premises identified in the Basic Lease Information and shown on the site plan(s) attached hereto as Exhibit A (the "Premises"). The Premises are located on the Property specified in the Basic Lease Information. Tenant shall have the non-exclusive right of access to and from the Premises by the main entrances to the Property and further defined in Section 21 (Access). In connection with its use of the Premises, and for the Term of this Lease, Landlord grants Tenant a non-exclusive and non-possessory license for the placement and use of wiring and conduit, as shown in Exhibit A. It is the intent of the Parties that the License hereby granted shall be co-terminus with the Lease.

2.2. As Is Condition

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED (AND THE PROPERTY WHICH IS THE SUBJECT OF THE LICENSE) 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. TENANT REPRESENTS AND WARRANTS TO LANDLORD THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE PROPERTY AND THE SUITABILITY OF THE PREMISES AND THE PROPERTY FOR TENANT'S INTENDED USE. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES AND THE PROPERTY ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER LANDLORD NOR ANY OF ITS AGENTS HAVE MADE, AND LANDLORD HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PREMISES OR THE PROPERTY, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES OR THE PROPERTY FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES OR

PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. TERM

3.1. Lease Term

The Premises are leased for a term (the "Term") commencing and ending as specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease. Landlord shall deliver the Premises to Tenant in their then existing as is condition as further provided above, with no obligation of the Landlord to make any improvements, repairs or alterations, except as otherwise specifically provided herein.

3.2. Redevelopment and Tenant Relocation

Tenant acknowledges that (i) Landlord intends to redevelop Landlord's Property, including the Premises, for use in Landlord's primary business (the "Redevelopment"), (ii) such Redevelopment may require the removal of Tenant's communications facility from the Premises, and (iii) in connection with such Redevelopment, Landlord may (but shall not be obligated to) offer Tenant the opportunity to lease space elsewhere on Landlord's Property to install a wireless communications facility similar to Tenant's installation as of the date hereof. In the event (a) Landlord elects to commence the Redevelopment and (b) the parties are not in the process of negotiating a new lease or an amendment to this Lease for the purpose of providing Tenant with a long term right to operate its communications facility at the new location, Landlord shall have the right and option to terminate this Lease upon not less than one hundred eighty (180) days prior written notice to Tenant. If Landlord exercises such right and option to terminate the Lease early, the Lease and Tenant's right to possession of the Premises hereunder shall end upon the termination date specified in the notice of termination (but not prior to the expiration of the applicable notice period) delivered by Landlord with the same effect as if said termination date had been the scheduled expiration date as specified in the Basic Lease Information.

4. RENT

4.1. Base Rent

Immediately upon the execution and delivery of this Lease by each of Landlord and Tenant, Tenant shall pay to Landlord an amount equal to all rent payable under this lease from the Commencement Date through the date of such execution and delivery. Thereafter, Tenant shall pay to Landlord the annual Base Rent specified in the Basic Lease Information, provided that such sum shall be subject to escalation pursuant to Section 4.2 (Adjustments in Base Rent) (the "Base Rent"). The Base Rent shall be paid to Landlord in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to Landlord hereunder shall be paid at the primary address for

Landlord specified in the Basic Lease Information, or such other place as Landlord may designate in writing. If the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. Within thirty (30) days after the parties execute this Lease, Tenant shall pay to Landlord the Base Rent for the first full month.

4.2.Adjustments in Base Rent

On each date specified in the Basic Lease Information for adjustment of the Base Rent (an "Adjustment Date"), the Base Rent for the following twelve-month period shall be adjusted to equal one hundred and three percent (103%) of the Base Rent for the lease year preceding such Adjustment Date.

4.3.Additional Charges

Tenant shall pay to Landlord any and all charges and other amounts required under this Lease as additional rent (collectively, "Additional Charges"). All such Additional Charges shall be payable to Landlord at the same place and the same manner as the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. As used in this Lease, the term "Rent" shall include the Base Rent, Additional Charges and any other amounts Tenant is obligated to pay hereunder, whether or not any such amounts are specifically characterized as rent.

4.4.Late Charges

If Tenant fails to pay any Rent or any portion of Rent within five (5) days following the due date, such unpaid amount shall be subject to a late payment charge of Fifty Dollars (\$50.00) in each instance. The late payment charge has been agreed upon by Landlord and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Landlord will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Landlord for its damages resulting from such failure to pay and shall be paid to Landlord together with such unpaid amount.

4.5.Default Interest

Any Rent, 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 Tenant nor on any amounts on which late charges are paid by Tenant 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 Tenant.

5. USE

5.1. Permitted Use

Tenant shall use and occupy the Premises during the Term solely for the removal, replacement, maintenance, and operation of a wireless communication facility and for such other uses, if any, as may be specified in the Basic Lease Information, and for no other purpose.

5.2. No Unlawful Uses, Nuisances or Waste

Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises or the Property. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises or on or about the Property except identification signs in a location and size and design approved by Landlord in its sole discretion.

6. TENANT IMPROVEMENTS

6.1. Tenant Improvement Work

Landlord and Tenant acknowledge and agree that Tenant currently operates and maintains the existing improvements on the Premises in accordance with the plans attached as Exhibit A, which are hereby approved by Landlord. Tenant shall obtain the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, for any modifications to the Premises not shown in Exhibit A; provided, however, unless required by local, state, or federal law, Landlord's approval for modification to the Premises not shown in Exhibit A shall not be required in connection with modifications that consist of replacements or upgrades of "like-kind" equipment which is comparable in dimensions and weight and wholly contained within Tenant's equipment shelter and/or cabinets. Tenant shall obtain all necessary governmental approvals and permits prior to commencing any improvements or modifications, and shall provide Landlord with ten (10) days written notice prior to the start of construction. All contractors and subcontractors of Tenant for work performed at the Premises shall be duly licensed by the State of California, and all work shall be performed in a good, safe and workmanlike manner.

Prior to the installation and use of additional equipment at the Premises, Tenant must obtain any and all licenses required in order to operate the site for the intended use. Copies of said license(s) shall be provided by Tenant to Landlord upon receipt by Tenant.

7. ALTERATIONS

7.1.Tenant's Alterations

Tenant shall not make or permit any alterations to the Property, and shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "Alterations"), in, to or about the Premises, without Landlord's prior written consent in each instance, except as set forth in Section 16 (Co-location). All Alterations shall be done at Tenant's expense in accordance with plans and specifications approved by Landlord, only by duly licensed and bonded contractors or mechanics approved by Landlord, and subject to any conditions that Landlord may reasonably impose.

7.2.Title to Improvements

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, at Landlord's sole option, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, the Tenant Improvements and any Alterations, shall be and remain Landlord's property. Tenant may not remove any such property at any time during or after the Term unless Landlord so requests as further provided in Section 25 (Surrender of Premises), below.

7.3.Tenant's Personal Property

All trade fixtures, equipment and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to Landlord, and that can be removed without damage to the Property (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 24 (Surrender of Premises), below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to Landlord upon request. Landlord acknowledges that Tenant may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Tenant's Personal Property (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 Tenant's Personal Property; (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.

8. REPAIRS AND MAINTENANCE

8.1.Tenant's Repairs

Tenant, at no expense to Landlord, shall maintain the Premises in good order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all necessary repairs and replacements: (a) at no cost to the Landlord, (b) by licensed contractors or qualified mechanics, (c) so that the same shall be at least equal in quality, value and utility to the original work or installation, (d) in accordance with all applicable laws, rules and regulations.

9. LIENS AND ENCUMBRANCES

9.1.Liens

Tenant shall keep the Premises and Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Landlord by Tenant upon demand. Landlord shall have the right to post on the Premises any notices that Landlord may deem proper for the protection of Landlord, and the Premises, from mechanics' and materialmen's liens. Tenant shall give to Landlord at least fifteen (15) days' prior written notice of commencement of any improvement, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold Landlord and its Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

9.2.Encumbrances

Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Property or Landlord's interest therein or under this Lease.

10. UTILITIES AND SERVICES

10.1. Utilities and Services

Tenant shall be responsible for the cost of all utilities and services associated with its operation. To the extent that Landlord pays utility providers directly, Tenant shall reimburse the Landlord for all utility costs paid on behalf of the Tenant. With the exception of those utilities for which Tenant reimburses Landlord, Tenant shall be responsible for the coordination, installation, set-up, maintenance and repair of its utilities and services.

11. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS

11.1. Compliance with Laws

Tenant shall promptly comply, at no cost to the Landlord, with all present or future laws, ordinance, resolution, regulation, requirement, proclamation, order or decree of any municipal, Landlord, state or federal government or other governmental or regulatory authority relating to the Premises or the use or occupancy thereof (the "Legal Requirements") and with any and all recorded covenants, conditions and restrictions affecting the Property or any portion thereof, whether in effect at the time of the execution of this Lease or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties. Tenant further understands and agrees that it is Tenant's obligation, at no cost to the Landlord, to cause the Premises and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C.A. §§ 12101 et seq. Any Alteration made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 8.1 (Tenant's Repairs), above. The parties acknowledge and agree that Tenant's obligation to comply with all Legal Requirements as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises (including any of the Tenant Improvements or any of Tenant's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Landlord, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Legal Requirement involved, and whether the Legal Requirement involved is related to Tenant's particular use of the Premises.

11.2. Regulatory Approvals

Tenant understands and agrees that Tenant's use of the Premises and construction of the Tenant Improvements permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, County agencies and commissions. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of Landlord under this Lease. Tenant shall bear all costs associated with applying for and obtaining with any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Property or Landlord's intent therein must first be approved by Landlord in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for any such fines or penalties.

11.3. Compliance with Landlord's Risk Management Requirements

Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase rates under a standard form fire insurance policy or subject Landlord to potential premises liability. Tenant shall faithfully observe, at no cost to the Landlord, any and all requirements of Landlord's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

12. SUBORDINATION

This Lease is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying lease and the lien of any mortgage or deed of trust and all renewals, modifications, consolidations, replacements and extensions of any of the foregoing, that may now exist or hereafter be executed by Landlord affecting the Property, or any part thereof, or Landlord's interest therein, without the necessity of executing any instrument to effectuate such subordination; provided, however, upon Landlord's request, Tenant, or Tenant's successor-in-interest, shall execute and deliver any and all instruments desired by Landlord evidencing such subordination in the manner requested by Landlord. Notwithstanding the foregoing, Landlord or the holder shall, in its respective discretion, have the right to subordinate any such interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to Landlord, at the option of such successor-in-interest. The provisions of this Section shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents evidencing the priority or subordination of this Lease.

13. INABILITY TO PERFORM

No actual or constructive eviction, in whole or in part, shall entitle Tenant to any abatement or diminution of Rent or relieve Tenant from any of its obligations under this Lease. If Landlord is unable to perform or is delayed in performing any of Landlord's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond Landlord's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon Landlord or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

14. DAMAGE AND DESTRUCTION

Not Used

15. EMINENT DOMAIN

15.1. Definitions

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

15.2. General

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. Landlord and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.10, 1265.40, 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

15.3. Total Taking; Automatic Termination

If there is a Total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

15.4. Partial Taking; Election to Terminate.

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if Landlord elects to terminate; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) Either party electing to terminate under the provisions of this Section 15 shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

15.5. Rent; Award

Upon termination of this Lease pursuant to an election under Section 15.4 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 15.6 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) Landlord shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.6. Partial Taking; Continuation of Lease

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking; provided, however, in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking, and (b) County shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against County for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.7. Temporary Takings

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or

occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and County shall be entitled to receive the balance of any Award.

16. CO-LOCATION OF TELECOMMUNICATIONS FACILITIES

A "co-located telecommunication facility" means a telecommunication facility comprised of one or more antennas, dishes, or similar devices owned or used by more than one public or private entity. Tenant shall have the right, but not the obligation, to allow co-location for public and private entities providing a public service and may charge reasonable fees to recover costs associated with the proposed co-location. Tenant shall notify Landlord of any new co-location within thirty (30) days of installation of co-located equipment, including a description of the entity co-locating and the equipment installed.

17. ASSIGNMENT AND SUBLETTING

17.1. Restriction on Assignment

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "Assignment"), without Landlord's prior written consent in each instance, which approval shall not be unreasonably withheld or delayed.

17.2. Effect of Sublease or Assignment

No Sublease or Assignment by Tenant shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. If there is an Assignment or Sublet, whether in violation of or in compliance with this Section, in the event of default by any Transferee, or any successor of Tenant, in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor.

17.3. Assumption by Transferee

Each Transferee shall assume all obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Additional Charges, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on Landlord unless Tenant or Transferee has delivered to Landlord a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in form and substance to Landlord. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above.

17.4. Indemnity for Relocation Benefits

Without limiting Section 17.6 (Assumption by Transferee) above, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease.

18. DEFAULT; REMEDIES

18.1. Events of Default

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

(a) a failure to pay Base Rent or Additional Charges when due, and such failure continues for three (3) days after the date of written notice by Landlord. However, Landlord shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such 12-month period shall constitute a default by Tenant hereunder without any further action by Landlord or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) a failure to comply with any other covenant, condition or representation made under this Lease and such failure continues for fifteen (15) days after the date of written notice by Landlord, provided that if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant 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 Landlord. Landlord 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 Tenant during such 12-month period shall constitute an Event of Default hereunder;

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

(d) an appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant 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.

18.2. Remedies

Upon the occurrence of an Event of Default Landlord 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:

(a) Landlord may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including, but not limited to, its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Premises from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section 18.2 or otherwise at law, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises.

Upon such termination in writing of Tenant's right to possession of the Premises, this Lease shall terminate and Landlord shall be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for such breach, including but not limited to the following:

- (i) The reasonable cost of recovering the Premises; plus
- (ii) The reasonable cost of removing Tenant's Alterations, trade fixtures and improvements; plus
- (iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in Section 18.2(b) below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (iv) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 above, as reasonably estimated by Landlord, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (v) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 above, as reasonably estimated by Landlord, for the remainder of the then term, after the date of the award of damages exceeds the amount such rental loss as Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Mateo for member banks at the time of the award plus one percent (1%); plus
- (vi) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other amount necessary to compensate Landlord for all the detriment proximately

caused by Tenant's failure to perform its obligations under this Lease which in the ordinary course of things would be likely to result therefrom.

(b) Landlord has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including, but not limited to, the right to recover rent as it becomes due. After the occurrence of an Event of Default, Landlord may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for such term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as Landlord deems advisable. In the event of any such subletting, rents received by Landlord from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (ii) second, to the payment of rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by Landlord from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to Landlord monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, Landlord may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

During the continuance of an Event of Default, for so long as Landlord does not terminate Tenant's right to possession of the Premises and subject to Section 16 (Assignment and Subletting) and the options granted to Landlord thereunder, Landlord shall not unreasonably withhold its consent to an assignment or sublease of Tenant's interest in the Premises or in this Lease.

(c) During the continuance of an Event of Default, Landlord may enter the Premises without terminating this Lease and remove all Tenant's Personal Property, Alterations and trade fixtures from the Premises and store them at Tenant's risk and expense. If Landlord removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any rent then due, then after the property has been stored for a period of thirty (30) days or more Landlord may sell such property at public or private sale, in the manner and at such times and places as Landlord deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for and the conducting of such sale, and for attorneys' fees and other legal expenses

incurred by Landlord in connection therewith, and the balance shall be applied as provided in Section 18.2(b) above.

Tenant hereby waives all claims for damages that may be caused by Landlord's re-entering and taking possession of the Premises or removing and storing Tenant's Personal Property pursuant to this Section 18.2, and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all Claims resulting from any such act. No re-entry by Landlord shall constitute or be construed as a forcible entry by Landlord.

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

(e) Landlord may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant. Any amount due Landlord under this subsection shall constitute additional rent hereunder.

18.3. Waiver of Redemption

Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future Legal Requirement to redeem the premises or to continue this Lease after being dispossessed or ejected from the Premises.

19. WAIVER OF CLAIMS; INDEMNIFICATION

19.1. Limitation on Landlord's Liability; Waiver of Claims

Landlord shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases Landlord and its Agents from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever except for any liability caused solely and directly by the negligence or willful misconduct of Landlord or its Agents.

19.2. Tenant's Indemnity

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") Landlord including all of its and their Agents, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in

part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises or Property by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises; (e) any construction or other work undertaken by Tenant on the Premises whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or the Property; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. Tenant's obligations under this Section shall survive the termination of the Lease.

20. INSURANCE

20.1. Tenant's Self-Insurance

Landlord acknowledges that Tenant maintains a program of self-insurance and agrees that Tenant shall not be required to carry any insurance with respect to this Lease. Tenant assumes the risk of damage to any of Tenant's Personal Property.

Tenant is presently self-insured in the amount of \$750,000 each occurrence giving rise to personal injury and property damage liabilities for which Tenant could be held responsible. In addition, Tenant shall maintain in force during the term of this Lease excess insurance with an annual aggregate of \$55,000,000. Said self-insurance and excess insurance shall provide coverage for personal injury and property damage liabilities arising out of the acts and/or omissions of Tenant, its officers, agents, contractors and employees, while on the Premises or the Property. Tenant, immediately upon the execution of this Lease, shall furnish Landlord with a Certificate of Insurance that shall name Landlord as an additional insured and further provide that Landlord shall receive ten (10) days' prior notice of cancellation, change in scope or modification in coverage of such coverage.

20.2. Landlord's Insurance

At all times during the Term, Landlord shall keep the Property (excluding the land upon which the improvements are located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a causes of loss special form property insurance policy (excluding earthquake, flood and terrorism) in an amount equal to one hundred percent of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by Tenant, provide to Tenant a certificate of insurance issued by the insurance carrier, evidencing the insurance

required above. The certificate shall expressly provide that the policy is not cancelable or subject to reduction of coverage or otherwise be subject to modification except after thirty (30) days prior written notice to Tenant.

20.3. Tenant Contractor and Subcontractor Contract Provisions and Insurance Requirements

Tenant shall include the following provisions in any agreement Tenant shall enter into with any contractors or subcontractors of Tenant for work performed at the Premises:

[Contractor/Subcontractor] agrees to maintain the following insurance coverages:

Automobile Liability insurance covering owned, non-owned, borrowed, leased and hired vehicles, in the amount of at least \$1,000,000 for each occurrence of bodily injury or property damage (Combined Single Limit Coverage).

Comprehensive general liability insurance covering premises/operations, contractual liability, products and completed operations and professional liability in the amount of at least \$1,000,000 for each occurrence of bodily injury and property damage (Combined Single Limited Coverage). Said bodily injury to include without limitation mental anguish.

Workers' Compensation Insurance at statutory limits and Employer's Liability Insurance covering bodily injury by accident in the amount of \$1,000,000 for each accident, bodily injury by disease in the amount of \$1,000,000 for each employee and bodily injury by disease in the amount of at least \$1,000,000 for policy limits.

Excess/Umbrella Liability with limits of \$5,000,000 per occurrence. The Excess/Umbrella Liability shall follow the coverage form of the scheduled underlying policies.

The insurance policies shall name NSMG California, LLC as an additional insured and provide that NSMG California, LLC will receive written notice thirty (30) days in advance of any cancellations or material changes of said insurance coverage. [Contractor/Subcontractor] shall, upon execution of the Agreement, furnish NSMG California, LLC with certificates evidencing the existence of such coverage. Such insurance will be provided by an insurance company with an "A" rating or better. Failure to provide such certificates shall be deemed as a material breach of this Agreement. The above-referenced policies shall be considered primary to any similar insurance held by third parties in respect of work performed or services provided by [Contractor/Subcontractor] as insured, under written contract or as evidenced by a certificate of insurance with said third parties.

21. ACCESS

21.1. By Landlord

Landlord reserves for itself and any of its designated Agents, the right to enter the Premises as follows: (i) on a regular basis without advance notice to supply any necessary or agreed-upon service to be provided by Landlord hereunder; (ii) on an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to conduct any environmental audit of Tenant's use of the Premises, to repair, alter or improve any part of the Premises, and for any other lawful purpose; and (iii) on an emergency basis without notice whenever Landlord believes that emergency access is required. Landlord shall have the right to use any means that it deems proper to open gates or doors in an emergency in order to obtain access to any part of the Premises, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

21.2. By Tenant

Landlord acknowledges that Tenant's equipment will operate on a twenty-four (24) hour a day, seven (7) day per week basis, and reasonable full time access is required. Landlord shall determine the allowable access route to the Premises, which shall be subject to modification by Landlord from time to time.

Subject to the provisions of Section 3 (Improvements and Installations) hereof, and subject to the allowable access route as determined by Landlord, Tenant may enter the Premises at any time without prior notice being given to Landlord for the installation, construction, maintenance, operation, modification or addition of Tenant's communications facilities.

Landlord shall provide keys, combinations or keycards as necessary for Tenant's reasonable use of the Premises, and shall provide updated access to Tenant within twenty-four (24) hours of any changes to combinations or codes.

22. CERTIFICATES

22.1. Tenant's Certificates

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Landlord, shall execute and deliver to Landlord or to any party designated by Landlord a certificate stating: (a) that Tenant has accepted the Premises, (b) the Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations hereunder (and if so, specifying the same), (e) whether or not there are any

defaults then existing under this Lease (and if so specifying the same), (f) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (g) any other information that may reasonably be required.

22.2. Landlord's Certificates

Landlord, at any time and from time to time upon not less than ten (10) days' prior notice from Tenant, shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (d) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (f) any other information that may reasonably be required.

23. RULES AND REGULATIONS

None

24. SECURITY DEPOSIT

None

25. SURRENDER OF PREMISES

At Landlord's sole option, upon the Expiration Date or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to Landlord the Premises in good order and condition, except for normal wear and tear after Tenant having made the last necessary repair required on its part under this Lease, and further except for any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Landlord. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal. If such removal is not completed at the expiration or other termination of this Lease, Landlord may remove the same at Tenant's expense. Notwithstanding anything to the contrary in this Lease, Landlord can elect at any time prior to the Expiration Date or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of the Leasehold Improvements, Alterations or other improvements or equipment constructed or installed by or at the expense of Tenant. Tenant shall promptly remove such items and shall repair or restore, at no cost to the Landlord, any damage to the Premises or the Property resulting from such removal, or if Tenant fails to repair or restore, Landlord may do so, at Tenant's expense. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of

this Lease may, at Landlord's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

Concurrently with the surrender of the Premises, Tenant shall, if requested by Landlord, execute, acknowledge and deliver to Landlord a quitclaim deed to the Premises and any other instrument reasonably requested by Landlord to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Tenant Improvements or other improvements or equipment which remain part of the Premises.

26. HAZARDOUS MATERIALS

26.1. Definitions

As used herein, the following terms shall have the meanings set forth below:

(a) "Environmental Laws" shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Investigate and Remediate" ("Investigation" and "Remediation") shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Property or that has been, are being or threaten to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

(d) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under or about any other part of the Property or into the environment.

26.2. No Hazardous Materials

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Property, or transported to or from the Property. Tenant shall give immediate written notice to Landlord of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Premises or Property or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Tenant or the Premises or Property relating to any loss of injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Premises or any other part of the Property has occurred that may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

26.3. Tenant's Environmental Indemnity

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents or Invitees, results in any Release of Hazardous Material in, on, under or about the Premises or any other part of the Property in violation of any applicable Environmental Laws, then, without limiting Tenant's Indemnity contained in Section 19.2, Tenant shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Premises or the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises or the Property and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other part of the Property, Tenant shall immediately and at no expense to Landlord take any and all appropriate actions to return the Premises or the Property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Landlord from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by the Landlord and continues at all times thereafter. Tenant shall afford Landlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement

agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

26.4. Survival of Obligations

Tenant's obligations under this Section 26 shall survive the Expiration Date or other termination of this Lease.

27. SPECIAL PROVISIONS

None

28. GENERAL PROVISIONS

28.1. Notices

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant at Tenant's address set forth in the Basic Lease Information or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Tenant shall promptly provide Landlord with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

28.2. No Implied Waiver

No failure by Landlord to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Landlord, shall constitute a waiver of such breach or of Landlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver

of a subsequent default or performance. Any consent by Landlord hereunder shall not relieve Tenant of any obligation to secure the consent of Landlord in any other or future instance under the terms of this Lease.

28.3. Amendments

Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by both parties hereto. Whenever an amendment, waiver, notice, termination or other instrument or document is to be executed by or on behalf of Tenant, the County Manager or the County Manager's designee shall be authorized to execute such instrument on behalf of Tenant, except as otherwise provided by applicable law, including the Tenant's Charter and Ordinance Code.

28.4. Authority

Each person executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

28.5. Parties and Their Agents; Approvals

The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by Tenant hereunder shall be made by or through Tenant's County Manager unless otherwise provided in this Lease, subject to applicable law.

28.6. Interpretation of Lease

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action

occurs on a Saturday, Sunday or a bank or County holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

28.7. Successors and Assigns

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by Landlord named herein (or by any subsequent landlord) of its interest in the Property as owner or lessee, including any transfer by operation of law, Landlord (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

28.8. Brokers

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

28.9. Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

28.10. Governing Law

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

28.11. Entire Agreement

This instrument, including the exhibits hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither Landlord nor Landlord's Agents have made any representations or warranties with respect to the Premises, the Property or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

28.12. Holding Over

Any holding over after the expiration of the Term with the express consent of Landlord shall be construed to automatically extend the Term of this Lease on a month-to-month basis on the same terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any holding over without Landlord's consent shall constitute a default by Tenant and entitle Landlord to exercise any or all of its remedies as provided herein, notwithstanding that Landlord may elect to accept one or more payments of Rent.

28.13. Time of Essence

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

28.14. Cumulative Remedies

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

28.15. Survival of Indemnities

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

28.16. Signs

Tenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from other portions of the Property or from the perimeter of the Premises, without Landlord's prior written consent, which Landlord may withhold or grant in its sole discretion.

Notwithstanding the above, Tenant shall at all times during the Term of the Lease have installed at the Premises signage indicating the owner and operator of the equipment and information sufficient to assure that a responsible party can be reached in the case of an emergency.

28.17. Relationship of the Parties

Landlord is not, and none of the provisions in this Lease shall be deemed to render Landlord, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

28.18. Light and Air

Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

28.19. No Recording

Tenant shall not record this Lease or any memorandum hereof in the public records.

28.20. Options Personal

Not applicable.

28.21. Taxes, Assessments, Licenses, Permit Fees and Liens

(a) Tenant agrees to pay taxes of any kind that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency. (b) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

28.22. Non-Liability of Landlord Officials, Employees and Agents

No elective or appointive board, commission, member, officer, employee or other Agent of Landlord shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by Landlord or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of Landlord under this Agreement.

28.23. No Relocation Assistance; Waiver of Claims

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Landlord, its departments, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Landlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

28.24. Counterparts

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

28.25. Effective Date

This Lease shall become effective on the date upon which (i) Tenant's Board of Supervisors, in its sole and absolute discretion, adopts a resolution approving this Lease in accordance with all applicable laws and (ii) this Lease is duly executed and delivered by the parties hereto.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF TENANT HAS AUTHORITY TO COMMIT TENANT TO THIS LEASE UNLESS AND UNTIL TENANT'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF TENANT HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF THE BOARD OF SUPERVISORS DOES NOT APPROVE THIS LEASE, IN ITS SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF TENANT SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON TENANT.

Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD: NSMG CALIFORNIA, LLC
a Delaware limited liability company

By: John A. King, Jr.
Its: General Council

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

President, Board of Supervisors

ATTEST:

RESOLUTION NO.: _____

Clerk of the Board

EXHIBIT A

SITE PLAN OF PREMISES



