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6/15/01

SECTION 1. RIGHT TO USE CITY PROPERTY

A. Right to Use.

CITY hereby grants COMPANY the right to use those certain areas of the PROPERTY more particularly described and shown on Exhibit "A" above, which is attached hereto and incorporated by reference herein. Said use shall be on a non-exclusive basis, for the purpose of installing, maintaining and operating the TELECOMMUNICATIONS FACILITIES to provide SERVICES and for no other purpose.

B. Access.

1. COMPANY will be given reasonable access to the LICENSED AREAS between the hours of 11:30 p.m. to 6:00 a.m. to repair, maintain or remove the TELECOMMUNICATIONS FACILITIES, provided COMPANY provides CITY with at least five (5) days prior written notice of the times that COMPANY will need access to those portions of the LICENSED AREAS located on the PROPERTY and at least forty-eight (48) hours' actual prior oral notice to CITY of the times that COMPANY will need access to any other portion of the LICENSED AREAS or PROPERTY. The CITY's Director of Aviation or his designee (hereinafter collectively "DIRECTOR") shall be CITY's contact for these purposes, unless CITY otherwise indicates in writing.
2. If emergency repair of the TELECOMMUNICATIONS FACILITIES is necessary, COMPANY may be allowed reasonable access to the LICENSED AREAS between 6:00 a.m. and 11:30 p.m., provided that COMPANY obtains the DIRECTOR's prior permission to enter the LICENSED AREAS. The CITY shall provide COMPANY with the phone number of the DIRECTOR, which number shall permit contact with the DIRECTOR, or his/her designate, 24 hours per day.
3. COMPANY shall allow a representative of the CITY to accompany COMPANY employees, contractors, sub-contractors, vendors, truckers and any other person who is required to perform work that allows them to have access to the controlled areas of the airfield or terminal or for any other work that might take place in the LICENSED AREAS or any other portion of the PROPERTY. At no time will disruption of passengers be allowed in the access area. All demolition work and loud construction or repair activity must be done after Airport hours, from 11:30 p.m. to 6:00 a.m. COMPANY should exercise all necessary precautions so that excessive noise will be held to a minimum during daytime hours.
4. COMPANY agrees to prevent any work from taking place on nearby tenant space or access to tenant space without the permission of the tenant and the DIRECTOR and accepts liability for any damages to nearby tenant spaces during construction.

RD:VP
6/15/01

C. Relocation and Removal.

1. At any time during the term of this AGREEMENT, CITY may require relocation of the TELECOMMUNICATIONS FACILITIES or any part thereof. COMPANY shall, at COMPANY's sole cost and expense, relocate all or part of its TELECOMMUNICATIONS FACILITIES, to a location designated by CITY or the adjust the size of the TELECOMMUNICATIONS FACILITIES in an expeditious manner only as may be permitted, directed or required by the DIRECTOR within one hundred twenty (120) day's of receiving from CITY prior written notice that the TELECOMMUNICATIONS FACILITIES must be relocated.
2. If, notwithstanding COMPANY's agreement to relocate the TELECOMMUNICATIONS FACILITIES, COMPANY fails to relocate the TELECOMMUNICATIONS FACILITIES or repair or restore the affected areas of the LICENSED AREAS and PROPERTY within the one hundred and twenty (120) day period, as that period may be extended as provided in this SECTION, CITY MANAGER, in his or her sole discretion and without limitation with respect to any other rights or remedies which he/she may have, may terminate this AGREEMENT, effective no earlier than seven (7) days after the date of notice of termination and CITY may remove any of COMPANY's PROPERTY, including the TELECOMMUNICATIONS FACILITIES from the PROPERTY.
3. If CITY removes the TELECOMMUNICATIONS FACILITIES pursuant to this Section, COMPANY shall pay to CITY all costs associated with CITY's removal of the TELECOMMUNICATIONS FACILITIES, including any storage costs and costs to repair and restore the PROPERTY, including the LICENSED AREAS, within ten (10) days after receipt by COMPANY of an itemized bill therefor.

D. Title to the TELECOMMUNICATIONS FACILITIES.

Title to the TELECOMMUNICATIONS FACILITIES shall be and remain with COMPANY while the TELECOMMUNICATIONS FACILITIES are installed and maintained at the PROPERTY in accordance and compliance with all of the terms of this AGREEMENT.

E. Title to improvements to the PROPERTY.

Notwithstanding Section 1.D above, title to the improvements to the PROPERTY, or LICENSED AREAS required for approval for the placement of the TELECOMMUNICATIONS FACILITIES, including buildings or other structures placed thereon, shall be and remain with CITY. Title to all equipment installed for purposes of operating and providing wireless communications services pursuant to this AGREEMENT shall be and remain with COMPANY.

RD:VP
6/15/01

F. No Warranties of Suitability of PROPERTY.

It is COMPANY's election to install and maintain the TELECOMMUNICATIONS FACILITIES at the PROPERTY and COMPANY does so solely at its own risk. CITY makes no representations or warranties regarding the suitability, condition or fitness of the PROPERTY for the installation, maintenance or use of the TELECOMMUNICATIONS FACILITIES.

G. Right of CITY Access.

CITY reserves, and COMPANY agrees to, the right of CITY, its authorized officers, employees, agents or contractors, to enter into and access the LICENSED AREAS and the PROPERTY at any time. Without limiting the foregoing, CITY and COMPANY agree that CITY may: (1) inspect the PROPERTY, LICENSED AREAS and TELECOMMUNICATIONS FACILITIES for COMPANY'S compliance with the terms of this AGREEMENT; (2) make repairs, alterations or additions to the PROPERTY or LICENSED AREAS or maintain or use the PROPERTY or LICENSED AREAS in any manner not prohibited by the terms of this AGREEMENT, all without a claim by COMPANY for any loss of occupation or use of, or any abatement of, the USE CHARGE for use of the LICENSED AREAS.

SECTION 2. TERM

A. Initial Term.

The term of this AGREEMENT shall commence on the EFFECTIVE DATE set forth herein, and shall continue for five (5) years, expiring at 11:59 p.m. on the fifth anniversary of said EFFECTIVE DATE ("EXPIRATION DATE"), unless earlier terminated as pursuant to the terms of this AGREEMENT.

B. Option to Extend.

COMPANY shall have the option to extend the term of this AGREEMENT beyond the initial term described herein for one additional five (5) year period on the same terms, covenants and conditions that are contained in this AGREEMENT; CITY shall continue to increase the USE CHARGE during the option period in the manner as provided in Section 3B below. COMPANY shall exercise its option to extend this AGREEMENT, if at all, by giving written notice to CITY of its election to exercise this option no later than one hundred and eighty (180) days prior to the EXPIRATION DATE.

SECTION 3. USE CHARGE

A. Charge and Payment.

Commencing upon the EFFECTIVE DATE, COMPANY shall prepay to CITY the sum of _____ (\$___) for the first year's use of the LICENSED AREA upon which COMPANY is permitted to install the TELECOMMUNICATIONS FACILITIES. No

RD:VP
6/15/01

later than thirty (30) days after completion of installation of the TELECOMMUNICATIONS FACILITIES, COMPANY shall additionally pay to CITY such further annual compensation for equipment area floor space or shelf space, actually used, at the rate of _____ (\$____.00) per square foot per year,; said payment for the equipment area floor or shelf space shall be a pro-rated to reflect the portion of the year remaining between the date of installation and the subsequent Anniversary of the EFFECTIVE DATE ("Anniversary Date"). (The charges referred to in this Section 3.A. are hereinafter collectively referred to as the "USE CHARGE.") The USE CHARGE for each succeeding year of this AGREEMENT shall be due and payable in full on each subsequent Anniversary Date without offset, in advance, subject to the annual adjustment provided below. Unless otherwise directed in writing, by CITY, COMPANY shall make all payments to the CITY at the following address:

City of San José
Department of Public Works – Fiscal Section
801 North First Street, Suite 320
San José, California 95110

B. Adjustment of USE CHARGE.

1. The USE CHARGE shall be increased annually, up to the maximum amount set forth below, to equal the greater of: (i) 4% of the then current USE CHARGES, or (ii) the extent of any percentage change which occurred in the Consumer Price Index (All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the San Francisco-Oakland-San José Metropolitan area (hereinafter "CPI"). The percentage change in the CPI shall be calculated by a fraction, the denominator of which is the CPI in effect as of the calendar month fourteen (14) full months prior to the adjustment date, and the numerator of which is the CPI in effect two (2) full months prior to the adjustment date.
2. If the Department of Labor discontinues publishing the index mentioned above, CITY may use a comparable index to calculate the percentage change in the CPI.
3. The USE CHARGE adjustment shall occur on each Anniversary Date.
4. Should COMPANY enter into an agreement for TELECOMMUNICATIONS FACILITIES with another "Public Airport" for use of any structure owned by such Public Airport anywhere in the United States, which agreement requires COMPANY to pay use rates higher than the rate then in effect hereunder, ("Higher Use Rate"), COMPANY shall so notify CITY within thirty (30) days of the effective date of such agreement. In the event COMPANY enters into such an agreement, COMPANY shall begin paying such Higher Use Rate to CITY within sixty (60) days of the effective date of such agreement. The first payment shall be made in one lump sum to CITY and shall be equal to the Higher Use Rate for the period beginning on the effective date of the

RD:VP
6/15/01

agreement with the Governmental Entity and ending on the following Anniversary Date less the amount then already paid for the same period.. For each year thereafter, COMPANY shall pay annually to CITY the Higher Use Rate. For purposes of this AGREEMENT, "Public Airport" shall mean airports open to commercial, regularly scheduled, passenger traffic. The provisions of this paragraph shall not apply to extensions of existing contracts between Public Airports and COMPANY that are in effect as of Commencement Date.

SECTION 4. RIGHT TO USE APPLICABLE ONLY TO PROPERTY.

This AGREEMENT shall not be construed to permit construction, installation, maintenance or use of TELECOMMUNICATIONS FACILITIES on any property other than the TELECOMMUNICATIONS FACILITIES on the LICENSED AREAS.

SECTION 5. COMPLIANCE WITH APPLICABLE LAWS AND APPROVALS.

A. Facility to be Constructed and Maintained in Accordance with Law & City Approvals.

COMPANY shall construct, install, operate, maintain and remove the TELECOMMUNICATIONS FACILITIES in accordance with all applicable federal, state and local governmental laws, rules and regulations now in existence or as hereafter enacted or amended. Without limiting the foregoing, COMPANY shall obtain, maintain and fully comply with any and all permits or approvals required from CITY.

B. Utility User's Tax.

COMPANY acknowledges and agrees that CITY requires users of communications services such as the SERVICES to pay to CITY a utility users' tax pursuant to Chapter 4.68 of Title 4 of the San José Municipal Code, as the same may be amended from time to time. Without limiting the other provisions of this SECTION, COMPANY agrees that COMPANY shall collect from the users of the SERVICES and remit to CITY said utility users' tax all in the manner described in, and in compliance with, Chapter 4.68 of Title 4 of the San José Municipal Code.

C. Licensing and Authorization

(Applicable only if COMPANY operates its TELECOMMUNICATIONS FACILITIES in such as way as to require licensure by the Federal Communications Commission).

COMPANY represents that it is licensed by the Federal Communications Commission to operate the ANTENNA FACILITIES and provide the SERVICES, and COMPANY agrees provides documentation evidencing such licensing and authorization within 10 days of a written request by CITY for such documentation.

RD:VP
6/15/01

SECTION 6. MAINTENANCE AND REPAIR.

- A. COMPANY shall maintain and repair the TELECOMMUNICATIONS FACILITIES, at no cost to CITY (except as specifically provided otherwise in this AGREEMENT) and to CITY's reasonable satisfaction, any and all damage to the PROPERTY or the LICENSED AREAS that may result from any relocation or removal of the TELECOMMUNICATIONS FACILITIES or COMPANY'S exercise of any of the rights and privileges hereby granted, including, without limitation, damage to any walls, floors, ceilings, doors or electrical system in the PROPERTY or the LICENSED AREAS. Upon removal of the TELECOMMUNICATIONS FACILITIES and termination of this AGREEMENT, COMPANY shall restore the affected areas of the PROPERTY to at least as good condition and repair as before COMPANY'S use thereof, except for ordinary wear and tear.
- B. COMPANY agrees to and shall: (1) shall keep the TELECOMMUNICATIONS FACILITIES and the LICENSED AREAS in neat, clean and orderly condition at all times; (2) not cause rubbish, garbage or debris to accumulate or remain on or around the TELECOMMUNICATIONS FACILITIES, LICENSED AREAS or PROPERTY at any time; (3) not commit, suffer or allow any acts to be done at or around the TELECOMMUNICATIONS FACILITIES, LICENSED AREAS or PROPERTY in violation of any law, regulation, permit or rule; and, (4) not use or allow the use of the TELECOMMUNICATIONS FACILITIES, LICENSED AREAS or PROPERTY for any illegal or immoral purpose.
- C. COMPANY shall mark cabling every 18 inches with identifying ownership markings and identify the TELECOMMUNICATIONS FACILITIES and associated equipment with similar ownership markings.
- D. Prior to installation, COMPANY shall submit plans and specifications to the DIRECTOR for approval any proposed cable runs. ("Plans and Specifications") COMPANY cabling shall be run in existing cable trays or, if permitted by the DIRECTOR, at his sole discretion, electrical metal tubes. Any changes to the equipment referenced in Exhibit C must be approved in writing by the DIRECTOR and CITY's Chief Information Officer .

SECTION 7. TERMINATION.

A. Termination with Cause.

Except as may otherwise be provided in this Agreement, CITY shall have the right to terminate this AGREEMENT immediately: (i) if COMPANY fails to cure a material breach (the materiality of which shall be determined in CITY's sole discretion) of any term or condition hereof, within thirty (30) days after CITY has notified COMPANY of such breach; or (ii) if said cure cannot be reasonably be completed within thirty (30) days and COMPANY has not commenced curative action within said thirty (30) days and thereafter diligently (in CITY'S sole opinion) prosecuted such cure to completion; or (iii) if COMPANY's operation is deemed by CITY to endanger or pose a threat to the public health, safety or welfare,

RD:VP
6/15/01

including, without limitation, and as an example, if operation of the TELECOMMUNICATIONS FACILITIES adversely interferes with, or otherwise adversely affects CITY communications or operations; (iv) if CITY is mandated by law, a court order or decision, or the federal, state or local government to take certain actions that cause or require the removal of the TELECOMMUNICATIONS FACILITIES from the LICENSED AREAS; or (v) if the removal of the TELECOMMUNICATIONS FACILITIES from the LICENSED AREAS is needed to accommodate the construction, installation, operation, repair, maintenance of improvements within the Airport, including any improvement funded in whole or in part by CITY or the REDEVELOPMENT AGENCY of CITY.

B. Termination without Cause.

CITY may terminate this AGREEMENT without cause upon one hundred eighty (180) days' prior written notice to COMPANY.

C. Removal of Facility Upon Termination.

COMPANY shall remove the TELECOMMUNICATIONS FACILITIES and repair and restore the affected areas of the LICENSED AREAS and the PROPERTY prior to the expiration of this AGREEMENT. If this AGREEMENT is terminated by either party earlier than the expiration of the term, COMPANY shall remove the TELECOMMUNICATIONS FACILITIES and repair and restore the affected areas of the LICENSED AREAS and the PROPERTY no later than termination of the AGREEMENT, provided that termination due to required relocation of the TELECOMMUNICATIONS FACILITIES shall be governed by **Section 1.C.** Removal of the TELECOMMUNICATIONS FACILITIES shall be at COMPANY's sole cost and expense, except as specifically provided otherwise in this AGREEMENT.

D. Prorated Use Charge Reimbursement

In the event of the early termination of this AGREEMENT, CITY will reimburse COMPANY the unused portion of the USE CHARGE after proration.

SECTION 8. NO LIABILITY

A. Liability.

CITY, its agents, officers, employees or contractors, shall not be liable for any damage from any cause whatsoever to the TELECOMMUNICATIONS FACILITIES, specifically including, without limitation any damage resulting from CITY's maintenance operations adjacent to the TELECOMMUNICATIONS FACILITIES or from vandalism or unauthorized use of the TELECOMMUNICATIONS FACILITIES, except as such damage is solely caused by the gross negligence or willful misconduct of CITY, its agents, officers, employees or contractors.

RD:VP
6/15/01

B. Security.

COMPANY shall take reasonable precautions against damage to or unauthorized use of the TELECOMMUNICATIONS FACILITIES. CITY shall not be liable for any vandalism or other damage that may occur to the TELECOMMUNICATIONS FACILITIES or in the LICENSED or any unauthorized use of the TELECOMMUNICATIONS FACILITIES except as provided in **SECTION 8(A)**, above.

SECTION 9. PLANS AND SPECIFICATIONS; PERMITS

- A. CITY shall have the right of prior review and approval of all Plans and Specifications and shall have the right to inspect the TELECOMMUNICATIONS FACILITIES at any time during and after installation. COMPANY shall not commence installation or alteration of the TELECOMMUNICATIONS FACILITIES, or any portion thereof, until CITY has approved the Plans and Specifications and COMPANY has obtained all applicable permits. Approval of Plans, Specifications and Permits shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the Plans, Specifications and/or Permits. COMPANY shall be responsible for notifying CITY and all other relevant parties immediately upon discovery of such omissions and/or errors.
- B. COMPANY agrees to perform any work in furtherance of the Plans, Specifications and Permits at COMPANY's sole expense and in accordance with and in a manner CITY is satisfied conforms to Plans, Specifications and Permits as may be approved by CITY in furtherance of this AGREEMENT.
- C. COMPANY will submit four (4) sets of such Plans and Specifications to the CITY at the address set forth for Notices in **Section 15** herein, which CITY shall use for description and acceptance of the TELECOMMUNICATIONS FACILITIES. COMPANY shall supply the CITY any additional information it may request before approving the Plans and Specifications.
- D. COMPANY shall apply for and obtain all applicable permits as are required by CITY to perform the work described in this AGREEMENT and shall comply with all of the terms and conditions set forth in such permits, including, without limitation, allowing CITY personnel to inspect the installation of the TELECOMMUNICATIONS FACILITY on CITY property. COMPANY shall arrange for, obtain and bear costs of all: permits (including without limitation any fees as required by any federal, state or local law, statute, ordinance, rule or regulation); plan check and inspection fees; licenses; environmental impact reports; site preparation; surface treatment and relocation of any facilities on the LEASED PROPERTY, as necessary or required for health or safety in the construction or alteration of the LEASED PROPERTY. As a condition of this AGREEMENT, COMPANY agrees to perform the covenants and conditions contained in any permit issued or to be issued to COMPANY by CITY's Chief Engineer or his designees.

BD:VR
8/15/01

E. COMPANY shall not commence physical installation of the TELECOMMUNICATIONS FACILITIES before approval of Plans and Specifications pursuant to provision 9.A and obtaining approval of all applicable permits pursuant to provision 9.D. Approval of Plans and Specifications by CITY Departments shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in Plans and Specifications. COMPANY agrees to perform any work at COMPANY'S sole cost and at COMPANY'S sole expense and in accordance with and in a manner CITY is satisfied conforms to Plans and Specifications as may be approved by CITY in furtherance of this AGREEMENT.

SECTION 10. INDEMNIFICATION

COMPANY shall protect, defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising from or related to any damage, injury or loss caused by, or resulting from, the installation, maintenance, operation or use of the TELECOMMUNICATIONS FACILITIES, the provision of SERVICES, or resulting in any way from COMPANY'S occupation or use of the PROPERTY or the LICENSED AREAS, including, without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions by COMPANY, its officers, employees, consultants or agents. COMPANY'S obligation to indemnify and hold harmless excludes only such claim, loss or liability that is due to the sole negligence or willful misconduct of CITY and/or its employees. All of COMPANY'S obligations under this SECTION are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT.

In an action or claim against CITY in which COMPANY is defending CITY, CITY shall have the right to approve legal counsel providing CITY'S defense.

SECTION 11. TAXES

- A. COMPANY shall pay before delinquency any and all taxes, assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon any of COMPANY'S interests herein, upon COMPANY'S businesses, upon COMPANY for the privilege of conducting business, or upon any property of COMPANY at the PROPERTY. COMPANY is advised that this AGREEMENT may, but is not intended to, create a possessory interest in the LICENSED AREAS, for which COMPANY may be subject to payment of possessory interest taxes therefor, for which CITY shall not be liable. Payment of any possessory interest tax shall not reduce in any way any charges or other fees required to be paid by COMPANY hereunder.
- B. COMPANY shall not permit or suffer any liens to be imposed upon the PROPERTY or any portion thereof, without promptly discharging the same, provided, however, that COMPANY may, if it so desires, contest the legality of

RD:VP
6/15/01

same following prior written notice to CITY. In the event of a contest of a lien, COMPANY shall provide a bond in an amount and in a form acceptable to CITY immediately following request therefor by CITY.

SECTION 12. INSURANCE

- A. COMPANY, at COMPANY's own expense throughout the Term of this AGREEMENT, as extended, shall comply with the insurance requirements attached hereto as EXHIBIT "E" and incorporated by reference herein. The procuring of the policy or policies of insurance required by EXHIBIT "E" shall neither be construed to limit COMPANY's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT. Notwithstanding the policy or policies of insurance, COMPANY shall be obligated for the full and total amount of any damage, injury or loss caused by its negligence or willful misconduct arising out of this AGREEMENT or COMPANY's use of the PROPERTY or the LICENSED AREAS.
- B. COMPANY shall deposit with CITY, on or before the EFFECTIVE DATE, certificates of insurance and the required endorsements in forms reasonably satisfactory to CITY, indicating compliance with the insurance provisions of this AGREEMENT. COMPANY shall keep the insurance in effect, and the certificates evidencing the insurance on deposit with CITY, during the Term of the AGREEMENT and as the same may be extended.

SECTION 13. FREQUENCY INTERFERENCE

- A. COMPANY will not cause, permit or allow the installation, operation, maintenance or use of the TELECOMMUNICATIONS FACILITIES or any other equipment installed pursuant to this AGREEMENT to interfere with: (1) any CITY use of the PROPERTY; (2) CITY equipment used at the PROPERTY; (3) CITY communications; and/or (4) or any pre-existing third party uses of the PROPERTY or any other CITY property, including uses of communications equipment, which uses were authorized or planned by CITY prior to the execution of this Agreement. COMPANY shall immediately provide, in writing, to the CITY at the address set forth for notices in Section 15, herein, the frequencies utilized in the operation of the TELECOMMUNICATIONS FACILITIES. COMPANY shall also provide the CITY, at the same address, with written notice of any intended changes in those frequencies, a description of those frequencies and the dates that those frequency changes are anticipated to occur, at least thirty (30) days prior to the date that those frequency changes are anticipated to occur. COMPANY shall not begin any work on the PROPERTY pursuant to this AGREEMENT until these frequencies have been approved in writing by CITY's Chief Information Officer or any other person that may be designated to make such approval by CITY's City Manager.
- B. COMPANY shall ensure that its use of the TELECOMMUNICATIONS FACILITIES does not interfere with any communication transmissions in the vicinity of the PROPERTY, including without limitation, the CITY's public safety transmissions,

RD:VP
6/15/01

police and fire communications, CITY's internal communications, or communications used by CITY or CITY's pre-existing telecommunications tenants in the connection with the San José International Airport. COMPANY shall operate the TELECOMMUNICATIONS FACILITIES in such a manner that all communications sent or received by the TELECOMMUNICATIONS FACILITIES shall be separated from all CITY communications frequencies, including without limitation, CITY communications listed in the preceding sentence, by at least 1 megahertz.

- C. If COMPANY's construction, installation, maintenance, operation, use or removal of the TELECOMMUNICATIONS FACILITIES violates this provision, COMPANY shall immediately eliminate such violation or interference. If COMPANY fails to immediately eliminate such violation or interference, CITY may, in addition to and without compromising any other remedy available to CITY, immediately cut off power to the facility in the manner set forth in **SECTION 14** below. CITY shall immediately provide notice to COMPANY of any interference or the exercise of CITY's shut off rights pursuant to this SECTION.
- D. Should a third party propose installation of a telecommunications facility in the terminal in which the COMPANY'S TELECOMMUNICATIONS FACILITIES are located, which installation is unrelated to airport or FAA functions, CITY shall review said proposal to determine whether the proposed telecommunications facility would interfere with the broadcast operations of COMPANY'S TELECOMMUNICATIONS FACILITIES as contemplated in this AGREEMENT. Said review shall be conducted in accordance with generally accepted radio frequency interference standards and the rules and regulations of the Federal Communications Commission if applicable. CITY will not enter into a new agreement or otherwise grant to any third party whose operations are unrelated to the Airport or FAA functions the right to use of said terminal if its review determines that such new use would interfere with COMPANY's operation or diminish the COMPANY's signal quality for the area serviced by the TELECOMMUNICATIONS FACILITIES. Any future agreement, which permits the installation of communication equipment in the terminal, shall be conditioned upon its not interfering with COMPANY's operation of the TELECOMMUNICATIONS FACILITIES, unless such installation relates to Airport or FAA functions. COMPANY shall not be required to modify the TELECOMMUNICATIONS FACILITIES to prevent interference with any new private communications use of the terminal so long as COMPANY operates the TELECOMMUNICATIONS FACILITIES within its assigned frequencies and in compliance with all applicable FCC Rules and Regulations and this AGREEMENT.

SECTION 14. EMERGENCY

- A. COMPANY understands that emergency situations may develop from time to time that require power to the TELECOMMUNICATIONS FACILITIES to be shut off. Notwithstanding Section 13, COMPANY agrees that in the event that such a situation occurs, and there are frequency interferences of any nature between CITY's communication equipment and that of COMPANY, CITY shall have the

RD:VP
6/15/01

right to shut off immediately any power to the TELECOMMUNICATIONS FACILITIES and any equipment of COMPANY's located on the PROPERTY for the duration of the emergency. COMPANY agrees not to hold CITY responsible or liable for and shall protect, defend, indemnify and hold CITY harmless pursuant to SECTION 10 for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of the TELECOMMUNICATIONS FACILITIES or other communication facilities at PROPERTY or affected by the power outage at PROPERTY.

- B. COMPANY agrees to install a master power "cut-off" switch on their equipment for the purpose of assisting CITY in such an emergency.
- C. Unless otherwise specifically provided in a notice of termination of this AGREEMENT, CITY's exercise of the right to shut off any power to the TELECOMMUNICATIONS FACILITIES pursuant to this SECTION is not intended to constitute a termination of this AGREEMENT by either party. COMPANY and CITY shall meet after the CITY determines that an emergency situation has ended to establish the time and manner in which power shall be restored to the TELECOMMUNICATIONS FACILITIES.
- D. CITY shall have the right to determine what constitutes an "emergency situation" pursuant to this Section.

SECTION 15. NOTICES

Except as otherwise specifically set forth and allowed under this AGREEMENT, all notices herein required to be given or which may be given by either party to the other shall be deemed to have been fully given when served personally on CITY or COMPANY, or when made in writing and deposited in the United States Mail, certified mail, return receipt requested, postage prepaid and addressed as follows:

To CITY: City of San José
 Department of Public Works, Real Estate Division
 84 West Santa Clara Street
 Suite 460
 San José, CA 95113-1815

Attn: Supervising Real Property Agent

With a copy to: Office of the City Attorney
 City of San José
 151 West Mission Street
 San José, CA 95110

To COMPANY:

Attention:

RD:VP
6/16/01

Either party may change its address for notice by notifying the other party in the manner provided in this Paragraph.

SECTION 16. RIGHT TO USE SUBORDINATE

The right to use the LICENSED AREAS herein granted by CITY to COMPANY, and all rights and privileges hereunder, are and shall be subordinate to the rights of CITY, the public and to other airport tenants to use and occupy, and to any occupancy by them of, the PROPERTY and the LICENSED AREAS. In the event of conflict between COMPANY's right to use the LICENSED AREAS and CITY's desired use thereof, after the EFFECTIVE DATE, CITY may require COMPANY to redesign, adjust, relocate or remove the TELECOMMUNICATIONS FACILITIES as further set forth in SECTION 1. of this AGREEMENT. COMPANY'S right to install, maintain and operate the TELECOMMUNICATIONS FACILITIES, or to remove the TELECOMMUNICATIONS FACILITIES, shall be subject at all times to such rights as CITY may have to require the removal or relocation of the TELECOMMUNICATIONS FACILITIES at the sole cost and expense of COMPANY, under the terms stated in SECTION 1 of this AGREEMENT.

SECTION 17. ASSIGNMENT

COMPANY shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of COMPANY's interest in this AGREEMENT or in the LICENSED AREA, without CITY's prior written consent which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, COMPANY shall have the right to sublease or assign its rights under this AGREEMENT to any of its subsidiaries, affiliates or successor legal entities or to any entity acquiring substantially all of the assets of the COMPANY.

SECTION 18. GOVERNING LAW.

This AGREEMENT shall be construed by and in accordance with the laws of the State of California.

SECTION 19. NO INTEREST IN PROPERTY.

Nothing herein shall be deemed to create a lease, or easement of any property, or to grant any interest in the PROPERTY, other than a real property license to use the LICENSED AREAS, revocable as set forth herein.

SECTION 20. INSPECTION

The LICENSED AREAS, including keys thereto, shall be at all times under control of the CITY, whose officials, employees and agents shall have the right to enter the LICENSED AREAS, and all portions thereof, for purposes of inspection (and other purposes contemplated by this AGREEMENT) at all times during the period covered by this AGREEMENT.

RD:VP
6/15/01

SECTION 21. UTILITIES

COMPANY at no cost to CITY, shall be solely responsible for ensuring that the LICENSED AREAS have adequate electrical power and any other utility service necessary or useful to operation of the TELECOMMUNICATIONS FACILITIES. CITY is not obligated to make electricity or other utilities available if there is an interruption in such service to the LICENSED AREAS or to the PROPERTY. COMPANY shall not do, nor shall it permit anything to be done, which may interfere with the effectiveness or accessibility of the utility, heating, ventilation, diesel exhaust or air conditioning systems or portions thereof of the PROPERTY.

SECTION 22. NOT AGENT OF CITY

Neither anything in this AGREEMENT nor any acts of COMPANY shall authorize COMPANY or any of its employees, agents or contractors to act as agent, contractor, joint venturer or employee of CITY for any purpose.

SECTION 23. RESERVATION OF RIGHTS.

COMPANY understands, acknowledges and agrees that any and all authorizations granted to COMPANY under this AGREEMENT are nonexclusive and shall remain subject to all prior and continuing regulatory and proprietary rights and powers of CITY to regulate, govern and use CITY property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect CITY property. CITY and COMPANY agree that nothing contained in, or contemplated by, this AGREEMENT is intended to confer, convey, create or grant to COMPANY any perpetual interest in any CITY property or in any of CITY's public rights of way.

SECTION 24. CONFLICT OF INTEREST.

COMPANY shall avoid all conflict of interest or the appearance of conflict of interest in the performance of this AGREEMENT.

SECTION 25. GIFTS.

- A. COMPANY is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. COMPANY agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by COMPANY. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 7 of this AGREEMENT.

RD:VP
6/15/01

SECTION 26. DISQUALIFICATION OF FORMER EMPLOYEES.

COMPANY is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters, which are connected with former duties, or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). COMPANY shall not utilize either directly or indirectly any officer, employee, or agent of COMPANY to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 27. SECURITY MEASURES

- A. COMPANY agrees to abide by all provisions of the Airport's Master Security Plan approved by the FAA, and agrees to institute and carry out all security measures as provided in the plan as further set forth in **EXHIBIT D** attached hereto. Any violations of the security plan which result in fines to the CITY by the FAA, and which are caused by COMPANY, its officers, agents, or employees, will be assessable to COMPANY by CITY and will be deemed to be additional fees and charges payable by COMPANY to CITY following invoice thereof by CITY to COMPANY.
- B. COMPANY shall be solely responsible for instituting and carrying out specific security measures required by the Airport's Master Security Plan in the areas where it is authorized to operate to prevent vandalism or damage to persons or property. CITY shall be responsible only for general security throughout the Airport and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of COMPANY's operation.
- C. COMPANY understands and acknowledges that CITY reserves the right to implement or change security measures that may limit public access to the Airport or the Terminals. In such event, COMPANY waives all rights against CITY for such limitation, and CITY shall not be liable to COMPANY for any amount, including compensation, in the form of reduction of any fees.
- D. COMPANY further agrees that all or a portion of its operations hereunder may be temporarily or permanently reduced or terminated if the FAA requires that all or a portion of the TELECOMMUNICATIONS FACILITIES must be removed from the Airport and that CITY may terminate this AGREEMENT immediately to comply with the FAA's directive. In such event the DIRECTOR is authorized, on behalf of CITY, to take all action necessary to comply with such requirement, including without limitation, terminating the AGREEMENT.

SECTION 28. AGREEMENTS WITH UNITED STATES

This AGREEMENT shall be subordinate to the provisions of any Federal agreement relative to the use, operation or maintenance of the Airport, the execution of which

Federal agreement has been, or may now or hereafter be, required as a condition precedent to the obtaining and/or expenditure of Federal funds for the development of the Airport, and any properties acquired in conjunction with its operations. COMPANY agrees that, to the extent that any such Federal agreement affects COMPANY, its use of the LICENSED AREAS and the Airport, COMPANY shall act in compliance therewith.

SECTION 29. GRANT AGREEMENT COVENANTS

COMPANY acknowledges that CITY is subject to Federal Grant Agreement obligations as a condition precedent to the granting of federal funds for improvements to the Airport, and, accordingly, COMPANY agrees to, and agrees to be bound by, the following covenants provided by the Federal Aviation Administration as they may apply to COMPANY.

- A. COMPANY for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on any areas occupied by COMPANY and described in this AGREEMENT for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, COMPANY shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- B. COMPANY for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities; (2) that in the construction of any improvements on, over, or under any areas occupied by COMPANY and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that COMPANY shall use any areas occupied by COMPANY in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.
- C. That in the event of breach of any of the above nondiscrimination covenants, CITY (through DIRECTOR) shall have the right to terminate this AGREEMENT and to reenter and repossess the areas occupied by COMPANY and the facilities thereon, and hold the same as if this AGREEMENT had never been made or issued. This provision does not become effective until the procedures of Title 49

RD:VP
6/15/01

Code of Federal Regulations, Part 21 are followed and completed including expiration of appeal rights.

- D. COMPANY shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. COMPANY may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- E. Without limiting the generality of any other terms or provisions of this AGREEMENT, non-compliance with Provision 29.D above shall constitute a material breach thereof and in the event of such non-compliance the CITY (through DIRECTOR) shall have the right to terminate this AGREEMENT and the estate hereby created without liability therefor or, at the election of the CITY or the United States, either or both governments shall have the right to judicially enforce Provisions 29.A, 29.B, 29.C and 29.D of this Section.
- F. COMPANY agrees that it shall insert the above five (5) Provisions in any agreement by which COMPANY grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public in the LICENSED AREAS.
- G. COMPANY assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This Provision obligates COMPANY or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this Section 29.G obligates COMPANY or any transferee for the longer of the following periods: (a) the period during which the property is used by CITY or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (b) the period during which CITY or any transferee retains ownership or possession of the property. In the case of contractors, this Section 29.G binds the contractors from the bid solicitation period through the completion of the contract.
- H. CITY reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of COMPANY and without interference or hindrance.
- I. CITY reserves the right, but shall not be obligated to COMPANY, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of COMPANY in this regard.

RD:VP
6/15/01

- J. This AGREEMENT shall be subordinate to the provisions and requirements of any existing or future agreement between CITY and the United States, relative to the development, operation or maintenance of the Airport.
- K. There is hereby reserved to CITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the LICENSED AREAS herein authorized. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the San José International Airport.
- L. COMPANY agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (FAR) in the event any future structure or building is planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.
- M. COMPANY by accepting this AGREEMENT expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport to a height above the mean sea level that would exceed Federal Aviation Regulations Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, CITY reserves the right to enter upon any area utilized by COMPANY and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of COMPANY.
- N. COMPANY by accepting this AGREEMENT agrees for itself, its successors and assigns that it will not make use of the LICENSED AREAS in any manner which might interfere with the landing and taking off of aircraft from San José International Airport or otherwise constitute a hazard. In the event this covenant is breached, CITY reserves the right to enter upon the LICENSED AREAS and cause the abatement of such interference at the expense of COMPANY.
- O. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349a).
- P. This AGREEMENT and its provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 30. MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this AGREEMENT, COMPANY agrees to consent in writing upon the request of CITY to any

such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this AGREEMENT as may be reasonably required to enable CITY to obtain the FAA funds, provided that in no event shall such changes materially impair the rights of COMPANY hereunder. A failure by COMPANY to so consent shall constitute a breach of this AGREEMENT.

SECTION 31. MISCELLANEOUS

- A. Whenever the singular number is used in this AGREEMENT and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- B. If there be more than one entity designated in, or signatory to, this AGREEMENT, the obligations hereunder imposed upon COMPANY shall be joint and several; and the term COMPANY as used herein shall refer to each and every of said signatory parties, severally as well as jointly.
- C. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in interest.
- D. Time is, and shall be, of the essence for each term and provision of this AGREEMENT.
- E. Each and every term, condition, covenant and provision of this AGREEMENT is and shall be deemed to be a material part of the consideration for CITY's entry into this AGREEMENT and any breach hereof by COMPANY shall be deemed to be a material breach. Each term and provision of this AGREEMENT performable by COMPANY shall be construed to be both a covenant and a condition.
- F. The headings of the several paragraphs and sections of this AGREEMENT are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this AGREEMENT and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- G. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either CITY or COMPANY in its respective rights and obligations contained in the valid covenants, conditions and provisions of this AGREEMENT.
- H. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto,

RD:VP
6/15/01

are by such reference incorporated herein and shall be deemed a part of this AGREEMENT as if set forth fully herein.

- I. Whenever in this AGREEMENT the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent unless the terms of this AGREEMENT specifically allow an oral approval or consent of a party.
- J. This agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- K. This agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.
- L. Days, unless otherwise specified, shall mean calendar days.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the EFFECTIVE DATE.

APPROVED AS TO FORM

"COMPANY"

 Victor A. Pappalardo
 Deputy City Attorney

BY: _____
 NAME: _____
 TITLE: _____

BY: _____
 NAME: _____
 TITLE: _____

APPROVED

CITY OF SAN JOSÉ,
a municipal corporation

 Name:
 Real Estate Division

By: _____
 Name: _____
 Title: _____
 Date: _____

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6/15/01

EXHIBIT A

PROPERTY DESCRIPTION

[INSERT PROPERTY DESCRIPTION,

RD:VP
6/15/01

EXHIBIT B

TELECOMMUNICATIONS FACILITY

[INSERT DESCRIPTION OF ALL INSTALLED EQUIPMENT]

RD:VP
6/15/01

EXHIBIT C

Description of Services

EXHIBIT D

AIRPORT SECURITY

Under the provisions of FAR 107, it has been determined that employees of the Airport, Airport tenants, contractors, and air carriers who have access to the controlled areas of airports are in positions where their actions can have a critical impact on the safety of the traveling public.

Therefor it is understood and agreed that if the work, storage or entry areas provide access to the aprons, taxiways, runways or any other restricted areas of the Airport the Contractor shall, at his own expense and cost, take what ever steps are reasonably necessary to prevent or deter persons and vehicles from unauthorized access to such areas and to take such further actions as may be necessary because of the nature of the work to insure continuing compliance with all applicable regulations relative to Airport security.

Contractor/vendors access to controlled areas

Contractors, sub-contractors, their employees, vendors, truckers and any other person who are required to perform work that allows them to have access to the controlled areas of the airfield must either be badged or escorted by someone who is badged. This specifically includes trucks bringing materials into or out of the controlled area.

Identification Badges

All persons employed by the contractor or any sub-contractor who must have unescorted access to any area of the Airport controlled for security reasons must undergo a background check and obtain an identification badge from the Airport. This badge must be worn at all times when in the controlled area. **Airport police and FAA security personnel can and will arrest and levy fines on individuals and companies for violations of security regulations**

Procedure to obtain a badge:

General procedure: Upon award of the contract the contractor will submit on the appropriate forms to the engineer an individual who will be authorized by the contractor to accept responsibility for signing badge applications.

The Airport sponsor will verify the employment history of the listed individual and will then sign the "Tenant/City Employee Employment - History Verification Certification" form (blue form).

This individual will be responsible for performing a ten year employment history review, verifying the most recent five year employment, and completing the appropriate forms to certify each individual who is to be issued a badge.

RD:VP
6/15/01

The Airport sponsor will meet with the Contractors representative to go over badging procedures before any badge applications will be accepted.

On contracts with a General Contractor and Sub Contractors the General Contractor shall assume responsibility for verifying and completing the appropriate forms for all Sub Contractor's badges. The Airport can not and will not verify or sign for Sub Contractors.

Ten year Employment History Review and Five year Employment Check: An employee requesting a badge must fill out and submit on the appropriate form ten years of employment history. The Contractors Representative will review the document, verify the last five years and complete the appropriate forms.

Verification of the past five years of employment for each employee requesting a badge must be documented and records kept on file by the employer. Records must contain: the date, name of the company, phone number, and name of the person contacted.

The Airport reserves the right to inspect these records at any time.

These records must be maintained by the contractor/sub-contractor or vendor for a period of 180 days after the termination /expiration of the badge.

Application: Each person requesting a badge must fill out an application and City Contractor/Vendor Employment History Certification Form (pink form) in blue or black ink and have it signed by their company's authorized representative. The Contractors Representative will submit in one packet, a letter on the company's letterhead listing all applicants, the applications and blue or pink forms, collated. This packet will be delivered to the engineer for processing. Incomplete applications will be returned. Fax's or copies are not acceptable. Applications take a minimum of 48 hours to process.

SIDA training: The FAA has mandated that any person who has unescorted access to controlled areas of the Airport must undergo security training. The Airport provides this training three times a week in a two-hour class. Reservations for the class can be made by contacting the Airport Training Center. A picture I.D., issued by a county, state, or federal agency, is required for admittance to this class. Examples would be a current California driver's license or I.D. card, U.S. passport or military I.D. plus one additional non-photo I.D.

Return of badges and employers obligation to notify Airport of termination of an employee: The badging office must be notified verbally within 15 minutes of the termination of an employee so the status of the I.D. badge may be updated. The number for the badging office is 408-277-5419. After hours call Airport communications office at 408-277-5100. Badges of terminated employees must be retrieved and turned in to the Badging office within one day after termination.

Lost or stolen badges: The Badging office must be notified verbally within 15 minutes of a lost or stolen badge. Written notification must reach the badging office within 8 hours of the verbal notice. There is a fee for replacement of lost badges.

Return of Badges on Contract Completion. Badges must be returned on contract completion. A One Hundred-Dollar fee will be assessed against the retention for any badge not returned.

EXHIBIT E**INSURANCE**

INSURANCE REQUIREMENTS. COMPANY shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to PROPERTY which may arise from, or in connection with, the performance of the work hereunder by COMPANY, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

Insurance Services Office form number GL 0002 (Ed. 1/73) covering commercial General Liability and Insurance Services Office form number GL 0404 covering Broad Form Commercial General Liability; or insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including, X, C, U, (E DATE.

1. Explosion, Collapse & Underground) coverage.
2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage also to include code 8 "hired autos" and code 9 "nonowned" autos.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. PROPERTY Insurance against all risks of loss to any tenant improvement or betterments.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

3. **Workers' Compensation and Employers Liability:** Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$100,000 per accident.
4. **Property Insurance:** Full replacement cost with no co-insurance penalty provision.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officials, employees, agents and contractors; or COMPANY shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. **Commercial General Liability and Automobile Liability Coverage(s)**
 - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insured(s) as respects: Liability arising out of activities performed by or on behalf of, COMPANY; products and completed operations of COMPANY; premises owned, leased or used by COMPANY; and automobiles owned, leased, hired or borrowed by COMPANY. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. COMPANY'S insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of COMPANY'S insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by COMPANY shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that COMPANY'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverage(s)

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY'S Risk Manager.

F. Verification of Coverage

COMPANY shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSÉ
Risk Manager
152 North Third Street, Suite 904
San José, California 95112-5509

G. Subcontractors

COMPANY shall include all subcontractors as insured(s) under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**RATE SCHEDULE FOR ATTACHMENT OF TELECOMMUNICATION
ANTENNAE/EQUIPMENT TO CITY OF SAN JOSE OWNED PROPERTIES ***

1 to 4 antennae and/or foundation/surface area containing equipment or cabinet is less than 150 square feet	\$19,679 per annum
5 to 8 antennae and/or foundation/surface area containing equipment or cabinet is 150 to 499 square feet	\$23,615 per annum
9 or more antennae and/or foundation/surface area containing equipment or cabinet is 500+ square feet but not more than 16 antennas and 2,000 square feet	\$28,337 per annum
Requests for facilities containing more than 16 antennae and/or foundation/surface area containing equipment in excess of 2,000 square feet shall be reviewed and priced on a case-by-case basis	

- Lessees which choose to pay for 5 years upon commencement of the contract shall be charged at a 20% discount based upon the base rate x 5 without factor for inflation.

* The rates noted below are for Fiscal Year 2001-02 ending June 30, 2002; rates increase annually by the greater of four percent (4%) or the change in the Consumer Price Index (All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the San Francisco-Oakland-San Jose Metropolitan area (hereinafter "CPI"). The CPI rose 5.8% for the 12 month period ending April 2001.

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6/26/01

**RATE SCHEDULE FOR PLACEMENT OF TELECOMMUNICATION OF
TELECOMMUNICATION FACILITY AT CITY OWNED PROPERTY AT THE
SAN JOSÉ INTERNATIONAL AIRPORT**

Base Year Rate:

City Fiscal Year 2001 – 2002 shall be the base year (“Base Year”). The rate for installation and use of a telecommunications facility at San José International Airport during the base year shall be \$63,480.00 plus \$58.00 per square feet for equipment area floor space or shelf space.

Adjustment:

The USE CHARGE shall be increased annually, up to the maximum amount set forth below, to equal the greater of: (i) 4% of the then current rate, or (ii) the extent of any percentage change which occurred in the Consumer Price Index (All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the San Francisco-Oakland-San José Metropolitan area (hereinafter “CPI”). The percentage change in the CPI shall be calculated by a fraction, the denominator of which is the CPI in effect as of the calendar month fourteen (14) full months prior to the adjustment date, and the numerator of which is the CPI in effect two (2) full months prior to the adjustment date.

If the Department of Labor discontinues publishing the index mentioned above, CITY may use a comparable index to calculate the percentage change in the CPI.

Advance Payment Discount:

Companies may at their option pay five years in advance, in which case the payment is calculated without regard to potential CPI change and a 20% discount is applied, as example:

Company pays \$63,480.00 X 5 years (in advance) = \$317,400.00
minus 20% (\$63,480) = \$253,920.