

CITY OF OAKLAND
TELECOMMUNICATIONS LICENSE AGREEMENT

This Telecommunications License Agreement ("License Agreement") is made this ____ day of ____, 2012, between the CITY OF OAKLAND, a municipal corporation, as licensor (hereafter "Licensor") and _____ ("Licensee"), whose address is: _____ for the use of real property located _____, Oakland, California, (the "Premises").

Recitals

- A. Whereas, the Licensor owns the Premises ("Premises") which consists of the real property situated in the City of Oakland, County of Alameda, State of California, located at the _____, and is more particularly shown on the attached drawing labeled Exhibit "A"; Site Plan(s) attached hereto and made part hereof (hereafter "Licensed Space"); and
- B. Whereas, Licensee wishes to use certain portions of the Premises exclusively for the siting of certain telecommunications equipment which is depicted on Exhibit "B" hereto (the "Licensed Space"), which exhibit is incorporated herein by this reference. The Licensee proposes to install all improvements necessary to facilitate the provision of telecommunications services. The Licensor has determined that it is in its best interest to permit the Licensee to utilize the Licensed Space to provide the telecommunications infrastructure to serve the Oakland community.
- C. The Licensor desires to license the Licensed Space to the Licensee for such use, all pursuant to the terms and conditions of this License Agreement.

NOW, THEREFORE, the undersigned parties agree as follows:

1) **TERM:** The term of this License Agreement ("Agreement") shall be effective upon the issuance of all related permits and shall commence on _____ (the "Commencement Date"), a copy of such permit is to be forwarded to the Licensor at the address listed below in Section 28. The initial license term will be for five (5) years ("Initial Term"), commencing upon the Commencement Date. The Initial Term will terminate on the last day of the month in which the fifth anniversary of the Commencement Date occurs.

2) **OPTION TO EXTEND:** Licensee shall have the right to extend this term for four (4) additional five (5) year terms. Each five year extension term is referred to as a "Renewal Term" on the same terms and conditions set forth herein, provided Licensee is not in default of this License upon commencement of the succeeding Renewal Term. (The Initial Term and all Renewal Terms are herein collectively referred to as the "License Term" or the ("Term")). This License Agreement shall automatically be extended for each successive Renewal Term unless Licensee notifies Licensor of its intention not to renew no later than ninety (90) calendar days prior to the expiration of the Initial Term or the preceding Renewal Term, as the case may be.

Within thirty (30) calendar days of the expiration of the Initial Term, Licensor may request in writing an adjustment of the then existing rent to equal the prevailing Fair Market Rate.

The Fair Market Rate shall be defined as the prevailing market rate for comparable sites for all metro areas within 100 miles of the City of Oakland with a population greater than 100,000. Comparable sites shall include sites that: (i) have a similar size and type of lease area (e.g. public areas, golf courses, parks, open space, garage space, rooftops light standards, etc.); and (ii) are of a similar telecommunications site type (i.e. raw or improved land); and (iii) house a similar number of antennas. Licensor and Licensee shall attempt, in good faith, to agree in writing on the Fair Market Rate within thirty (30) calendar days of Licensor's request for a Fair Market Rate adjustment.

3) **PURPOSE:** Licensor hereby grants to Licensee a non-exclusive License to use the Licensed Space for the purpose of constructing, installing, operating, repairing, maintaining and removing that telecommunications equipment specified in the attached Exhibit "C" (the "Equipment"), which is incorporated herein by reference.

4) **LICENSE FEE PAYMENTS:** Commencing upon the Commencement Date, Licensee shall pay the Licensor as consideration for its use of the Licensed Space, the sum of _____ Thousand Dollars (\$_____) per year (the "License Fee"), and subject to annual adjustment as provided below. The Annual License Fee shall be due and payable to Licensor on January 1 of each and every year of the License Term. The License Fee for the first year of the License shall be prorated based on a daily rate of \$_____. Licensee agrees to pay all License Fees to Licensor during the License Term, without any offset or deduction whatsoever, for the nonpayment of which Licensor shall be entitled to exercise all such rights and remedies as are herein provided for in the case of the nonpayment of the License Fees. Licensee hereby agrees to pay such License Fee to Licensor at the following address, or such other address as the Licensor may from time to time designate:

City of Oakland
Real Estate Services
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, California 94612
Attn: John Monetta

Licensor shall increase the License Fee on the anniversary of the Commencement Date of each year following the Commencement Date by the greater of Four Percent (4%) or the percentage increase which occurred in the Consumer Price Index ("CPI") for "All Items - All Urban Consumers" for the San Francisco-Oakland-San Jose Metropolitan Statistical Area during the preceding 12 month period, which increase shall not exceed Six Percent (6%) of the License Fee from the previous year.

5) **DELINQUENT LICENSE FEES:** Licensee acknowledges that the Licensor incurs collection and administrative costs associated with pursuing delinquent License Fee payments. Licensor and Licensee hereby agree that if payment of the License Fee for any year is not received

by the Licensor prior to 5:00 p.m. on the day it is due, Licensee shall pay a late charge equal to ten percent (10%) of such overdue amount and shall be due and payable at the time the License Fee is paid. If the late charge is not paid within ten (10) calendar days, the amount owed will be added to the succeeding Year's License Fee. Acceptance of such late charge by Licensor shall in no event constitute a waiver of Licensee's default with respect to such overdue amount, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder.

6) **PROCESSING AND ADMINISTRATIVE FEES:** Concurrent with the execution of this License Agreement, Licensee shall pay the City of Oakland a non-refundable ("Processing Fee") of Two Thousand Two Hundred Twenty-Four Dollars and twenty cents (\$2,224.20) to compensate Licensor for its legal and other costs in entering into this Agreement. Licensee acknowledges that the Processing Fee is not applicable against Base Rent or any other charge or fee under this Agreement.

(a) **PROCESSING FEE:** Within thirty (30) calendar days following the Effective Date of this Agreement, Licensee shall pay to Licensor a non-refundable one-time payment of Two Thousand Two Hundred Twenty-Four Dollars and Twenty Cents (\$2,224.20) ("Professing Fee") to compensate Licensor for its legal and other costs in entering into this Agreement. Licensee acknowledges that the Processing Fee is not applicable against the License Fee or any other charge or fee under this Agreement.

(b) **REVIEW FEE:** In the event that Licensee requires additional administrative services to amend, update, modify or change Equipment (substantially similar Equipment replacements excepted) Licensee shall pay an Administrative Review Fee ("Review Fee") to recover staff costs associated with the technical analysis, legal review and preparation of documents to assure complete compatibility of operations at this location. The current Review Fee is as stated in the Master Fee Schedule One Thousand Seven Hundred Sixty-Seven Dollars and forty-eight cents (\$1,767.48). This is in addition to the general permits required by other Licensor agencies, and may be adjusted annually in accordance with the City of Oakland Master Fee Schedule.

(c) **COLOCATION:** In the event that Licensee desires to collocate Licensee will notify Licensor of Oakland, Real Estate Services of its intention to do so. Licensee may not collocate add or make any changes to the Licensed Space without written consent of the Licensor. Licensor may, at its discretion, charge additional rent for collocating any additional facilities.

7) **LICENSE NOT EXCLUSIVE:** Licensor hereby reserves the right to grant, renew or extend similar licenses to others. Notwithstanding the foregoing, Licensor shall expressly condition any such license upon such Licensee agreeing not to cause interference with Licensee's Equipment or Licensee's PCS wireless signal transmission or reception from and to the Licensed Space. If any third party or another licensee shall interfere with the enjoyment by Licensee of the rights granted under this License Agreement, the Licensee shall have the right to take appropriate action against such interfering party or to terminate this License upon thirty (30) calendar days written notice to Licensor. Licensor shall not be liable for any expenses or damages, which it may suffer as a result

of such interference and premature termination of this License Agreement.

8) **LICENSE NOT TRANSFERABLE:** The License granted herein is personal to Licensee only and is not transferable in any manner whatsoever without the written consent of the Licensor and in accordance with Section 46 herein below. Transfer of this License or the rights granted herein by this License shall be void and of no force unless such transfer complies with Section 46

9) **USE:** The Licensee shall use the Licensed Space for the purposes set forth in Section 2 above. Licensee agrees not to use or permit the use of the Licensed Space for any other purpose, or for any purpose which is illegal, dangerous to life, limb or property or which, in Licensor's reasonable opinion, creates a nuisance or which would increase the cost of insurance coverage with respect to the Licensed Space. In particular, no semiconductors or other electronic Equipment containing polychlorinated biphenyls (PCB's) or other environmentally hazardous materials will either be used or stored in or around the Licensed Space and no such materials will be used in any of the Equipment installed by Licensee in the Licensed Space (except for Licensee's battery system, which having environmentally sensitive materials will be handled by and will be the sole responsibility of the Licensee). Licensee will not permit unauthorized person or persons with insufficient expertise or experience to enter the Licensed Space and maintain or operate its Equipment Licensee understands that its Equipment must be kept locked and secure at all times. Licensee shall use the Licensed Space in conformance with the standards and requirements of the Oakland Planning Code with respect to telecommunications facilities.

Licensee acknowledges that interruptions in utility services are not uncommon in facilities such as the Licensed Space and Licensee acknowledges that any sensitive electronic Equipment, which may be used in the Licensed Space, will be protected by Licensee from utility service interruptions through the use of backup power supplies, surge protectors and other appropriate safety systems. Licensee acknowledges that it has taken all precautionary steps it deems necessary to protect such Equipment in the Licensed Space, including the acquisition of insurance if applicable. Licensee agrees to indemnify and hold the Licensor, its officers, agents and employees harmless from any damages or losses (including indirect or consequential damages and including attorneys' fees) sustained to any of Licensee's Equipment or caused by service interruptions, regardless of whether such interruptions are attributable in whole or in part to the negligence of Licensor, its agents or employees. This indemnity is in addition to and not in substitution of any other indemnity in this Agreement.

10) **UTILITIES:** Licensee shall be responsible for and shall pay for all charges for utility services furnished to the Licensed Space during the term of this License Agreement and, whenever practicable, shall arrange for such services directly with the furnishing utility agency.

As part of Licensee's construction and installation of Licensee's Equipment, Licensee shall pay for all costs of meters, submeters, wiring, risers, transformers, electrical panels, lighting, air conditioning and other, if any, items required by Licensor which, in Licensor's reasonable judgment, are necessary to accommodate Licensee's design loads and capacities, including, without limitation, the installation and maintenance thereof. Notwithstanding the foregoing, Licensor may

withhold consent for Licensee's installation of any wiring, risers, transformers, electrical panels, lighting or air conditioning if, in Licensor's reasonable judgment, the same are not necessary or would cause damage or injury to the Licensed Space or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations or repairs to the Licensed Space, or would interfere with or create or constitute a disturbance to other tenants, Licensees or occupants of the Licensed Space. In no event shall Licensor incur any liability for Licensee's installation or modification of any such electrical facility or Equipment.

Licensee accepts the Licensed Space in an "AS-IS" condition and that the Licensor has not agreed to undertake or provide any improvements to the Licensed Space for the Licensee. Licensee shall have the right to install utilities, at Licensee's sole cost and expense, and to improve the present utilities on the Premises or near its Equipment (including, but not limited to the installation of emergency back up power). Subject to Licensor's approval of the location, which such approval shall not be unreasonably withheld, plus approval by the appropriate permitting agency, if any, Licensee shall have the right to place utilities on (or to bring utilities across) Licensor's property in order to service the Licensee's Equipment. Upon Licensee's request, Licensor, at its sole discretion, may execute recordable instruments evidencing such easements. Licensor shall use all reasonable efforts to notify Licensee at least 24 hours in advance of any planned utility outages which may interfere with Licensee's use.

11) **INSTALLATION AND OPERATION:** All of the Equipment to be installed on the Licensed Space shall be installed at Licensee's sole cost and expense, and in good and workmanlike manner by a licensed contractor and in accordance with appropriate electrical, mechanical and structural plans and specifications to be reviewed by the City of Oakland's Office of Planning and Building. It is further agreed that Licensee shall not operate the Equipment at any frequency which has not been approved by the Licensor's Office of Communications and Information Services, which approval shall not unreasonably be withheld or delayed. Notwithstanding the foregoing, Licensor acknowledges that Licensee intends to operate within the Licensed Space on the FCC approved frequency range for which Licensee is permitted: Receive and Transmit Range of (MHz-700-900) and Receive and Transmit range (MHz 1800-2000) and the City agrees that the Licensee shall be entitled to operate on any of the frequencies within the foregoing range, without consent of the City, or change frequencies, without the consent of the City, provided Licensee does not interfere with the City. In the event that Licensee changes, or adds, frequency ranges to another range outside that set forth above, Licensee shall notify City in writing, as soon as reasonably practicable, of such change.

a) Under the terms of this Agreement, in the event Licensee desires to increase the footprint of the Licensed Space beyond that set forth in Exhibit "B" for placement of a larger Equipment shelter or additional Equipment cabinets, and/or antennas excluding any modifications additions or increases in size, number or length of power, poles, Telco and cable runs, Licensee shall first seek Licensor's consent. Such increase to the Licensed Space may be subject to increased License Fees, Design Review Fees, Administration Fees and planning or building fees required by the City of Oakland Planning and Building Departments.

Upon satisfaction by Licensee of all conditions precedent in this License Agreement to the

installation of the Equipment, including submittal to and approval by the Licensor of proof of insurance as required under Exhibit "D" and issuance of all permits and governmental approvals necessary to begin installation (including establishment of a sinking fund for Equipment removal), Licensee shall be authorized to enter the Premises and install the Equipment.

12) MAINTENANCE:

(a) Licensee shall keep the Licensed Space and Licensee's Equipment in a neat, clean, and orderly condition at all times during the term of this License Agreement. Licensee, at Licensee's sole cost and expense, shall be responsible for all repairs and maintenance to the Licensed Space resulting from the installation and operation of the Equipment and any modifications or alterations to the Licensed Space made to accommodate the Equipment. Licensee shall also promptly repair any damage to the Licensed Space or Licensor's Premises caused by Licensee, its agents or contractors.

(b) In the event that Licensor performs maintenance or repairs which this License Agreement requires Licensee to perform but which Licensee fails to perform, Licensee shall reimburse the Licensor within thirty (30) calendar days after receipt of an invoice from Licensor for the cost of such maintenance or repair plus an amount equal to twenty (20%) of such costs in order to reimburse Licensor for administration and overhead. Notwithstanding the foregoing, Licensor shall not be entitled to repair, alter, adjust, move or otherwise affect the operation of the Licensee's Equipment during the term of this License Agreement.

(c) Prior to installation Licensee shall submit plans and specifications to the Licensor for Design Review and for approval of any proposed cable runs and antenna locations, which approval shall not be unreasonably withheld, conditioned or delayed.

13) REPAIRS: The Licensor shall not be obligated to make any repairs to the Licensed Space during the term hereof. Licensee covenants and agrees, at its own cost and expense, during the term hereof to repair any damage to the Premises or the Licensed Space caused by Licensee, its agents, or contractors and maintains Licensed Space and Licensee's Equipment in good condition and repair.

14) ALTERATIONS: Licensee shall not make or permit any other person to make alterations to the Licensed Space outside of the scope of this License Agreement without the prior written consent of the Licensor. Such consent shall not be unreasonably withheld.

15) FAILURE TO OBTAIN PERMITS: Licensee hereby represents that Licensee has obtained or will apply for and obtain all of the necessary construction permits and/or governmental approvals for Licensee's operation in and on the Licensed Space. Issuance of all required permits and governmental approvals (including sinking fund requirement) is a precondition of this license. Execution of this Agreement in no way constitutes approval by any Licensor department with permitting authority over Licensee's activities. If Licensee has not, as yet, obtained such permits

and/or approvals, Licensee will have the option to terminate this License Agreement because of the denial by the appropriate government agency of any necessary construction permits and/or approvals. Such option must be exercised, if at all, by Licensee's delivery to Licensor of written notice of such termination within thirty (30) calendar days after Licensee's receipt of notice of denial. This License Agreement shall terminate thirty (30) calendar days after Licensor receives written notice of Licensee's intent to terminate under this provision and neither Licensor nor Licensee shall have any further rights, obligations, duties or liabilities to each other hereunder.

16) ACCESS BY LICENSEE: Licensee and its agents and contractors shall have access to the Licensed Space for the purpose of constructing and installing the Equipment. All provisions of this License Agreement shall be in force during such construction period including the fee provisions as stated in this License Agreement. During the Term of this License Agreement after completion of the construction of the Equipment and installation of the Equipment, Licensee shall have access to the Premises for the sole purposes of maintenance and repair of the Equipment. During the initial construction period and in the event Licensee finds it necessary to access the Licensed Space for repairs and alterations, Licensee shall inform the Licensor's Real Estate Services Department ("RESD") as to the exact nature of the repairs and/or alterations and the proposed date and time of the required access, and shall obtain authorization from RESD prior to performing any work. Additionally, Licensee shall supply the name, telephone number and other contact information of the all persons and entities entering the Licensed Space for these purposes. The phone number for the Licensor's Real Estate Services is (510) 238-7125 or (510) 238-3541.

17) ACCESS BY LICENSOR: Licensor reserves the right for Licensor and Licensor's agents to enter the Licensed Space at any time (i) to inspect the Licensed Space, (ii) to show the Licensed Space to prospective lessees, lenders or purchasers, (iii) to alter, maintain or repair the Licensed Space or any other portion of the Licensed Space, (iv) to alter, maintain, repair, replace or relocate conduit, wire or Equipment serving other portions of the Licensed Space, (v) to perform any obligation of Licensee after Licensee's failure to perform same, provided notice of such failure and opportunity to cure in accordance to Sections 28 and 32 below has first been provided to Licensee or (vi) upon default by Licensee under this License Agreement. Licensor shall have the right to enter the Licensed Space without advance notice in those cases in which Licensor deems in its reasonable judgment that an emergency requires such entry. In such cases Licensor shall notify Licensee of such entry as soon as it is possible. During the course of any permitted access to the Licensed Space under this Section 17, Licensor shall not alter, tamper with, adjust, move, or otherwise affect the Equipment or the operation thereof.

(18) INTERFERENCE BY LICENSEE: Licensee shall ensure that its use of the Equipment does not interfere with the Licensor's public safety transmissions, police and fire communications, Licensor's internal or external communications, or communications used in the connection with the Oakland International Airport. Licensee shall operate the Equipment in such a manner that all communications sent or received by the Equipment shall be in accordance with FCC rules and regulations and pursuant to Licensee's FCC issued and regulated frequency licenses.

Licensee hereby warrants and covenants that the installation and operation of the Equipment will:

- (a) In no way damage the Premises.
- (b) Comply with the requirements of the carriers of the fire and other property insurance on the Premises.
- (c) Not increase the possibility of fire or other casualty or increase the then existing premiums for or void the coverage of any insurance on the Premises or its contents.

Licensee shall provide reasonable proof of compliance with Subparagraph (c) upon reasonable request by Licensor.

As used herein, the term “interference” shall mean and include any and all material and/or measurable interference as defined by the FCC, which interference is by definition a violation of FCC licenses and/or any applicable FCC rules or regulations.

In the event such interference exists, Licensee will promptly and as soon as practicable, upon receipt of written notice from Licensor correct and eliminates such interference.

In the event Licensee refuses or is unable to correct interference under Subparagraph (b) within five (5) calendar days after receipt of notice from Licensor or Licensor's authorized representative, Licensor shall, in addition to any other remedies available to Licensor for default under this License Agreement, have the right to correct, or cause to be corrected, such interference at the sole cost and expense of Licensee. In the event of interference, the Licensor's Office of Information Technology will reasonably determine the source of such interference, which determination shall be made by an engineer with substantial experience in radio frequency radiation evaluations. The determination of such Office will be conclusive.

- (a) Comply with all applicable rules and regulations of the Federal Communications Commission ("FCC") or any successor agency to the FCC and the electrical and fire codes of any governmental authority having jurisdiction over the Premises.
- (b) Comply with the requirements of the carriers of the fire and other property insurance on the Premises.
- (c) Not increase the possibility of fire or other casualty or increase the then existing premiums for or void the coverage of any insurance on the Premises or its contents.

Licensee shall provide reasonable proof of compliance with Subparagraph (c) upon reasonable request by Licensor.

Subsequent to the installation of the Equipment, Licensor shall not permit itself, its lessees or Licensees to install new Equipment on the Licensed Space if such Equipment is likely to cause interference with the operation of Licensee's Equipment. In the event interference occurs, Licensor agrees to take all reasonable steps necessary to eliminate such interference, in a reasonable time period.

Except in the event of an emergency, subsequent to the installation of the Equipment, Licensor shall, in good faith, use best efforts to meet and confer in advance with Licensee regarding the installation of new Equipment by the Licensor which may cause interference with the operation of Licensee's Equipment. The parties shall use all good faith efforts to continue Licensee's use and transmission without interference if reasonably possible. In the event such interference cannot be avoided after such use of such good faith best efforts, the parties shall address the resolution of Licensee's Equipment pursuant to Section 35 of this License. Licensor and Licensee acknowledge that in the event of a public emergency, Licensor may be required to take action with or without notice to Licensee which may cause interference with Licensee's Equipment or signal transmission and reception, and in the event of such public emergency, Licensor shall have no liability to Licensee for any interference or other damage caused to Licensee's Equipment.

(a) Licensee agrees to install a master power "cut-off" switch on their Equipment for the purpose of assisting Licensor in such an emergency.

(b) Unless otherwise specifically provided in a notice of termination of this License Agreement, Licensor's exercise of the right to shut off any power to the Licensed Space pursuant to this Section is not intended to constitute a termination of this License Agreement by either party. Licensee and Licensor shall meet after the Licensor

19) **RELOCATION:** Subject to other provisions of this License Agreement, in the event Licensor desires to redevelop, modify, remodel, demolish, or in any way alter the Premises and any improvements thereon ("Redevelopment"), Licensor shall in good faith use its best efforts to fully accommodate Licensee's continuing use of the Premises. Should any proposed Redevelopment necessitate the relocation of the Premises or of the Equipment and/or any alterations to the Equipment during the Term of this License Agreement, Licensee shall relocate or make the necessary alterations, at Licensee's sole cost, expense and risk; provided however, that Licensor has provided Licensee with no less than six (6) months prior written notice of Licensor's proposed Redevelopment and written notice of a License Fee abatement equal to three (3) months of the License Fee in effect when the relocation of the Equipment occurs. Licensor shall not be entitled to require relocation or alteration of the Equipment more than one (1) time during the Term of this License Agreement. Licensee hereby waives and releases the Licensor from any claims for relocation benefits or assistance upon termination of this License Agreement under federal, state or local law.

20) **SURRENDER:** Upon the expiration or earlier termination of this License Agreement, Licensee will remove all of the Equipment installed in or on the Licensed Space by Licensee and leave the Licensed Space in the same condition existing as of the date of this License Agreement, ordinary wear and tear excepted. If Licensee fails to remove any Equipment or other item of property required to be removed within thirty (30) calendar days following expiration or termination of this License Agreement, Licensor may, at Licensor's option, remove such property from the Licensed Space at the expense of Licensee and sell or dispose of same in such manner as Licensor deems advisable. Any property of Licensee remaining in the Licensed Space more than

thirty (30) calendar days after expiration or earlier termination of this License Agreement, and delivery to Licensee of any applicable statutory notices, if any, will be deemed to have been abandoned by Licensee.

21) **INDEMNIFICATION:** To the fullest extent permitted by law, Licensee hereby indemnifies, agrees to defend and hold harmless the Licensor, its elected officials, its employees, agents and officers from and against any liability, damages, injuries, or claims for damages by reason of injury to any person or persons, including Licensee, or property of any kind whatsoever and to whomsoever belonging, including Licensee, to the extent arising directly from the installation, use, maintenance, repair or removal of the Licensed Space, by Licensee, its agents, customers, business invitees and/or any persons acting on Licensee's behalf, except for those damages arising out of the active negligence or willful misconduct of the Licensor, its elected officials, its employees, agents or independent contractors. To the fullest extent permitted by law, Licensor shall indemnify, defend and hold Licensee harmless from and against any and all liability for injury, loss, damage or liability or property damage arising out of the active negligence or willful misconduct of the Licensor, its elected officials or its employees, agents or independent contractors, or Licensor's breach of any provision of this License Agreement, except to the extent attributable to the negligent or intentional act or omission of Licensee, its employees, agents or independent contractors. Licensor shall not be held responsible or liable for any subsurface soil conditions existing at, on, or under the Licensed Space on the effective date of this License Agreement, except to the extent arising out of the willful misconduct or active negligence of Licensor elected officials, its officers, agents, or employees, or except as otherwise provided for herein. Notwithstanding anything to the contrary contained in this License Agreement, Licensor and Licensee acknowledge that as a material inducement for the Licensor entering into this License Agreement, Licensor and Licensee shall not be liable under any circumstances for punitive damages or consequential damages (including, without limitation, lost profits or customer losses of Licensee). The indemnification obligations of Licensee and Licensor under this section shall survive the expiration or earlier termination of this License Agreement.

In an action or claim against Licensor in which Licensee is defending Licensor, Licensor shall have the right to approve reasonable legal counsel providing Licensor's defense.

22) **DAMAGE TO PROPERTY OR PERSON:** Licensor will not be liable for the following: (i) any loss or damage to property of Licensee, including the Equipment, or of others located in or on the Licensed Space, by theft or otherwise, (ii) any injury or damage to persons or property within the Licensed Space resulting from fire, explosion, falling sheetrock, gas, electricity water, rain, snow or leaks from any part of the Licensed Space or from, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, (iii) any injury or damage caused by other Licensees or any person(s) in the Licensed Space, or by occupants of property adjacent to the Licensed Space or common areas, or by the public or by the construction of any private, public or quasi-public work, or (iv) any latent defect in construction of the Licensed Space, unless due to the active negligence and or intentional conduct of Licensor, its agents or invitees.

23) **INSURANCE:** Licensee shall, at its sole cost and expense, procure and maintain during the entire term of this License Agreement public liability and property damage insurance in accordance

with the requirements of Exhibit "D" which is attached hereto and incorporated herein. Proof of insurance shall be submitted to the Licensor prior to the installation of the Equipment.

24) **HAZARDOUS MATERIALS:** Hazardous materials are those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42, U.S.C. Section 9601, et seq. ("CERCLA") and the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et. seq., or those which meet the toxicity, reactivity, corrosively or flammability criteria of the above regulations, as well as any other substance which poses a hazard to human health or to the environment.

Except as otherwise permitted in this License Agreement, Licensee shall not use, create, store or allow any such substances on the Licensed Space. In no case shall Licensee cause or allow the deposit or disposal of any such substance on the Licensed Space.

25) **ENVIRONMENTAL LAW** means any and all federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, rulings, directives or notices of violation, that create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal, or management of any Hazardous Material, or otherwise regulating or providing for the protection of the environment.

26) **ENVIRONMENTAL HEALTH:**

(a) Licensee shall, at Licensee's sole cost, take all measures necessary to ensure that the Equipment strictly complies with all obligations to which Licensee is bound in connection with such Equipment, including, without limitation, regulations of the Federal Communications Commission, the Environmental Protection Agency, and the Occupational Safety and Health Administration, applicable to the emission of radiation from active transmission Equipment or similar facilities. Licensee shall also pay promptly when due all royalties or other fees due in connection with the operation of the Equipment. In the event compliance with this section shall require modifications or alterations of Equipment or the Licensed Space, no modification or alteration shall be made without Licensor's prior written consent, which consent shall not be unreasonably withheld, on such terms and conditions as Licensor may determine in its sole judgment.

(b) As of the Effective Date of this License Agreement: (1) Licensee hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Premises in violation of any Environmental Law (as defined above), and (2) Licensor hereby represents and warrants, with no duty or obligation to actively investigate that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Premises in violation of any Environmental Law; (ii) no notice has been received by or on behalf of Licensor from, and Licensor has no knowledge that notice has been given to any

predecessor owner or operator of the Premises by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Premises; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Premises in violation of any Environmental Law.

(c) Without limitation of either party's indemnity obligations as set forth in this License Agreement, Licensor and Licensee shall each indemnify, defend and hold the other harmless from and against all Losses arising from (i) any breach of any representation or warranty made in this Paragraph 26 by such party; and/or (ii) environmental conditions or noncompliance with any Environmental Law (as defined above) that result, in the case of Licensee, from operations in or about the Premises by Licensee or Licensee's agents, employees or contractors, and in the case of Licensor, from the ownership or control of, or operations in or about, the Premises by Licensor or Licensor's predecessors in interest, and their respective agents, employees, contractors, Licensees, guests or other parties, provided Licensee has not caused or contributed in any way to such environmental conditions or noncompliance. The duties described in this Paragraph 26 shall apply as of the Effective Date of this License Agreement and survive termination of this License Agreement.

27) **POSSESSORY INTEREST:** Licensee understands and acknowledges that its interest hereunder may be subject to a possessory interest tax or property tax that may be levied on Licensee by the Licensor or County of Alameda pursuant to Section 107 of the Revenue & Taxation Code, Section 33673 of the Health and Safety Code, or other provision of state or local law. The Licensee is required to pay any such tax directly to the Licensor or County.

28) **NOTICES:** All notices required by this License Agreement shall be in writing and given to the party as follows:

LICENSEE: [INSERT]

LICENSOR: City of Oakland
c/o Real Estate Division
250 Frank H. Ogawa Plaza, 4th Floor
Oakland, California 94612
Attention: John Monetta/Telecommunications Program

Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier. Licensor or Licensee may from time to time designate any other address for this purpose by written notice to the other party.

29) **SEVERABILITY/WAIVER:** If any provision of this License Agreement shall be determined to be invalid by any court of competent jurisdiction the remaining portions of this License Agreement shall remain in full force and effect. Waiver by either party of any of its rights

under this License Agreement must be in writing and shall not constitute a waiver of any other rights such party may have.

30) **AMENDMENT:** The terms of this License Agreement may be amended only in a writing signed by the Licensor and the Licensee.

31) **LITIGATION COSTS:** In the event that a legal action is commenced to enforce any of the provision herein contained, or to recover possession of the Licensed Space, the prevailing party shall be entitled to recover its reasonable attorney's fees in addition to costs and necessary disbursements.

32) **DEFAULT:** The occurrence of any of the following will constitute a default under this License Agreement by Licensee:

(a) Any failure by Licensee to pay, within ten (10) calendar days, following notice of nonpayment, License Fees or to make any other payment required under this License Agreement.

(b) Any failure by Licensee to observe and perform any other provision of this License Agreement to be observed and performed by Licensee, where such failure continues for thirty (30) calendar days after written notice by Licensor to Licensee.

33) **REMEDIES:** Licensor shall have the following remedies if Licensee commits a default which has not been cured after notice by Licensor. These remedies are not exclusive; they are cumulative in addition to all other remedies new or later available at law or in equity.

34) **TERMINATION OF LICENSE:** In the event of default by Licensee, Licensor shall have the right immediately to terminate this License Agreement and all rights of Licensee hereunder by giving written notice of no less than thirty (30) calendar days to Licensee of such election by Licensor.

Notwithstanding anything to the contrary contained in this License Agreement, if the Licensor at any time during the term of this License Agreement is unable, after use of its best efforts, to fully accommodate Licensee's continuing use of the Licensed Space on the Premises due to the Licensor's desire to redevelop, modify, remodel, demolish or alter the Premises, Licensor shall have the right to terminate this License Agreement upon not less than Six (6) Months prior written notice to Licensee.

This License Agreement may be terminated by Licensee without further liability on thirty (30) calendar days prior written notice as follows: (i) upon a default of any covenant, condition, or term hereof by Licensor, which default is not cured within sixty (60) calendar days of receipt of written notice of default; (ii) by Licensee prior to the Commencement Date for any reason and for no reason, provided Licensee delivers written notice of termination to Licensor prior to the Commencement Date; (iii) by Licensee if Licensee does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operation of Licensee's Equipment; or (iv) by

Licensee if Licensee is unable to occupy or utilize the Licensed Space due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (v) if Licensee determines that Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength or interference. In the event Licensee elects to terminate the License for any reason, other than termination pursuant to Section 33(i) above during the Term, Licensee shall pay a license termination fee equal to three (3) months License Fee, which termination fee shall accompany Licensee's written notification to terminate the License Agreement.

35) **CONDITION UPON TERMINATION:** Upon the termination or expiration of the License Agreement, Licensee shall remove all of Licensee's Equipment and surrender the Licensed Space to Licensor, in the same condition as received. In addition, Licensor may require Licensee at any time to remove any alterations, additions or improvements made without Licensor's consent all at Licensee's expense. Licensee shall repair, at Licensee's expense, any damage to the Licensed Space caused by the removal of the Equipment. In the event Licensee elects to terminate the License for any reason, other than termination pursuant to Section 34(i) above during the Term, Licensee understands and agrees that the City will retain any prepaid License Fee(s).

36) **APPLICABLE LAW:** This License Agreement shall be binding on and inure to the benefit of the Licensee, its successors and permitted assignees of the respective parties. This License Agreement shall be governed by the laws of the State of California.

37) **DAMAGE:** If the Premises or Equipment are damaged, destroyed or condemned, Licensee may elect to terminate this License Agreement as of the date of the damage, destruction or condemnation by giving notice to Licensor no more than thirty (30) calendar days following the date of such damage, destruction or condemnation. If Licensee chooses not to terminate this License Agreement, the License Fee shall be reduced or abated in proportion to the actual reduction or abatement of use of the Licensed Space.

38) **RECORDATION:** Licensee agrees not to record this License Agreement or any memorandum thereof unless required by governmental action or franchise agreement.

39) **FORCE MAJEURE:** Whenever a period of time is herein prescribed for the taking of any action by Licensor, Licensor shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of Licensor.

40) **TIME OF PERFORMANCE:** Except as expressly otherwise herein provided, with respect to all required acts of Licensee, time is of the essence of this License Agreement.

41) **TRANSFERS BY LICENSOR:** Licensor shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Licensed Space referred to herein, and in such event and upon such transfer Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to such successor in interest of Licensor

for the performance of such obligations.

42) **COMMISSIONS:** Licensee hereby indemnifies and holds Licensor harmless against any loss, claim, expense or liability with respect to any commissions or brokerage fees claimed on account of the execution and/or renewal of this License.

43) **ENTIRE LICENSE AGREEMENT:** This License Agreement embodies the entire agreement between the parties hereto with relation to the transaction contemplated hereby, and there have been and are no covenants, agreements, representations, warranties, or restrictions between the parties hereto with regard thereto other than those specifically set forth herein.

44) **COMMENCEMENT OF OPERATIONS:** The commencement of operations in the Licensed Space by Licensee shall constitute the acknowledgment and agreement of Licensee that Licensee is fully familiar with the physical condition of the Licensed Space that Licensee has accepted the same in good order and condition, and that the Licensed Space complies in all respects with the requirements of this License and is suitable for the purposes for which the Licensed Space are hereby licensed. In that regard, Licensor hereby disclaims, and Licensee hereby waives, any express or implied warranty of suitability with respect to the Licensed Space, and any express or implied warranty of fitness for a particular purpose.

45) **MERGER:** The voluntary or other surrender of this License by Licensee or a mutual cancellation thereof, shall not constitute a merger of the License and fee estates; and upon such surrender or cancellation of this License, Licensor shall have the option, in Licensor's sole discretion, to (i) either terminate all or any existing sublicenses, or (ii) assume Licensee's interest in any or all sublicenses.

46) **ASSIGNMENT:** Licensee shall not voluntarily or by operation of law, assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Licensee's interest in this Agreement or in the Licensed Space, without Licensor's prior written consent, which will not be unreasonably withheld, delayed or conditioned; provided, however, Licensee 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 51% or more of the stocks or assets of Licensee without Licensor's prior written approval.

Further, and notwithstanding anything to the contrary contained in this Agreement, Licensee may assign, mortgage, pledge, hypothecate or otherwise transfer without notice or consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Licensee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. If Licensee requests Licensor's consent to transfer, Licensee shall pay to the Licensor a fee of One Thousand Dollars (\$1,000) plus all Cities' out of pocket expenses, included but not limited to actual attorney's fees reasonably related to such transfer, whether or not the transfer is approved.

47) NO ESTATE: This instrument is a license and not a lease and does not confer any property interest or estate on Licensee. Licensee expressly agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Premises by virtue of the rights granted under this License Agreement or its occupancy or use under this License.

48) NO PARTNERSHIP: Nothing in this License shall be construed to create a partnership or joint venture between Licensor and Licensee or any other relationship other than as licensor and Licensee; nor shall Licensee in any manner act or indicate to any third party that it is acting as agent of the Licensor.

49) TITLE AND AUTHORITY: Licensor and Licensee each warrant to the other that it has full right, power and authority to execute this License Agreement. Licensor further warrants that it has no knowledge that this License Agreement will violate any existing covenant, condition or agreement affecting the Premises. Licensor is entering into this License Agreement pursuant to the authority conferred under Ordinance No. 11945 C.M.S. adopted November 12, 1996.

50) TITLE TO LICENSEE'S EQUIPMENT: Title to Licensee's Equipment and any Equipment placed on the Licensed Space by Licensee shall be held by Licensee. All of Licensee's Equipment shall remain the property of the Licensee and are not fixtures. Licensee has the right to remove all Licensees' Equipment at its sole expense at any time without Licensor's consent. Licensor acknowledges that Licensee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Licensee's Equipment (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Licensor (i) consents to the installation of the Collateral, to the extent that the Collateral is part of the approved Licensee's Equipment; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution foreclosure, sale, levy, attachment, or distress for any License Fee or to become due and that such Collateral shall be removed at any time without recourse to legal proceedings.

51) SECURITY DEPOSIT: Upon execution of this License Agreement, Licensee shall pay to the City the sum of approximately One Sixth of the Annual License Fee (\$_____) as a security deposit (the "Security Deposit"). The Security Deposit shall be held by City as security for the faithful performance by Licensee of all the provisions of this License Agreement to be performed by Licensee. The Security Deposit shall not be assigned, transferred, or encumbered by Licensee, and any attempt to do so by Licensee shall not be binding upon City. If at any time during the term any fee shall be overdue, or should Licensee be in default of any other provision of this License Agreement, then City may at its election (but shall not be required to) appropriate and apply any portion of the Security Deposit to the payment of any such over-due fees or to the costs and expenses City shall incur in curing Licensee's default. Should the entire Security Deposit, or any portion thereof, be appropriated and applied by City as provided herein, the Licensee shall within ten (10) days after receipt of written demand by City, pay to City an amount to restore the Security Deposit to its original level and Licensee's failure to do so shall constitute a breach of this License Agreement.

IN WITNESS WHEREOF, this License Agreement is executed by the undersigned parties. The parties hereto further certify that the persons signing this License Agreement is duly authorized to do so.

Licensor: City of Oakland, a municipal corporation

By: _____
Deanna Santana, City Administrator

Date: _____

APPROVED AS TO FORM AND LEGALITY

Office of the City Attorney

Licensee:

By: _____

Its: _____

Printed Name: _____

Date: _____

Schedule D

INSURANCE REQUIREMENTS

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and with AM Best ratings of at least A-VII or better. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance**, shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)].
 - A. Coverage afforded on behalf of the Licensor shall be primary insurance and any other insurance available to the Licensor under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - B. Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence.
 - C. If the policy is a "claim made" type policy, the following should be included as endorsements:
 - 1) The retroactive date shall be the effective date of this Agreement or a prior date.
 - 2) The extended reporting or discovery period shall not be less than thirty-six (36) months.
- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. In the event the Contractor does not own vehicles, but utilized non-owned and hired vehicles, evidence of such coverage is acceptable with a signed statement from Contractor stating that only non-owned and hired vehicles are used in the course of the contract.

iii. **Worker's Compensation insurance** as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

b. Terms Conditions and Endorsements

The aforementioned insurance shall have all the following conditions:

- i. Insured Status (Additional Insured): Contractor shall provide insured status using ISO endorsement CG 20 10 or its equivalent naming the Licensor of Oakland, its Councilmembers, directors, officers, agents and employees as insureds in its Comprehensive Commercial General Liability policy. If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Cancellation Notice: 30-day prior written notice of termination in coverage and 10-day prior written notice of cancellation for non-payment;
- iii. Cross-liability coverage as provided under standard ISO forms' separation of insureds clause; and
- iv. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- v. Insurer shall carry a insurance from an admitted company with a Best Rating of A minus VII or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the Licensor may, at the Licensor's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the Licensor of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The Licensor reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the Licensor. At the option of the Licensor, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the Licensor, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Licensor guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) calendar days prior written notice.

Exhibit A General Map

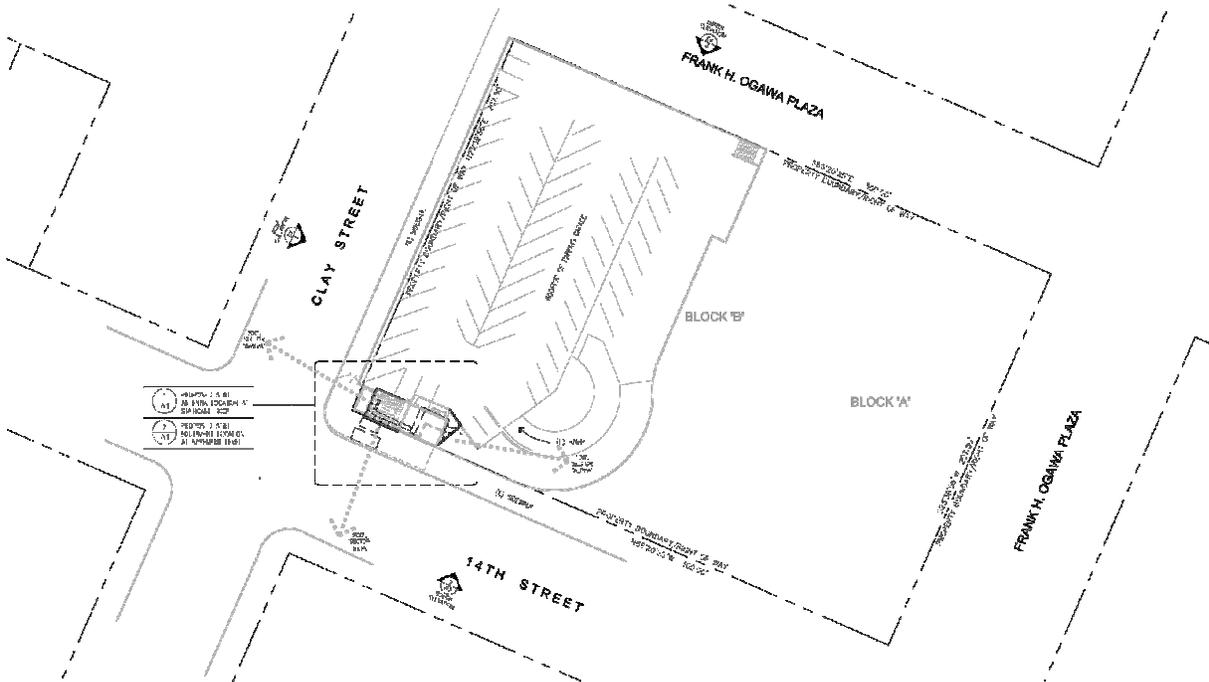


Exhibit B

to the Agreement dated _____, 200__, by and between Licensor of Oakland, a municipal corporation, as Landlord, and _____, a _____, as Tenant.

The Premises are described and/or depicted as follows: