

COUNTY OF MONTEREY
WIRELESS COMMUNICATION SITE LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Agreement") is made and entered into by and between the County of Monterey, a political subdivision of the State of California, (hereinafter "LESSOR"), with its office located at 168 W. Alisal, Salinas, CA 93901, and Pacific Gas & Electric (hereinafter "LESSEE"), with its principal office located at P.O. Box 770000 Mail Code N10A, San Francisco, CA 94177 .

RECITALS:

WHEREAS, California American Water Company, a California corporation (hereinafter "Cal-Am") is the owner of certain real property (the "Property") in Monterey County, California, described as APN 008-111-017 and commonly referred to as Huckleberry Hill;

WHEREAS, LESSOR occupies an area of the property by a "Grant of Revocable Lease" dated July 1, 1973, (hereinafter the "Revocable Lease") from Cal-Am for the purpose of constructing, operating, and maintaining a radio relay station, tower, and auxiliary emergency power system at the location shown in Exhibit A (hereinafter "Premises").

WHEREAS, LESSEE desires to occupy space on LESSOR's antenna tower for the installation, operation and maintenance of its Supervisory Control and Data Acquisition (SCADA) antenna and LESSOR has space available on its tower for such use;

LESSOR and LESSEE hereby agree as follows:

SECTION 1. GRANT OF LEASE

A. RIGHT TO INSTALL, MAINTAIN, AND OPERATE EQUIPMENT:

LESSOR hereby grants to LESSEE non-exclusive permission to install, maintain, and operate the radio communications equipment described within Exhibit B ("Equipment") attached to this agreement using a portion of said Premises for equipment space, antenna space, and all connections and access. LESSOR also grants to LESSEE the right and sufficient space for the installation and maintenance of wires, cables, conduits and pipes generally as shown within Exhibit B running from the Equipment Space to the Antenna Space and to install, maintain, replace and repair wires, cables, conduits and pipes from the Premises to the nearest appropriate utilities provider if LESSOR is not providing adequate power and telephone access to the Premises.

LESSOR is not providing power or back up power to equipment installed by LESSEE.

LESSEE accepts the Premises in an "as-is" condition.

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B. ACCESS TO PREMISES:

Subject to the schedule, notification, and approval requirements set forth within Exhibit C (“Access and Security Policies”), LESSEE shall have the reasonable and non-exclusive right for pedestrian and vehicular ingress and egress to the property for the purpose of routine installation and maintenance of the Equipment located on the Premises. Subject to Exhibit C, all reasonable access will also be granted for the purpose of emergency equipment repairs. LESSEE shall not unreasonably interfere with LESSOR’s operations and employees within the Premises and shall not go into any offices, rooms, stairwells, or other portions of the Premises not required for the purposes of this Agreement. Only LESSEE, its properly qualified and authorized agents, employees, and contractors shall have the right of ingress to and egress from Premises.

LESSOR reserves the right of it, its authorized officers, employees, agents or contractors, to enter into and access the Premises at any time. LESSOR may: (1) inspect the Premises for LESSEE’s compliance with the terms of this agreement; (2) make repairs, alterations or additions to the Premises, or maintain or use the Premises in any manner not prohibited by the terms of this agreement, provided, however, that LESSOR shall not alter, adjust, move, disrupt or otherwise affect the operation of LESSEE’s Equipment except as otherwise provided under this Agreement. If LESSOR alters, adjusts, moves, disrupts or otherwise affects the operation of LESSEE’s Equipment during the inspection in such a manner to cause damage to LESSEE’s Equipment, LESSOR shall be liable for the damage.

C. RIGHTS RESERVED BY THE LESSOR:

Upon reasonable notice to LESSEE, LESSOR reserves the right to reassign or reallocate space assigned to LESSEE for installation of telecommunications equipment to benefit LESSOR, LESSEE or other entities sharing the site. In the event of a space reallocation, LESSEE shall remove or relocate its equipment within sixty (60) days of written notice of reallocation at LESSEE’s sole cost and expense. In the event that LESSEE fails to do so, LESSOR may relocate LESSEE’s equipment and invoice LESSEE for any costs, including but not limited to staff time and materials expense as defined within Section 6 herein.

D. PERMITTED USE:

Subject to the terms of this Agreement, LESSEE shall be permitted to use the Premises to operate and maintain certain wireless communications base station equipment and antennae and other appurtenant and incidental equipment. LESSEE shall comply and operate all Equipment in accordance with FCC Leases for such Equipment. All equipment installed under this Agreement shall be clearly marked by LESSEE with its identifying information which shall include the identity and phone number of LESSEE’s emergency contact, FCC Call Sign, and the transmitting and/or receiving frequencies of the Equipment.

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Except as provided within Section 9 herein, LESSEE shall not sublet, Lease, or permit any use of the Premises or any part thereof or lease space in any building, tower, constructed on said land, or provide radio equipment for the use of others.

E. CONSTRUCTION STANDARDS:

Installation and maintenance of LESSEE's equipment shall be in a neat and workmanlike manner and shall conform in all respects to the fire, safety and construction aspects deemed applicable to such construction by the LESSOR and be satisfactory to the LESSOR. LESSEE shall, at all times, comply with the statutes, laws, ordinances, and regulations of any government authority which are applicable to the installation, operation and maintenance of Equipment.

LESSEE shall remove any debris resulting from maintenance, operation, and construction on the Premises. In the event that LESSEE fails to remove debris from the premises, LESSOR shall cause such debris to be removed and invoice LESSEE for any costs as defined in Section 6 herein.

F. NEW LEASE PENDING WITH CAL-AM:

LESSOR is currently negotiating a new Lease with Cal-Am. This Agreement is subject to the terms and provisions of the existing Revocable Lease and to the terms and conditions of a new lease agreement negotiated between LESSOR and Cal Am. LESSOR shall provide 60 days written notice of any provisions of that lease that may affect LESSEE. LESSEE shall comply with any provisions as defined in that written notice. In the event that the LESSEE does not agree with the provisions of that lease as they are applicable to LESSEE, LESSEE may terminate this Lease Agreement under the terms and conditions defined within Section 8 herein.

SECTION 2: IMPROVEMENTS ON THE PREMISES AND PERFORMANCE OF WORK

A. INITIAL INSTALLATION AND MAINTENANCE: LESSEE accepts the Premises in an "as is" condition. LESSEE shall have the right to finance and construct approved equipment and related improvements on the Premises at LESSEE's sole cost and expense. LESSOR hereby consents to and approves of LESSEE's initial installation at the Premises, as depicted on Exhibit A and Exhibit B attached hereto. Following the construction and installation of LESSEE's Equipment, LESSEE may thereafter, at its sole cost and expense, perform construction, maintenance, repairs, additions to, and replacement of its Equipment as necessary and appropriate for its ongoing business and has the right to do all work necessary to prepare, modify and maintain the Premises to accommodate LESSEE's Equipment and as required for LESSEE's communications operations at the Premises, including any structural upgrades required to accommodate LESSEE's equipment on the Premises.

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B. MODIFICATIONS TO EQUIPMENT OR PREMISES:

For the purposes of this Agreement, a “Modification” shall mean: (i) any modification to the Equipment as specified herein or an approved “LESSOR of Monterey Wireless Communication Site Application Form” or previously approved “LESSOR of Monterey Wireless Communication Site Modification Application Form”; (ii) any alterations in the frequency ranges or Federal Communications Commission (“FCC”) Leased allocation or power levels specified in the approved “County of Monterey Wireless Communication Site Application Form” or “County of Monterey Wireless Communication Site Modification Application Form”; (iii) any change in LESSEE’s technology protocol (e.g., GSM, CDMA, TDMA, iDEN, etc.); (iv) any addition of Equipment or occupation of additional space, or relocation of Equipment on the tower or on the ground, or relocation of ground space or equipment shelter space; or (v) any repair to the Equipment that affects tower loading capacity.

LESSEE shall apply to make Modifications (as such term is defined below) to its Equipment by submitting a “County of Monterey Wireless Communication Site Modification Application Form” to County together with payment of a Modification application fee as defined in Exhibit D attached.

Any approved Modification(s) shall be evidenced by an amendment to this Agreement, and the “County of Monterey Wireless Communication Site Modification Application Form” approved by LESSOR describing the Modification(s) shall be an exhibit to said amendment.

Any Improvements and Modifications to equipment owned by LESSEE shall be performed at LESSEE’S sole cost and expense. LESSEE shall notify LESSOR in writing sixty (60) days in advance of any planned modification(s) to equipment.

Notwithstanding the foregoing, once the initial Equipment is installed, LESSEE shall not make any material alterations thereto (or to the Premises structure itself) without obtaining the prior written approval of LESSOR except that LESSEE may replace equipment with equipment of the same general type that meets or exceeds the same technical specifications of the original equipment, uses the same RF frequencies, occupies no more physical space and consumes no additional electrical power. LESSEE shall immediately notify LESSOR in writing of such modifications and the date that the modifications are completed.

LESSEE agrees to submit to the LESSOR, for review and approval, all plans including specifications, working drawings, and other information reasonably required by the LESSOR covering proposed alterations by LESSEE. Said plans shall be submitted to the LESSOR for LESSOR's written approval, which approval shall not be unreasonably withheld, conditioned or delayed. All work to be done by LESSEE shall be performed in accordance with the approved plans unless otherwise approved in writing by the LESSOR which approval shall not be unreasonably withheld, conditioned or delayed.

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C. LESSOR'S IMPROVEMENTS:

LESSOR retains the right to make any improvements to the Premises as reasonably deemed necessary by the LESSOR. Said improvements shall not be inconsistent with the LESSEE's use of the Premises. Nothing contained in this Agreement shall be deemed or construed in any way to limit LESSOR's authority to exercise any right or power concerning the utilization of the Premises. LESSEE's use of the Premises shall be subordinate to the LESSOR's use of the Premises.

D. REPLACEMENT AND RENOVATION OF PREMISES:

LESSOR reserves the right, in its sole discretion, to renovate, replace or rebuild the tower structure, building, or shelter and related improvements thereof. LESSOR reserves the right to erect one or more towers on the Leased Premises. In such event, LESSOR shall provide LESSEE with Tower Space suitable to allow LESSEE to continue to operate the Equipment in a substantially similar manner during any construction period or shall provide LESSEE with a written ninety (90) days notice of its inability to provide similar tower space. In the event that the LESSOR cannot provide similar tower space, LESSEE shall have the right to establish a temporary facility on the Leased Premises to provide such services as LESSEE deems necessary during any such renovation, replacement, or reconstruction by LESSOR for so long as adequate space is available and such temporary facility does not interfere with such construction or use by other tenants and customers in the Premises. The location of such temporary facility shall be subject to the approval of LESSOR and Cal Am. LESSEE shall be solely responsible for the costs associated with removing and re-installing the Equipment.

LESSOR currently anticipates site improvements including the erection of a new tower and demolition of the existing tower. Within sixty (60) days after receipt of written notice from the LESSOR, LESSEE shall move all equipment from the existing tower to the new tower at LESSEE's sole cost and expense. LESSOR shall endeavor to provide the same or similar location on the new tower as LESSEE occupies on the existing tower. In the event that the same or similar equipment location is not available, LESSEE may install equipment at the location defined by the LESSOR or may terminate this Lease Agreement under the terms and conditions defined within Section 8 herein.

By moving equipment from the existing tower to the new tower; LESSEE confirms its acceptance of the tower in "as-is" condition.

E. CONDITIONS PRECEDENT TO INSTALLATION OF OR MODIFICATION TO EQUIPMENT:

LESSOR shall have the right of prior review and approval of all Plans and Specifications and shall have the right to inspect the Equipment and Premises at any time during and after installation. LESSEE shall not commence installation of Equipment or alteration of the Premises, or any portion thereof, until LESSOR has approved the Plans and Specifications

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and LESSEE has obtained all applicable permits. Such approval shall not be unreasonably withheld, conditioned or delayed. Approval of Plans, Specifications and Permits shall not release LESSEE 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. LESSEE shall be responsible for notifying LESSOR and all other relevant parties immediately upon discovery of such omissions and/or errors. LESSEE shall not cause or permit any change of any equipment installed by LESSEE on Premises including power outputs or changes in the use of frequencies described in Exhibit A except upon written approval from the LESSOR.

LESSEE shall apply for and obtain all applicable permits as are required to perform the work described in this agreement and shall comply with all of the terms and conditions set forth in such permits. LESSEE 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; Leases; environmental impact reports; site preparation; surface treatment and relocation of any facilities on the Premises, as necessary or required for health or safety in the construction or alteration of the Premises.

For any activity that requires climbing the tower such as installation or maintenance of antennas, LESSEE shall notify the LESSOR at least 5 business days in advance and the LESSOR may specify the dates or times that such activity may take place. Such notification shall be made to the Monterey LESSOR Department of Emergency Communications at (831)769-8882.

SECTION 3: REPAIRS:

LESSEE shall be responsible for all maintenance and repairs of LESSEE's Equipment. LESSEE shall keep its installation in good, neat and clean condition in conformity with the standards of the local governing body regulations. LESSEE shall be responsible for the timely repair of all damage to Premises caused by the negligence or willful misconduct of LESSEE, its employees, agents or business vendors.

SECTION 4: GOVERNMENTAL APPROVALS/TERMINATION

In the event that any governmental permit, approval or authorization required for LESSOR's use of, operation of, or right to Lease space to LESSEE at the Premises is challenged, terminated or withdrawn by any governmental authority or third party as part of any governmental, regulatory, or legal proceeding, LESSOR may terminate this Agreement. It is understood and agreed that LESSEE's ability to use the Premises is also contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals relating to the presence and operation of the Equipment at the Premises (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities, including all applicable Federal Communications Commission (FCC) requirements. This requirement includes any necessary construction, building or use permits and compliance with any progress inspections that may be required by any regulatory body. In the event that any of such applications for such Governmental Approvals should be finally

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rejected or any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority through no fault of LESSEE so that LESSEE will be unable to use the Premises for its intended purposes, LESSEE shall have the right to terminate this Agreement as defined within Section 8 herein.

SECTION 5: RADIO FREQUENCY (RF) EMISSIONS:

A. RF INTERFERENCE: LESSEE agrees to have installed radio equipment of the type and frequency that will not cause RF interference in excess of levels permitted by the FCC to LESSOR or to other current lessees of the Premises, which lessees were authorized by the LESSOR prior to the execution of this Agreement. In the event LESSEE's Equipment causes such interference, and after LESSOR has notified LESSEE of such interference pursuant to this Agreement, LESSEE will take all steps necessary to correct and eliminate the interference within thirty (30) days of said notice. If the interference continues beyond thirty (30) days of notice, LESSOR shall have the right to require LESSEE to reduce power and/or cease operations until such time as LESSEE can make repairs to the interfering equipment. LESSOR acknowledges that interference may come from different sources, and LESSEE shall only be responsible to correct interference caused by LESSEE's Equipment. LESSOR agrees that LESSEE and/or any other tenants of the Premises who currently have or in the future take possession of the Premises will be permitted to install only such radio equipment that is of the type and frequency which will not cause measurable interference to the existing equipment of the LESSEE. Should a dispute arise, LESSOR shall provide any assistance necessary between LESSEE and any other tenants.

Notwithstanding the above, in the event that LESSEE's equipment interferes with public safety radio equipment currently installed or to be installed by the LESSOR, LESSEE may be required to resolve any interference issues within twenty-four (24) hours or may be required to modify its equipment even if LESSEE's equipment was installed before the equipment installed by the LESSOR. In the event that LESSEE cannot modify their equipment to avoid interference with the LESSOR's current or new system, the LESSOR or LESSEE may terminate this Agreement as defined within Section 8 herein and LESSEE shall promptly remove its equipment and antennas from Premises at LESSEE'S sole cost and expense.

Any interference of LESSOR's electronic equipment during a disaster or emergency incident will require immediate cessation of operation, transmission, or further use of LESSEE's equipment. Failure to cease operation or transmission immediately after being notified of such interference will be grounds for immediate termination of this Agreement and removal of equipment.

LESSEE may be billed for costs expended by LESSOR to identify or resolve RF interference issues caused by LESSEE's equipment as defined within Section 6 herein.

B. RF EMISSIONS COMPLIANCE: LESSEE is aware of its obligation to comply with all applicable rules and regulations of the FCC pertaining to RF emissions standards, as well as

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applicable rules and / or regulations of any other federal or state agency (including but not limited to OSHA) having jurisdiction over the installation, operation, maintenance, and / or working conditions involving RF emissions and / or safety and work standards performed on or near communication towers and antenna Leased Premises. LESSEE agrees to be solely responsible for compliance with all applicable FCC and other governmental requirements with respect to installation, operation, and maintenance of its Equipment and for repairs to its Equipment at the Leased Premises. LESSEE will immediately remedy its operations to comply with such laws, rules, and regulations as they apply to its operations and / or the operations of all Leased users at the Leased Premises to comply individually and in the aggregate with all applicable FCC and other governmental RF emissions standards.

SECTION 6: FEES:

LEASE FEE:

For the rights granted under this Agreement, LESSEE shall pay to LESSOR a Lease fee (hereinafter “Lease Fee”) as calculated in accordance with Exhibit D (“Lease Fees and Term”), and subject to provisions as provided. LESSEE shall pay the first annual Lease Fee within sixty (60) days of the Commencement Date, as defined in Exhibit D. The Lease fee shall be prorated for any partial month occurring during the lease term.

All payments shall be due within sixty (60) days of invoice. Payments shall be made to the address specified on the invoice and need not be sent certified. If LESSEE does not pay any amount owed on or before the Due Date, the amount unpaid shall be deemed delinquent. A delinquency fee in the amount of one and ½ percent (1.5 %) of the delinquent amount shall be added to the amount owed and charged to the Agency. The delinquency fee shall be applied to the amount owed (including any previously added delinquency fee) every thirty (30) days until such time the invoice is paid in full.

OTHER COSTS:

In addition to the Lease Fees specified herein, LESSEE may be billed for actual time expended by LESSOR staff for resolution of issues related to the performance of this Agreement as well as any other actual costs expended by LESSOR. This shall be limited to costs for staff that are otherwise billed to other LESSOR departments or agencies. Rates for such services will be billed to LESSEE at the same rate that the LESSOR is currently billing LESSOR departments internally for similar services, subject to modification each July 1. LESSEE may request rates 60 days in advance in writing by contacting the LESSOR at the address identified in Section 10.

SECTION 7: TERM OF AGREEMENT

The initial term and allowed extensions to this Agreement are described in Exhibit D (“Lease Fees and Term”) attached hereto.

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SECTION 8: TERMINATION

A. TERMINATION:

This Lease may be terminated by either party for any reason by giving written notice of termination at least sixty (60) days prior to the effective date of the termination. Notice of the exercise of LESSEE's or LESSOR'S right to terminate shall be given to the other party in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by the LESSEE. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder. Otherwise, all the parties shall have no further obligations, including the payment of money, to each other.

B. TERMINATION WITH CAUSE:

Except as otherwise provided in this Agreement, LESSOR shall have the right to terminate this agreement immediately (i) if LESSEE fails to cure a material breach of any term or condition hereof, within thirty (30) days after LESSOR has notified LESSEE of such breach; or (ii) if said cure cannot reasonably be completed within thirty (30) days and LESSEE has not commenced corrective action within said thirty (30) days and thereafter diligently prosecuted such cure to completion; or (iii) if LESSEE's operation is deemed by LESSOR to endanger or pose a threat to the public health, safety or welfare, including, without limitation, and as an example, if operation of the Equipment adversely interferes with, or otherwise adversely affects LESSOR's communications or operations; or (iv) if LESSOR is mandated by law, a court order or decision, or the federal, state or local government to take certain actions that will cause or require the removal of the Equipment from the Premises.

C. REMOVAL OF EQUIPMENT UPON TERMINATION:

LESSEE shall remove the Equipment and repair and restore the affected areas of the Premises prior to the expiration of this agreement, and to the extent reasonably requested by LESSOR, restore the Premises as nearly as possible to the condition in which it existed immediately prior to the Commencement Date, including, but not limited to, removing rooftop mounts and tie downs (if applicable), electrical conduits, cabling and switches, whether underground or above-ground, reasonable wear and tear excepted. If this agreement is terminated by either party earlier than the expiration of the term, LESSEE shall remove the Equipment and repair and restore the affected areas of the Premises no later than sixty (60) days after notice of termination. Removal of the Equipment shall be at LESSEE's sole cost and expense, except as specifically provided otherwise in this agreement.

In the event that LESSEE fails to remove equipment within sixty (60) days of termination under this section, the LESSOR may remove equipment and LESSEE may be billed for all costs associated with removal of equipment as defined within Section 6 herein.

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Both LESSEE and LESSOR shall take or make available to each other photo or electronic files of the Premises prior to occupancy and upon termination and removal of equipment showing compliance with the requirement as outlined above.

- D. **PRORATED LEASE FEE REIMBURSEMENT:** In the event of the early termination of this Agreement, LESSOR will reimburse LESSEE the unused portion of the Lease fee after proration and proper computation.
- E. **HOLDING OVER:** In the event that LESSEE shall hold over after expiration of the term of this Agreement or any extension or renewal thereof, with the consent, express or implied, of LESSOR, such holding over shall be deemed merely a tenancy from month-to-month on the terms, covenants, and conditions, so far as applicable, and subject to the same exceptions and reservations, as herein contained, until such tenancy is terminated in a manner prescribed by law.

SECTION 9: ASSIGNMENT

Neither this Agreement nor any rights hereunder shall be transferred or assigned by the LESSEE, nor shall the LESSEE lease to any person or corporation or business entity, or permit the use of any portion of the Premises by others without the written consent of LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, LESSEE may assign this Agreement, without written consent by LESSOR, to LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or part of LESSEE's assets in the market defined by the FCC in which the Premises are located by reason of a merger, acquisition, or other business reorganization including formation of a Joint Powers Authority. Notwithstanding anything to the contrary contained in this Agreement, LESSEE may assign, mortgage, pledge, hypothecate or otherwise transfer with the written consent of LESSOR its interest in this Agreement to any financing entity, or agent on behalf of any financing entity, to whom LESSEE (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. It is understood and agreed that the written consent of the LESSOR shall not be granted until LESSOR receives satisfactory documentation evidencing LESSEE's Assignee's assumption of the terms and conditions of this Agreement. LESSEE shall not encumber the Premises in any manner whatsoever.

SECTION 10: NOTICES

Any demand or notice which either party shall be required, or may desire, to make upon or give to the other shall be in writing and shall be delivered personally upon the other or be sent by prepaid certified mail and shall be effective as of the date sent to the respective parties as follows:

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To LESSOR:

LESSOR of Monterey
Contracts/Purchasing Officer
168 W. Alisal St.
Salinas, CA 93901

*with copy to contact listed in Section 6: Lease Fees.

To LESSEE:

Pacific Gas & Electric Company
Attn: Manager, Land Management
P.O. Box 770000 Mail Code N10A
San Francisco, CA 94177

Either party may, from time to time, designate any other address for this purpose by written notice to the other party. Either party for general communication may use telephone, email or facsimile.

SECTION 11: ACKNOWLEDGMENT OF TITLE:

It is understood and agreed that LESSEE, by the acceptance of this Agreement and by the use or occupancy of said Premises, has not acquired and shall not acquire hereafter any property rights or interest in or to said Premises (other than the leasehold interest granted herein), and LESSEE may use the Premises only as herein provided. LESSEE shall not have, nor will it obtain, any right or claim to the continued use of said Premises beyond that specifically given within this Agreement. LESSOR covenants that LESSEE, on paying the Lease Fee and performing the covenants, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR covenants that LESSOR is seized of good and sufficient title and interest to the Premises and has full authority to enter into and execute this Agreement. LESSOR further covenants that there are no other liens, judgments or impediments of title on the Premises or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Premises by the LESSEE as set forth above.

SECTION 12: INSURANCE AND INDEMNIFICATION:

A. INSURANCE REQUIREMENTS:

LESSEE, at LESSEE'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. In the event LESSEE is lawfully self-insured in any or all of the aforementioned insurance areas, a letter certifying those areas of coverage, and in the minimum amounts as set forth in this contract, shall be furnished upon request to LESSOR prior to execution of this Agreement. The procuring of the policy or policies of insurance required by Exhibit E shall neither be construed to limit LESSEE'S liability hereunder nor to

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fulfill the indemnification provisions and requirements of this agreement. Notwithstanding the policy or policies of insurance, LESSEE 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 LESSEE'S use of the Premises.

B. PROOF OF INSURANCE:

LESSEE shall deposit with LESSOR, on or before the EFFECTIVE DATE, certificates of insurance and the required endorsements in forms reasonably satisfactory to LESSOR, indicating compliance with the insurance provisions of this AGREEMENT. LESSEE shall keep the insurance in effect, and the certificates evidencing the insurance on deposit with LESSOR, during the Term of the Agreement and as the same may be extended.

C. INDEMNIFICATION:

LESSEE, during the term hereof, shall indemnify and hold harmless the LESSOR from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, occurring within the Premises and arising out of the use of the Premises by the LESSEE, excepting however, such claims and demands whether for injuries to persons or loss of life, or damage to property, caused by acts or omissions of the LESSOR.

SECTION 13: CONDEMNATION:

In the event of any condemnation of the Premises, LESSEE may terminate this Agreement upon fifteen (15) days written notice to LESSOR if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the Equipment, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement, and LESSOR and LESSEE shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement.

SECTION 14: CASUALTY:

- A. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as expiration date of this Agreement

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and LESSOR and LESSEE shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the Lease Fee shall abate during the period of repair following such fire or other casualty.

- B. Should any matter or condition beyond the control of LESSOR and LESSEE, such as war, public emergency, calamity, fire, earthquake, flood, or act of God prevent performance of this Agreement by either party, such party shall be relieved of the performance of such obligations during the time period of the event.
- C. LESSEE shall be solely responsible for any damage or loss to LESSEE's Equipment resulting from theft or vandalism or resulting from any other cause, except as caused by LESSOR's acts or omissions.

SECTION 15: ENVIRONMENTAL

LESSOR and LESSEE each agree that they will not use, generate, store or dispose of any Hazardous Material on, under, about or within LESSOR's Premises in violation of any law or regulation. LESSOR and LESSEE each agree to defend and indemnify the other and the other's partners, affiliates, officers, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any warranty or agreement contained in this paragraph. "Hazardous Material" shall mean any substance, chemical or waste identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

SECTION 16: REAL ESTATE TAXES:

LESSEE shall pay all personal property taxes assessed against LESSEE's personal property that is located within the Premises. LESSOR shall pay all real property taxes and all other fees and the LESSOR's premises or LESSOR's personal property or improvements thereon owned and maintained by the LESSOR.

SECTION 17: DEFAULT

Except as otherwise provided in this agreement, in the event there is a default by LESSEE with respect to any of the provisions of this Agreement or its obligations under it the LESSOR shall give LESSEE written notice of such default. After receipt of such written notice, LESSEE shall have thirty (30) days in which to cure any default, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until the LESSEE has failed to cure the same within the time periods provided in this paragraph. In the event that LESSEE fails to cure a default within thirty (30) days or as otherwise provided in this section, LESSOR may

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take possession of the premises and remove all LESSEE improvements from the premises. LESSOR shall invoice LESSEE for any staff time related to removal of equipment resulting from default as defined within Section 6 herein.

SECTION 18: JURISDICTION AND COMPLIANCE WITH LAWS

The laws of the State of California shall govern this Agreement. The duties and obligations of the parties created hereunder are performable in Monterey County, and Monterey County shall be the venue for any action or proceeding that may be brought or arise by reason or connection with this Agreement. LESSEE shall maintain and operate its Equipment during the term of this Agreement in compliance with all present and future rules and regulations of any local, State, or Federal authority having jurisdiction with respect hereto, including without limitation, the rules and regulations of the Federal Communications Commission (“FCC”), the Federal Aviation Administration (“FAA”), and the Occupational Safety and Health Administration (“OSHA”)

SECTION 19: EXHIBITS

Within forty-five (45) days following the commencement of the installation of the Equipment, LESSEE shall provide LESSOR with as-built drawings of the Equipment at the Premises (“As-Built Drawings”), such As-Built Drawings shall include the location of any shelters, cabinets, grounding rings, cables, and utility lines associated with LESSEE’s use of the Premises. Upon receipt, LESSOR shall insert hereto the As-Built Drawings as updates to Exhibits A and B. In the event that LESSEE fails to deliver the Construction Drawings as required by this section, LESSOR may cause such As-Built Drawings to be prepared on behalf of LESSEE and LESSOR shall assess a fee for such As-Built Drawings of cost which upon invoice shall become immediately due and payable. LESSOR shall be responsible for completion of As-Built Drawings resulting from any modifications required by the LESSOR.

SECTION 20: MISCELLANEOUS

- A. **AGREEMENT:** This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all prior or previous offers, negotiations and other agreements concerning the subject matter contained herein including, without limitation, that Communications License Agreement Huckleberry Hill which Communications License Agreement was entered into in November, 2004.
- B. **AMENDMENT:** This Agreement may be amended or modified only by an instrument in writing signed by the authorizing party for the LESSOR and LESSEE.
- C. **WAIVER:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the authorizing party for the LESSOR and LESSEE. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions of this Agreement.

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- D. **NON-EXCLUSIVE AGREEMENT:** This Agreement is non-exclusive and both LESSOR and LESSEE expressly reserve the right to contract with other entities for the same or similar services, except as otherwise prohibited by this Agreement.
- E. **AUTHORITY:** Any individual executing this Agreement on behalf of the LESSOR or the LESSEE represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- F. **INTEGRATION:** This agreement, including the exhibits, represent the entire Agreement between the LESSOR and LESSEE with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the LESSOR and LESSEE as of the effective date of this agreement, which is the date that the LESSOR signs this agreement
- G. **TIME IS OF THE ESSENCE:** Time is of the essence in each and every provision of this Agreement.
- H. **SUCCESSORS AND ASSIGNS:** Subject to any provision hereof restricting assignment or subletting by LESSEE, this Agreement shall bind the parties, their personal representatives, successors, and assigns.
- I. **SEVERABILITY:** The invalidity of any provision of this lease, as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates appearing below their respective authorized signatures.

LESSOR:

LESSEE:

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors

Date: _____

Approved as to Form

By: _____
Deputy County Counsel

Date: _____

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions

By: _____
Risk Management

Date: _____

By: _____
(Signature of Authorized Representative)*

Name and Title

By: _____
(Signature of Authorized Representative)*

*INSTRUCTIONS: If LESSEE is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two authorized representatives. If the LESSEE is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If LESSEE is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

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Exhibit A: Premises

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Exhibit B: Equipment

| Sector | V1 | V2 | V3 |
|---|---|---|-------------|
| Desired Rad Center (Feet AGL) | 30' | 45' | 65' |
| Antenna Quantity | 1 | 1 | 1 |
| Antenna Manufacturer | dBSpectra | dBSpectra | Kathrein |
| Antenna Model | DS4C0036D | DS4C0036D | OGB6-928N |
| Weight (per antenna) | 10lbs | 10lbs | 12.1 lbs |
| Antenna Dimensions | 2" x 30" | 2" x 60" | 2" x 60" |
| ERP (watts) | 25 | 0 | 5 |
| Antenna Gain | 0 dB | 0 dB | 8dBi |
| Orientation/Azimuth | omni | omni | Omni |
| Mechanical Tilt | | | |
| Channels | 3 | 3 | 1 |
| Tower Mount Dimensions | 3' standoff | 3' standoff | 3' standoff |
| Tower Mount Weight | | | |
| Tower Mount Mounting Height | | | |
| Transmit Frequency | 454.45625 / 454.16875 / 454.29375 | | 952.43125 |
| Receive Frequency | | 459.45625 / 459.16875 / 459.29375 | 928.43125 |
| Number of Coax Cables (PER ANTENNA) | 1 | 1 | 1 |
| Diameter of Coax Cables | 7/8" | 7/8" | 7/8" |
| Type of Service (i.e. CELLULAR, CDMA, GSM, TDMA, PAGING): | PLMR | PLMR | SCADA |

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Exhibit C: Access and Security Policies

LESSEE may only access site with escort of LESSOR. Emergency access may be coordinated through the ITD Help Desk at 831-796-1400. For routine access such as for preventative maintenance, LESSOR shall provide at least one week notice.

Except in the case of an emergency, LESSEE may only access the site Monday through Friday between the hours of 9:30 am to 4:00 pm. For the purposes hereof, an emergency shall be deemed to be LESSEE's inability to transmit signals from, or receive signals at, the Site or a situation that reasonably appears to present an imminent risk of bodily injury or property damage.

LESSEE may be billed for actual time expended by LESSOR staff for site escorts as well as any other actual costs expended by LESSOR. This shall be limited to costs for staff that are otherwise billed to other LESSOR departments or agencies. Rates for such services will be billed to LESSEE at the same rate that the LESSOR is currently billing LESSOR's departments internally for similar services, subject to modification each July 1. LESSEE may request rates sixty (60) days in advance in writing by contacting the LESSOR using the address listed within Section 10.

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Exhibit D: Lease Fees and Term

CHARGES FOR ATTACHMENT OF TELECOMMUNICATION EQUIPMENT ON PREMISES

LEASE FEES:

LEASE FEES: LESSEE shall pay to LESSOR a Lease Fee in an amount of \$800 per month for use of the Tower to include the antennas listed in Exhibit B. In the event that LESSEE places equipment within the shelter owned by LESSOR, LESSEE shall pay an additional fee based on actual space usage. This modification shall be incorporated into an amendment to this Agreement and signed by the authorized parties for LESSOR and LESSEE.

This Lease fee does not include utilities, taxes, and the right to connect to and use the power generator at the site.

INITIAL TERM: The initial term of this Agreement shall be for five (5) years commencing on the first (1st) day of the month following the date this Agreement is executed by the parties or the first (1st) day of the month following the date LESSEE is granted a building permit by the governmental agency charged with issuing such permits, whichever event occurs last (the "Commencement Date").

EXTENSIONS: This Agreement shall automatically be extended for three (3) additional five (5) year terms unless LESSEE or LESSOR terminates according to the provisions of this Agreement.

ADDITIONAL EXTENSIONS: If at the end of the third (3rd) five (5) year extension term this Agreement has not been terminated, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated according to the provisions of this Agreement.

MODIFICATION APPLICATION FEE: LESSEE shall apply to make Modifications (as such term is defined below) to its Equipment by submitting a "County of Monterey Wireless Communication Site Modification Application Form" to LESSOR together with payment of a Modification Application Fee of in the amount of Two Thousand Five Hundred Dollars (\$2,500) to defray LESSOR's costs incurred in evaluating a "LESSOR of Monterey Wireless Communication Site Modification Application Form".

This Modification Application Fee is intended to defray LESSOR's costs incurred in evaluating the impacts of the proposed modification. In addition to those costs, a structural analysis, AM detuning study or an inter-modulation study may be required by LESSOR in connection with a proposed Modification, and LESSEE will be liable for the cost thereof. In addition, LESSEE may be billed for any costs expended by LESSOR to evaluate impacts to modifications requested by LESSEE including engineering reviews required to accommodate LESSEE's proposed modifications and staff time costs as defined within Section 6 herein.

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FEE INCREASES: All Fees may be increased on each annual anniversary of the Commencement Date by an amount equal to four percent (4%) of the monthly Lease Fee paid for the previous year or by the actual change in costs based on actual costs increases to the County.

In no event shall LESSEE's Lease fees be less than a pro rata share of total annual site costs for the LESSOR. Therefore, in addition to this annual increase, the Lease fee may increase resulting from increases in actual costs to LESSOR. In the event of a fee increase which exceeds 4% in one year, LESSOR shall notify LESSEE in writing of any proposed additional Lease Fee increase not less than one hundred and twenty (120) calendar days before any increased Lease Fee shall take effect.

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Exhibit E: Insurance

INSURANCE REQUIREMENTS. LESSEE shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to PREMISES which may arise from, or in connection with, the installation or operation of LESSEE’s Equipment on the Premises.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

LESSEE shall maintain, at a minimum, the following types of coverage, or be validly self-insured for such coverages.

1. Commercial General Liability
2. Workers’ Compensation and Employers Liability
3. Automobile Liability.

B. Minimum Limits of Insurance

LESSEE 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 **\$1,000,000 \$100,000** per accident.

C. Deductibles and Self-Insured Retentions

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

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LESSEE shall be responsible for the full amount of any deductibles or self-insured retentions, and LESSOR shall not be called upon to satisfy such amounts in order to receive the benefits of the protection.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, or LESSEE shall agree to provide comparable coverage under its self-insurance programs, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage(s)
 - a. The LESSOR of Monterey, its officers, employees, agents and contractors are to be covered as additional insured(s) as respects: Liability arising out of the installation, operation, or maintenance of the Equipment on the Premises. The coverage shall contain no special limitations on the scope of protection afforded to LESSOR, its officers, employees, agents and contractors.
 - b. LESSEE's insurance coverage shall be primary insurance as respects LESSOR, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by LESSOR, its officers, employees, agents or contractors shall be excess of LESSEE's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by LESSEE shall not affect coverage provided LESSOR, its officers, employees, agents, or contractors.
 - d. Coverage shall state that LESSEE'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 LESSOR.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to LESSOR's Risk Manager.

F. Verification of Coverage

LESSEE shall furnish LESSOR with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and

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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 LESSOR of Monterey Contracts/Purchasing Officer:

County of Monterey
c/o Contracts/Purchasing Officer,
168 West Alisal Street
Salinas, CA 93901

G. Subcontractors

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

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