

Location of Leased Premises

CALANDRA LOOKOUT
MONTEREY COUNTY

Agency Department of Forestry & Fire Protection

Real Property #429

COMMUNICATIONS VAULT LEASE**Lease No. L-0058****Lessee: County of Monterey**

THIS LEASE, dated for reference purposes only June 16, 2014, is made by and between the State of California, acting by and through the Director of the Department of General Services (DGS), with the consent of the Department of Forestry and Fire Protection (CAL FIRE), hereinafter collectively referred to as STATE, and County of Monterey, hereinafter referred to as LESSEE.

RECITALS

WHEREAS, pursuant to Section 14670.12 of the Government Code, the Department, with the consent of the State agency concerned, may lease real property owned by the STATE, not exceeding five (5) acres, for a period not to exceed twenty-five (25) years to governmental entities to further the state's mission for providing emergency services, where the Director deems it is in the best interests of the STATE; and

WHEREAS, CAL FIRE has under its jurisdiction certain real property in the County of Monterey, State of California, commonly referred to as Calandra Lookout Radio Vault Facility, hereinafter referred to as "Calandra LO"; and

WHEREAS, LESSEE currently occupies space in the CAL FIRE telecommunication facility at Calandra LO under STATE's communications vault lease L-0058, which commenced July 1, 2010 and which will expire on June 30, 2015; and

WHEREAS, LESSEE desires to modify equipment and continue to lease vault and tower space described herein from the STATE; and

WHEREAS, it is in the best interests of the STATE that such a lease, hereinafter the "Lease," be consummated between the STATE and LESSEE on the terms and conditions herein contained;

NOW THEREFORE, the parties agree to the provisions that follow and are incorporated herein as:

Section 1: Site Specific Provisions
Section 2: Telecom Specific Provisions
Section 3: Standard Provisions

SECTION 1 –SITE SPECIFIC PROVISIONS**PROPERTY
DESCRIPTION**

1. STATE does hereby lease to LESSEE and LESSEE does hereby hire from STATE an area of approximately eighteen (18) square feet consisting of 4 and one-half (4 ½) communications vault rack spaces together with six (6) antenna positions (2 EXPOSED DIPOLES, 2 WHIPS AND 2-6' DIAMETER MICROWAVES) on the STATE'S tower, hereinafter referred to as "Premises." The subject property is a communications facility located in the County of Monterey, State of California, commonly known as Calandra LO, and described in Exhibit "A," which is attached hereto and made a part hereof.

A communications facility located on Williams Hill at an elevation of 2,780± above sea level and located in the W ½ of the SW ¼ of the SE ¼ of Section 4, T. 23 S., R. 9E., M.D.B. & M at 121°00'03" Longitude and 35°57'06" Latitude.

USE

2. (a) The Premises shall be used during the term hereof solely and only for the purpose of installing, operating and maintaining telecommunications equipment as described in LESSEE's "Radio Vault Space Application" (State Form TD-312) dated October 10, 2012 and Revised April 5, 2013 and approved by the California Office of Emergency Services (CAL OES), Public Safety Communications Office (PSCO), effective April 16, 2014. Said "Radio Vault Space Application" complete with attachments and approval documentation by CAL OES-PSCO are made a part hereof, marked Exhibit "B," consisting of thirty-three (33) pages (entire document available upon request) with the final approval letter of two (2) pages attached as a part of this Lease.

(b) LESSEE shall not be responsible in any manner for the maintenance and repair of the equipment of the STATE or its political subdivisions located within the STATE's communications facility.

TERM

3. The initial term of this Lease shall be ten (10) years, commencing on July 1, 2014, and terminating on June 30, 2024, with LESSEE having two (2) successive five (5) year options to extend the Term of the Lease. If fully extended, this Lease shall terminate June 30, 2034.

LESSEE's option to extend shall automatically be exercised unless LESSEE notifies STATE in writing of its intention **not to exercise** its option. Said written notice shall occur a minimum of sixty (60) days prior to the commencement of the option period.

Should LESSEE exercise its option to extend the term of this Lease, the annual rent for each such renewal option period will be reevaluated at the current market rate pursuant to the telecom lease rate guidelines.

All other provisions of the Lease shall remain the same unless either party notifies the other in writing sixty (60) days in advance of the end of the current Term, with such rights of termination as may be hereinafter expressly set forth.

SECTION 1 –SITE SPECIFIC PROVISIONS**LEASE
PAYMENTS**

4. Current Fair Market Rent for the Premises is THIRTY-SEVEN THOUSAND AND NINETY-TWO DOLLARS (\$37,092.00) per year subject to three percent (3%) annual adjustments each July 1st during the term of this Lease.

(a) STATE recognizes LESSEE as a cooperator and LESSEE's contributions to the STATE represent sufficient in-lieu benefits to offset the rental value of this LEASE by 50%. LESSEE will be responsible for the maintenance and utility payments due and payable to CAL FIRE as indicated in the payment schedule below.

(b) Should LESSEE fail to meet the above condition for cooperative participation to support LESSEE's discounted rental status, the STATE shall provide notice of termination of LESSEE'S discounted rental status and rent shall become due and payable at the current fair market rent adjusted at a rate of 3% annually, or, at STATE's sole discretion, the rate will be adjusted to market rent as determined by DGS.

The first period lease payments identified in the schedule below, are due concurrently with the commencement of this Lease and thereafter will be due and payable annually in advance during the remaining term of this Lease. LESSEE's payments shall display STATE's Lease Number L-0058 and shall be payable as follows:

RENT SCHEDULE

<u>Period</u>	<u>Term</u>	<u>Due Date</u>	<u>Rent Payable to DGS</u>	<u>Maintenance. and Utilities Payable to CALFIRE</u>
1	July 1, 2014 – June 30, 2015	July 1, 2014	\$ 9,273.00	\$ 9,273.00
2	July 1, 2015 – June 30, 2016	July 1, 2015	\$ 9,551.00	\$ 9,551.00
3	July 1, 2016 – June 30, 2017	July 1, 2016	\$ 9,838.00	\$ 9,838.00
4	July 1, 2017 – June 30, 2018	July 1, 2017	\$10,133.00	\$10,133.00
5	July 1, 2018 – June 30, 2019	July 1, 2018	\$10,437.00	\$10,437.00
6	July 1, 2019 – June 30, 2020	July 1, 2019	\$10,750.00	\$10,750.00
7	July 1, 2020 – June 30, 2021	July 1, 2020	\$11,073.00	\$11,073.00
8	July 1, 2021 – June 30, 2022	July 1, 2021	\$11,405.00	\$11,405.00
9	July 1, 2022 – June 30, 2023	July 1, 2022	\$11,747.00	\$11,747.00
10	July 1, 2023 – June 30, 2024	July 1, 2023	\$12,099.00	\$12,099.00

BACK

RENT	July 1, 2013 – June 30, 2014	July 1, 2014	\$ 2,909.00	\$ 2,909.00
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Payments shall be made payable to:

Department of General Services
Accounts Receivables PAL (L-0058)
P. O. Box 989053
West Sacramento, CA 95798-9053

Department Forestry and Fire Protection
CAL FIRE Accounting –Remittance – (L-0058)
P. O. Box 997446
Sacramento, CA 95899-7446

Rent shall be due and payable to STATE whether or not an actual invoice is sent by STATE or received by LESSEE.

In addition, BACK RENT (for early installation of equipment) as shown in Rent Schedule above will be due and payable upon lease execution.

SECTION 1 –SITE SPECIFIC PROVISIONS

If any installment of rent or other sum due from LESSEE shall not be received by STATE within five (5) days after such amount shall be due, LESSEE shall pay to STATE, without notice from STATE, as additional rent, a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs STATE will incur in processing such delinquent payment by LESSEE. The late charge is not intended to compensate STATE for the costs incurred by STATE to handle Non-Sufficient Funds (NSF) checks tendered by LESSEE, and STATE shall have the right to charge LESSEE an NSF Fee not to exceed Twenty-Five Dollars (\$25.00) per NSF check.

UTILITIES

5. STATE makes no guarantee as to the reliability of the electrical services. STATE shall supply the following:

- (a) Electrical power from standard electrical service, and
- (b) Emergency standby power from STATE's on-site generator during any interruptions to the standard electric service.

**EARLY
TERMINATION**

6. The parties hereto agree that either party may terminate this Lease at any time during the term hereof by giving written notice to the other party sixty (60) days prior to the date when such termination shall become effective. If LESSEE fails to complete its move out within the notice period and remains on the Premises, additional rent shall be paid and prorated based on the actual number of days the LESSEE occupies the Premises following the effective date of termination.

**HOLDING
OVER &
LEASE
RENEWAL**

7. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this Lease shall constitute a month to month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect, except for rents. The LESSEE has had continuous and uninterrupted occupation of the Premises described in the "Area" Paragraph hereof, under a reciprocal rental rate and therefore has been charged a less than market rate of rent. During hold over, LESSEE shall forfeit its reciprocal status and, at the STATE's sole discretion, shall be subject to a rent increase of ten percent (10%) of the ending rent, payable annually in advance.

STATE offers and LESSEE accepts no assurance that the Premises or any other comparable space or facilities at the site described herein will be made available to LESSEE beyond the term stated above or as said term is reduced as provided herein.

NOTICES

8. (a) All notices or other communications required or permitted hereunder shall be in writing with Lease Number L-0058 prominently displayed, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (1) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (2) if mailed as provided above, on the date of receipt or rejection, or (3) when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Time so long as such day is not a State or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a State or federal holiday, such notice shall be effective on the following business day.

SECTION 1 –SITE SPECIFIC PROVISIONS**TO STATE: Department of General Services**

Department of General Services
Real Estate Services Division
SOLD (L-0058)
P.O. Box 989052
West Sacramento, CA 95798-9052
(916) 375-4025 (phone)

Department of General Services
Real Estate Services Division
SOLD (L-0058)
707-3rd Street, MS 505
West Sacramento, CA 95605

TO CALFIRE: California Department of Forestry and Fire Protection

(note: U.S. Postal Services will not deliver to CALFIRE street address)

Department of Forestry & Fire Protection
Technical Services Section (L-0058)
P.O. Box 944246
Sacramento, CA 94244-2460
(916) 324-1183 (phone)

Department of Forestry & Fire Protection
Technical Services Section (L-0058)
1300 U Street
Sacramento, CA 95818

TO LESSEE: County of Monterey

County of Monterey
ATTN: William E. Harry, ENP (Administration/Lease)
Director of Emergency Communications
1322 Natividad Road
Salinas, CA 93906
(831) 769-8880
HarryW1@co.monterey.ca.us

County of Monterey
ATTN: Alex Zheng (Technical Operations)
Division Manager - Infrastructure
1590 Moffett Street
Salinas, CA 93905
(831) 759-6991- Office
(831) 809-1825 – Cell

- (b) Notice of change of address or telephone number shall be given by written notice in the manner described in this Paragraph. LESSEE is obligated to notice all STATE offices listed above and the failure to provide notice to all STATE offices will be deemed to constitute a lack of notice.

End of Section 1

SECTION 2 –TELECOM SPECIFIC PROVISIONS

1. **HVAC LOAD.** State communication vaults are properly sized to at a minimum accommodate the heat load generated by all state equipment. If in the future the HVAC is found to be inadequate to provide sufficient cooling due to added heat load from non-state tenants/applicants, the replacement cost and associated electrical upgrade to HVAC shall be prorated among all non-state tenants based on an analysis of heat load generated by each tenant.
2. **ROAD ACCESS AND FEES.** STATE hereby makes no representation regarding ingress and egress rights via the access road that serves the Premises. LESSEE agrees to the following terms and conditions regarding the use of said access road:
 - (a) LESSEE shall exercise its right personally or through its authorized agents, employees, contractors, or servants whenever it is necessary.
 - (b) LESSEE shall use said road at its sole risk and avoid traveling upon it to the greatest practical extent at all times when weather conditions are such that excessive damage to the road surface may result from such use, and further, LESSEE shall, at its expense, promptly repair any road damage caused by its use, including such road surface protective features as water drains, berms, or culverts.
 - (c) LESSEE agrees to pay, within 30 days of notice, its proportionate share of any road access fee that may be assessed upon the STATE by the owner of the road.
3. **ACCESS TO PREMISES.** Only the LESSEE, its properly qualified and authorized agents, employees, contractors and servants, shall have the right of ingress to and egress from said Premises. If communications equipment of LESSEE is operated or maintained by anyone other than its regular employees, the admission of such persons to said site shall be permitted only upon the express consent of STATE having first been obtained.
4. **CHANGE IN EQUIPMENT.** LESSEE shall not cause or permit any change of any equipment installed by LESSEE in the Premises, including power outputs or changes in the use of the frequencies described in the Exhibits herein attached, except upon making a written request to STATE for each such transaction and the obtaining of STATE's prior written consent. Such consent is subject to fees described in the "Lease Modification Fees," Item 2 of the Standard Provisions in Section 3, and/or the "Technical Analysis Fees," Item 5 below.
5. **TECHNICAL ANALYSIS FEES.** Any change in LESSEE's approved communication equipment requires technical approval from Office of Emergency Services (OES), Public Safety Communications (PSC), consistent with the "Elimination of Interference" Paragraph 7 of this Section 2. To initiate approval for a change of equipment, LESSEE must first contact CALFIRE to obtain a current TD-312 application form. The LESSEE must comply with the terms of the TD-312 including payment of all fees described in the application (technical analysis and associated lease modifications).
6. **ELECTRONIC EQUIPMENT STANDARDS.** With regard to specific site standards and any other statutes pertaining to the use of electronic equipment: LESSEE agrees to install, maintain, and operate its electronic equipment in accordance with all such requirements. If LESSEE was in occupation under a previous Lease, LESSEE shall have one hundred and eighty (180) days from the commencement of this Lease to conform to any new site standards. LESSEE shall display on each piece of equipment the appropriate license from the federal regulatory agency.
7. **ELIMINATION OF INTERFERENCE.**
 - (a) In the event LESSEE'S installation, or operation, in any way hinders, obstructs, or interferes with the radio or electronic equipment of the STATE, or any tenant at the STATE'S facility, LESSEE shall, at its sole cost and expense, immediately cease the interfering installation or operation. In the event of LESSEE'S inability or refusal to immediately cease such interference, STATE may at its option, immediately terminate this Lease and evict LESSEE.
 - (b) Any interference and compatibility testing required hereunder for radio interference with other equipment at the STATE'S facility, by such equipment installed, or by changes to said equipment, shall, be made at the sole cost of LESSEE by a qualified technical person representing LESSEE and a representative designated by STATE. If the test is satisfactory to both the technical person and the STATE representative, a certification of such test signed by both the technical person and the STATE representative will be forwarded to STATE at locations indicated in "Notices" Paragraph hereof. All costs incurred by the STATE to conduct compatibility testing will be reimbursed to the STATE by LESSEE within thirty (30) days of the receipt of a bill from the STATE. Should payment not be received, STATE may at its option, immediately terminate this Lease and evict the LESSEE.
 - (c) Any interference with the STATE's electronic equipment during an emergency incident will require immediate cessation of operation, transmission or further use of LESSEE's equipment. Failure to do so immediately after being notified of such interference will be grounds for immediate termination of Lease and eviction of LESSEE.
8. **WORKMANSHIP STANDARDS.** The installation and maintenance of the electronic equipment of LESSEE shall be performed in a neat and workmanlike manner and shall conform in all respects to the fire, safety and construction standards deemed applicable to such installation by the STATE, and be satisfactory to STATE.
9. **RE-ALLOCATION OF SPACE.** State will have the right at any time upon giving notice thereof to re-assign or re-allocate the amount or location of space for communications equipment for the use of Lessee, State or anyone claiming under it. In the event that a space re-allocation is made, Lessee shall, within sixty (60) days of receipt of notice thereof, remove or relocate its equipment in conformity with said re-allocation.
10. **DISPOSITION OF LESSEE'S PERSONAL PROPERTY.**
 - (a) During the term of this Lease, all wires, equipment, and other personal property placed in, upon, or under the Premises by LESSEE shall remain the property of LESSEE and shall be removed by LESSEE, at its sole cost and expense within thirty (30) days after expiration or termination of LESSEE'S tenancy.
 - (b) Should LESSEE fail to remove said equipment and personal property within thirty (30) days after expiration or termination of the Lease, STATE may do so at the risk of

SECTION 2 –TELECOM SPECIFIC PROVISIONS

LESSEE. Upon written demand by STATE, LESSEE shall immediately pay all costs and expenses of the removal of LESSEE'S personal property and equipment.

(c) LESSEE may, however, with written consent of STATE, abandon in place any and all of LESSEE'S equipment and personal property, whereupon, as abandoned, title to said improvements will vest in STATE.

LESSEE'S properly qualified or authorized agents, employees, contractors and servants, in order to accomplish the installation and/or maintenance of their communications equipment at the STATE'S facilities. Should the interruption or failure of STATE'S existing computer or building support systems occur due to, or in anyway be connected with LESSEE'S installation and/or maintenance of LESSEE'S equipment, all costs to repair or replace STATE'S existing systems will be the sole responsibility of LESSEE.

11. **LESSEE GUARANTEES.** LESSEE hereby guarantees any and all work or services performed by LESSEE or

End of Section 2

SECTION 3 – STANDARD PROVISIONS

1. **PERMITS AND APPROVALS.** The parties agree that Lessee's ability to use the Premises is dependent upon Lessee obtaining all of the certificates, permits, licenses, and other approvals that may be required from any third party. State will cooperate with Lessee at no expense to State, in Lessee's effort to obtain such approvals in connection with said permits, licenses or other approvals.
2. **LEASE MODIFICATION FEES.** An administration/technical review fee shall be assessed for any action originated by LESSEE requiring lease administration or technical review staff work by STATE, such as but not limited to, name changes, assignments of Lease or changes in equipment which result in an amendment to, or assignment of this Lease. To initiate such services, LESSEE must submit a written request to DGS. The administration fee will be assessed at the prevailing rate in effect at the time the request is received. LESSEE will be required to remit the administration/technical review fee to the DGS address listed in the "Notices" Paragraph of this Lease. If the request is found to be complex and/or requires non-standard handling for administrative services, the transaction will be billed at the DGS current hourly rate for the actual additional hours required to complete the requested administrative/technical review services.
3. **DEFAULT.** LESSEE shall make all payments to the STATE without deduction, default or delay. In the event of the failure of LESSEE to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of LESSEE to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to LESSEE of such default, this Lease may, at the STATE'S sole discretion, be terminated. In the event of termination of this Lease, it shall be lawful for STATE to reenter into and upon the Premises and every part thereof and to remove and store at LESSEE'S expense all property there from and to repossess and occupy the Premises. In the event STATE terminates this Lease pursuant to this Paragraph, the STATE shall not be required to pay LESSEE any sum or sums whatsoever.
4. **INTEREST ON PAST DUE OBLIGATIONS.** STATE may charge interest, for any amount due to STATE but not paid when due, at a rate equal to the annual maximum rate allowable by law from the due date. Payment of such interest together with the amount due shall excuse or cure any default by LESSEE under the "Default" Paragraph above.
5. **COMPLIANCE WITH LAWS.** LESSEE shall at its sole cost and expense comply with all the statutes, laws, ordinances and regulations of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the Premises and use of the Premises as provided by this Lease.
6. **FAILURE TO PERFORM.** In the event of the failure, neglect, or refusal of LESSEE to do, or perform work, or any part thereof, or any act or thing in this Lease provided to be done and performed by LESSEE, STATE will, at its option, have the right to do and perform the same, and LESSEE hereby covenants and agrees to pay STATE the cost thereof on demand.
7. **ASSIGNMENT, SUBLETTING & CHANGE IN USE.** LESSEE shall not transfer or assign ("assign" shall include any transfer of any ownership interest in the Lease by LESSEE or by any partner, principal, or controlling stockholder, as the case may be, from the original LESSEE, its partner or principal) this Lease, and shall not sublet, license, permit or suffer any use of the Premises or any part thereof, or lease space in any building or tower constructed on the land, or provide communications equipment for the use of others without first obtaining the written consent of the STATE, which consent is at the sole discretion of the STATE.
8. **RIGHTS RESERVED BY STATE.**
 - (a) STATE reserves the right to use the real property involved (not including real property installed, erected or constructed by Lessee) in any manner, including but not limited to the right to construct, place, maintain, use, operate, repair, replace, alter and move pipelines, conduits, culverts, ducts, fences, poles, electrical energy, power and communication lines, roads, bridges, subways, sidewalks, to grant easements over, across, upon and under said real property, and the continuous right of ingress to and egress from any portion or portions of said real property in such manner as not to create any unreasonable interference with the exercise of the rights granted to Lessee.
 - (b) Any grant herein contained is subject to all valid and existing contracts, leases, licenses, easements, encumbrances and claims of title which may affect said facility.
 - (c) No priority or other rights will attach to the use of any space in STATE'S building or on said facility.
9. **PROHIBITED USES.** LESSEE shall not commit, suffer or permit any waste or nuisance on the Premises or on STATE property or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the Premises for any illegal or immoral purposes. No dumping or refuse by LESSEE is permitted at the Premises. LESSEE agrees not to cut or remove any trees or brush thereon except as approved in writing in advance by STATE. LESSEE agrees that it shall at all times exercise due diligence in the protection of the Premises and the STATE'S property against damage or destruction by fire or other cause.
10. **FIRE AND CASUALTY DAMAGES.** STATE will not keep improvements which are constructed or installed by LESSEE under the provisions of this Lease insured against fire or casualty, and LESSEE shall make no claim of any nature against STATE by reason of any damage to the business or property of LESSEE in the event of damage or destruction by fire or other cause, arising other than from or out of negligence or willful misconduct of agents or employees of the STATE in the course of their employment.
11. **ACTS OF NATURE.** If any of LESSEE'S improvements or equipment are destroyed by acts of nature, LESSEE may replace them with improvements or equipment of the same general type that meets or exceeds the technical specifications of the original equipment, that occupies no more physical space and that consumes no more electrical power. LESSEE shall immediately notify STATE of such items and the date the replacement is completed.
12. **HAZARDOUS WASTE.** LESSEE agrees that it shall comply with all laws, either federal, state, or local, existing during the term of this Lease pertaining to the use, storage, transportation,

SECTION 3 – STANDARD PROVISIONS

and disposal of any hazardous substance as that term is defined in such applicable law.

(a) In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the LESSEE'S illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LESSEE shall indemnify, defend, and hold harmless any of these individuals against such liability.

(b) Where the LESSEE is found to be in breach of this Paragraph due to the issuance of a government order directing the LESSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LESSEE or any person acting under LESSEE'S direct control and authority, LESSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

13. CONDITION OF PREMISES.

(a) LESSEE is aware of the current condition of the Premises and accepts the Premises in "as is" condition. LESSEE accepts the Premises as being in good order, condition and repair, unless otherwise specified herein, and agrees that on the last day of the term, or sooner termination of this Lease, to surrender up to STATE the Premises, with any appurtenances or improvements therein, in the same condition as when received, reasonable use and wear thereof and damage by act of nature, excepted.

(b) LESSEE shall not call on STATE to make any repairs or improvements on the Premises and LESSEE shall keep the same in good order and condition at its own expense.

14. VACATING THE PREMISES. LESSEE shall, on the last day of said term or sooner termination of this Lease, peaceably and quietly leave, surrender, and yield up to STATE, the Premises in good order, condition, and repair, reasonable use and wear thereof and damage by acts of nature, excepted.**15. RECOVERY OF LEGAL FEES.** If action is brought by the STATE for the recovery of any rent due under the provisions hereof or for any breach hereof, or to restrain the breach of any agreement contained herein, or for the recovery of possession of said Premises, or to protect any rights given to the STATE against LESSEE, and if the STATE will prevail in such action, the LESSEE shall pay to the STATE such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.**16. TAXES AND ASSESSMENTS.** LESSEE agrees to pay all lawful taxes, assessments or charges that at any time may be levied upon any interest in this Lease. It is understood that this Lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of property taxes levied on such interest.**17. NON-DISCRIMINATION.**

(a) In the performance of this Lease, the LESSEE shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment in accordance

with all State and Federal laws. LESSEE shall ensure that the evaluation and treatment of its employees and applicants for employment are free from discrimination and harassment.

(b) Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(c) LESSEE shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Lease by reference and made a part thereof as if set forth in full. LESSEE shall give written notice of its obligations under this clause to any labor organizations with which they have collective bargaining or other agreement. Further, LESSEE shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this Fair Employment Practices Section. (Government Code, Section 12920-12994).

(d) Remedies for willful violations:

(1) The STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon the receipt of a final judgment having that effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(2) The STATE will have the right to terminate this Lease and any loss or damage sustained by the STATE by reason thereof will be borne and paid for by the LESSEE.

18. INSURANCE.

LESSEE shall furnish STATE a certificate of insurance with STATE's Lease Number (L-0058) indicated on the face of said certificate, issued to STATE with evidence of insurance as follows:

COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain general liability with limits of not less than \$1,000,000 aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the LESSEE's limit of liability.

The policy must include State of California, Department of General Services and their officers, agents and employees as additional insureds, but only insofar as the operations under the Lease are concerned. The additional insured endorsement must be provided with the certificate of

SECTION 3 – STANDARD PROVISIONS

insurance.

AUTOMOBILE LIABILITY

LESSEE shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The State of California and Department of General Services are to be additional insured with respect to liability arising out of all vehicles owned, hired and non-owned. The additional insured endorsement must be provided with the certificate of insurance

WORKERS' COMPENSATION

LESSEE shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 shall be required, and the policy shall include a waiver of subrogation in favor of the State of California. The waiver of subrogation endorsement must be provided with the certificate of insurance

GENERAL REQUIREMENTS

LESSEE shall ensure that the following general requirements are met:

a. Insurance Companies must be acceptable to Department of General Services, Office of Risk and Insurance Management.

b. Coverage needs to be in-force for complete term of this Lease. If insurance expires during the term of the Lease, a new certificate must be received by the STATE within thirty (30) days of the expiration date of the existing policy. This new insurance must still meet the terms of the original contract.

c. Lessee shall notify the State within five business days of Lessee's receipt of any notice of cancellation or non-renewal of any insurance required by this lease.

d. LESSEE is responsible for any deductible or self-insured retention contained within the insurance program.

e. In the event LESSEE fails to keep in effect at all times the specified insurance coverage, the STATE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event, subject to the provisions of this Lease.

f. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the STATE.

g. If LESSEE is self-insured in whole or in part as to any of the above described types and levels of coverage, LESSEE shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. The State may require financial information to justify LESSEE's self-insured status. If, at any time after the execution of this Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this Insurance clause pertaining to policies of insurance in regard to those types and levels of insurance.

It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the required insurance coverage.

19. **HOLD HARMLESS INDEMNIFICATION.** This Lease is made upon the express condition that the STATE of California is to be free from all liability and claims for

damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any occupancy hereunder, holdover periods or any other occupancy of the Premises by LESSEE, except those arising out of the sole negligence of the STATE. LESSEE agrees to defend, indemnify, and save harmless the STATE of California from all liability, loss, cost or obligation on account of or arising out of any such injury or loss, however occurring arising from the action or inaction of the LESSEE.

20. **LOSSES.** STATE will not be responsible for losses or damage to personal property, equipment or materials of LESSEE and all losses shall be reported to STATE immediately upon discovery.

21. **DEBT LIABILITY DISCLAIMER.** The STATE, including but not limited to the STATE's General Fund or any special self insurance programs, is not liable for any debts, liabilities, settlements, liens or any other obligations of the LESSEE or its heirs, successors or assigns. The STATE and its agencies, departments and divisions will not be liable for and will be held harmless by LESSEE and for any claims or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the LESSEE, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the LESSEE. The STATE has no obligation to defend or undertake the defense on behalf of the LESSEE or its heirs, successors or assigns. LESSEE shall defend the State of California and its agencies, departments and divisions from any claims, actions, lawsuits, administrative proceedings or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the LESSEE, its employees, agents, servants, invitees, guests, or anyone acting in concert with or on behalf of the LESSEE.

22. **RELOCATION PAYMENTS.**

(a) In the event that STATE terminates this Lease pursuant to it terms, LESSEE acknowledges and agrees that it has no claim against the State for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code sections 7260 et seq., or any regulations implementing or interpreting such sections. LESSEE further agrees that it has no claim in either law or equity against the STATE for damages or other relief should the Lease be terminated, and waives any such claims it may have.

(b) In the event subleasing, under the terms of this Lease, is permitted, LESSEE shall incorporate this Paragraph into the sublease. Failure to do so may obligate LESSEE for damages and costs resulting from claims for relocation payments by sublessee.

23. **SMOKING RESTRICTIONS.** Smoking shall not be allowed inside any building, or within 20 feet of any entrance or operable window of any building.

24. **RECORDING.** LESSEE shall not record this Lease or a short form memorandum thereof. Any such recordation will, at the option of STATE, constitute a non-curable default by LESSEE hereunder.

SECTION 3 – STANDARD PROVISIONS**25. AUTHORITY TO CONTRACT.**

(a) If LESSEE is a public, private or non-profit corporation, each individual executing this Lease on behalf of said LESSEE shall provide evidence, which is acceptable to the STATE, that he/she is duly authorized to execute and deliver this Lease on behalf of said LESSEE in accordance with a duly adopted resolution of the Board of Directors or in accordance with the Bylaws of said Board, and that this Lease is binding upon said Board of Directors in accordance with its terms.

(b) LESSEE shall, concurrently with the Execution of this Lease, deliver to the STATE at the address for the Department of General Services shown in the "Notices" Paragraph of this Lease, either a copy of the board's bylaws or a certified copy of the resolution of the Board of Directors authorizing or ratifying the execution of this Lease.

(c) In addition prior to the execution of this Lease, LESSEE shall provide STATE with a copy of LESSEE's current bylaws and corporate filing status as filed with the California Secretary of State.

26. PARTNERSHIP DISCLAIMER. LESSEE its agents and employees shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained will be construed as constituting the parties herein as partners.

27. CEQA. Any physical changes made to the improvements by LESSEE or its agents shall comply with the California Environmental Quality Act (CEQA).

28. BANKRUPTCY. In no event shall this Lease or the leasehold estate become an asset of LESSEE in bankruptcy, receivership or other judicial proceedings. LESSEE shall be in default under this Lease and the provisions of the "Default" Paragraph hereof shall apply in the event of any of the following: (a) LESSEE becomes insolvent or makes an assignment for the benefit of creditors, (b) a petition in bankruptcy is filed by or against LESSEE, (c) a writ of execution is levied against this Lease or the leasehold estate, (d) LESSEE abandons or vacates or does not continuously occupy or safeguard the Premises.

29. AMENDMENTS AND MODIFICATIONS. No amendment, modification, or supplement to this Lease shall be binding on either party unless it is in writing and signed by the party to be bound by the modification.

30. MUTUAL CONSENT. Notwithstanding anything herein contained to the contrary, this Lease may be terminated and the provisions of the Lease may be altered, changed, or amended by mutual consent of the parties hereto in writing.

31. FORCE MAJEURE. If either LESSEE or STATE will be delayed or prevented from the performance of any act required hereunder by reason of acts of nature, governmental restrictions, regulations or controls (except

those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this Paragraph shall excuse LESSEE from prompt payment of any rent, taxes, insurance or any other charge required of LESSEE, except as may be expressly provided in this Lease.

32. WAIVER. If the STATE waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by STATE to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease STATE's right to insist thereafter upon strict performance by LESSEE. Waiver by STATE of any term, covenant, or condition contained in this Lease may only be made by a written document properly signed by an authorized STATE representative.

33. ENTIRE AGREEMENT. This Lease and its exhibits constitute the entire agreement between State and Lessee. No prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding.

34. PARAGRAPH HEADINGS. All Paragraph headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

35. SEVERABILITY. If any term, covenant, condition, or provision of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.

36. SUPERSEDEDURE. This Lease supersedes and voids any prior license, lease or agreement between the STATE and the LESSEE identified in this Lease with regards to the Premises.

37. BINDING. The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.

38. ESSENCE OF TIME. Time is of the essence for each and all of the provisions, covenants and conditions of this Lease.

39. SEPARATE COUNTERPARTS. This Lease may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

End of Section 3

This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any prior Lease or negotiations. There have been no representations by the STATE or understandings made between the STATE or LESSEE other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

IN WITNESS WHEREOF, this Lease has been executed by the parties hereto as of the date written below.

STATE OF CALIFORNIADIRECTOR OF DEPARTMENT OF
GENERAL SERVICESBy: _____
TONY PSIHOPAIDAS, Assistant Chief
State Owned Leasing & Development_____
Date Executed**Consent of**DEPARTMENT OF FORESTRY
AND FIRE PROTECTIONBy: _____
MARC VAN ZUUK, PLS
Real Property Manager – Chief of Surveys
Technical Services_____
Date Signed**Recommended for Approval**

DEPARTMENT OF GENERAL SERVICES

By: _____
DEBORAH MAC MILLAN
Associate Real Estate Officer_____
Date Signed**LESSEE**

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer_____
Date SignedBy: _____
Department Head_____
Date Signed

Approved as to Form:

By: _____
County Counsel_____
Date Signed

Approved as to Fiscal Provisions:

By: _____
Auditor/Controller_____
Date Signed

Approved as to Liability Provisions

By: _____
Risk Management_____
Date Signed