

RESOLUTION NO. 2024-79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING LEASE BETWEEN CITY OF MARINA, AND BAY AREA ENVIRONMENTAL RESEARCH INSTITUTE FOR A PORTION OF PROPERTY LOCATED AT 3262 IMJIN ROAD (BUILDING 515) FOR 6 WEEKS AT MARINA MUNICIPAL AIRPORT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, Bay Area environmental Research Institute (BAERI) has been in negotiations with Marina Municipal Airport since December 2023.

WHEREAS, BAERI wishes to lease a “catwalk” on the property located at 3262 Imjin Road (Building 515) and run an omni-directional inlet and use of the top floor of the communications tower at Marina Municipal Airport for six weeks, and;

WHEREAS, the lease with BAERI has been received by the City and is under review, (attached as Exhibit “A”) by the City Attorney as to form prior to execution and signature by the City, and;

WHEREAS, at the commencement of the lease, BAERI will pay the City a one-time fee of \$3,000.00. Prior to construction, a final environmental survey will be conducted at the building 515 site. Under this lease agreement no jobs will produced at the Airport.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Authorizing a lease between the City of Marina, and Bay Area Environmental Research Institute for a portion of the property located at 3262 Imjin Road (Building 515) six weeks at the Marina Municipal Airport, and;
2. Authorizing the City Manager to execute the agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 2nd day of July 2024, by the following vote:

AYES, COUNCIL MEMBERS: McAdams, McCarthy, Biala, Visscher, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

LEASE

Between THE CITY OF MARINA

and

**BAY AREA ENVIRONMENTAL
RESEARCH INSTITUTE (BAERI)**

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LEASE

This Lease ("**Lease**") is made and entered into as of _____, 2024, between the City of Marina, a municipal corporation ("**City**" or "**Lessor**"), and The National Aeronautics and Space Administration, an agency of the federal government ("**Lessee**").

RECITALS

The following recitals are a substantive portion of this Lease:

- A. City is the owner of certain real property commonly known as the Marina Municipal Airport, together with all rights and privileges arising in connection therewith, located at with an address of 3262 Imjin Rd., in the City of Marina, County of Monterey, State of California [APN: 031-112-008-000] ("**City Property**"), as more particularly described in **Exhibit "A"** attached and incorporated by this reference.
- B. Lessee is a government agency of the federal government.
- C. Lessee requests the use the Premises (as defined in Section 1.1 below) for the construction, installation and operation of certain of Lessee's communications equipment necessary or advisable for the operation of its antennas and associated communications fixtures and equipment to be installed at 3262 Imjin Rd (building 515) on the catwalk .
- D. City is willing to permit Lessee to lease the Premises in accordance with the terms, conditions and covenants of this Lease.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

Premises and Improvements

1.1 Lease of Premises. City hereby leases to Lessee and Lessee leases from City for the Term (as defined in Section 2.2 below), at the rental and upon all of the terms and conditions set forth herein, a portion of the City Property containing approximately 20' x 30'(600) square feet, as described in **Exhibit "B"** attached and incorporated herein (the "**Premises**") for the placement of Lessee's Communication Facility (as defined in Section 4.1 below), and City grants to Lessee access as is necessary for the installation of all equipment required or advisable to connect Lessee's Communication Facility.

ARTICLE 2

Term

2.1 Initial Term. The initial term of this Lease shall be for a period of six (6) weeks beginning on the Commencement Date and terminating on the 28th day of September 2024 unless terminated earlier ("**Initial Term**").

2.2 Option to Extend. Provided Lessee is not in monetary default beyond any applicable notice and cure period, either at the time of exercise or at the time an Extension Term (as defined below) commences, Lessee shall have the option to extend the initial Term of this Lease for one (1) additional six (6) week extension periods (each, an "**Extension Term**") on the same terms, covenants and conditions set forth herein. City shall not unreasonably deny this extension. Lessee shall exercise its option by giving City written notice ("**Option Notice**") at least seven (7) days, but not more than one hundred twenty (14) days, prior to the expiration of the Initial Term of this Lease, or the successive Extension Term. The Initial Term and any Extension Terms exercised are hereinafter collectively referred to as the "**Term**".

2.3 Commencement Date. The "Commencement Date" of this Lease shall be the first day of the month following the date of Building Permit issuance. Lessee shall diligently pursue the issuance of the Building Permit. Should Lessee commence construction or active site preparation prior to the issuance of the Building Permit then the Lease shall commence immediately.

ARTICLE 3

Rental

3.1 Base Rent. Commencing on the Commencement Date, Lessee shall pay to City as rent for the Premises in advance on the first (1st) day of each calendar month during the Term without deduction, offset, prior notice or demand, in lawful money of the United States, the sum of Three Thousand and No/100 Dollars (\$3,000.00) ("**Base Rent**") per month. Base Rent shall be paid to: City of Marina, Finance Department, 211 Hillcrest Avenue, Marina, CA 93933. In any partial month occurring after the Commencement Date, the Base Rent will be prorated. The initial Base Rent payment will be forwarded by Lessee to City within fourteen (14) days after the Commencement Date.

3.2 Annual Increase. During the Term of this Lease, including the Extension Terms, if exercised, the Base Rent shall be increased annually by 3%, beginning on January 1, 2025, and effective each January 1st throughout the Term and any Extension Terms exercised. The sum shall be adjusted annually resulting in a compound rate of increase.

3.3 Late Charge. Lessee acknowledges late payment by Lessee to City of Base Rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. If any installment of the monthly Base Rent due from Lessee is not received by City within ten (10) days after the date such payment of Base Rent is due, Lessee shall pay to City an additional sum of ten Percent (10%) of the overdue amount as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment of the Base Rent by

Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

ARTICLE 4

Use

4.1 Permitted Uses. Lessee may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the City Property; Lessee further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Lessee or City, as long as the installation of such equipment does not increase the area occupied by the Communication Facility (collectively, the "**Permitted Use**"). City and Lessee agree that any portion of the Communication Facility that may be conceptually described on **Exhibit "B"** will not be deemed to limit Lessee's Permitted Use. If **Exhibit "B"** includes drawings of the initial installation of the Communication Facility, City's execution of this Lease will signify City's approval of **Exhibit "B"**. Lessee has the right to install and operate transmission cables from the equipment shelter or cabinet to electric lines from the main feed to the equipment shelter or cabinet and communication lines from the City Property's main entry point to the equipment shelter or cabinet, subject to review and reasonable approval by City concerning the location of same, and to make other improvements, alterations, upgrades or additions appropriate for Lessee's Permitted Use, and undertake any appropriate means to secure the Premises at Lessee's expense, subject to the City's approval. Lessee has the right to modify, supplement, replace, upgrade, expand the equipment or relocate the Communication Facility within the Premises at any time during the Term, except Lessee may not expand the size of Lessee's equipment shelter comprising a portion of the Communication Facility. The installation of the Communication Facility shall be subject to the reviews and approvals set forth in Section 4.4. Lessee shall be solely responsible for all costs associated with the construction, installation, maintenance and use of the Communication Facility.

4.2 Access. During the Term, City grants Lessee reasonable non-exclusive vehicular and foot access ("**Access**") to and over the Property, from an open and improved public road to the Premises. Access shall be available to Lessee, Lessee's agents, employees and contractors during normal business hours (8:00AM PST - 5:00PM PST, Monday through Friday) for regular maintenance and repairs, and twenty-four (24) hours a day, seven (7) days a week in the event of an emergency, which shall be deemed to include any outage or failure of the Communication Facility. Lessee shall provide City with not less than twenty-four (24) hours' prior notice of any Access to the Premises outside of normal business hours for any unscheduled maintenance and repair, except of in the event of an emergency which shall be deemed to include any outage or failure of the Communication Facility.

4.3 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted herein. Lessee shall not: (a) create, cause, or permit any public or private nuisance, or waste in, on or about the Premises or permit the Premises to be used for any unlawful activity; (b) do or permit anything which unreasonably disturbs or creates a public or private nuisance to the users of the City Property or the occupants of neighboring property; specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Premises; and Lessee shall not store any materials or articles of any nature outside upon any portion of the Premises. Lessee shall provide 24-hours' notice to City prior to off peak maintenance except in cases of emergency.

4.4 Approval by the City and Other Agencies. Lessee, at its sole cost and expense, may install the Communication Facility, subject to Lessee's obtaining all required permits, licenses and approvals from the City and any other governmental agencies having jurisdiction. Lessee shall maintain permits, licenses and approvals in force through the Term of this Lease, including any Extension Terms exercised.

4.4.1 City agrees that Lessee's ability to use the Premises is contingent upon ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Lessee for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). City authorizes Lessee to prepare, execute and file all required applications to obtain Government Approvals for Lessee's Permitted Use under this Lease and agrees to reasonably assist Lessee with such applications and with obtaining and maintaining the Government Approvals. In addition, Lessee shall have the right to initiate the ordering and/or scheduling of necessary utilities.

4.4.2 Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

4.4.3 Lessee may also perform and obtain, at Lessee's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports (collectively, "**Tests**") on, over, and under the City Property, necessary to determine if Lessee's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

4.5 Alterations. Should Lessee wish to alter or modify the Communication Facility (collectively, "**Lessee Changes**") (excluding any minor modification which would not require an amendment to the site development permit or a building permit, and which would not expand or increase the Communication Facility), Lessee shall not do so without the prior approval of City and amendment of this Lease and without obtaining all required permits, licenses and approvals from the City and any other governmental agencies with jurisdiction. Notwithstanding the foregoing, in no event shall Lessee be required to obtain City's approval for any Lessee Changes within the footprint of the Communication Facility, or for any other Lessee Changes. Should Lessee change or expand any exterior portion of the Communication Facility or undertake any Lessee Changes which requires City's reasonable approval hereunder without the

prior approval of City, City may require that Lessee remove the Lessee Change at Lessee's sole cost and expense. Lessee shall be solely responsible for conducting any environmental review at Lessee's cost required by applicable Laws (as defined in Section 4.6 below) in association with Lessee's use of the Premises.

4.6 Compliance with Laws. Lessee shall not do or permit anything to be done in or on the Premises or bring or keep anything in or on the Premises, which will conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted. Lessee agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Lessee's use of the Communication Facility on the Property. City agrees to comply with all Laws relating to City's ownership and use of the Property and any improvements on the Property.

4.7 Condition, Use of Premises. Except as expressly set forth herein, City makes no warranty or representation concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and disclaims any personal knowledge, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as-is and has ascertained that it can be used for the limited Permitted Use specified in Section 4.1 above.

4.8 Hazardous Materials.

4.8.1 Hazardous Materials on Premises. Lessee shall not introduce any Hazardous Materials (as defined below) to the Premises or the City Property excluding any Hazardous Materials that are components of commercially available products, back-up power supplies, and cleaning solvents utilized in the ordinary course of Lessee's business, provided that Hazardous Materials are transported, obtained, handled, stored and/or disposed of in accordance with all federal, state and local laws, ordinances, rules, regulations or policies.

4.9.2. Hazardous Materials Defined. The term "**Hazardous Material(s)**" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the following statutes and regulations: (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Secs. 9601 et seq.; (b) RCRA, 42 U.S.C. Secs. 6901 et seq.; (c) CWA, 33 U.S.C. Secs. 1251 et seq.; (d) CAA, 42 U.S.C. Secs. 7401 et seq.; (e) TSCA, 15 U.S.C. Secs. 2601 et seq.; (f) The Refuse Act of 1899, 33 U.S.C. Secs. 407; (g) OSHA, 29 U.S.C. Secs. 651 et seq.; (h) Hazardous Materials Transportation Act, 49 U.S.C. Secs. 5101 et seq.; (i) USDOT Table (49 CFR Sec. 172.101 App. A and amendments) or the EPA Table (40 CFR Part 302 and amendments); (j) Carpenter-Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code Secs. 25300 et seq.; (k) California Hazardous Waste Control Act, Cal. Health & Safety Code Secs. 25100 et seq.; (l) Porter-Cologne Act, Cal. Water Code Secs. 13000 et seq.; (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq.; (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq.; (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq.; (p)

California Hazardous Substance Act, Cal. Health & Safety Code Secs. 108100 et seq.; (q) Air Resources Law, Cal. Health & Safety Code Secs. 39000 et seq.; (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500 et seq.; (s) TPCA, Cal. Health and Safety Code Secs. 25208 et seq.; and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos; (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and (vii) radioactive materials and waste.

4.9.4 Hazardous Materials Indemnity. Lessee shall indemnify (by counsel reasonably acceptable to City), protect and hold City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorney's fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), to the extent arising from, or caused or resulting, during the Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Premises by Lessee, Lessee's agents, employees, licensees or invitees acting on Lessee's behalf or at Lessee's direction, of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises, and the presence and implementation of any closure, remedial action or other required plans for the Premises, and shall survive the expiration of or early termination of the Term. For purposes of the indemnity, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of Lessee acting on behalf of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. Lessee's indemnity obligations shall not include claims, liabilities, losses, damages, costs, or other expenses arising from the negligence or misconduct of City or City's employees, agents, sublessees, assignees, invitees, subcontractors or contractors.

4.9.5 City's Right to Perform Tests. At any time prior to the expiration of the Term, upon not less than forty-eight (48) hours' prior written notice to Lessee, City shall have the right to enter upon the Premises in order to conduct tests of water and soil and to deliver to Lessee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Lessee's use of the Premises. Lessee shall have the right to have a representative of Lessee present during such City entry upon the Premises. Lessee

shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorney's fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return the Premises and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials to the extent such presence arises out of Lessee's use of the Premises. The testing shall be at Lessee's expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the Premises or the City Property, which has been caused by or resulted from the activities of Lessee, its agents, employees, contractors or invitees acting on Lessee's behalf or at the Lessee's direction.

4.9.6 In the event Lessee becomes aware of any Hazardous Materials on the City Property, or any environmental, health or safety condition or matter relating to the City Property, that, in Lessee's sole determination, renders the condition of the Premises or City Property unsuitable for Lessee's use, or if Lessee believes that the leasing or continued leasing of the Premises would expose Lessee to undue risks of liability to a government agency or third party, Lessee will have the right, in addition to any other rights it may have at law or in equity, to terminate this Lease upon written notice to City.

4.9.7 Survival. This entire Section 4.9 of this Lease shall survive termination of the Lease, as to any activities during the Term of this Lease.

4.9.8 Termination of Lease. City shall have the right to terminate the Lease in City's sole and absolute discretion in the event that: (i) any use of the Premises by Lessee involves the generation or storage, use, treatment, disposal or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) Lessee has been required to take remedial action in connection with Hazardous Materials contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material on the Premises. Lessee shall have a thirty (30) day right following Lessee's receipt of written notice from City of any such alleged Lessee default in Subsection 4.9.8.(i)-(ii) to commence a cure, prior to City's ability to exercise its rights under this Section. If the nature of the cure is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default, if Lessee commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion..

4.10 Covenant of Non-Interference.

4.10.1 Lessee shall be responsible for inspecting the City Property and finding adequate space at the Premises without moving or relocating any of City's facilities or equipment, or any other facility, or utility located at the City Property, at the time Lessee's facilities are installed. Lessee's equipment shall not negatively impact any other existing facility or antenna existing on the City Property as of the Commencement Date. In the event that Lessee's equipment does impact other facilities existing on the City Property as of the Effective Date, Lessee shall be required to install, at its own expense, frequency filters or take other reasonable measures to correct the problem. Lessee shall be required to coordinate with other

existing utilities located at the City Property, to ensure that Lessee's equipment does not interfere with the frequency utilized by existing utilities.

4.10.2 City will not grant, after the Commencement Date, a lease, license or any other right to any third party, if the exercise of such grant may materially and adversely impact or interfere with the Communication Facility, the operations of Lessee or the rights of Lessee under this Lease. City will notify Lessee in writing prior to granting any third party the right to install and operate communications equipment on the City Property. City will not, nor will City permit its employees, tenants, licensees, invitees, agents or independent contractors to, interfere in any way with the Communication Facility, the operations of Lessee or the rights of Lessee under this Lease. City will cause such interference to cease within ten (10) days after receipt of notice of interference from Lessee, unless such interference is caused by equipment necessary for emergency response. In the event any such interference does not cease within the aforementioned cure period, City shall cease all operations, except for any operations related to emergency response, which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. For the purposes of this Lease, "interference" may include, but is not limited to, any use on the City Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility. Lessor shall not grant a lease to any party for use of the City Property if the new use would interfere with Lessee's operation of its Communication Facility. Any future lease of this portion of the City Property which permits installation of communication equipment shall be conditioned upon not interfering with Lessee's operation of the Premises.

4.11 Co-location. Lessee acknowledges and approves that City shall be entitled to lease additional positions on the City Premises, subject to City's non-interference covenants set forth herein. All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements. Should City add new facilities on the City Property in the future, Lessee will not cause electronic or physical interference with City owned and operated equipment that is related to the public health and safety and is located on the City Property. Lessee shall reasonably cooperate with current and future users of the City Property.

4.12 Electromagnetic Emissions. Lessee's operations on the Premises shall comply with all applicable federal laws and regulations regarding electromagnetic emissions. Lessee shall conduct all necessary tests after its Communication Facility is constructed on the Premises to ensure that its facilities are in compliance with those laws and regulations. The tests shall be conducted by a licensed professional engineer, and the results shall be provided to the City.

ARTICLE 5

Maintenance, Repairs and Alterations

5.1 General. Lessee shall keep in good order, condition and repair the Premises, and the portions of the Communication Facility placed on the Premises. Lessee shall keep the Premises clean and free of debris.

5.2 Surrender. All portions of the Communication Facility brought onto the City Property by Lessee will be and remain Lessee's personal property and, at Lessee's option, may be removed

by Lessee at any time during the Term. City covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Lessee will become, or be considered as being affixed to or a part of, the City Property, it being the specific intention of City that all improvements of every kind and nature constructed, erected or placed by Lessee on the Premises will be and remain the property of the Lessee and may be removed by Lessee at any time during the Term. Within thirty days (30) days after the termination of this Lease, Lessee shall surrender the Premises to City in the same condition as when received, subject to ordinary wear and tear, and clean and free of debris. Lessee shall also remove all portions of the Communication Facility and cables and wires located above ground that Lessee placed upon the Premises, and Lessee shall remove all footings, foundations, and concrete installed by Lessee to a depth of six feet (6') below grade, and repair any damage caused to the Premises by the installation, maintenance or removal of Lessee's Communication Facility and any related cables, wires or other equipment, and shall otherwise restore the Premises to the same conditions as when Lessee received the Premises from City subject to ordinary wear and tear.

5.3 City's Rights to Enter. If Lessee is in default beyond any applicable notice and cure periods, City may (but shall not be required to) enter upon the Premises, (except in the case of a bona fide emergency circumstance pertaining to protection of persons or property, in which case no notice shall be required), to perform obligations on Lessee's behalf and put the Premises and/or Communication Facility in good order, condition and repair, and the cost, together with interest at the maximum rate then allowable by law, shall become due and payable as additional rent to City with Lessee's next rental installment, provided, however, in the case of a non-emergency, City shall notify Lessee in writing of City's intention to perform Lessee's obligations ten (10) days prior to performing any work on Lessee's behalf. If no rental installment is due to City, these costs shall become due and payable within thirty (30) days from the date of Lessee's receipt of City's invoice accompanied by reasonable substantiation.

5.4 City Repair Obligations. City shall have no obligation to repair and maintain the Premises nor the Communication Facility. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Premises in good order, condition and repair. City shall maintain any landscaping within the Premises that is accessible to City.

5.5 Security Measures. City shall have the right to require a reasonable security system, device, operation or plan be installed and implemented to protect the Premises or the Communication Facility. Should City, in its sole discretion, require Lessee to install a security system, Lessee agrees to bear the sole cost of any security system, device, operation or plan and the installation and implementation. Lessee shall obtain City's prior approval before installing or implementing any security system, device, operation or plan.

5.6 Improvements.

5.6.1 Lessee shall pay, when due, or in good faith promptly contest the validity of, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic or material lien against the Premises or any interest therein. Lessee shall give City not less than ten (10) days' notice prior to the commencement of any work on the Premises, except in the event of an

emergency circumstance (which shall be deemed to include any outage or failure of the Communication Facility), in which event, Lessee shall provide City with notice of such emergency work as soon as reasonably practicable in light of the emergency circumstance. City shall have the right to post notices of non-responsibility in or on the Premises. If Lessee, in good faith, contests the validity of any lien, claim or demand, then Lessee shall, at its sole expense, defend itself and City against such lien, claim or demand, and shall pay or bond any adverse judgment that may be rendered before enforcement against the City. If City shall require, Lessee shall furnish to City a surety bond satisfactory to City in an amount equal to the contested lien, claim indemnifying City against liability for and holding the Premises free from the lien or claim.

5.6.2 Before the initial construction of the Communication Facility is commenced on the Premises, and before any building materials have been delivered to the Premises by Lessee or Lessee's agents, Lessee shall comply with the following conditions or procure City's written waiver of the conditions specified:

5.6.2.1 Construction Schedule. A construction schedule reasonably approved by Lessee and the City setting forth in detail a description of the initial installation of the Communication Facility and all steps for construction of the Communication Facility, and Lessee's best estimate of the date upon which each step shall be substantially completed is attached and incorporated herein as **Exhibit "C"**. A construction schedule shall not be required for like kind replacement following initial installation.

5.6.2.2 Protection of Adjacent Property, Indemnity of the City. Lessee shall protect the City Property and adjacent property against damage resulting from the performance of work undertaken by Lessee or Lessee's agents, employees, contractors, excluding any damage caused by the negligence or the willful act of City, and shall indemnify the City against all liens or liability arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment or power on behalf of Lessee.

5.6.2.3 Insurance. In addition to the insurance coverage otherwise required under this Lease, Lessee shall maintain workers' compensation insurance covering all persons employed in connection with the construction of the Communication Facility, repair or maintenance activities with respect to whom death or injury claims could be asserted against the City, Lessee or the Premises. City may require any third party(ies) performing work at the Premises to maintain workers' compensation insurance at the contractor's sole cost and expense at all times when any work is in process and shall otherwise conform to the requirements of this Lease for insurance.

5.6.2.4 Notice of Changes in Plans. Prior to the initial installation of the Communication Facility, Lessee will supply City with plans and specifications ("**Plans**") to be reviewed and approved by City prior to commencement of construction. If City disapproves the Plans then the Lessee will provide City with revised Plans,. In the event City disapproves of the revised Plans, Lessee may either (x) make further revisions to the Plans and submit them to City for review, or (y) terminate this Lease without further liability by providing written notice to City. Lessee maintains the right to perform routine maintenance, repairs, replacements and upgrades without City's approval when no changes to the exterior appearance of the Communication Facility are made. Upon completion of any Communication Facility, Lessee

shall give City notice of all changes in the plans and specifications made during the course of the work and at the same time deliver to City "as built" drawings accurately reflecting all changes, provided that no change that substantially alters the final plans last approved by the City shall be made without the City's prior written approval.

5.7 City Access. The City or its agents, may enter into the Premises at all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions or for any other purpose incidental to rights of the City. City shall provide Lessee with at least two (2) business days' prior written notice and the ability to accompany City during any such inspection.

5.8 Lessee Access. Lessee acknowledges that other lessees and licensees also have rights to access the area immediately adjacent to the Premises, and that if multiple lessees or licensees request simultaneous access, the City may have to delay Lessee's access to the area immediately adjacent to the Premises to accommodate all parties.

5.9 Lessee Access During Security Alert. During times of high security alert by the Homeland Security Advisory System, Lessee must obtain City's consent to access the Premises.

ARTICLE 6

Indemnity and Insurance

6.1 Indemnity. This Lease is made upon the express condition that Lessee shall indemnify and hold harmless City and its officers, agents and employees against any suits, claims or actions arising out of Lessee's use of the Premises or from any act permitted, or any omission to act, in or about the Premises or the City Property by Lessee or its agents, employees, contractors or invitees, including, but not limited to, any injury or injuries to, or death or deaths of, persons or property that may occur, or that may be alleged to have occurred from any cause or causes whatsoever, while in, upon, about or in any way connected with the Premises during the Term of this Lease, or during any holdover tenancy thereof (except where caused solely by the active negligence or willful misconduct of City, its employees, contractors or agents).

6.2 The City (i) shall promptly provide the Lessee with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Article 6 and provide the Lessee party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the Lessee; and (iii) shall fully cooperate with the Lessee in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the Lessee party of its indemnity obligation.

6.3 Waiver of Claims. Lessee waives any claims against City for injury to Lessee's business or any loss of income, for damage to Lessee's property, or for injury or death of any person in or about the Premises or the City Property, from any cause whatsoever, except to the extent caused by City's (or any of its agents', employees' or contractors') negligence or willful misconduct.

6.4 Insurance. During the Term of this Lease, Lessee shall maintain in full force and affect the following insurance policies:

6.4.1 Commercial general liability policy (bodily injury and property damage); and

6.4.2 Commercial automobile liability insurance policy.

These policies shall be maintained with respect to employees and vehicles using the Property with coverage amounts and including the required endorsements, certificates of insurance and coverage verifications as defined in **Exhibit "D"** attached and incorporated by this reference.

ARTICLE 7

Damage, Destruction and Termination

7.1 If any part of the Communication Facility or City Property is damaged by casualty or other harm as to render the Premises unsuitable, then Lessee may terminate this Lease by providing written notice to City, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Lessee will be entitled to collect all insurance proceeds payable to Lessee on account thereof and to be reimbursed for any prepaid Base Rent on a pro rata basis.

7.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee, shall excuse the performance by Lessee for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractor's results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

7.3 Waiver. City and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

ARTICLE 8

Taxes

8.1 Personal Property. Lessee shall pay prior to delinquency all taxes, license fees and public charges assessed or levied against Lessee or Lessee's estate in this Lease or Lessee's Communication Facility, trade fixtures, furnishings, equipment and other personal property.

8.2 Real Property. Lessee shall pay Lessee's share of all real property taxes (as defined in Section 8.3 below) which become due and payable to City on or before the later of ten (10) days prior to the delinquency, or thirty (30) days after the date on which Lessee receives a copy of the tax bill and notice of City's determination, including documentation reasonably supporting determination hereunder. Lessee's liability to pay real property taxes shall be prorated on the

basis of a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the Term at the commencement or expiration of the Lease. Lessee is not responsible for taxes related to rental income to City under this Lease. Lessee specifically acknowledges it is familiar with Section 107.6 of the California Revenue and Taxation Code, realizes that a possessory interest subject to property taxes may be created, agrees to pay any tax, and waives any rights Lessee may have under Revenue and Taxation Code 107.6.

8.3 Definition. The term "real property taxes" as used herein shall mean:

8.3.1 All taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to (i) value, occupancy, use or possession of the Premises and/or the Communication Facility, (ii) any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises, (iii) use of the Premises, Communication Facility, public utilities or energy within the Premises;

8.3.2 All charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the Communication Facility;

8.3.3 New excise, transaction, sales, privilege or other taxes now or hereafter imposed upon City as a result of this Lease; and,

8.3.4 All costs and fees incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises. If at any time during the Term, the taxation or assessment of the Premises and/or the Communication Facility prevailing as of the commencement of this Lease shall be altered, then any tax or charge, however designated, shall be included within the meaning of the term "real property taxes." If any real property taxes are based upon property or rents unrelated to the Premises and/or the Communication Facility, then only that part of such tax that is fairly allocable to the Premises and/or the Communication Facility, as reasonably determined by City, on the basis of the assessor's worksheets or other available information, shall be included within the meaning of the term "real property taxes."

ARTICLE 9

Utilities

9. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes imposed thereon. City acknowledges that Lessee provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week.

ARTICLE 10

Signs

10. Lessee shall not place any signs upon the Premises without the prior written consent of City, unless the placement of any signs upon the Premises is otherwise required by applicable Laws.

ARTICLE 11

Assignment and Subletting

11.1 City's Consent Required. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without City's prior written consent, which consent shall not be unreasonably withheld. City shall respond to Lessee's request for consent in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without consent shall be void and shall constitute a breach of this Lease, except as expressly permitted in this Article 11.

11.2 Release of Lessee. No subletting as approved by City, to the extent that City's approval is required under this Article 11, shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the Base Rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of Base Rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. Consent to one subletting shall not be deemed consent to any subsequent subletting.

ARTICLE 12

Defaults; Remedies

12.1 Lessee Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this Lease by Lessee:

12.1.1 The abandonment of the Premises by Lessee as defined by Civil Code §1951.3.

12.1.2 The failure by Lessee to make any payment of Base Rent or any other payment required to be made by Lessee hereunder, as and when due, where the failure shall continue for a period of ten (10) business days after Lessee's receipt of written notice from City to Lessee.

12.1.3 The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect to be observed or performed by Lessee, other than those described in Section 12.1.2 above, where the failure shall continue for a period of thirty (30) days after written notice from City to Lessee; provided, however, that if the nature of Lessee's default is that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default, if Lessee commenced cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

12.1.4 The making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, it is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this

Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where seizure is not discharged within thirty (30) days.

12.2 Remedies. In the event of any material default or breach by Lessee as defined in Section 12.1 above, City may at any time, thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of default or breach:

12.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to City. In that event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including if necessary, removal of the Communication Facility and restoration of the Premises, the worth at the time of the award of the unpaid Base Rent that had been earned at the time of termination of this Lease and the worth at the time of award of the amount by which the unpaid Base Rent for the balance of the Term after the time of such award exceeds the amount of rental loss for the same period that Lessee proves could be reasonably avoided.

12.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In that event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover Base Rent as it becomes due.

12.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

12.3 Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

ARTICLE 13

Termination of Lease

13.1 Termination by Lessee. Except as provided otherwise herein or by applicable Law, Lessee may terminate this Lease for cause upon the giving of not less than thirty (30) days written notice to City if any of the following occur:

13.1.1 The failure by City to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect to be observed or performed by City, where the failure shall continue for a period of thirty (30) days after written notice from Lessee to City; provided, however, that if the nature of the City's default is such that more than thirty (30) days are reasonably required for its cure, then City shall not be deemed to be in default, if City

commenced to cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion;

13.1.2 if Lessee fails to obtain or loses any Government Approvals necessary for operation of the Communication Facility upon the Premises;

13.1.3 if Lessee determines that the site is inappropriate for technological reasons, beyond its control; including but not limited to signal interference; or if Lessee is unable to obtain a lease, license or similar agreement necessary for the Communication Facility.

13.2 Termination by City. Except as otherwise provided or by applicable law, City may terminate this Lease for cause upon giving thirty (30) days written notice if any of the following occur:

13.2.1 Unless otherwise prohibited by applicable Laws, should the City Council of City determine following a duly noticed public hearing through credible scientific evidence collected with regard to the Communication Facility operated at the Premises, that the Communication Facility is a threat to public health or safety which threat cannot be rectified by Lessee after Lessee has been afforded a reasonable opportunity to rectify the threat. The City shall provide at least 30-days' written notice to Lessee of the intent to terminate this Lease pursuant to this Section 13.21, and Lessee shall have a full and fair opportunity to provide contradictory scientific data prior to City Council action. The determination of the City Council must apply to similarly situated telecommunication facilities on lands owned by the City; or

13.2.2 Lessee loses or fails to satisfy any condition of any permit required by City necessary for operation of the Communication Facility upon the Premises.

13.3 Condemnation of Leased Premises. Should all or part of the leased Premises be taken by any public or quasi-public agency or entity under the power of eminent domain during the Term of this Lease:

13.3.1 Either City or Lessee may terminate this Lease by giving the other thirty (30) days written notice of termination; and

13.3.2 Any damages and compensation awarded or paid because of the taking shall belong to the City, except for amounts paid Lessee for moving expenses or for damage to property owned by Lessee.

ARTICLE 14

Transfer of City Property

14. The term " City" as used herein, shall mean the City only while the City is the owner of the fee title of the Premises. In the event of any transfer of title or interest in the City Property, the City (and in case of any subsequent transfer, then the grantor) shall, after the date of such transfer, be relieved from all liability with respect to its obligations hereunder occurring after the transfer date, provided that any funds in the hands of City at the time of transfer, in which Lessee has an interest , shall be delivered to the City's grantee.

ARTICLE 15
Interest on Past-Due Obligations

15. Except as expressly provided, any amount due City when not paid when due shall bear interest at the lesser of ten Percent (10%) per year or the maximum rate allowable by law from the date due.

ARTICLE 16
Holding Over

16. If Lessee remains in possession of the Premises or any part after the expiration of the Term the occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation in effect at the time of expiration of the Term.

ARTICLE 17
City's Access

17. City and City's agents shall have the right to enter the Premises for the purpose of showing to prospective purchasers, lenders or lessees, and making repairs, improvements or additions to the Premises as City may deem necessary. City shall provide Lessee with at least two days prior notice and the ability to accompany City during any inspection.

ARTICLE 18
Quiet Possession

18. Upon Lessee's paying Base Rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed, Lessee shall have quiet possession of the Premises for the entire Term subject to all of the provisions of this Lease.

ARTICLE 19
Easements

19. City reserves to itself, the right, from time to time, to grant such easements, rights and dedications, outside of the Premises and subject to the terms of this Lease that City deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of City and failure to do so shall constitute a material breach of this Lease.

ARTICLE 20
General Provisions

20.1 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.

20.2 Time of Essence. Time is of the essence under this Lease.

20.3 Additional Rent. Any monetary obligations of Lessee to City under the terms of this Lease shall be deemed to be rent and all references herein to "rent" shall be deemed to include the Base Rent and all other sums paid or payable by Lessee to City.

20.4 Entire Agreement. Modification. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding shall be effective. This Lease may be modified in writing signed by City and Lessee only.

20.5 No Warranty. Except as otherwise expressly set forth in this Lease, Lessee hereby acknowledges that neither the City nor any employees or agents of the City has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of the Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of the Premises and compliance with all applicable laws and regulations in effect during the Term of this Lease.

20.6 Notices. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

Lessee:

Bay Area Environmental Research Institute
P.O. Box 25
Moffett Field, CA 94035-0001

With a Copy to:

George E. Hays
General Counsel
Bay Area Environmental Research Institute
P.O. Box 25
Moffett Field, CA 94035-0001

City:

City Manager
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

With Copy to:

City Attorney
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

And:

Marina Municipal Airport
Attn: Airport Manager
781 Neeson Road
Marina, CA 93933

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein. Every notice shall be provided to both addresses listed by City and Lessee.

20.7 Waivers. No waiver by City or Lessee of any provision shall be deemed a waiver of any other provision or of any subsequent breach by City or Lessee of the same or any other provision. City's or Lessee's or approval of, any act shall not be deemed to render unnecessary obtaining of their consent of any subsequent act. The acceptance of rent by City shall not be a waiver of any preceding breach by Lessee of a provision, other than the failure of Lessee to pay the particular rent so accepted, regardless of City's knowledge of the breach at the time of acceptance of rent.

20.8 Cumulative Remedies. No remedy or election under this Lease shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

20.9 Choice of Law. This Lease shall be governed by the laws of the State of California. The language of all parts of this Lease shall be construed with its fair meaning and not strictly for or against the City or Lessee.

20.10 Condition to Effectiveness of Lease. The approval of the City Council of City constitutes an express condition precedent to the effectiveness of this Lease.

20.11 Brokers. Each party represents that it is has not had dealings with any real estate broker or finder, with respect to this lease in any manner. Each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the indemnifying party has or purportedly has dealt.

20.12 Authority. Each individual executing this Lease on behalf of Lessee and City represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said party.

20.13 Non-Liability of Officials and Employees of the City & Limitation of Liability. No official or employee of City shall be personally liable for any default or liability under this agreement.

20.14 Non-Discrimination. Lessee covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in any activity under this lease.

20.15 No Agency. It is agreed that Lessee shall not act as or be an agent or employee of City.

20.16 Conflict of Interest. Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Lease.

20.17 Memorandum of Lease. Contemporaneously with the execution of this Lease, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit "E"**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term of this Lease, either party will, at any time upon thirty (30) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease. Lessee agrees that following the expiration or earlier termination of this Lease, and within thirty (30) days following Lessee's receipt of City's written request delivered to Lessee after such expiration or earlier termination date, Lessee shall sign and delivery to City a Quitclaim Deed in form suitable for recording in the County in which the City Property is located, remising, releasing and quitclaiming all of Lessee's right, title and interest in and to this Lease, including any recorded Memorandum of Lease referenced in this Section 20.18.

20.18 Estoppel Certificate. Lessee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing: (a) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, (b) the date to which the rental and other charges, if any, have been paid; and, (c) acknowledging that there are not to Lessee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the City Property.

20.19 Warranties. Lessee and City each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Lease and bind itself hereto through the party set forth as signatory for the party below.

20.20 Waiver of City Liens. City waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Lease, regardless of whether any portion is deemed real or personal property under applicable law; City consents to Lessee's right to remove all or any portion of the Communication Facility from time to time in Lessee's sole discretion and without City's consent.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN **WITNESS WHEREOF**, the parties have caused this Lease to be effective as of the last date written below.

"CITY"

City of Marina,
a municipal corporation

By: _____
Name: Layne Long
Its: City Manager
Date: _____

APPROVED AS TO FORM:

Rene Alejandro Ortega
City Attorney

ATTEST:

City Clerk

"LESSEE"

Bay Area Environmental Research Institute,

By: George E Hays
Its: General Counsel

By: George E. Hays

Name: George E. Hays

Its: General Counsel

Date: June 14, 2024

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING TWO (2) PAGES]

Exhibit "A"

Legal Description of City Property

Parcel 12, as said Parcel is shown on that certain "amended official map amending that map filed in Volume 19, Citites and Towns, page 22, showing the creation of Marina Municipal Airport Parcels."

Recorded July 31st, 2001 in Volume 21 of Citites and Towns, at page 34, in the office of the County Recorder, Monterey County, State of California.

APN: 031-111-034

Exhibit "B"

Depiction of Premises & Communication Facility

LARGE: Ground Measurement Plans (control tower)

Primary Location = Control Tower

- Not in operation, used currently by Verizon
- ~20m height, 300m SSW of runway
- Locked and secure, accessible 24/7
- Needs some cleaning



- Omi-directional inlet to be installed on rooftop
- Instruments to be installed INSIDE top floor
- Pass-through available for tubing



- METAR data used for local meteorological context (KOAR)

Exhibit "C" Insurance Requirements

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (This applies to lessees with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision. If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

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

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the **Lessee's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall

not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Lessee may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor’s primary and excess liability policies are exhausted.

Legal Liability Coverage

The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation

Lessee hereby grants to City a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City. Any and all deductibles and SIRs shall be the sole responsibility of Lessee who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Lessee to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Lessee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

Risk Manager
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

1790920.1

1790920.2

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

6/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services, LLC 2375 E.Camelback Road, Suite 250 Phoenix, AZ 85016 877 468-6516	CONTACT NAME: Gary Nerger PHONE (A/C, No, Ext): 602 666-4817 FAX (A/C, No): 610 537-2283 E-MAIL ADDRESS: gary.nerger@usi.com																					
INSURED Bay Area Environmental Research Institute P.O. Box 25 Moffett Field, CA 94035	<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> </thead> <tbody> <tr> <td colspan="2">INSURER A : Alliance of Nonprofits for Insurance RR</td><td>10023</td></tr> <tr> <td colspan="2">INSURER B : Hartford - WC Multiple Issuing Cos</td><td>00914</td></tr> <tr> <td colspan="2">INSURER C : Travelers Casualty & Surety Co. of Amer</td><td>31194</td></tr> <tr> <td colspan="2">INSURER D : Swiss Re</td><td>NONAIC</td></tr> <tr> <td colspan="2">INSURER E :</td><td></td></tr> <tr> <td colspan="2">INSURER F :</td><td></td></tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : Alliance of Nonprofits for Insurance RR		10023	INSURER B : Hartford - WC Multiple Issuing Cos		00914	INSURER C : Travelers Casualty & Surety Co. of Amer		31194	INSURER D : Swiss Re		NONAIC	INSURER E :			INSURER F :		
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COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			202337379	08/20/2023	08/20/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$20,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
D	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY ☒ COMP ☒ COLL			CWA001593907	08/20/2023	08/20/2024	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$DED \$500 \$DED \$500
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			202337379UMB	08/20/2023	08/20/2024	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	41WECAV0ZW2	09/10/2023	09/10/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Employee Theft incl 3rd Party			106053225	02/12/2024	02/12/2025	\$1,000,000/\$10,000 ret

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

General Liability includes an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder, only when there is a written contract or written agreement between the named insured and the certificate holder and with regard to work performed by or on behalf of the named insured or as pertains to leased property. General Liability contains a special endorsement with "Primary and Non-contributory" wording, when required by written contract. This form is (See Attached Descriptions)

CERTIFICATE HOLDER**CANCELLATION**

City of Marina
 211 Hillcrest Avenue
 Marina, CA 93933

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

subject to any/all respective policy provisions.

Additional insured includes: The City, its officers, officials, employees, and volunteers.

The General Liability policy provide a Blanket Waiver of Subrogation when required by written contract, except as prohibited by law.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - LESSOR OF LEASED
EQUIPMENT - AUTOMATIC STATUS WHEN
REQUIRED IN LEASE AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

- B.** With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
- C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.	All insured premises and operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.	All insured premises and operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to

Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You):
Name Of Person(s) Or Organization(s) (Additional Insured): Any person or organization acting as a manager or lessor of a covered premises that you are required to name as an additional insured on this policy, under a written contract, lease or agreement currently in effect, or becoming effective during the term of this policy.
Additional Premium: Included
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - DESIGNATED PERSON
OR ORGANIZATION -
FOOD CONTRIBUTIONS OR CLIENT
REFERRALS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy, in consideration of food contributions or client referrals you receive from them.

- A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations; or
 2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less. This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SOCIAL SERVICE PROFESSIONAL LIABILITY COVERAGE FORM

SCHEDULE

Name of Person or Organization:

Where you are so required in a written contract or agreement currently in effect or becoming effective during the term of this policy, we waive any right of recovery we may have against that person or organization, who may be named in the schedule above, because of payments we make for injury or damage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED
PRIMARY AND NON-CONTRIBUTORY
ENDORSEMENT FOR PUBLIC ENTITIES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:
--

A. Section II – WHO IS AN INSURED is amended to include:

4. Any public entity as an additional insured, and the officers, officials, employees, agents and/or volunteers of that public entity, as applicable, who may be named in the Schedule above, when you have agreed in a written contract or written agreement presently in effect or becoming effective during the term of this policy, that such public entity and/or its officers, officials, employees, agents and/or volunteers be added as an additional insured(s) on your policy, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by:

- a. Your negligent acts or omissions; or
- b. The negligent acts or omissions of those acting on your behalf;

in the performance of your ongoing operations.

No such public entity or individual is an additional insured for liability arising out of the sole negligence by that public entity or its designated individuals. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.

B. Section III – LIMITS OF INSURANCE is amended to include:

8. The limits of insurance applicable to the public entity and applicable individuals identified as an additional insured(s) pursuant to Provision A.4. above, are those specified in the written contract between you and that public entity, or the limits available under this policy, whichever are less. These limits are part of and not in addition to the limits of insurance under this policy.

C. With respect to the insurance provided to the additional insured(s), Condition 4. Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is replaced by the following:

4. Other Insurance

a. Primary Insurance

This insurance is primary if you have agreed in a written contract or written agreement:

- (1) That this insurance be primary. If other insurance is also primary, we will share with all that other insurance as described in c. below; or

- (2) The coverage afforded by this insurance is primary and non-contributory with the additional insured(s)' own insurance.

Paragraphs (1) and (2) do not apply to other insurance to which the additional insured(s) has been added as an additional insured or to other insurance described in paragraph **b.** below.

b. Excess Insurance

This insurance is excess over:

1. Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is fire, lightning, or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE.**
 - (e) Any other insurance available to an additional insured(s) under this Endorsement covering liability for damages which are subject to this endorsement and for which the additional insured(s) has been added as an additional insured by that other insurance.
- (1) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the additional insured(s) against any "suit" if any other insurer has a duty to defend the additional insured(s) against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured(s)' rights against all those other insurers.
- (2) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
 - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (3) We will share the remaining loss, if any, with any other insurance that is not described in this **Excess Insurance** provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Methods of Sharing

If all of the other insurance available to the additional insured(s) permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any other the other insurance available to the additional insured(s) does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

June 20, 2024

Item No. **10g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 2, 2024

**CITY COUCL TO CONSIDER ADOPTING RESOLUTION NO. 2024-,
APPROVING LEASE BETWEEN CITY OF MARINA, AND BAY AREA
ENVIRONMENTAL RESEARCH INSTITUTE FOR A PORTION OF
PROPERTY LOCATED AT 3262 IMJIN ROAD (BUILDING 515) FOR 6
WEEKS AT MARINA MUNICIPAL AIRPORT AND AUTHORIZING THE
CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF
THE CITY**

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2024-, and;
2. Authorize the City Manager to execute the agreement on behalf of the City.

BACKGROUND:

PACE-PAX (Plankton, Aerosol, Cloud, ocean Ecosystem-Postlaunch Airborne Experiment) is a NASA Airborne Science Program mission specializing in validating satellite data. PACE is a state-of-the-art weather/climate instrument that will observe ocean and atmospheric exchanges; a PACE satellite of this kind was launched earlier this year from Vandenburg Air Force Base. There will be several sites in California, with mobile assets collecting data to validate the PACE satellite feed.

Bay Area Environmental Research Institute wishes to lease a “catwalk” on the property located at 3262 Imjin Road (Building 515) and run an omni-directional inlet and use of the top floor of the communications tower at Marina Municipal Airport (“**EXHIBIT A**”).

ANALYSIS:

At the Marina Municipal Airport, the CIRPAS Twin Otter, a research aircraft operated out of the Naval Postgraduate School in Monterey, will assist with a suite of onboard instruments. Additional ground instruments will be operating from the Airport Tower. This includes the LARGE instrument stationed on the top floor of the Airport Tower with an auxiliary extension transmitting to the rooftop for passive aerosol measurements.

If the lease is approved, PACE operations at the Marina Municipal Airport will commence on August 18, 2024, and run through September 28, 2024.

BAERI wishes to lease a “catwalk” on the property located at 3262 Imjin Road (Building 515) and run an omni-directional inlet and use of the top floor of the communications tower at Marina Municipal Airport (**EXHIBIT A**).

BAERI’s proposed use at Building 515 is an appropriate usage on this portion of the Airport. BAERI has been in negotiation with Marina Municipal Airport since December 2023.

FISCAL IMPACT:

At the commencement of the lease, BAERI will pay the city a one-time fee of \$3,000.00. Prior to construction, a final environmental survey will be conducted at the building 515 site. Under this lease agreement no jobs will produced at the Airport.

Should the City Council approve this lease, it will result in \$3,000 annual revenue for the City's Airport Enterprise Fund.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Melissa Orduno
Airport Administrative Assistant
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina