

ORIGINAL

AGREEMENT OF SUBLEASE

SUBLEASE OF BUILDING 624

**AT THE
FORMER ALAMEDA NAVAL AIR STATION**

BETWEEN

**ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY,
A JOINT POWERS AUTHORITY ESTABLISHED BY
THE CITY OF ALAMEDA
AND THE CITY IMPROVEMENT COMMISSION
UNDER THE CALIFORNIA JOINT EXERCISE OF POWERS ACT
AS
SUBLESSOR**

AND

**NEXTEL OF CALIFORNIA, INC.
A DELAWARE CORPORATION,
d/b/a NEXTEL COMMUNICATIONS**

**AS
SUBTENANT**

AGREEMENT OF SUBLEASE
SUBLEASE OF BUILDING 624
at the
FORMER ALAMEDA NAVAL AIR STATION

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AGREEMENT OF SUBLEASE

BETWEEN

**THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY
AND
NEXTEL OF CALIFORNIA, INC.,
d/b/a NEXTEL COMMUNICATIONS**

**FOR THE
SUBLEASE OF BUILDING 624**

**AT THE
FORMER ALAMEDA NAVAL AIR STATION**

THIS SUBLEASE is made this 1st day of October, 2000 (the Sublease Execution Date), by and between the Alameda Reuse and Redevelopment Authority, a Joint Powers Authority established by the City of Alameda and the City Improvement Commission under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (Government Code §6500 et seq.)(Sublessor) and Nextel of California, Inc., a Delaware corporation d/b/a Nextel Communications (Subtenant).

RECITALS:

WHEREAS, the UNITED STATES OF AMERICA, acting by and through the Department of the Navy ("Government"), is the owner of real and personal property commonly referred to as the former Naval Air Station Alameda ("Station"), which was closed as a military installation and is subject to disposal pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1991, as amended (Pub. Law No. 101-510); and

WHEREAS, Sublessor and Government have agreed upon a method of conveyance of said property as set forth in the Economic Development Conveyance Memorandum of Agreement ("EDC MOA") dated June 6, 2000; and

WHEREAS, prior to the conditions for a deed transfer of the property to Sublessor being met, immediate possession of all or portions of the Station has been granted by Government to Sublessor pursuant to a Lease in Furtherance of Conveyance ("LIFOC") dated June 6, 2000; and

WHEREAS, Government has determined that it will be in the public interest to lease the Leased Premises herein described to the Sublessor, upon the terms and conditions set forth in the LIFOC; and

WHEREAS, Sublessor and Subtenant have agreed to make and enter into this Sublease, whereby Subtenant will lease from Sublessor the Leased Premises, hereinafter described in more detail in section 1 of this Sublease; and

WHEREAS, the parties intend the Sublease to remain in full force and effect until such time as the Leased Premises are conveyed by the Government to the Sublessor.

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, Sublessor and Subtenant hereby agree as follows:

1. **LEASED PREMISES.** Sublessor does hereby lease, rent, and demise to Subtenant and Subtenant does hereby hire and rent from Sublessor, the following:

Building 624. Those certain premises known as Building 624, containing approximately 240 square feet, together with the improvements and fixtures situated therein (the Building) and the adjoining parcel of real property (the Land), to include the use of the existing one hundred fifty foot (150') lattice tower ("Existing Tower") situated therein, as shown and described on Exhibit A-1.

Equipment. Certain moveable and immovable equipment and related personal property (Equipment), is more particularly described on Exhibit A-2 attached hereto and made a part hereof. During the term of this Sublease, Subtenant shall be entitled to the exclusive use of such Equipment, subject to the terms and conditions set forth in this Sublease.

The Building and the Land and all improvements and fixtures thereon and the equipment described on Exhibits A-1 and A-2 are collectively referred to in this Sublease as the "Leased Premises."

1.1 Notwithstanding anything otherwise stated herein, the obligation of Sublessor to lease the Leased Premises under this Sublease, and to perform the covenants of Sublessor under this Sublease, and the obligation of Subtenant to so hire and lease the Leased Premises under this Sublease, and to perform the covenants of Subtenant under this Sublease, are each expressly conditioned upon the LIFOC between Sublessor and the Government. The parties hereto understand

that the Government, as Lessor, and Sublessor, as Lessee, have entered into the LIFOC containing the provisions, terms and conditions set forth in Exhibit B attached hereto.

1.1.1 This Sublease is subject and subordinate to the LIFOC between the Government, as the Lessor thereunder, and Sublessor, as the Lessee thereunder, which was executed on June 6, 2000, a signed copy of which is attached hereto as Exhibit B. Subtenant acknowledges that Sublessor's rights to the Leased Premises arise solely under the LIFOC and the EDC MOA.

1.1.2 Notwithstanding any provision of this Sublease, Sublessor and Subtenant hereby agree as follows: (i) Subtenant will not do or permit anything to be done in or on the Leased Premises which will cause the occurrence of a default by Sublessor under the LIFOC; (ii) if the LIFOC expires or is terminated for any reason, then this Sublease shall thereupon terminate, without any liability to Sublessor (unless such expiration or termination is caused by a material default of Sublessor under the LIFOC), as if such date were the scheduled expiration date of the Term, as defined in section 2.

1.1.3 Sublessor shall have no liability to Subtenant for Government's defaults under the LIFOC. Subtenant agrees that Sublessor shall not be obligated to perform any of the Government's obligations under the LIFOC, except to the extent that such obligations are expressly made obligations of Sublessor under this Sublease. Subtenant further agrees that neither this Sublease nor any obligation hereunder, including the payment of Base Rent or Additional Rent, shall be affected by Government's default under the LIFOC, except to the extent that the LIFOC is terminated, or unless such default causes Sublessor to breach the covenant of quiet enjoyment in favor of Subtenant contained herein. Sublessor reserves all rights to enforce the LIFOC, but agrees to make reasonable and diligent efforts to enforce Government's obligations under the LIFOC, to the extent that Subtenant is a material beneficiary thereof.

1.1.4 In the event of any conflict in the rights of Subtenant under this Sublease and the rights of Sublessor under the LIFOC, the terms, conditions and covenants of the LIFOC shall control.

1.1.5 Subtenant represents that it received, read and is familiar with the terms of the copy of the LIFOC delivered to it by Sublessor. Notwithstanding the foregoing, or anything otherwise stated herein, it is expressly understood that all obligations of Subtenant relative to this Sublease and its use and occupancy of the Leased Premises are contained in this Sublease, and that Subtenant shall have no other or further obligations to Sublessor or to the Government which are not expressly set forth in this Sublease.

2. **TERM.** Subject to subsections 2.1 and 2.2 hereof, the term of this Sublease ("Term") shall commence on October 1, 2000 (Sublease Commencement Date) and end on September 30, 2007 unless sooner terminated as provided herein.

2.1 Joint Inspection. Notwithstanding anything stated in the preceding paragraph, prior to the use and occupancy of the Leased Premises by the Subtenant, a joint inspection of the Leased Premises shall be conducted pursuant to section 6 of the LIFOC and section 6 of this Sublease ("Joint Inspection").

2.2 Commencement of Possession. If Sublessor is unable to give possession of the Leased Premises on the Sublease Commencement Date because the Leased Premises is not ready for occupancy, Sublessor shall not be subject to any liability for the failure to give possession on said date. Under such circumstances, unless the delay is the fault of Subtenant, the Rent (as defined in section 3.6 hereof) shall not commence until the Leased Premises is available for occupancy by Subtenant, and no such failure to give possession on the Sublease Commencement Date shall in any way affect the validity of this Sublease or the obligations of Subtenant hereunder, nor shall same be construed in any way to extend the Term.

2.3 First Right to Negotiate a Renewal. Upon expiration of the 7-year Term of this Sublease, Subtenant shall have the first right to negotiate a seven (7) year extension to this sublease for the Leased Premises at 90% of the then fair market value. At the conclusion of the first seven (7) year extension, subtenant will have the first right to negotiate another seven (7) year extension to this sublease for the Leased Premises at 90% of the then fair market value. The fair market value shall be based upon the highest and best use of the Leased Premises. If Sublessor and Subtenant cannot agree on the fair market value, an impartial MAI appraiser shall be retained to establish the fair market value. The cost of the appraisal shall be shared equally by Sublessor and Subtenant.

3. CONSIDERATION.

3.1 Base Rent. Subtenant shall pay to Sublessor as Base Rent the rent shown in the following table:

YEAR	RENT
1	/Month
2	<u>Above + CPI Increase</u>
3	<u>Above + CPI Increase</u>
4	<u>Above + CPI Increase</u>
5	<u>Above + CPI Increase</u>
6	<u>Above + CPI Increase</u>
7	<u>Above + CPI Increase</u>

Each monthly payment of Base Rent shall be paid in advance promptly on the first day of every calendar month of the Term beginning on the Sublease Commencement Date that is established under section 2 hereof. The Base Rent shall be paid without prior notice or demand, and, except as may be authorized under subsections 3.2 and 3.3 hereof, without any setoff, counterclaim or deduction whatsoever. The Base Rent shall be paid at ARRA offices, or such other place as sublessor shall direct. If the Term commences on a day other than the first day of the calendar month or ends on a day other than the last day of the calendar month, Base Rent for any such partial month shall be prorated at the rate of one-thirtieth of the monthly Base Rent for each day of the period. As an additional part of Base Rent and consideration for this Sublease, Subtenant shall pay any and all Taxes levied or imposed against the Leased Premises in accordance with the provisions of Section 27.

3.2 Base Rent Offset. Sublessor shall permit Subtenant to receive a partial offset from payment of Base Rent equal to the actual cost of certain physical improvements made by the Subtenant to the Building and Land (Qualified Shell Improvement Costs). The cost of the following items of work performed by Subtenant will qualify as Qualified Shell Improvement Costs:

3.2.1 Installation of fire sprinkler systems or renovation, upgrade or repair of existing fire sprinkler systems.

3.2.2 Work, including demolition, required to comply with written requests made by the City of Alameda concerning occupancy of the Building.

3.2.3 Extension of electrical service to and inside the Building (the costs of extending the electrical distribution system within interior of Building is not an "extension of electrical service to the Building" under this provision).

3.2.4 All costs of upgrades for work to the Building required under the Americans with Disabilities Act, as required by the City of Alameda Building Department.

3.2.5 Work within the Leased Premises, to correct safety or health hazards, identified in the Joint Inspection, which Subtenant has agreed to correct pursuant to the agreement required under section 6.1 hereof, or otherwise requested by Subtenant and approved by Sublessor.

3.2.6 The installation and repair of fire alarm and security systems required by the City of Alameda Fire Department pertaining to the building shell of the Building, and not any that is required by virtue of any office space upgrades within the Building.

3.2.7 Work to verify, establish and repair utilities, including water, gas, sewer and telephone connections to the Building and the Land.

3.2.8 Structural or seismic upgrade work pertaining to the building shell of the Building, and not any that relates to any office space upgrades within the Building, as required by the Government or the City of Alameda Building Department or otherwise approved by Sublessor;

3.2.9 Work not listed under paragraphs 3.2.1 through 3.2.8 that Subtenant has claimed in writing to Sublessor qualifies as Qualified Shell Improvement Costs as being part of building shell improvements related to general requirements for use and occupancy of the Building, and not being for specific occupancy requirements of Subtenant or parties occupying through Subtenant, and which Sublessor has approved as so qualifying.

3.2.10 All architectural, design, plan, permit and inspection fees and expenses incurred by Subtenant in connection with the work described in paragraphs 3.2.1 through 3.2.9 above.

3.2.11 To qualify any costs for the rent offset under this provision, the Subtenant must comply with the following:

3.2.11.1 Subtenant must provide to Sublessor plans or descriptions of the proposed work, in form and content reasonably acceptable to Sublessor, in advance of commencement of such work, in accordance with the requirements of section 8 hereof. Sublessor shall notify Subtenant in writing, within fifteen working days of receipt of such plans and descriptions, whether or not, in Sublessor's reasonable opinion, such proposed work qualifies as Qualified Shell Improvement Costs. If Sublessor fails to approve or reject such proposed work as Qualified Shell Improvement Costs within fifteen working days of receipt of Subtenant's plans, then the costs of such work as shown on the plans submitted shall be deemed to qualify as Qualified Shell Improvement Costs. If Sublessor notifies Subtenant that such proposed work does not qualify as Qualified Shell Improvement Costs, such notice shall set forth in reasonable detail the reasons for Sublessor's decision. Sublessor may only reject work as qualifying for Qualified Shell Improvement Costs if such work does not come within any of the provisions of paragraphs 3.2.1 through 3.2.10, above.

3.2.11.2 Subtenant shall provide to Sublessor an itemized statement of such Qualified Shell Improvement Costs along with such documentation as reasonably required by Sublessor evidencing and verifying that Subtenant has completed the work and that Subtenant has expended the funds for such Qualified Shell Improvement Costs.

3.2.11.3 Notwithstanding any of the foregoing, in no event shall the aggregate amount of any offset of Base Rent for Qualified Shell Improvement Costs exceed the lesser of \$10,000 or the actual cost of improvements divided by the lesser of 84 or the number of months remaining in the sublease following completion of the work.

3.3 Equipment Rent. The rent for each piece of Equipment listed on Exhibit A-2 shall be the value shown in Exhibit A-2 for the individual piece of Equipment divided by the number of months

remaining on the sublease at time equipment is added to Exhibit A-2. Equipment Rent shall be paid at the same time and place as Base Rent is paid. Equipment Rent shall be subject to adjustment for partial-month use as provided in subsection 3.1. Equipment Rent shall be paid without prior notice or demand, and without any setoff, counterclaim or deduction whatsoever. Upon written agreement of the Sublessor, Subtenant and Government, the Equipment listed on Exhibit A-2 may be changed either by deleting a piece of equipment therefrom or adding a piece of equipment and an agreed value thereto. The rent for any piece of equipment that is added to the list of Equipment shall be the value of the equipment agreed to by the parties divided by the number of months or partial months remaining in the Term of this Sublease.

3.4 [Deleted]

3.5 Security Deposit: Subtenant shall pay Sublessor the amount of _____ upon execution of this Sublease as a security deposit securing its obligations under this Sublease.

3.6 Additional Rent. All sums payable by Subtenant to Sublessor under this Sublease not otherwise payable as Base Rent, including but not limited to Equipment Rent, and the sums payable pursuant to sections 12 and 27 of this Sublease, shall be deemed additional rent (Additional Rent). For the purposes of this Sublease, Base Rent and Additional Rent are hereinafter collectively referred to as Rent.

3.7 Default Rate. If any portion of Rent shall be due and unpaid for more than five days, it shall thereafter bear interest at the per annum rate equal to 2% per annum greater than the prime rate of interest announced from time to time by the Wall Street Journal, as the same may change from time to time (the Default Rate), from the due date until the date of payment thereof by Subtenant.

3.8 Late Charge. If any payment of Rent or any part thereof to be made by Subtenant to Sublessor pursuant to the terms of this Sublease shall become overdue for a period in excess of five days after written notice from Sublessor that the same is past due, a late charge of five cents for each dollar overdue shall be paid by Subtenant for the purpose of defraying the expense incident to handling such delinquent payment, together with interest from the date such payment or part thereof was due, at the Default Rate. Nothing herein or in the imposition or acceptance of a late charge by Sublessor shall be construed as a waiver of any rights of Sublessor arising out of any default of Subtenant; the right to collect any late charge or interest is separate and apart from any rights or remedies of Sublessor relating to any default by Subtenant.

3.9 Survival. The obligation of Subtenant with respect to the payment of Rent shall survive the termination of this Sublease.

3.10 Net Lease. The Subtenant hereby acknowledges and agrees that this Sublease is intended to be a triple net lease to the Sublessor, as such term is commonly used for the leasing of industrial properties, except as expressly herein set out, such that the Sublessor is not responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the

Leased Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and that the Subtenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises except as expressly otherwise agreed herein. As set forth in this Sublease, all costs of maintenance and repair of the Leased Premises, all costs of insuring the Leased Premises, and all taxes, as that term is defined in section 27 of this Sublease, allocated to the Leased Premises shall be paid by the Subtenant. Notwithstanding anything contained in this Sublease to the contrary, Subtenant shall have no obligation to make any capital or extraordinary improvements or repairs to the Leased Premises or to perform any environmental remediation of or at the Leased Premises, except as and to the extent provided in section 13 hereof, or to the extent any of the same is necessitated by Subtenant's negligence or willful misconduct or results from Subtenant's misuse of hazardous materials.

4. USE OF LEASED PREMISES. The sole purpose for which the Leased Premises may be used, by Subtenant or authorized contractors, subcontractors or licensees of Subtenant, is for a telecommunications cell-site.

4.1 No Other Uses. The Leased Premises shall not be used for any other purposes without the prior written approval of the Government and the Sublessor.

4.2 Compliance With ROD and Other Governmental Documents. Any use or uses of the Leased Premises shall comply with all terms and conditions of the LIFOC, this Sublease, and the Alameda Reuse and Redevelopment Plan, subject to the uses being consistent with the National Environmental Policy Act (NEPA) Record of Decision ("ROD") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions expressed therein as well as all conditions expressed in any Categorical Exclusion or other environmental action with respect to the uses of the Leased Premises prepared for compliance with the National Environmental Protection Act. A copy of the Categorical Exclusion is attached as Exhibit C. A copy of the ROD is available for review at Sublessor's offices during normal business hours.

4.3 No Commitment for Future Conveyance. Subtenant understands and acknowledges that this Sublease is not and does not constitute a commitment by Sublessor or Government to create any priority with regard to the ultimate disposal of the Leased Premises, in whole or in part, to the Subtenant.

4.4 Use of Hazardous or Toxic Materials. In accordance with 10 U.S.C. 2692, the Subtenant is prohibited from storing or disposing non-DOD-owned toxic or hazardous materials, which includes materials that are of an explosive, flammable, or pyrotechnic in nature, on a military installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his or her designee. In the event that Subtenant desires to store or dispose of any such non-DOD-owned toxic or hazardous materials, which includes materials that are of an explosive, flammable, or pyrotechnic in nature, on a military installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692, Subtenant shall contact

Sublessor in writing and Sublessor shall coordinate with the Government the obtaining of any approvals required to be obtained from the Secretary of Defense or his or her designee.

4.5 Use Permit. Subtenant and any of its subtenants shall obtain a City of Alameda Use Permit and other applicable City permits and approvals for any intended use of the Leased Premises.

4.6 Historic or Archeological Property. Subtenant shall not undertake any activity that may affect an identified historic or archeological property, including excavation, construction, alteration, maintenance or repairs of Leased Premises, Historic Buildings, or sites in a manner that is inconsistent with the Memorandum of Agreement Among the United States Navy, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the City of Alameda regarding historic properties on the former Naval Air Station Alameda, set forth as Exhibit "E" to the EDC MOA. Buried cultural materials may be present on the Leased Premises. If such materials are encountered, Subtenant shall stop work immediately and notify Government and sublessor.

5. ASSIGNMENT AND SUBLETTING.

5.1 Subtenant shall not, without Sublessor's prior written consent, (i) assign, convey, mortgage, pledge, encumber or otherwise transfer (whether voluntarily or otherwise) this Sublease or any interest under it; (ii) allow any transfer of or any lien upon Subtenant's interest by operation of law; (iii) sublet the Leased Premises or any part thereof; or (iv) permit the use or occupancy of the Leased Premises or any part thereof by anyone other than Subtenant and its employees.

5.2 Subtenant's request for consent to any sublet or assignment shall be in writing and shall contain the name, address, and description of the business of the proposed assignee or subtenant, its most recent financial statement and other evidence of financial responsibility, its intended use of the Leased Premises, and the terms and conditions of the proposed assignment or subletting. Within 30 days from receipt of such request, Sublessor shall either: (1) grant or refuse consent; or (2) elect to require Subtenant to: (a) as to a proposed sublease, execute an assignment of Subtenant's interest under this Sublease to Sublessor, upon terms and conditions reasonably required by Sublessor, together with an assignment of Subtenant's interest as sublessor in any such proposed sublease, or (b) as to a proposed assignment, terminate this Sublease and the term hereof effective as of the last day of the third month following the month in which the request was received.

5.3 For purposes of this section, any transfer or change in control of Subtenant by operation of law or otherwise shall be deemed an assignment hereunder, including, without limitation, any merger, consolidation, dissolution or any change in more than 50 percent of the interests of Subtenant, whether in a single transaction or a series of related transactions.

5.4 If, with the consent of Sublessor, this Sublease is assigned or if the Leased Premises or any part thereof is sublet or occupied by anybody other than Subtenant, Sublessor may, after default by Subtenant, collect rent from the assignee, subtenant, or occupant, and apply the net amount

collected to the Rent herein reserved. If Sublessor consents to any such subletting or assignment, it shall nevertheless be a condition to the effectiveness thereof that a fully executed copy of the sublease or assignment be furnished to Sublessor and that any assignee assumes in writing all obligations of Subtenant hereunder. No consent to any assignment, subletting or occupancy shall be deemed a waiver of any of Subtenant's covenants contained in this Sublease nor the acceptance of the assignee, subtenant or occupant as Subtenant, nor a release of Subtenant from further performance of any covenants and obligations under this Sublease.

5.5 Any consent given by Sublessor to an assignment or subletting of this Sublease shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting.

6. **JOINT INSPECTION REPORT.** Prior to execution of this Sublease, a joint inspection of the Leased Premises was conducted by representatives of Sublessor and the Government. A report of the condition of the Leased Premises, including any deficiencies which were found to exist, the "Joint Inspection Report," is attached as Exhibit D to this Sublease, and shall be incorporated into this Sublease by this reference.

6.1 Any safety or health hazards identified during the above said Joint Inspection shall be corrected prior to use and occupancy of the Leased Premises. Responsibility and expense for correcting any such hazards shall have been determined by mutual agreement between Sublessor, Government and Subtenant before commencement of the Sublease. Subtenant shall have the option, but not the obligation, to correct any condition identified in the Joint Inspection Report, on behalf of Sublessor, so as to avoid any termination of the LIFOC pursuant to Section 14 thereof.

6.2 If during any subsequent inspection prior to actual use and occupancy of the Leased Premises, the Subtenant finds that the Leased Premises is not in fact in a condition reasonably suitable for the use intended by Subtenant, and will not for whatever reason be rendered reasonably suitable for such use by the Government, Sublessor, or Subtenant; then Subtenant may terminate this Sublease, without incurring any liability to Sublessor, upon 30 days written notice to the Sublessor.

6.3 **No Warranty by Government or Sublessor.** The Leased Premises are delivered to the Subtenant by Sublessor "as is, where is," and, as such, the Sublessor and the Government make no warranty as to such facilities and property either as to their usability generally or as to their fitness for any particular purpose. Without limiting application of the foregoing, Subtenant specifically acknowledges that the roof of the Building may be defective and may leak and require repair during the Term of this Sublease. In addition to the hold-harmless and indemnification provisions contained elsewhere in this Sublease, Subtenant agrees to hold Sublessor harmless for any damage to any property resulting from or related in any way to the defective roof, including but not limited to damage from water and other elements leaking through the roof and into the Building, and from any interruption of its business, loss of income or other financial loss resulting from or related in any way to Sublessor's decision to, and Sublessor's actual repair of, the roof. Should this Sublease terminate and not be succeeded by either another lease or sublease, or a conveyance of title to the Leased Premises, or by active negotiation for either lease or conveyance, Subtenant shall turn over

to Government the Leased Premises in the same condition in which they were received, reasonable wear and tear excepted. The Joint Inspection Report attached hereto as Exhibit D shall be used as the measurement with respect to any pre-existing contamination of the Leased Premises.

6.4 Subtenant's taking possession of the Leased Premises shall be conclusive evidence that the Leased Premises were in satisfactory condition when Subtenant took possession, except as to latent defects. No promises of Sublessor to alter, remodel, repair or improve the Leased Premises and no representation respecting the condition of the Leased Premises have been made by Sublessor to Subtenant, except as expressly stated in this Sublease.

7. **PURCHASE OF EQUIPMENT.** Sublessor intends to request conveyance of all the equipment that is a part of the Leased Premises. If such conveyance is made by the Government, Subtenant shall be entitled to purchase the Equipment, or any piece thereof, for its value as shown on Exhibit A-2 less any Equipment Rent that has been paid for it up to the date of sale.

8. **ALTERATIONS.**

8.1 Subtenant shall not make any substantial alterations, improvements, or additions to the exterior or interior of the Leased Premises (collectively the Work), without Sublessor's prior written consent in each and every instance. Any Work which adds to, removes, or otherwise alters, the structural components of the Building, including the roof, any support structures, foundations, the exterior of the Building, and the fire retardant and other life safety systems of the Building, shall be deemed to be substantial unless the Sublessor states in writing otherwise. In the event Subtenant desires to perform any Work, Subtenant shall first submit to Sublessor a written description of the proposed Work, and, if Sublessor requires, plans and specifications relating thereto, and obtain Sublessor's written approval prior to commencing it. Approval of Work may be conditioned upon providing the Sublessor and the Government with a performance and payment bond satisfactory to them in all respects in addition to other requirements deemed reasonably necessary to protect the interests of the Sublessor and the Government.

8.2 Because of the possibility that the Leased Premises will ultimately be under the jurisdiction of the City of Alameda for compliance with health and safety regulations and requirements, prior to undertaking or doing any Work on the Leased Premises, or any portion thereof, Subtenant agrees to submit an application to the City of Alameda Building Department, and, if required by the City, to other City departments, for review and obtaining approval of such plans and proposals for such Work to the Leased Premises, whether or not such are at such time under the legal jurisdiction of the City for such review and approval, unless such review and approval process is expressly waived in writing by such City Department. In addition to the application to the City of Alameda Building Department, Subtenant shall also submit a narrative description of all proposed Work on the Leased Premises, with the projected schedule and costs thereof, and an analysis as to how and why such Work will or will not be visible for the exterior of the Building, or affect any historically significant features, or be substantially likely to adversely affect the environmental cleanup of the Station, human health, or the environment, or adversely impact the

structure of the Building. All Work shall be done at the expense of Subtenant without any costs or obligation to Sublessor. No Work shall be undertaken by Subtenant on the Leased Premises, unless such Work has been approved by the City Building Department or such review has been waived in writing. In addition, there shall be no Work performed on the Leased Premises without prior written authorization from the Government under the LIFOC to the extent required, and in the manner set forth, in section 8 thereof.

8.2.1 Actual location of utility lines is approximate at the Station. In the event Subtenant intends to perform Work requiring excavation below the surface of the Leased Premises (whether inside or outside of the Building) or construction of a permanent structure on the Leased Premises, Subtenant must determine actual location of utilities using standard methods (i.e., Potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to the City of Alameda Public Works Department for approval. The application should include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structures will be constructed in these areas.

8.3 At the termination of this Sublease, all improvements, whether temporary or permanent in character, made by Sublessor or Subtenant in or upon the Leased Premises shall become Sublessor's property and shall remain upon the Leased Premises at the termination of this Sublease without compensation to Subtenant (excepting only Subtenant's movable office furniture, trade fixtures, and manufacturing, office and professional equipment, and any Work approved by Sublessor as to which, at the time of such approval, Sublessor stated, in writing, that such Work had to be removed at the termination of the Sublease).

8.4 The Government has provided to Sublessor an asbestos survey for the Building. Before Subtenant undertakes any alterations, modifications or any other Work which will disturb any known friable or non-friable asbestos in the Building, the Subtenant, as part of its improvement plan submittal, shall set forth a plan stating how it will handle any such asbestos, which plan must be reviewed and approved by Sublessor and the Government, before any such work which will disturb the asbestos in the Building can commence. The Government's asbestos survey for the Building is available for review by Subtenant at Sublessor's offices during normal business hours.

9. ACCESS BY GOVERNMENT AND SUBLESSOR. In addition to access required under Section 13, the Government and Sublessor shall be allowed access to the Leased Premises at all reasonable times throughout the term of this Sublease, for any reasonable purposes upon prior written notice to the Subtenant. The Government and Sublessor will normally give Subtenant a minimum 24-hour prior notice of an intention to enter the Leased Premises, unless the entry is required on an emergency basis for safety, environmental, operations or security purposes. Unless an emergency situation, all such entry by the Government shall be accompanied by a representative of the Subtenant. Subtenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Subtenant who will be available on short notice, 24 hours a day, 365 days per year, and possess and have authority to use all keys necessary to gain access to the Leased Premises,

to facilitate entry in time of emergency. The Subtenant shall ensure that the Sublessor has a current roster of such on-call personnel and their phone numbers. Subtenant shall have no claim against the Government or Sublessor for exercise of their rights of access hereunder.

9.1 Portions of the utilities systems serving the Station may be located within the Leased Premises. The Subtenant agrees to allow the Government, the Sublessor and their utility suppliers reasonable access to the Leased Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Sublessor agrees to take all reasonable steps to limit interference with the use of the Leased Premises by Subtenant.

10. UTILITIES

10.1 Provision of Utilities. Utilities will not be furnished to Subtenant by Sublessor. The obtaining of such utility services is solely the responsibility of the Subtenant. Any separate metering of utilities required by the Government or by any utility provider shall be the responsibility of Subtenant. In the event that Subtenant is required by any utility provider or governmental authority to install or pay for any separate utility meters to the Leased Premises, the cost of the same shall constitute Qualified Shell Improvement Costs pursuant to section 3 of this Sublease.

10.2 Heating of Leased Premises. Subtenant acknowledges that the Government's pre-existing steam heating facilities will not be operable for the Building during the entire Term of this Sublease. Subtenant acknowledges that Subtenant will be responsible for providing heating to the Leased Premises.

10.3 Subtenant acknowledges that pursuant to the provisions of the LIFOC, the Government in no way warrants the conditions or adequacy of its utility systems for the purposes intended by the Subtenant. The Subtenant may ask Sublessor to seek authorization from the Government to replace, remove, or relocate utility systems on the Leased Premises in order to use the Leased Premises, so long as there is no unreasonable interference with use by the Sublessor or the Government, or with use by contractors of Sublessor or the Government, of the utility systems, provided Subtenant bears all costs of the work, and provided the Sublessor and the Government have approved the replacement, removal or relocation in advance and in writing.

10.4 Subtenant agrees that it will accept needed utility services from any private or municipal supplier, who should during the term of this Sublease, become capable of delivering such services to the Leased Premises at commercial rates. Subtenant agrees that it will investigate the feasibility of obtaining needed utility services directly from private or municipal suppliers.

10.5 New Utilities. Subtenant agrees that any costs required to provide and maintain "new utilities" to the Premises following sublease commencement shall be the sole responsibility of the Subtenant. "New utilities" shall include utility services and utility systems that were not available to the Premises on the Sublease Commencement Date, including telecommunications.

11. **NO INTERFERENCE WITH GOVERNMENT OPERATIONS.** Subtenant shall not conduct operations, nor make any alterations, that would interfere with or otherwise restrict Government operations or environmental clean-up or restoration actions by the Government, Environmental Protection Agency (EPA), State of California, or their contractors. Environmental clean-up, restoration, or testing activities by these parties shall take priority over the Subtenant's use of the Leased Premises in the event of conflict. The Government has agreed in the LIFOC to make every reasonable effort to develop a plan to conduct any remediation of environmental contamination in a manner that minimizes interference with Sublessor's or Subtenant's use of the Leased Premises, and to provide reasonable and timely prior written notice of Government operations that may or will interfere with Sublessor's or Subtenant's use of the Leased Premises. Any work by Sublessor or Subtenant in the proximity of Operable Units that are part of a National Priorities List (NPL) site may require written approval by the Government's Remedial project Manager. .

12. **PROTECTION AND MAINTENANCE SERVICES.** The services to be provided by the Subtenant hereunder shall include the furnishing of all labor, supervision, materials, supplies, and equipment necessary to furnish the structural (including roof) maintenance; fencing maintenance; plumbing maintenance; electrical maintenance; maintenance of heating and cooling systems; exterior utility systems maintenance; pavement and grounds maintenance (including grass cutting, shrub trimming and tree removal); pest control; security within the Leased Premises; refuse collection, removal, and disposal; and utilities maintenance on the Leased Premises necessary for the protection of Government property. For specifics as to such protection and maintenance required to be provided by Subtenant hereunder the following provisions shall apply.

12.1 **Maintenance.** The degree of maintenance services to be furnished by the Subtenant hereunder shall be that which is sufficient to maintain weather tightness, structural stability, protection from fire hazards or erosion, and elimination of safety and health hazards, which arise during the term of the sublease and which are not caused by the actions of the Sublessor, the Government or their employees, contractors, or agents, so that the Leased Premises, facilities, and related personal property being serviced will remain in the condition in which they exist at the commencement of the sublease as documented in the Joint Inspection Report prepared pursuant to section 6, ordinary wear and tear excepted. Both Sublessor and Government, upon due notice, may inspect the Leased Premises, facilities, and related personal property to insure performance of the maintenance set forth herein. Should this Sublease terminate and not be succeeded by either another lease, or a conveyance of title to the premises, or by active negotiation for either lease or conveyance, Subtenant shall turn over to Sublessor the premises, facilities, and related personal property in the same condition in which they were received, reasonable wear and tear excepted.

12.1.1 The personal property as to which Subtenant obtains possession under section 7 of this Sublease shall not be removed by Subtenant, or any of its employees or agents, from the Leased Premises, without the prior written consent of the Government and Sublessor. Subtenant shall be responsible for preparing and maintaining an accurate and current inventory of all such personal property it has taken possession of from the government. If Subtenant desires to cease use of any personal property during the Term of this Sublease and cause it to be removed from the

Leased Premises, Subtenant shall so advise the Sublessor in writing and shall obtain written approval for moving or disposing of such personal property from the Sublessor and, so long as the personal property is the property of the Government, from the Government.

12.1.2 At the termination of this Sublease, the personal property shall be returned to the Sublessor or, at Sublessor's direction to the Government, in as good condition as when Subtenant took possession, ordinary wear and tear excepted, provided however that it is understood that Subtenant shall not have any obligation to maintain or repair any personal property which as become functionally obsolete, or if such personal property is not reasonably capable of being repaired because of an inability to reasonably obtain parts, or the cost of such repair or maintenance is unreasonable.

12.2 Housekeeping. Debris and unused materials shall be promptly removed from the Leased Premises, and the area of work shall be kept reasonably clean and free of unused materials at all times. At completion of the sublease, the area of work and the Leased Premises shall be left without containers, Subtenant's equipment, and other undesirable materials, and in an reasonably acceptable clean condition.

12.3 Security Protection. Subtenant shall provide for all security and safety within the Leased Premises. Any crimes or other offenses, involving damage to or theft of Government property shall be reported to the appropriate authorities for their investigation and disposition and to the Government and Sublessor as property owner and lessor, respectively.

12.4 Services. The Subtenant shall be responsible, at its cost and expense, for obtaining and providing any and all other services which may be required in connection with the Subtenant's use or occupancy of the Leased Premises.

13. ENVIRONMENTAL PROTECTION PROVISIONS.

13.1 Subtenant, its contractors, assigns or subtenants shall comply with all applicable Federal, state and local laws, regulations and standards that are or may become applicable to Subtenant's activities on Leased Premises.

13.2 Subtenant, its contractors, assigns or subtenants shall be solely responsible for obtaining their cost and sole expense any environmental permits required for its operations under the Sublease, independent of any existing permits held by Sublessor or Government. Subtenant shall not conduct operations or activities under any environmental permit that names Sublessor or Government as a secondary discharger or co-permittee. Subtenant shall provide prior written notice to Sublessor and Government of all environmental permits and permit applications required for any of Subtenant's operations or activities. Subtenant acknowledges that neither Sublessor nor Government will consent to being named a secondary discharger or co-permittee for any operations or activities of the Subtenant, its contractors, assigns or subtenants.

13.3 Subtenant acknowledges that Government's rights under the LIFO specifically include the right for Government officials to inspect upon reasonable notice Leased Premises for compliance with environmental, safety and occupational health laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Sublessor shall also have the right to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, regardless of whether the Government or Sublessor is responsible for enforcing or complying with them. Government or Sublessor normally will give Subtenant twenty-four (24) hours prior notice of its intention to enter Leased Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security. Subtenant shall have no claim against Sublessor, Government, or any officer, agent, employee, contractor or subcontractor of Sublessor or Government by reason of entrance of such Sublessor or Government officer, agent, employee, contractor or subcontractor onto the Leased Premises.

13.4 Subtenant acknowledges that Installation has been identified as a National Priorities List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended, and acknowledges that Sublessor has provided it with a copy of the Installation Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region, the state equivalent, and the Military Department. Sublessor will provide Subtenant with a copy of any amendments thereto. Subtenant agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("FFA," "Interagency Agreement" or "IAG") and the provisions of this Sublease, the terms of the FFA or IAG will take precedence. Subtenant further agrees that notwithstanding any other provision of this Sublease, Government assumes no liability to Subtenant or its assigns or subtenants should implementation of the FFA interfere with Subtenant's use of Leased Premises. Subtenant shall have no claim on account of any such interference against the Sublessor or Government or any officer, agent, employee, contractor or subcontractor thereof, other than for abatement of rent, where applicable.

13.5 Government, EPA (for NPL sites) and the State (for non-NPL sites) and their officers, agents, employees, contractors and subcontractors have the right, upon reasonable notice to the Sublessor and to the Subtenant, to enter upon Leased Premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provisions of the cleanup program (including but not limited to the BRAC Cleanup Plan, IRP, FFA, or IAG):

13.5.1 to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings and other activities related to the cleanup program;

13.5.2 to inspect field activities of Government and its contractors and subcontractors in implementing the cleanup program;

13.5.3. to conduct any test or survey required by EPA or applicable state equivalent relating to the implementation of the cleanup program;

13.5.4. to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the cleanup program, including but not limited to monitoring wells, pumping wells and treatment facilities.

13.6 Subtenant agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of any of the above described response or remedial actions. Any inspection, survey, investigation or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Sublessor and Subtenant. Neither Sublessor nor Subtenant shall have any claim on account of such entries against the Government or any officer, agent, employee, contractor or subcontractor thereof. In addition, Subtenant shall comply with all applicable Federal, state and local occupational safety and health regulations.

13.7 Subtenant shall provide to Sublessor, in the event of any assignment or further sublease of the Leased Premises, in order that Sublessor may provide to EPA and applicable state equivalent by certified mail a copy of the agreement or sublease of Leased Premises (as the case may be) within fourteen (14) calendar days after the effective date of such transaction. The Sublessor and the Subtenant may delete the financial terms and any other proprietary information from the copy of any agreement of sublease furnished pursuant to this condition.

13.8 The Subtenant shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent. Except as specifically authorized by Government in writing, Subtenant must provide at its own expense such hazardous waste management facilities complying with all laws and regulations. Government hazardous waste management facilities will not be available to Subtenant. Any violation of the requirements of this condition shall be deemed a material breach of this Sublease.

13.9 DoD component accumulation points for hazardous and other waste will not be used by Subtenant. Neither will Subtenant permit its hazardous wastes to be commingled with hazardous waste of DoD Component.

13.10 The Subtenant shall have a Government-approved plan for responding to hazardous waste, fuel and other chemical spills prior to commencement of operations on Leased Premises. Such plan shall be independent of Installation plan and, except for initial fire response and/or spill containment, shall not rely on use of Installation personnel or equipment. Should Government provide any personnel or equipment whether for initial fire response and/or spill containment, or otherwise on request of Sublessor or Subtenant, or because the Sublessor or Subtenant was not, in the opinion of Government, conducting timely cleanup actions, Subtenant agrees to reimburse Government for its costs in association with such response or cleanup.

13.11 Subtenant shall not conduct or permit any subtenant, contractor, agent or employee to undertake any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of Sublessor and Government.

13.12 Subtenant acknowledges that, pursuant to Section 13.12 of the LIFOC, to the extent required by law and regulation, Government shall abate, remove or otherwise remedy all friable, accessible and damaged asbestos containing material (ACM), except as provided in paragraph 13.12.2 below, lead based paint (LBP), and any polychlorinated biphenyls (PCBs) from Leased Premises.

13.12.1 If Subtenant intends to make any improvements or repairs that require the removal of asbestos, an appropriate asbestos disposal plan must be incorporated into the plans and specifications and submitted to Sublessor and Government. The asbestos disposal plan will identify the proposed disposal site for the asbestos, or in the event the site has not been identified, will provide for disposal at a licensed facility authorized to receive it.

13.12.2 ACM which, since the commencement of the Sublease, became damaged or deteriorated through the passage of time, as the result of a natural disaster or as a consequence of Subtenant's activities under this Sublease, including but not limited to any emergency, will be abated by Subtenant at its sole cost and expense. Notwithstanding Paragraph 13.12.1 above, in an emergency, Subtenant will notify Sublessor and Government as soon as practicable of its emergency ACM responses. Subtenant shall be responsible for monitoring the condition of existing ACM on Leased Premises for deterioration or damage and accomplishing repairs or abatement pursuant to the applicable conditions of this Sublease.

13.12.3 Subtenant is hereby advised that the buildings and other painted structures in the Leased Premises are potentially painted with Lead Based Paints (LBP). Such buildings and structures shall not be suitable for occupancy for residential purposes until any inspections and abatement required by applicable law have been completed. Subtenant may, at its sole cost and expense, have a State Certified LBP Inspector complete a LBP inspection and abatement and provide an abated certification to the Sublessor and Government, at which time with written Sublessor and Government approval, the specified premises can be used for residential purposes.

13.12.4 Subject to the provisions of Paragraphs 13.12.2 and 13.12.3, Subtenant shall manage at its sole cost and expense any asbestos containing materials (ACM) and LBP property and comply with all applicable Federal, State and local laws.

13.13 [Deleted]

13.14 [Deleted]

13.15 In addition to the provisions of Section 16, Subtenant shall, and does hereby agree to, indemnify and hold harmless Government and Sublessor from any costs, expenses, liabilities, fines

or penalties resulting from discharges, emissions, spills, storage or disposal arising from Subtenant's occupancy, use or operations, or any other action by Subtenant or its contractors, employees, agents, assigns, or subtenants giving rise to Government or Sublessor liability, civil or criminal, or any other action by Subtenant or its contractors, employees, agents, assigns, or subtenants giving rise to responsibility under Federal, state or local environmental laws. Subtenant's obligations hereunder shall apply whenever Government or Sublessor incurs costs or liabilities for Subtenant's activities or for the activities of Subtenant's contractors, employees, agents, assigns, or subtenants as provided hereunder. This provision shall survive the expiration or termination of this Sublease.

13.16 Storage, treatment or disposal of toxic or hazardous materials on the Leased Premises is prohibited excepted as authorized by Government in accordance with 10 U.S.C. § 2692.

13.17 The responsibility of the Government to indemnify and hold harmless the Sublessor and Subtenant against toxic torts and other environmental claims shall be in accordance with Public Law 102-484, Section 330, as amended.

13.18 Subtenant shall be solely responsible for any dredging and/or dredge disposal requirements associated with the berthing of vessels under this Sublease, including any permits required for dredging. The Subtenant shall be responsible for verifying the water depth prior to moving vessels to any berthing or pier facilities. The Subtenant shall periodically verify the depth of the water and consider the effects of siltation rates to insure that vessels can be safely berthed and removed from berthing space.

13.19 Subtenant and Sublessor are prohibited from interfering with any predator management or animal control activities.

13.20 Subtenant shall maintain copies of any permit applications made to any Federal, State or local regulatory agencies and shall provide copies to Sublessor or Government on reasonable request. Subtenant shall promptly notify Sublessor and Government of any notices of violation or noncompliance received by Subtenant from any such agency, concerning environmental matters or hazardous substances or hazardous waste on, about, or pertaining to the Leased Premises.

13.21 Subtenant shall be responsible for reporting, containment, removal and clean up of any land, air or water pollution that occurs on any Leased Premises as a result of Subtenant's use of the Leased Premises, the use of the Leased Premises by Subtenant's agents, employees, contractors, subcontractors, subtenants or assigns.

14. TERMINATION.

14.1 Termination by Government of the LIFOC for Breach. The Government has the right to terminate the LIFOC on account of the breach by the Lessee thereof of any of the terms and conditions of the LIFOC. In the event of a breach involving the performance of any obligation under the LIFOC, the LIFOC provides that Sublessor, as the Lessee thereunder, shall be afforded thirty (30)

days from the receipt of the Government's notice of intent to terminate, to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of the LIFOC. Sublessor agrees to immediately, and in any event within 24 hours after Sublessor's receipt, except when it arrives on a weekend or holiday, in which event it shall be delivered by the next business day, provide a copy of any such notice to Subtenant. In the event that any such notice is delivered to Sublessor as the Lessee under the LIFOC, for any such breach occasioned or caused by the action, negligence or inaction of Subtenant, or any party acting on behalf of or through Subtenant, for an obligation, covenant or undertaking of Subtenant under this Sublease, then Subtenant shall complete the performance of the obligation or otherwise cure the subject breach and avoid termination of this Sublease and the LIFOC. Subtenant shall cure such breach within thirty days from the date of receipt of the Government's notice of intent to terminate by Sublessor. If Subtenant should fail to cure within the grace periods provided above, and the Government does not terminate the LIFOC under the provisions of the LIFOC, then Sublessor shall have the option to terminate this Sublease, without the necessity of providing further notice or rights of cure to Subtenant.

14.2 In the event that the Government shall elect to terminate the LIFOC on account of the breach by the Subtenant of any of the terms and conditions hereof or of the LIFOC to be performed by Subtenant, the Subtenant shall indemnify Sublessor against any claims the Government may have against Sublessor for any of the following under the LIFOC:

14.2.1 The costs incurred by the Government in resuming possession of the Leased Premises.

14.2.2 The costs incurred in performing by the Government of any of Subtenant's obligations under this Sublease.

14.2.3 An amount equal to the aggregate of any maintenance obligations, and charges assumed hereunder and not therefore paid or satisfied, which amounts shall be due and payable at the time when such obligations, and charges would have accrued or become due and payable under this Sublease.

14.3 Termination by Government for Other Than Breach. In addition to the right to terminate the LIFOC for breach, the Government is entitled to terminate the LIFOC for its convenience under the following terms and conditions:

14.3.1 Upon reasonable determination that the interim uses of the Lessee under the LIFOC or the interim uses of the Subtenant under this Sublease for the remaining duration of the Sublease term are incompatible with the Government's final disposal decision as embodied in the NEPA Record of Decision, with respect to the required subsequent uses of the Leased Premises, which subsequent uses must be effected during the balance remaining on the term of this Sublease, and a finding is made that the continued use and occupation of the Leased Premises through the end of the remaining Sublease Term cannot be permitted because of such irreconcilable incompatibility,

unless the parties to this Sublease make such modifications to this Sublease as are reasonably required to make the uses compatible for the period of time remaining on the Sublease term.

14.3.2 In the event of a National Emergency as declared by the President or the Congress of the United States and the Government makes a reasonable determination that such National Emergency requires the use by the United States of America of the Leased Premises, or such National Emergency otherwise necessitates the use of the Station and such use will materially interfere with the Lessee's use under the LIFO C or any Subtenant's use of the Leased Premises.

14.3.3 In the event of a termination for the Government's convenience as set forth in the LIFO C, the Sublessor as Lessee under the LIFO C, is to be provided with no less than 30 days written notice of such termination and shall immediately provide Subtenant with a copy of any notification it receives from the Government relative to such termination. The Sublessor shall meet and confer with the Subtenant and the Government to determine what is a reasonable time for the Subtenant to vacate the Leased Premises, considering the factors of the nature of the exiting uses of the Subtenant, the consequences which would be affected if such termination is required and the losses and penalties which would be engendered if such termination is required. Sublessor shall provide Subtenant with as long and reasonable time as are under the facts and circumstances acceptable to the Government relative to such termination. In the event of such termination, Subtenant and Sublessor as Lessee under the LIFO C shall have only such remedies as are otherwise available under the law with respect to compensation from the Government for such termination. Subtenant shall not seek and shall not have any claim against Sublessor for any such termination for convenience by the Government, except to the extent that Sublessor obtains recovery therefor from the Government for itself or on behalf of Subtenant.

14.4 Termination by Subtenant. The following provisions shall apply in the event of termination by Subtenant.

14.4.1 Damage and Destruction. The Subtenant shall have the right to terminate this Sublease upon 30 days written notice to the Sublessor in the event of damage to or destruction of all of the improvements on the Leased Premises or such a substantial portion thereof as to render the Leased Premises incapable of use for the purposes for which it is leased hereunder, provided that the cost of the repair, rebuilding, or replacement of the Building is in excess of the amounts of insurance carried therefor by the Subtenant, as required under section 17 of this Sublease; such damage or destruction was not occasioned by the willful misconduct or gross negligence of the Subtenant or any of its officers, agents, servants, employees, subtenants, licensees, or invitees; or the damage or destruction was not occasioned by any failure or refusal on the part of the Subtenant to fully perform its obligations under this Sublease.

14.5 Termination for Lack of Utility Service. Subtenant may terminate this Sublease upon 30 days' notice if domestic water, waste water, electrical, gas, or telephone service is not available to it. Subtenant may also terminate if, upon abandonment of the base-wide fire protection system,

Subtenant cannot retrofit building sprinkler system or provide other measures to comply with fire code requirements applicable to its use. The cost of such retrofit or other measures shall be the sole responsibility of the Subtenant.

15. VACATION OF LEASED PREMISES. In the event environmental contamination is discovered on the Leased Premises which creates, in the Government's determination, an imminent and substantial endangerment to human health or the environment which necessitates evacuation of Leased Premises, then notwithstanding any other termination rights and procedures contained in this Sublease, the Government may require the Sublessor to require that Subtenant vacate the Leased Premises immediately upon notice from Government of the existence of such a condition. The Government shall not be liable for the exercise of authority, which is in conformity with this subsection, except as detailed in Section 15 of the LIFOC. Government's exercise of this right herein to order the Leased Premises immediately vacated does not alone constitute a termination of the LIFOC, but such right may be exercised in conjunction with any other termination rights provided for in the LIFOC or by law.

16. INDEMNIFICATION BY SUBTENANT AND OF SUBTENANT.

16.1 Indemnification By Subtenant of Sublessor. The Subtenant shall indemnify, defend and save Sublessor harmless and shall pay all costs, expenses and reasonable attorney's fees for all trial and appellate levels and post judgment proceedings in connection with any fines, suits, actions, damages, liability, causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Subtenant and Subtenant's employees, agents, servants, guests, invitees, contractors or sublessees. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained, or incurred by Sublessor by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of Subtenant or Subtenant's employees, agents, servants, guests, invitees and sublessees. This indemnification also applies to claims arising out of the furnishing of any utilities or services by Sublessor or any interruption therein or failure thereof. However, this indemnity shall not extend to damages due to the sole fault or negligence of Government or Sublessor or their contractors. This covenant shall survive the termination of this Sublease.

16.2 Indemnification By Subtenant of Government. The Subtenant shall indemnify, defend and save Government harmless and shall pay all costs, expenses and reasonable attorney's fees for all trial and appellate levels and post judgment proceedings in connection with any fines, suits, actions, damages, liability, causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Subtenant and Subtenant's employees, agents, servants, guests, invitees, contractors or sublessees. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained, or incurred by Government by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of Subtenant or Subtenant's employees, agents, servants, guests, invitees and sublessees. This indemnification also

applies to claims arising out of the furnishing of any utilities or services by Government or any interruption therein or failure thereof. However, this indemnity shall not extend to damages due to the sole fault or negligence of Government or Sublessor or their contractors. This covenant shall survive the termination of this Sublease.

16.3 Indemnification By Sublessor of Subtenant. The Sublessor shall hold harmless, indemnify and defend Subtenant, its officers, directors, agents, employees and representatives, from and against any suit, claim, demand, action, liability, judgment, cost, expenses or other fee arising out of any claim for injury or damage (Claim) that results from, or is in any manner predicated upon activities of the Sublessor on the Leased Premises during the Term of this Sublease, except to the extent that such Claim arises from and is attributable to the sole fault or negligence of Subtenant or the Government.

17. SUBTENANT TO BEAR ALL RISK; INSURANCE PROVISIONS.

17.1 As to those structures and improvements on Leased Premises constructed by or owned by Government or Sublessor, Subtenant shall procure and maintain at Subtenant's cost a standard fire and extended coverage insurance policy or policies on Leased Premises in an amount not less than \$1,000,000 to demolish damaged or destroyed structures and improvements, remove debris, and clear the Leased Premises. Subtenant shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of Sublessor, shall be payable to Subtenant to be used solely for the demolition of damaged or destroyed structures and improvements, removal of debris and clearance of the Leased Premises or for repair, restoration, or replacement of the property damaged or destroyed. Any balance of the proceeds not required for such purposes shall be paid to Sublessor. If Sublessor does not elect, by notice in writing to the insurer within thirty (30) calendar days after the damage or destruction occurs, to have the proceeds paid to Subtenant for the purposes herein above set forth, then such proceeds shall be paid to Sublessor, provided however that the insurer, after payment of any proceeds to Subtenant in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by Subtenant. Nothing herein contained shall be construed as an obligation upon Government or Sublessor to repair, restore or replace Leased Premises or any part thereof.

17.2 During the entire period this Sublease shall be in effect, Subtenant and its sublessees and contractors shall carry and maintain the insurance required below:

17.2.1 Comprehensive general liability insurance, in the amount of \$5,000,000.00 per occurrence with respect to personal injury or death, and \$3,000,000.00 per occurrence with respect to property damage.

17.2.2 Workman's compensation or similar insurance in form and amounts required by law.

17.3 All insurance which this Sublease requires Subtenant or its sublessees or contractors to carry and maintain or cause to be carried or maintained shall be in such form, for such periods of time, and with such insurers as Sublessor and Government may reasonably require or approve. All policies or certificates issued by the respective insurers for public liability and property insurance will name Sublessor and Government as additional insureds, will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Government or Sublessor or any other person, will provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by Sublessor and Government of written notice thereof; will provide that the insurer shall have no right of subrogation against Government or Sublessor; and will be reasonably satisfactory to Government and Sublessor in all other respects. In no circumstances will Subtenant be entitled to assign to any third party, rights of action which Subtenant may have against Government or Sublessor.

17.4 Subtenant and its sublessees and contractors shall deliver or cause to be delivered promptly to Sublessor and Government a certificate of insurance evidencing the insurance required by this Sublease and shall also deliver prior to expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

18. LABOR PROVISIONS.

18.1 Equal Opportunity. During the Term of this Sublease, and with respect only to employment or employees at the Leased Premises, Subtenant agrees as follows:

18.1.1 Subtenant will not discriminate against any employee of Subtenant or applicant for employment because of race, color, religion, sex, or national origin. The employees of Subtenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Subtenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

18.1.2 Subtenant will, in all solicitations or advertisements for employees placed by or on behalf of Subtenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

18.1.3 Subtenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the Government, advising the labor union or worker's representative of Subtenant's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.4 Subtenant will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor of the United States of America.

18.1.5 Subtenant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by the Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

18.1.6 In the event of Subtenant's noncompliance with the Equal Opportunity Clause of this Sublease or with any said rules, regulations, or orders, this Sublease may be canceled, terminated or suspended in whole or in part and Subtenant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18.1.7 Subtenant will include the above provisions in every sublease or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee or vendor. Subtenant will take such action with respect to any sublessee or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Subtenant becomes involved in, or is threatened with, litigation with the sublessee or vendor as a result of such direction by the Government, Subtenant may request the United States to enter into such litigation to protect the interests of the United States.

18.2 Convict Labor. In connection with the performance of work required by this Sublease, Subtenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

19. SUBMISSION OF NOTICES. All notices, demands, requests, consents, or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when sent by United States Certified or Registered Mail, postage prepaid, or by reputable overnight delivery service or personal delivery as follows:

19.1 If for Subtenant, addressed to Subtenant at the Building, or at such other place as Subtenant may from time to time designate by notice to Sublessor.

19.2 If for Sublessor, addressed to Sublessor at

Executive Director

Alameda Reuse and Redevelopment Authority
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501-4566
(Facsimile: 510-748-4504)

19.3 If for Government, addressed to

Commanding Officer
Southwest Division
Engineering Field Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132-5189
(Facsimile: 619-532-3830)

19.4 Notwithstanding the addresses provided in subsections 19.1 through 19.3 of this section, any party may from time to time designate an alternate and/or additional address by notice.

20. **AUDIT.** This Sublease shall be subject to audit by Sublessor and by any and all cognizant Government agencies. The Subtenant shall make available to such agencies for use in connection with such audits all records, which it maintains with respect to this Sublease and copies of all reports required to be filed hereunder. The Subtenant will make these materials available for a period of three years after termination or expiration of this Sublease.

21. **AGREEMENT.** This Sublease agreement shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, or for, on behalf of either party shall be a part of this Sublease. Should a conflict arise between the provisions of this Sublease and any exhibit hereto, or any other agreement between Sublessor and Subtenant, the provisions of this Sublease shall take precedence.

22. **FAILURE TO INSIST ON COMPLIANCE.** The failure of the Sublessor to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Sublease shall not be construed as a waiver or relinquishment of the Sublessor's right to the future performance of any such terms, covenants, or conditions and the Subtenant's right to the future performance of any such terms, covenants, or conditions and the Subtenant's obligations in respect of such future performance shall continue in full force and effect.

23. **DISPUTE RESOLUTION.** Any disputes arising under this Sublease that involve or relate to the Government or the Government's interpretation of the LIFOC that are subject to resolution under the Contracts Disputes Act, 431 U.S.C. section 601 et seq. pursuant to the provisions of section 23 of the LIFOC shall be resolved under that Act. All other disputes that may arise under

this Sublease shall be resolved in accordance with the provisions of the laws of the State of California.

24. **COVENANT AGAINST CONTINGENT FEES.** The subtenant warrants that no person or agency has been employed or retained to solicit or secure this Sublease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Subtenant for the purpose of securing business. For breach or violation of this warranty, the Sublessor shall have the right to annul this Sublease without liability or in its discretion to require the Subtenant to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

25. **OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Sublease or to any benefit to arise therefrom, but this proviso shall not be construed to extend to this Sublease if made with a corporation for its general benefit.

26. **LIENS.** The Subtenant shall promptly discharge or cause to be discharged any valid lien, right in rem, claim, or demand of any kind on the Leased Premises, except one in favor of the Government, or the Sublessor, which at any time may arise or exist with respect to the Leased Premises or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by the Subtenant, or should the Subtenant or Subtenant be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, the Sublessor reserves the right to take immediate possession without any liability to the Subtenant or any subtenant thereof. If the Subtenant breaches the foregoing, Subtenant and any subtenant thereof shall be responsible for any costs incurred by the Government in securing clear title to its property.

27. **TAXES.** Subtenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Leased Premises during the Term. Taxes shall mean all taxes, assessments and governmental charges, whether federal, state, county or municipal, and whether general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Rent, the Leased Premises, the Building, any possessory interest therein, or their operation, whether or not directly paid by Sublessor. Taxes shall not include income taxes, excess profit taxes, franchise taxes, or other taxes imposed or measured on or by the income of Sublessor from the operation of the Leased Premises, provided, however, that if, due to a future change in the method of taxation or assessment, any income, profit, franchise or other tax, however designated, shall be imposed in substitution, in whole or in part, for (or in lieu of) any tax, assessment or charge which would otherwise be included within the definition of Taxes, such other tax shall be deemed to be included within Taxes as defined herein to the extent of such substitution. There shall be added to Taxes the expenses of any contests (administrative or otherwise) of Taxes incurred during the taxing year, but only to the extent such contests result in a reduction of Taxes for such year or any other year during the Term. Subtenant shall pay to the appropriate governmental authority any use, possessory interest, and/or occupancy tax applicable

to the Leased Premises. In the event that Sublessor is required by law to collect such tax, Subtenant shall pay such use and occupancy tax to Sublessor as Additional Rent within ten days of demand and Sublessor shall remit any amounts so paid to Sublessor to the appropriate governmental authority.

27.1 The interest created by this Sublease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Sublease pursuant to the requirements of section 107.6 (a) of the Revenue and Taxation Code of the State of California.

27.2 Subtenant shall pay the Taxes directly imposed upon it in accordance with the instructions of the taxing entity. Subtenant shall pay the Taxes originally imposed upon Sublessor, upon Sublessor's election, either (i) annually within 30 days after the date the Sublessor provides Subtenant with a statement setting forth in reasonable detail such Taxes (which statement shall not be provided to Subtenant more than 60 days before such Taxes are due), or (ii) monthly in advance based on estimates provided by Sublessor based upon the previous year's tax bill.

27.3 All Taxes originally imposed upon Sublessor and payable by Subtenant with respect to the Leased Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Subtenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Sublease.

28. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY.

28.1 Subtenant acknowledges that the LIFOC, and this Sublease, are subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Leased Premises or any portion thereof and to the right of Government (under section 28 of the LIFOC), to grant such additional easements and rights-of-way over, across, in and upon the Leased Premises as it shall determine to be in the public interest; provided that any such additional easement or right-of-way shall be conditioned upon the assumption by the grantee thereof of liability to Sublessor for such damages as Sublessor shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is reserved to the rights of the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any Federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over Leased Premises as shall be necessary for the performance of their duties with regard to such facilities.

29. **INGRESS AND EGRESS.** The Government and Sublessor shall be granted reasonable access to the Leased Premises under this Sublease. Such access will be coordinated with Subtenant.

30. **ADMINISTRATION.** Except as may be otherwise provided in the LIFOC or this Sublease, the Government shall, under the direction of the Command described in addendum (a) to the LIFOC, have complete charge of the administration of the LIFOC and any interests the Government has under this Sublease, and shall exercise full supervision and general direction thereof insofar as the interests of the Government are affected.

31. **SURRENDER.** Upon the expiration of this Sublease or its prior termination by Subtenant, the Subtenant shall quietly and peacefully remove itself and its property from the Leased Premises and surrender the possession thereof to the Sublessor. The Sublessor or the Government may, in its discretion, declare any property which has not been removed from the Leased Premises upon termination provided for above, as abandoned property upon an additional 30 calendar days notice.

32. **QUIET POSSESSION.** Upon Subtenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Subtenant's part to be observed and performed hereunder, Subtenant shall have quiet possession of the Leased Premises for the entire Term hereof, subject to all the provisions of this Sublease.

33. **CERTAIN RIGHTS RESERVED TO SUBLESSOR.** Sublessor reserves the following rights:

33.1 To hold copies of all keys and passkeys to the Leased Premises, other than to vaults, safes, or restricted areas within the Leased Premises.

33.2 On reasonable prior written notice to Subtenant, no less than 48 hours in advance, to show the Leased Premises to prospective tenants during the last nine months of the Term, and to any prospective purchaser, mortgagee, or assignee of any mortgage or ground lease on the Leased Premises and to others having a legitimate interest in the Leased Premises at any time during the Term.

33.3 At any time in the event of an emergency, and otherwise at reasonable times, to take any and all measures, including making any inspections, repairs, alterations, additions, and improvements to the Leased Premises, as may be necessary or desirable for the safety, protection, or preservation of the Leased Premises, or Sublessor's interests, or as may be necessary or desirable in the operation or improvement of the Leased Premises, or in order to comply with all laws, orders, and requirements of governmental or other authorities, using reasonable efforts not to interfere with the use and occupancy of the Leased Premises by Subtenant. Sublessor shall not be in default hereunder nor have any liability to Subtenant, nor shall Subtenant have any right to terminate this Sublease or claim an offset against or reduction in Rent payable hereunder, due to any damage, annoyance or inconvenience resulting from any such inspections, repairs, alterations, additions or improvements, or the failure of Sublessor to make any such inspections, repairs, alterations, additions or improvements; provided however that Sublessor shall be liable for its gross negligence or willful misconduct. Subtenant shall reasonably cooperate with Sublessor or Sublessor's agents or contractors in carrying out any such inspections, repairs, alterations, additions or improvements.

34. COVENANTS OF SUBTENANT

34.1 Use of the Leased Premises. Subtenant shall not make or permit to be made any use of the Leased Premises or any part thereof (i) which would directly or indirectly violate any federal, state or local law, ordinance, rule or governmental regulation; (ii) which would invalidate or unreasonably increase the premium cost of any policy of insurance carried on the Leased Premises or covering its operation (unless such increase is paid for by Subtenant); or (iii) which will suffer or permit the Leased Premises or any part thereof to be used in any manner or permit anything to be brought into or kept therein which, in the reasonable judgment of Sublessor, shall unreasonably impair or interfere with any of the services required to be performed by Sublessor, if any, for the Leased Premises.

34.2 Exterior Signs. Subtenant shall not display, inscribe, print, maintain or affix on any place on or about the exterior of the Buildings any sign, notice, legend, direction, figure or advertisement, except as may be approved by Sublessor in writing and, if required, by local governing authorities.

34.3 Locks. Subtenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, change any locks, without providing to Sublessor one set of keys therefore. All keys must be returned to Sublessor at the expiration or termination of this Sublease.

34.4 Overloading. Subtenant shall not overload any floor.

34.5 Machinery. Subtenant shall not install or operate any machinery, refrigerating or heating device or air-conditioning apparatus in or about the Leased Premises which would impose unreasonable substantial additional loads on the facilities of the buildings.

34.6 No Obstruction. The exits, entrances, elevators and stairways of the Buildings shall not be obstructed by Subtenant or used for any purpose other than for ingress to and egress from the Leased Premises. Subtenant and its employees or invitees shall not go upon the roof of the Buildings without Sublessor's prior consent.

34.7 No Animals. Subtenant shall not permit any animals, except those required to be allowed by law, such as guide dogs, to be brought in or kept in or about the Leased Premises without the Sublessor's prior written consent.

34.8 Applicable Rules and Regulations. Subtenant shall comply with all Federal, State and local laws, regulations and standards that are applicable or may become applicable to Subtenant's activities on the Leased Premises, including those rules and regulations promulgated by Sublessor pursuant to Section 35 of this Sublease. These include, but are not limited to, laws and regulations on the environment, construction of facilities, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business (e.g., wetlands [EO 11990] and floodplains

[EO 11988], Section 106 consultation under the National Historic Preservation Act and air quality conformity determinations under the Clean Air Act). Subtenant is responsible for obtaining and paying for permits required for its operations under the Sublease.

34.9 Outside Storage Prohibited. Outside storage or activities are not permitted unless expressly authorized in writing by Sublessor. Any outside storage authorized by Sublessor shall be properly screened.

35. RULES AND REGULATIONS. Sublessor shall have the right to make such rules and regulations as in the reasonable judgment of Sublessor may from time to time be necessary for the safety, appearance, care and cleanliness of the Leased Premises and for the preservation of good order therein, provided that such rules do not unreasonably interfere with the operations of the Subtenant which otherwise comply with the terms of this Sublease.

36. HOLDING OVER. If Subtenant retains possession of the Leased Premises or any part thereof after the expiration or termination of the Term, Subtenant shall pay to Sublessor immediately on demand, a monthly sum equal to 150 percent of the amount of the monthly Base Rent and Additional Rent for the last full calendar month of the Term for the time Subtenant thus remains in possession and, in addition thereto, shall pay Sublessor for all direct damages sustained by reason of Subtenant's retention of possession. The provisions of this section do not exclude Sublessor's rights to re-entry or any other right under this Sublease.

37. DEFAULT. It shall constitute an event of default (Event of Default) under this Sublease if any of the events describes in the following subsections occurs.

37.1 Subtenant fails to pay when due Base Rent, Additional Rent, or other amounts due hereunder and such failure continues for a period of five days after written notice to Subtenant from Sublessor.

37.2 Subtenant assigns or sublets, or purports to assign or sublet the Leased Premises or any part thereof other than in the manner and upon the conditions set forth herein.

37.3 Subtenant fails to perform or observe any of its other obligations, covenants, or agreements hereunder within ten working days after written notice of any such failure has been given by or on behalf of Sublessor, or, if more than ten working days is required to cure such failure, within said ten working days, Subtenant shall advise the Sublessor in writing of Subtenant's intended course of action to cure and the estimated date as to when said action will be completed, and if Subtenant fails to commence such cure as promptly as practical as stated in its notice to Sublessor and thereafter diligently to pursue such cure and thereafter fails to diligently pursue such a cure and complete such cure within a reasonable time thereafter, or within the period of time as may be otherwise required under the LIFO.

37.4 Subtenant liquidates its business, becomes insolvent, makes an assignment for the benefit of creditors, files or has filed against it a petition of bankruptcy, bill in equity, or other proceedings for the appointment of a receiver or other custodian for its property, or if proceedings for reorganization or composition with creditors under any law are instituted by or against Subtenant or if any levy or sale or execution of any kind is made upon or of any property of Subtenant in the Leased Premises.

37.5 Subtenant abandons or vacates the Leased Premises or Subtenant removes or attempts to remove or manifests an intention to remove Subtenant's goods or property from or out of the Leased Premises otherwise than in the ordinary and usual course of business.

37.6 Subtenant fails to vacate the Leased Premises at the end of the Term of this Sublease unless this Sublease is otherwise renewed or extended.

38. SUBLESSOR'S REMEDIES

38.1 If an Event of Default hereunder shall have occurred, Sublessor may, at its option, exercise any one or more of the following remedies:

38.1.1 Termination of Sublease. Sublessor may terminate this Sublease, by written notice to Subtenant, without any right by Subtenant to reinstate its rights by payment of rent due or other performance of the terms and conditions hereof. Upon such termination, Subtenant shall immediately surrender possession of the Leased Premises to Sublessor, and Sublessor shall immediately become entitled to receive from Subtenant an amount equal to the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of the award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of section 1951.2 of the California Civil Code.

38.1.2 Reletting. With or without terminating this Sublease, as Sublessor may elect, Sublessor may re-enter and repossess the Leased Premises, or any part thereof, and lease them to any other person upon such terms as Sublessor shall deem reasonable, for a term within or beyond the Term; provided, that any such reletting prior to termination shall be for the account of Subtenant, and Subtenant shall remain liable for (i) all Base Rent, Additional Rent and other sums which would be payable under this Sublease by Subtenant in the absence of such expiration, termination or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Subtenant after deducting from such proceeds all of Sublessor's expenses, reasonable attorneys' fees and expenses, employees' expenses, alteration costs, expenses of preparation for such reletting and all costs and expenses, direct or indirect, incurred as a result of Subtenant's breach of this Sublease. If the Leased Premises are, at the time of default, sublet or leased by Subtenant to others, Sublessor may, as Subtenant's agent, collect rents due from any subtenant or other tenant and apply such rents to the Rent and other amounts due hereunder without in any way affecting Subtenant's obligation to Sublessor hereunder. Such agency, being given for security, is hereby declared to be irrevocable.

38.1.3 Rent Minus Fair Market Value. Sublessor may declare immediately due and payable from Subtenant, in addition to any damages or other amounts becoming due from Subtenant under any other provision of this Sublease, an amount equaling the difference between the Rent reserved in this Sublease from the date of the default to the Expiration Date and the then fair market value of the Leased Premises for the same period.

38.1.4 Removal of Contents by Sublessor. With respect to any portion of the Leased Premises which is vacant or which is not physically occupied by Subtenant, Sublessor may remove property therefrom, and store such property in a public warehouse or elsewhere at the cost of and for the account of Subtenant, in such manner as may be permitted by applicable law, without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

38.2 Survival of Subtenant's Obligations. No early expiration or termination of this Sublease (except as expressly provided herein) and no repossession of the Leased Premises or any part thereof shall relieve Subtenant of its liabilities and obligations to pay rent hereunder, all of which shall survive such expiration, termination or repossession, and Sublessor may, at its option, sue for and collect all Rent and other charges due hereunder at any time as when such charges accrue.

38.3 Not Exclusive Right. No right or remedy herein conferred upon or reserved to Sublessor is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

38.4 Expenses. In the event that Sublessor commences suit for the repossession of the Leased Premises, for the recovery of Rent or any other amount due under the provisions of this Sublease, or because of the breach of any other covenant herein contained on the part of Subtenant to be kept or performed, and a breach shall be established, Subtenant shall pay to Sublessor all expenses incurred in connection therewith, including reasonable attorneys' fees. In the event that Subtenant commences suit because of the breach of any covenant herein contained on the part of Sublessor to be kept or performed, and a breach shall be established, Sublessor shall pay to Subtenant all expenses incurred in connection therewith, including reasonable attorneys' fees.

39. SEVERABILITY. If any of the provisions of this Sublease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, Sublessor and Subtenant have respectively signed and sealed this Sublease as of the day and year first above written.

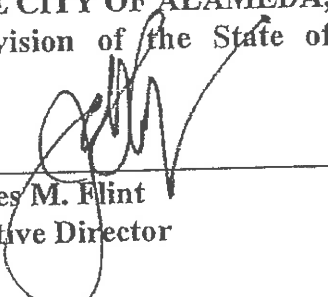
SUBTENANT:

NEXTEL OF CALIFORNIA, INC.,
a Delaware Corporation,
d/b/a NEXTEL COMMUNICATIONS

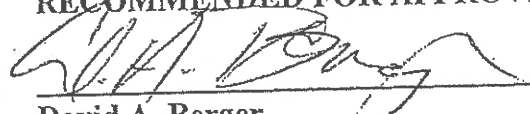
By 

SUBLESSOR:

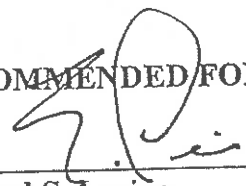
ALAMEDA REUSE AND
REDEVELOPMENT AUTHORITY, AN
AGENCY OF THE CITY OF ALAMEDA,
a political subdivision of the State of
California

By 
James M. Flint
Executive Director

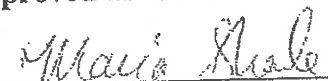
RECOMMENDED FOR APPROVAL:


David A. Berger
Assistant City Manager
Community & Economic Development

RECOMMENDED FOR APPROVAL:


Edward S. Levine
Facilities and Property Manager

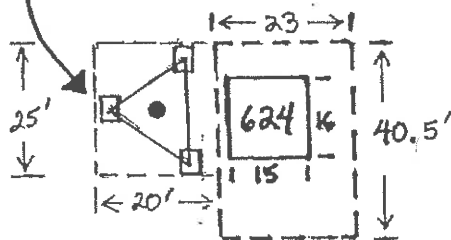
Approved as to form:


Maria Shanle
Deputy General Counsel

W. MIDWAY AVE.

175'

AREA in Nextel's Leased Premises where
150' TOWER TO BE REMOVED AND
REPLACED WITH 100' MONOPOLE



NEXTEL'S LEASED PREMISES

BLDG 624: 240 #

PARCEL : 1431.5 #

INITIALS

CEH
XUS



PAN AM WAY

BLDG 35

W. RANGER AVE.

EXHIBIT

EQUIPMENT

The value of selected equipment shall be determined through appraisal and will be incorporated in an addendum to Exhibit A-2. [no equipment has been requested at date of Sublease execution]

INITIALS	
<i>eg</i>	_____
<i>km</i>	_____

