

COPY

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LEASE AGREEMENT
(Revenue Lease)

COMMUNICATIONS SITE
Sheriff 800 MHZ
LAKE SAN MARCOS PEAK (LSMP)

LESSOR: COUNTY OF SAN DIEGO, a Political Subdivision of
the State of California

LESSEE: CITY OF SAN DIEGO, a California
Municipal Corporation

COUNTY CONTRACT: 103558

CITY ATTORNEY
JAN 20 3 57 PM '05

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EXHIBIT A- PLAT OF PREMISES

EXHIBIT B -INSURANCE REQUIREMENTS

**LEASE AGREEMENT
COMMUNICATIONS SITE
LAKE SAN MARCOS PEAK (LSMP)**

THIS LEASE AGREEMENT ("Lease") is made and entered into effective as of the _____ day of _____, 2004 ("Commencement Date"), by and between the **COUNTY OF SAN DIEGO**, a political subdivision of the State of California (referred to herein as "Lessor" or "County"), and the **CITY OF SAN DIEGO**, ("Lessee").

IN CONSIDERATION OF THE RENTS AND COVENANTS hereinafter set forth, the County hereby leases to Lessee, and Lessee hereby leases from County, the premises described below upon the following terms and conditions:

**ARTICLE 1
LEASE OF PREMISES**

County hereby leases to Lessee and Lessee hereby leases from County, for the rent and upon the covenants and conditions hereinafter set forth, the premises ("Premises") consisting of that certain real property, located at Lake San Marcos Peak Communication Facility, San Marcos, CA (the "Property"), and specifically described as a portion of the County communications and antenna site consisting of one-half of a rack space and two (2) antenna mounts on the County's tower located at San Marcos Peak. All of said leased real property is outlined on the plat marked Exhibit "A" attached hereto and by this reference incorporated herein. The Premises shall also include a non-exclusive right of access to the Premises, seven (7) days a week, twenty-four (24) hours a day and a right to conduct any lawful activity related to the installation and maintenance of utility wires, cables, conduits and pipes from Lessee's equipment to the authorized utility sources.

**ARTICLE 2
TERM**

The term of this Lease shall be ten (10) years commencing upon the date of execution of this lease by County and terminating ten (10) years from the Commencement Date of this Lease. This Lease may be terminated by either party without further liability on not less than sixty (60) days prior written notice after one year from the Commencement date, except that County may only terminate for an event of default prior to City's recompense of rent credit pursuant to Article 3.5 (Rent Credits).

**ARTICLE 3
RENT**

3.1 Base Monthly Rent. Subject to adjustment as provided in Section 3.2, "Cost of Living Adjustment," below, Lessee shall pay as rent for the use and occupancy of the Premises the sum of Five-Hundred Dollars (\$500.00) per month. Lessee shall pay said rent in advance, on the

first day of each calendar month ("Rent Due Date"), without setoff, deduction, prior notice or demand, unless otherwise provided in this Lease, beginning on the date Lessee commences installing communication equipment in the Premises or 30 days following the Commencement Date, whichever occurs first (Rent Commencement Date). Should the Rent Commencement Date be a day other than the first day of a calendar month, then the rent for such first fractional month shall be computed on a daily basis for the period from the Rent Commencement Date to the end of such calendar month and at an amount equal to one thirtieth (1/30th) of the said monthly rent for each such day, and thereafter shall be computed and paid as aforesaid.

3.2 Cost Of Living Adjustments ("COLA") to the Base Monthly Rent. The Base Monthly Rent provided for in Section 3.1 shall be increased and adjusted as of the first (1st) anniversary of the Rent Commencement Date by Three Percent (3%), and thereafter every year on such date for the remainder of the Term (each such one-year period is referred to herein as a "COLA Period").

3.3 Delivery of Rent Payments. All rent due under this Lease shall be made payable to the County of San Diego, and shall be considered paid when delivered to:

Controller Branch Office - Cashier
5201 Ruffin Road, Suite B (MS O650)
San Diego, California 92123

County may, at any time, by prior written notice to Lessee, designate a different address to which Lessee shall deliver the rent payments. County may, but is not obligated to, send monthly rent invoices to Lessee.

3.4 Failure to Pay Base Monthly Rent or Additional Rent; Late Charge.

a. If Lessee fails to pay rent due hereunder at the time it is due and payable, such unpaid amounts shall bear interest at the rate of ten percent (10%) per year from the date due to the date of payment, computed on the basis of monthly compounding with actual days elapsed compared to a 360-day year. In addition to such interest, the late payment by Lessee of any monthly rental due hereunder will cause County to incur certain costs and expenses not contemplated under this Lease, the exact amount of which costs being extremely difficult or impracticable to fix. Such costs and expenses will include, without limitation, administrative and collection costs, and processing and accounting expenses. Therefore, if any such monthly rental is not received by County within fifteen (15) calendar days following the due date, Lessee shall immediately pay to County a late charge equal to five percent (5%) of such overdue amount. This late charge represents a reasonable estimate of such costs and expenses and is fair compensation to County for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent due hereunder, County's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to such nonpayment by Lessee nor prevent County from exercising all other rights and remedies available to County under this Lease or under law.

b. In the event of a dispute between the parties as to the correct amount of Base Monthly

Rent or Additional Rent owed by Lessee, County may accept any sum tendered by Lessee in payment thereof, without prejudice to County's claim as to the proper amount of rent owing. If it is later determined that Lessee has not paid the full amount of rent owing, the late charge specified herein shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Section to the contrary, however, County's Lease Administrator may waive any delinquency payment or late charge upon written application of Lessee.

3.5 Rent Credits

Lessee shall be entitled to Rent Credits in an amount not to exceed five thousand dollars (\$5,000.00) for work performed by Lessee or Lessee's contractor to improve the Premises. All improvements will be completed no later than six months after the commencement date. The following work is hereby approved for Rent Credits:

- A. Patch side wall and enclose vertical area on south wall ceiling with dry wall.
- B. Install ladder, racks and hardware and for shelving for equipment racks.
- C. Seal all room penetrations
- D. Paint room.
- E. Add 2x6s around entire room.
- F. Add 2 new 1x4 lights.
- G. Add conduit, conductors, breakers and devices on ladder rack (4 twist lock).
- H. Add Micro flex 2x6 electrical entry panel.
- I. Add grounding bars and ground system.

Upon completion of the above work, County Staff shall inspect and approve the Rent Credits. Lessee shall then submit a paid invoice to County. County shall process this paid invoice when received and shall endeavor to apply the rent credit within thirty (30) days of completion of processing the invoice, to the rent balance due of Lessee for this Lease. The Rent Credit shall be used at a monthly rate of \$500 (plus any COLA adjustment) until the Credit is exhausted at which time the normal rent payments will resume.

ARTICLE 4 SECURITY DEPOSIT

There shall be no security deposit required for this Lease.

ARTICLE 5 POSSESSION AND USE

5.1 Permitted Uses. Lessee shall use the Premises for any lawful activity in relation to the construction, maintenance, and operation of a communications facility and appurtenances thereto. The communications facility may consist of a free-standing antenna system including all necessary connecting appurtenances sufficient to be a fully operable communications facility for its intended licensed communications coverage areas. Equipment may include, without limitation, radio

transmitting and receiving equipment, batteries, utility lines, transmission lines, radio transmitting and receiving antennas, and supporting structures and improvements ("Lessee's Facilities). All improvements shall be at Lessee's expense. Adequate clearance between the County's Microwave Communications and Lessee's antenna system must be maintained. No one other than Lessee, its agents and employees, or any sublessee or assignee of Lessee authorized under this Lease or approved by County as provided in Article 14, "Assignment and Subletting," below, is permitted to use the Premises for the purposes described herein, and Lessee shall be fully responsible for the activities of its agents, employees and sublessees, if any, on the Premises.

5.2 Duties and Prohibited Conduct. Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination of County's Lease Administrator that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

Preliminary interference testing shall be completed on new transmit frequencies before any improvements per section 3.5 can be completed. In its use of the Premises Lessee will not interfere with the operations of County or other existing lessees of the County. In the event of any such interference, Lessee shall take all actions necessary to eliminate such interference in accordance with reasonable technical standards. If any such interference inhibits County's operations, and Lessee does not correct or commence to correct such interference within 24 hours following notice from County to Lessee, or if there are immediate levels of interference and Lessee does not correct or commence to correct such interference with thirty (30) days of receipt of written notice, Lessee shall discontinue operating such equipment, on County's written demand, unless and until it can be operated without interference, or shall replace the interfering equipment with alternative equipment that does not cause such interference.

County agrees that it will require any subsequent occupants of the Property to provide Lessee these same assurances against interference, and County shall have the obligation to promptly eliminate any interference with the operations of Lessee caused by such subsequent occupants. If such interference is not eliminated, Lessee shall have the right to terminate this Lease or seek injunctive relief enjoining such interfering use generated by any other occupant of the Property. In the event that the interference is caused by County, the Lessee must demonstrate that the interference is caused by the County's equipment operating outside of defined operating specifications established by the Federal Communications Commission or any other legal authoritative governing body.

Lessee shall not use, or permit the use of, the Premises other than as described above. Noncompliance by Lessee with this provision is grounds for termination of this Lease by the Lease Administrator. In any case where Lessee is, or should reasonably be, in doubt as to the propriety of a particular use, Lessee may request, and will not be in breach or default if Lessee abides by, the written determination of the Lease Administrator that such use is or is not permitted. Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any

objectionable noises or odors, except as may be typically present for the permitted uses specified above. Lessee's use of the Premises is subject to federal, state and local laws regarding the discharge of pollutants into the stormwater conveyance system in stormwater and non-stormwater. Compliance with these laws may require Lessee to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground. BMPs applicable to Lessee's use of the Premises may include a requirement that all materials, wastes or equipment with the potential to pollute urban runoff be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal. Lessee is required and agrees to use, operate, maintain, develop, redevelop and retrofit the Premises, as necessary, in accordance with all applicable federal, state and local laws restricting the discharge of non-stormwater at or from the Premises; and all such laws, regulations, or local guidance requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee further agrees to develop, install, implement and/or maintain at Lessee's sole cost and expense, any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations or guidance. Lessee understands and acknowledges that the stormwater and non-stormwater requirements applicable to Lessee's use of the Premises may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or County. Lessee agrees to develop, install, implement, and maintain such additional BMPs and/or other pollution control practices at the Premises at Lessee's sole cost and expense. To the extent there is a conflict between any federal, state or local law, Lessee shall be obligated to comply with the more restrictive provision. Lessee agrees that, in the event County receives any fine or fines from any regulatory agency as a result of Lessee's failure to comply with applicable stormwater laws as set forth in this Article, Lessee will reimburse the County for the entire fine amount.

ARTICLE 6 UTILITIES

County agrees to provide and pay for all utilities and services necessary for the use and occupancy of the Premises during the Term of this Lease. Lessee shall be responsible for connecting all services and to pay any fees and obtain any permits as may be required or imposed by any governmental agency or utility provider.

ARTICLE 7 MECHANICS' LIENS

Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within ten (10) days after Lessee receives written notice that such a lien has been filed. Lessee shall indemnify, defend and hold County harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work

performed or materials or supplies furnished for Lessee or persons claiming under Lessee. Lessee shall have the right to contest the validity, nature, or amount of any such lien but, upon the final determination of such questions, shall immediately pay any adverse judgment rendered with all proper costs and charges and shall have the lien released at its own expense. If lessee desires to contest any such lien, then prior to commencing such contest, will post a bond, where necessary, to release the lien.

ARTICLE 8 SECURITY

Lessee shall be responsible for and shall provide for the security for the Lessee's Facilities only and County shall have no responsibility therefor. Lessee shall maintain security and shall restrict access to the Premises by unauthorized persons.

ARTICLE 9 TAXES, ASSESSMENTS AND FEES

9.1 Responsibility for Payment of Taxes and Assessments. County shall not be obligated to pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee therein before, during or after the Term, or any extension thereof; all such payments shall be the sole responsibility of Lessee. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any improvements, fixtures or personal property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

9.2 Definition of "Taxes." As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any franchise, succession or transfer taxes, (iii) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (iv) any increases in taxes attributable to the sale of Lessee's leasehold interest in the Premises, or (v) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

9.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments or fees to become delinquent and a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

ARTICLE 10
LESSEE'S RIGHT TO CONSTRUCT IMPROVEMENTS

10.1 Construction Permits and Licenses. Lessee shall procure, at its sole cost and expense, all permits and licenses that are or may in the future become necessary or required for its operation on the Premises. Lessee further agrees not to allow or permit any fee or charge for such permit or license to become delinquent or to become a lien on said Premises or any improvement thereon. County agrees, at no expense to County, to cooperate with Lessee in making application for and obtaining all licenses, permits, and any and all necessary approvals that may be required for Lessee's intended use of the Premises.

10.2 As-Built Plans and Construction Costs. Within sixty (60) days following completion of any substantial improvements within the Premises, Lessee, or its Engineer or architect, shall furnish County a complete set of "as-built" plans.

10.3 Construction of Facilities. County and Lessee acknowledge that, as consideration for the granting of this Lease, and as a security for this Lease, Lessee agrees to install, erect and construct improvements on the Premises. Installation, erection and construction of said improvements or any additional improvements shall be at Lessee's sole cost and expense and according to working drawings and schedules delivered to and approved by the Lease Administrator in writing no less than ten (10) days prior to commencement of construction. Lessee will be responsible for funding all Construction Management costs.

10.4 Removal of Lessee's Fixtures, Equipment and Improvements. County agrees that all fixtures, equipment and improvements installed by Lessee in accordance with the provisions herein provided, and not being a replacement or repair of or for any improvement now existing and belonging to County, shall be and remain the property of Lessee. Lessee shall have the right to remove said fixtures, equipment and improvements prior to the termination of this Lease at its own expense, provided that any damage to County's property or improvements shall be repaired and the Premises left in as good order and condition as when Lessee took possession, normal wear and tear and casualty loss excepted. In the event Lessee does not so remove said fixtures and improvements prior to the expiration of this Lease, County, upon expiration or termination of this lease, may remove and store said fixtures and equipment at Lessee's sole cost and expense, and Lessee shall pay to County the reasonable cost thereof, together with the reasonable cost of repair of resulting damages to County's property or improvements.

ARTICLE 11 REPAIRS; MAINTENANCE

11.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Commencement Date of this Lease, and that it accepts the Premises as of the Commencement Date in their condition at that time. Lessee further acknowledges that County has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect thereto.

11.2 Lessee's Repair and Maintenance Obligations. Lessee shall maintain Lessee's facilities and shall make all repairs to the premises necessitated by reason of the default or neglect of Lessee, its employees, agents, contractors, or subcontractors. Upon surrender of the Premises, Lessee shall deliver the Premises to County in good order, condition and state of repair, normal wear and tear excepted.

11.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to County, County shall have the right, upon giving Lessee reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Lessee. If County makes or causes any such repairs to be made or performed, as provided for herein, Lessee shall pay the cost thereof to County, as additional rent, promptly upon receipt of an invoice therefore.

11.4 Right to Enter Lessee shall permit County, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work therein (a) that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) that County may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from County, and (c) that County may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any County-constructed or owned facilities on or off of the Premises. Nothing herein contained shall imply any duty on the part of County to do any such work, which, under any provision of this Lease, Lessee may be required to do, nor shall County's performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the same. No exercise by County of any rights herein reserved shall entitle Lessee to any compensation, damages or abatement of rent from County for any injury or inconvenience occasioned thereby. If County's remodeling or renovation of the County-owned facilities on which the Premises are located necessitate disturbing the PCS equipment or antennas, then County shall coordinate with Lessee, and if necessary permit at Lessee expense, to use a temporary site on County property during such disturbances to ensure that Lessee is able to operate the facility or a temporary facility from the property at all times. In the event the use of the temporary site is not satisfactory to Lessee, then Lessee may, in its sole and absolute discretion, terminate the Lease upon 30 days written notice to the County without further obligation pursuant to the Lease.

ARTICLE 12 INDEMNITY AND INSURANCE

12.1 Lessee's Indemnity. County shall not be liable for, and Lessee shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Lease and arising either directly or indirectly from any act, error, omission or negligence of Lessee or its contractors,

licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of County Parties. Lessee shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused solely by the negligence or willful misconduct of County Parties.

12.2 County's Indemnity. County shall defend and indemnify Lessee and hold it harmless from and against any Claims related to this Lease that arise solely from any act, omission or negligence of County Parties.

12.3 Covered Claims. The obligations of Lessee and County hereunder to indemnify, defend and hold each other harmless shall not apply to the extent that insurance carried by Lessee or County, other than any program of self-insurance covered by either party, covers any Claim.

12.4 Lessee's Insurance Obligations. County is aware that Lessee is self insured. The City's Risk Management Department upon request will provide County with proof of self insurance coverage which shall be kept in force at all times during the term of the lease. County shall, throughout the Term, provide, maintain and keep in force the following insurance covering Landlords operations and the Premises: (a) commercial general liability insurance: (b) all risk insurance or fire insurance (with standard extended coverage endorsement perils covering all fixed improvements therein) and provide proof upon Lessee's request.

12.5 County's Insurance Obligations. County maintains a policy of All-Risk Insurance covering the County's improvements on and around the Premises and its personal property in the Premises, including any fixtures or equipment in the Premises owned by County. The County utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out its use or occupancy of the Premises.

ARTICLE 13 HAZARDOUS MATERIALS

13.1 Hazardous Materials Laws-Definition. As used in this section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., 6901 et seq.), and the California Environmental Quality Act of 1970, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

13.2 Hazardous Materials - Definition. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- a. is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus,

hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

- b. is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- c. gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or
- d. is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Hazardous Materials Law.

13.3 Lessee's Representations and Warranties. Lessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions of this Section unless otherwise specifically approved in writing by County's Lease Administrator:

a. Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, its agents, employees, sublessees, assigns, contractors or invitees, except as reasonably required by Lessee for Lessee's permitted use of the Premises, as described in Section 5.1, "Permitted Uses."

b. Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;

c. Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at its sole expense, and any such discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities as required by law;

d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises;

e. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises without County's prior written consent;

f. Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises, which Hazardous Materials were brought onto the Premises by Lessee, in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of County;

g. Lessee shall promptly supply County with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws;

h. Lessee shall promptly notify County of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law as a result of any Hazardous Materials brought on the Premises by Lessee. If such a lien is filed against the Premises, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Premises pursuant to the lien, Lessee shall either: (a) pay the claim and remove the lien from the Premises, or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to County in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to County in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this lease, Lessee shall surrender the Premises to County free of any and all Hazardous Materials brought on the Premises by Lessee and in compliance with all Hazardous Materials' Laws affecting the Premises.

13.4 Indemnification.

a. Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel approved by County) reimburse and hold County and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be approved by County) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials deposited by Lessee, its employees or agents during the Term anywhere in the Premises, including the soil, ground water or soil vapor on or under the Premises. Without limiting the generality of the foregoing, the indemnification provided by this section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises deposited by Lessee, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

b. County hereby represents and warrants that, to the best of County's knowledge, information, and belief, that the Premises are presently free of all Hazardous Materials. County shall indemnify, defend, protect, and hold Lessee harmless from and against any and all claims, loss, proceedings, damages, cause of action, liability, costs, or expenses (including attorney's fees) arising as a result of any Hazardous Materials which exist within the County's property, common areas, building, or the Premises as of the date this Lease is fully executed and any Hazardous Materials which are present with the Property, common areas, building, or the Premises after said date which

are not the result of the activities of Lessee.

13.5 Remedies Cumulative; Survival. The provisions of this Article shall be in addition to any and all reciprocal obligations and liabilities that the Lessee and County may have at common law, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

ARTICLE 14 ASSIGNMENT AND SUBLETTING

Lessee may not assign this Lease at any time without prior written approval from County. Lessee shall not otherwise voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Lease without County's prior written consent.. Any attempted Transfer without County's consent shall be void and shall constitute a material breach of this Lease. As used herein, the term "Transfer" shall include an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy of all or part of the Premises by anyone other than Lessee. Notwithstanding the forgoing, Lessee shall have the right to sublease or assign this Lease without the consent of Lessor to: a) any parent, subsidiary, or affiliate of Lessee; b) any entity which is controlled by or under common control with Lessee; c) any entity into which Lessee may be merged or consolidated; or d) any entity that purchases or holds Lessee's FCC license or purchases all or substantially all of Lessee's assets.

ARTICLE 15 COUNTY'S RIGHT OF ACCESS

County, its agents, employees, and contractors may enter the Premises pursuant to the terms of paragraph 11.4 above. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry except that County shall be responsible for and shall reimburse Lessee for any damage to Lessee's facilities caused by County, its agents, employees, and contractors. If necessary, Lessee shall provide County with keys to unlock all of the doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). County will have the right to use any means that County may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by County by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor will the entry entitle Lessee to damages except as described in this Article 15, or an abatement of rent or other charges that this Lease requires Lessee to pay unless otherwise provided in this Lease.

ARTICLE 16 QUIET ENJOYMENT

If Lessee is not in breach under the covenants made in this Lease, County covenants that Lessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of County. County will defend Lessee in the peaceful and quiet enjoyment of the Premises against claims of all persons claiming through or under the County.

ARTICLE 17 NOTICES

17.1 Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other party at the following addresses:

To County: Director, Department of General Services
Building 2
5555 Overland Avenue
San Diego, California 92123

To Lessee: City of San Diego
Communications Division
1220 Caminito Centro
San Diego, CA 92102

cc: City Manager
Attn: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

Mailed notices shall be sent by United States Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received upon receipt or refusal as shown on the receipt.. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

17.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices County is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by County mailing a copy of such notice to Lessee in the manner specified in the preceding Section.

ARTICLE 18
AFFIRMATIVE ACTION PROGRAM FOR DISABLED PERSONS

Lessee shall comply with the Affirmative Action Program for Vendors pertaining to employment of disabled persons, as set forth in Article IIIK (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated in this Lease by this reference. Lessee is informed that the County's Affirmative Action Program for Vendors provides that its requirements shall not apply to any lessee, or subcontractor of a lessee, who has a regular, paid workforce of less than fifteen (15) employees. A copy of this Affirmative Action Program will be furnished upon request to the Lease Administrator.

ARTICLE 19
WAIVER OF RELOCATION ASSISTANCE BENEFITS

19.1 Relocation Assistance Benefits. Lessee is hereby informed and acknowledges the following:

a. By entering into this Lease and becoming a tenant of County, Lessee may become entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Gov. Code 7270 et seq.) (collectively, the "Relocation Statutes"), should County at some time make use of the Premises in such a way as to "displace" Lessee from the Premises. Pursuant to the Relocation Statutes, County may then become obligated to make such payments to Lessee even where such displacement of Lessee does not otherwise constitute a breach or default by County of its obligations pursuant to this Lease.

b. Under the Relocation Statutes in effect as of the Effective Date of this Lease, Relocation Benefits may include payment to such a "displaced person" of (i) the actual and reasonable expense of moving himself or herself and a family, business, or farm operation, including personal property, (ii) the actual direct loss of reestablishing a business or farm operation, but not to exceed Ten Thousand Dollars (\$10,000), or (iii) payment in lieu of moving expenses of not less than One Thousand Dollars (\$1000) or more than Twenty Thousand Dollars (\$20,000).

19.2 Lessee's Waiver and Release of Relocation Benefits. In consideration of County's agreement to enter into this Lease, Lessee hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the County's assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not such rights are contested by Lessee or any other entity, and releases County from any liability for payment of such Relocation Benefits; provided, however, that Lessee does not waive its rights to Relocation Benefits to the extent that Lessee's entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the County or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided hereby as County may reasonably require.

ARTICLE 20 GENERAL PROVISIONS

20.1 Authority. Lessor and Lessee each represent and warrant to the other party that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of such party are the duly designated agents authorized to do so.

20.2 Brokers. Lessor and Lessee each warrant to the other party that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. In the event any broker other than the brokers acknowledged in writing by the parties make claim for monies owed, the party violating this warranty shall indemnify, defend and hold the other party harmless therefrom.

20.3 Captions. The captions, headings and index appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

20.4 County Approval. Except where stated herein to the contrary, the phrases "County's approval," and "County's written approval" or such similar phrases shall mean approval of County's Lease Administrator or said Administrator's representative as authorized by said administrator in writing.

20.5 Cumulative Remedies. In the event of a default under this Lease, each party's remedies shall be limited to those remedies set forth in this Lease; any such remedies are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.

20.6 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded

20.7 Estoppel Certificate. Either party may request from the other party, that within twenty (20) business days of written notice from the requesting party, execute and deliver to the requesting party a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. The responding party's statement shall include other details requested by the requesting party, such as the date to which rent and other charges are paid, the current ownership and name of the responding party, the responding party's knowledge concerning any outstanding defaults with respect to the requesting party's obligations under this Lease and the nature of such defaults if they are claims. A party's failure to deliver such statements within such time shall be a default under this Lease.

20.8 Exhibits. All exhibits referred to herein are attached hereto and incorporated by

reference.

20.9 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or the County's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

20.10 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

20.11 Interpretation. The parties have each agreed to the use of the particular language of the provisions of this Lease, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the parties who cause an uncertainty to exist or against the draftsman.

20.12 Joint and Several Liability. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee hereunder.

20.13 Lease Administration. This Lease shall be administered on behalf of County by the Director, Department of General Services, County of San Diego, or by such person's duly-authorized designee (referred to collectively herein as "County's Lease Administrator"), and on behalf of Lessee by: City of San Diego Communications Division, 1220 Caminito Centro San Diego, CA 92102 or by such other person as may be designated in writing by Lessee (referred to collectively herein as "Lessee's Lease Administrator").

20.14 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. County may contact Lessee's representative identified under Article 17.1 to resolve problems or answer question pertaining to this Lease and Lessee's operations on the Premises.

20.15 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by both parties.

20.16 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

20.17 Payments. Except as may otherwise be expressly stated, each payment required to be made by Lessee shall be in addition to and not in substitution for other payments to be made by Lessee.

20.18 Successors & Assigns. This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein.

20.19 Time of Essence. Time is of the essence of each and every provision of this Lease.

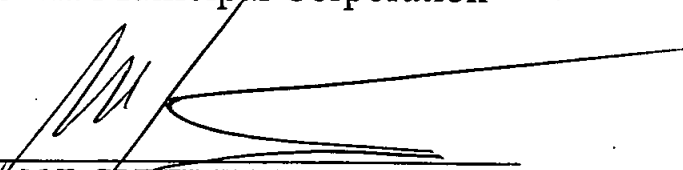
20.20 Waiver. No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by County of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. County's subsequent acceptance of partial rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of County to a forfeiture of the Lease by reason of such breach, regardless of County's knowledge of such preceding breach at the time of County's acceptance. The failure on the part of County to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping County from enforcing in full the provisions hereof. No custom or practice which may arise or grow up between the parties hereto in the course of administering this Lease shall be construed to waive, estop or in any way lessen the right of County to insist upon the full performance of, or compliance with, any term, covenant or condition hereof by Lessee, or construed to inhibit or prevent the rights of County to exercise its rights with respect to any default, dereliction or breach of this Lease by Lessee.

20.21 Memorandum Of Lease. Both parties agree that, upon the request of a party, the parties will promptly execute and deliver a recordable Memorandum of this Lease.

IN WITNESS WHEREOF, the County and Lessee have duly executed this Lease as of the day and year first above written.

**LESSEE: CITY OF SAN DIEGO, a
California Municipal Corporation**

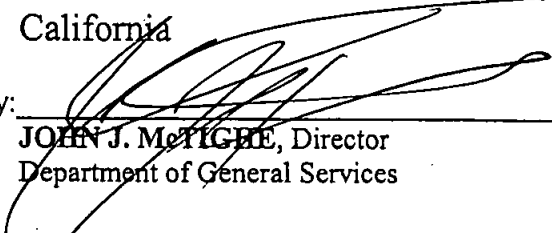
Dated: January 11, 2005

By: 

WILLIAM T. GRIFFITH, Director Real Estate Assets

**THE COUNTY OF SAN DIEGO,
A Political Subdivision of the State of
California**

Dated: January 11, 2005

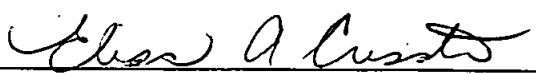
By: 

**JOHN J. McTIGUE, Director
Department of General Services**

Approved as to form and legality this 21st

day of January, 2005

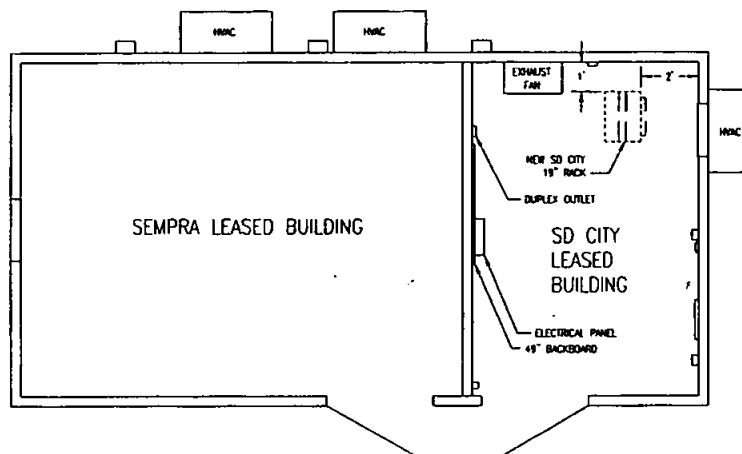
MICHAEL J. AGUIRRE, City Attorney

By: 

ELISA A. CUSATO, Deputy City Attorney

0-19346

Exhibit A



EQUIPMENT AND ELECTRICAL PLAN
SCALE 1/4"=1'-0"

SITE SPECIFIC INSTRUCTIONS

1. CITY OF SAN DIEGO
ELECTRICAL - PROVIDE AND INSTALL
SEA NEW OVERHEAD FLUORESCENT LIGHTS
ADD SEA MEHA 15-20H DUPLEX BOX ON 120V/20A CIRCUITS
REWORK EXHAUST FAN CONTROL AFTER BUILDING REMODELED
 2. CITY OF SAN DIEGO
BUILDING - PROVIDE A INSTALL
INSULATE AND SEAL CEILING
INSTALL DRYWALL AND SEAL NON-ENTRY PORTS
PAINT DRYWALL AND 2"x6" BOARD
ADD CABLE ENTRY PORT WEST WALL CENTER OF ROOM
ADD 2' x 6" ARCHING ROOM FOR HALL AND CABLE TRAY
ADD CABLE TRAY ON RACK LEVEL (DOIT RACK)
ADD CABLE TRAY GRID
 3. CITY OF SAN DIEGO
GROUNDING - PROVIDE & INSTALL PER MOTOROLA PDS
ADD INTERNAL GROUND BUS & Tie TO EXTERNAL GROUND ROD
ADD EXTERNAL GROUND BUS & Tie TO EXTERNAL GROUND ROD
ADD GROUNDING TO CABLE TRAY
ADD HALL GROUND #2 STRAND ON INSULATED STANDOFFS
GROUNDING CABINETS & EQUIPMENT TO HALL
 4. CITY OF SAN DIEGO
EQUIPMENT - PROVIDE & INSTALL
INSTALL 6" HX 18" RACK PER ROW
DOIT RACK TO FLOOR AND OVERHEAD UNISTRUT
INSTALL PACING TRANSMITTER IN RACK
INSTALL SEA ANTENNAS ON WEST TOWER
COMPLETE INTERCOM TESTING WITH COUNTY RES
 5. COUNTY RCS - PROVIDE AND INSTALL
WIRE CIRCUIT TO SAN YSIDRO
DOIT ALARM TO RCS PACING SYSTEM - COMPLETE
ACCESS AND KEYS
- NOTE: MOST ITEMS ARE OBTAINED IN THE LEASE AGREEMENT.
ARTICLE 5.5.2 STATES THAT PRELIMINARY INTERFERENCE
TESTING SHALL BE COMPLETED ON SAN DIEGO CITY NEW TRANSMIT
FREQUENCIES BEFORE ANY IMPROVEMENTS CAN BE COMPLETED.

N		
F		
D		
C		
B		
O 6-21-83	LA	ORIGINAL RELEASE
REV DATE	BY	MODIFICATION

	COUNTY OF SAN DIEGO ENGINEER'S SERVICES (BLSG 12) 5000 OFFICER AVE. SAN DIEGO, CA 92161 PHONE (619) 415-6400 FAX (619) 606-6476	COUNTY OF SAN DIEGO PROJECT: REGIONAL COMMUNICATIONS SYSTEM TITLE: LAKE SAN MARCOS PEAK, SITE 202 SD CITY LEASED BLDG FLOOR PLAN			
	SCALE: $\frac{1}{4"} = 1' - 0"$ (FEET) 0 1 2 3 4 5	DESIGNER: CAD PROGRAM: DATE:	DRAWN BY: CHECKED: SD PROJECT NO:	PROJECT NO.: SCALE: $\frac{1}{4"} = 1' - 0"$ (FEET) 0 1 2 3 4 5	DATE: 6-23-03 DRAWING NO:

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Without limiting Lessee's indemnification obligations to County under this Lease, Lessee shall provide and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.
- B. Automobile Liability covering all owned, non owned and hired auto, Insurance Services Office form CA0001.
- C. Workers Compensation, as required by State of California and Employer's Liability Insurance.
- D. Property Insurance against all risk or special form perils, including Replacement Cost coverage, without deduction for depreciation, for Lessee's merchandise, fixtures owned by Lessee, any items identified in this Lease as improvements to the Premises constructed and owned by Lessee, and the personal property of Lessee, its agents and employees.

Rental Income Insurance assuring County of receiving the minimum monthly rent from the time the Premises are damaged or destroyed with a minimum period of coverage for one (1) year.

2. Minimum Limits of Insurance

Lessee shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.
- C. Employers Liability: \$1,000,000 each accident for bodily injury or disease.

Coverage shall include a waiver of subrogation endorsement in favor of County of San Diego.

D. Property: Full replacement cost with no coinsurance penalty provision.

3. Deductibles and Self-Insured Retention's

Any liability deductible or self-insured retention must be declared to and approved by the County's Risk Manager. The property insurance deductible shall not exceed \$5,000 per occurrence and shall be borne by Lessee.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement

Any general liability policy provided by Lessee shall contain an additional insured endorsement applying coverage to the County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively.

B. Primary Insurance Endorsement

For any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, the members of the Board of Supervisors of the County, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

C. Notice of Cancellation

Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County at the address shown in section of Lease entitled "Notices".

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County's Risk Manager.

6. Proof of Insurance

Lessee shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Contract, deliver to County certified copies of the actual insurance policies specified herein, together with appropriate separate endorsements thereto, evidencing that Lessee has obtained such coverage for the period of the Contract. Thereafter, copies of renewal policies, and appropriate separate endorsements thereof, shall be delivered to County within thirty (30) days prior to the expiration of the term of any policy required herein.

7. Failure to Obtain or Maintain Insurance; County's Remedies

Lessee's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Lease, and County may, at its option, terminate the Lease for any such default by Lessee.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Lessee may, with the prior written consent of County's Risk Manager, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize such self-insurance if in the opinion of County's Risk Manager, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Lease.

11. Sublessees' Insurance

Lessee shall require any sublessee, and any sub-sublessee, of all or any portion of the Premises to provide the insurance coverage described herein prior to occupancy of the Premises.

12. Waiver of Subrogation

Lessee and County waive all rights to recover against each other or against any other tenant or occupant of the building, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant of the building, from any Claims (as defined in the Article entitled "Indemnity") against either of them and from any damages to the

fixtures, personal property, Lessee's improvements, and alterations of either County or Lessee in or on the Premises and the Property, to the extent that the proceeds received from any insurance carried by either County or Lessee, other than proceeds from any program of self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Lessee shall be a standard waiver of rights of subrogation against County by the insurance company issuing said policy or policies.

ORDINANCE NUMBER O- 19346 (NEW SERIES)

ADOPTED ON JAN 11 2005

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO
EXECUTE A 10-YEAR COMMUNICATIONS SITE LEASE
WITH THE COUNTY OF SAN DIEGO FOR THE LAKE SAN
MARCOS PEAK COMMUNICATIONS SITE.

WHEREAS, the County of San Diego [County] owns property commonly identified as
Lake San Marcos Peak which is located in the County; and

WHEREAS, the City of San Diego [City] Information Technology & Communications
Department requires installation of a new paging transmitter to better cover City employees who
reside in the north county areas; and

WHEREAS, the City and the County have negotiated a lease for the Lake San Marcos
Peak location for the installation, operation, and maintenance of a new paging transmitter at the
existing County facility; and

WHEREAS, the monthly rent for the facility is \$500 with a 3 percent annual increase.
The term of the lease is ten years, commencing on the date of execution of the Lease by the
County; and

WHEREAS, the City's valuation staff has determined the fair market rental value of the
property is \$6,000 per year; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the City Manager is authorized to execute, for and on behalf of the City
of San Diego, a 10-year Communications Site Lease with the County of San Diego, for the
installation, operation, and maintenance of a new paging transmitter on a portion of Lake

San Marcos Peak located in the County of San Diego at a monthly rent of \$500 with an annual increase, under the terms and conditions set forth in the Communications Site Lease on file in the office of the City Clerk as Document No. OO-19346.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Elisa A. Cusato
Elisa A. Cusato
Deputy City Attorney

EAC:dm
11/16/04
Or.Dept:READ
J.O.: 223329
O-2005-67
MMS#431
Aud.Cert:2500542

Passed and adopted by the Council of The City of San Diego on Jan 11, 2005 by the following vote:

YEAS: PETERS, ZUCCHET, ATKINS, YOUNG, MAIENSCHIN, FRYE,
MADAFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

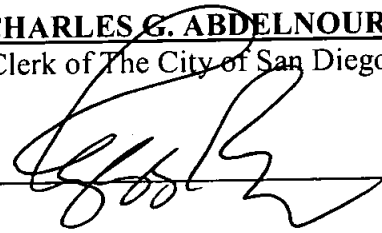
DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
ORDINANCE NO. 19346 (New Series) of The City of San Diego, California.

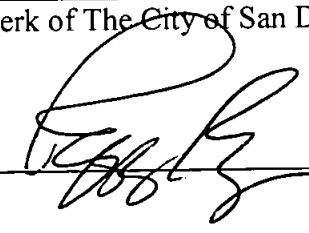
I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had
elapsed between the day of its introduction and the day of its final passage, to wit, on
December 7, 2004 and on Jan 11, 2005.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of
not less than a majority of the members elected to the Council, and that there was available for
the consideration of each member of the Council and the public prior to the day of its passage a
written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy