

COPY



THE CITY OF SAN DIEGO
and
PACIFIC BELL TELEPHONE COMPANY
At Mount Woodson

Flat Rate Lease

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and PACIFIC BELL TELEPHONE COMPANY hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY is the fee owner of all that certain real property situated in the County of San Diego, State of California, known as Mount Woodson and more particularly described in Exhibit "A", *Legal Description of Site*, attached hereto and by this reference made part of this agreement, and hereinafter called the "Site." CITY hereby leases to LESSEE and LESSEE leases from CITY that certain portion of the Site, described in Exhibit "B", *Site Plan of Leased Premises*, attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "Premises" or "Leased Premises." LESSEE may use the existing access road shown on the attached Exhibit "B" for vehicular or foot access on a 24-hour nonexclusive basis.
- 1.2 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of installing, constructing, maintaining and operating its Communications Center and any other incidental activities or activities relating thereto as may be permitted by applicable law in accordance with Exhibits "B" and "C", *Equipment*, hereof. LESSEE shall have the right to replace or repair the Communications Equipment or any portion thereof.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the Premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Interference. Prior to the CITY'S approval of an application for a new radio-electronic use authorization or modification of an existing authorization, on Premises, pre-installation or pre-use tests will be required. Such tests will

determine whether or not radio frequency interference or degraded performance will result to the existing authorized radio electronic type uses at the facility.

Should the interference problems result, it will be the responsibility of the user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves.

CITY may recognize the right of prior Permittees/Lessees and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other authorizees. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of termination of this lease, and, further, that LESSEE expressly waives any claim for expense or loss which LESSEE might incur as a result of termination of this lease.

a. Pre-installation or pre-use Testing

- (1) It will be the responsibility of the LESSEE to make the complete arrangements and conduct all tests in a technically sound manner.
 - (a) A listing of all radio-electronic land use permittees/lessees operating at the facility will be obtained from the City.
- (2) It will be the responsibility of the LESSEE to notify all radio-electronic permittees/lessees at the facility of the tests and details thereof, at least 14 days in advance of the tests.
 - (a) The notification shall be in the form of letter to each listed permittee/lessee giving a technical summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the permittees/lessees to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the permittee/lessee.
 - (b) A copy of these instructions, "City of San Diego Radio-Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be so noted in the notification letter.

- (c) Notification to permittees/lessees shall be sent via U.S. Mail or hand delivered.
 - (d) The notification letter to the City Communications Engineer shall include a list of all permittees/lessees notified.
- (3) It will be the LESSEE's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each permittee/lessee participating in the test and a list of those permittees/lessees who did not respond.
 - (4) In the event a notified permittee/lessee fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the permittee/lessee has assured themselves that their operations will not be affected.

b. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the LESSEE under the following technical conditions:

- (1) The LESSEE's transmitting and/or receiving equipment shall be of the type planned for final use at the site.
 - (a) The transmitted RF power shall be the maximum to be used and authorized at the location.
 - (b) On-the-air transmitter tests shall include the use of full allowable modulation.
 - (c) Antenna height(s), location(s) and type(s) shall be the same as the final installation plan.
- (2) Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the LESSEE's electronic equipment.
- (3) All tests will include testing with all frequencies planned for use by the LESSEE at the location.

- 1.4 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Leased Premises.
- 1.5 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.
- 1.6 Reservations. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Leased Premises resulting from CITY exercising the rights reserved in this section.
- 1.7 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the Leased Premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a communication facility and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be 5 years commencing on the first day of the calendar month following execution by the City Manager (Commencement Date). "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager. Provided that LESSEE is not in default of this lease, LESSEE has an option for two additional 5-year periods

contingent upon LESSEE agreeing to the 5th and 10th year market value adjustments. CITY or LESSEE may terminate this lease at any time after providing 180 days written notice of intention to do so.

- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the Premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On the expiration or earlier termination of this lease, LESSEE shall deliver to CITY a Quitclaim Deed in recordable form quitclaiming all rights in and to the Premises.

At the expiration or earlier termination of this lease, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: RENT

- 3.1 Time and Place of Payment. Rent is due monthly in advance. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California, or made via direct deposit.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer.

- 3.2 Rent.
- a. Rent Amount. The minimum rent to the CITY will be One Thousand and Seven Hundred Dollars (\$1,700) per month, payable monthly in advance.

Beginning with the second year of this lease and continuing each year thereafter, the rent will be increased annually on the Commencement Date defined in Section 2.1 of this lease. The annual increase shall be five percent (5%) of the preceding years annual rent.

- b. Rent Adjustment. At least six (6) months prior to the end of the fifth year of the term of this agreement and at least six (6) months prior to the end of each five-year period thereafter, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust LESSEE'S rent to be paid CITY effective upon the first day of the succeeding five-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.2c. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said five-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- c. Fair Market Value Adjustments. At the end of the fifth year following the Commencement Date of this agreement and at the end of the tenth year, the rent for the ensuing five years, subject to the aforesaid adjustments, shall be determined by an appraisal of the Leased Premises as of the adjustment date by a qualified, competent experienced real estate appraiser, who has demonstrated expertise in determining rent for telecommunication site(s)/properties. The fair market rent of the Leased Premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market rent of the Premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected

appraiser, and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market rent of the Premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this lease at the commencement of the rental period under review, and that the authorized communication system is considered the highest and best use.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. IN NO EVENT SHALL THE ADJUSTED RENT, AS ESTABLISHED BY PERIODIC APPRAISALS AS PROVIDED FOR HEREIN, BE LESS THAN THE RENT IN EXISTENCE IMMEDIATELY PRIOR TO THE ADJUSTMENT DATE.

Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent within five (5) days after receipt of written notice of delinquency from CITY, LESSEE will pay, in addition to the unpaid rents, five percent (5 %) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days from such written notice, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE

agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this section shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this lease which are applicable to the rights acquired. The City Manager may require that this lease or any proposed sublease be revised to comply with current standard CITY lease requirements. Pursuant to San Diego Charter section 225, which is incorporated herein by this reference, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will

not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

- 4.3 Encumbrance. Any encumbrances on the Premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises.

4.4 Defaults and Remedies.

a. Default

- (1) Upon default by LESSEE, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three (3)-Day Notice to Pay or Quit, or CITY may terminate the lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof, and CITY may enter and take possession of the premises (provided, however, in the event that any default described in Section 4.4, Default and Remedies, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion), and may recover from LESSEE the sum of
 - (a) the worth at the time of award of any unpaid rent that had been due at the time of termination;
 - (b) the worth at the time of award of the amount by which (a) the unpaid rent that would have been earned after termination until the time of award exceeds (b) the amount of rental loss, if any, and LESSEE affirmatively proves could have been reasonably avoided;
 - (c) the worth at the time of award of the amount by which (a) the unpaid rent for the balance of the term after the time of the award exceeds (b) the amount of rental loss, if any, as LESSEE affirmatively proves could be reasonably avoided;
 - (d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and

(e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (i) and (ii) of this Section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (iii) of this Section, the "worth at the. time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section the term "rent" shall include Base Rent, Percentage Rent and any other payments required by LESSEE.

- b. Remedies. If there is a deed of trust or mortgage on the leasehold interest, CITY will give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary will have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within 30 days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty (30) day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

If the mortgagee or beneficiary will be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY will have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (1) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge will be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (2) CITY may correct said default(s) and may the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the cost of correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all

penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant will be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, will have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary will give notice in writing of its election to so substitute itself within the thirty (30)-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease will not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease will continue in effect so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including the right to recover the rent as it becomes due, plus damages.

LESSEE and CITY agree that any personal property left at the premise five (5) days after termination of this agreement shall be considered abandoned and LESSEE forfeits all ownership to the abandoned personal property, and it is mutually agreed CITY may dispose of the abandoned personal property as it solely deems appropriate, without further liability to LESSEE.

- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any

other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-leased and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

- 4.5 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (beneficiary or mortgagee) will be as follows:
- a. In the event the entire Premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking, if, in the opinion of LESSEE and CITY, the remaining part of the Premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. In the event of a partial taking, if, in the opinion of LESSEE and CITY, the remaining part of the Premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken. The consideration paid by LESSEE for all its subsequent years of this Lease shall be reduced by an amount proportionate to the reduction of the utility of the Premises to LESSEE'S intended use caused by the taking.
 - d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award

attributable to the taking of, or damages to LESSEE'S, then-remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority. In the event LESSEE should not be allowed to remove any fixtures or other personal property as provided by the terms of this Lease, then LESSEE shall receive that portion of the award, paid to CITY, which shall represent the value of LESSEE'S property so retained.

- e. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnification. LESSEE shall defend, indemnify, protect, and hold CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its agents, officers, or employees.

If CITY chooses at its own election to conduct its own defense, participate in its own defense or obtain independent counsel in defense of any claim related to the Premises, LESSEE agrees to pay the reasonable cost of such attorney fees and all other reasonable costs associated with such defense.

- 5.2 Insurance to be Carried by LESSEE - Option One. Upon the effective date of this lease, LESSEE shall include the Leased Premises in its program of liability self-insurance, covering LESSEE'S occupancy and use thereof. Self-insurance

program shall be evidenced by a "Statement of Coverage" issued by LESSEE to CITY. Self-insurance limits must be, at a minimum, the limits in Paragraph 5.3(a)(1 & 2). The CITY is a self insured Municipal Corporation.

5.3 Insurance to be Carried by LESSEE - Option Two.

a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the Premises.
- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the

insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.4 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Leased Premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed

any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Leased Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Leased Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the rent requirement for such period or periods that said Premises are untenantable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the Premises are in the condition called for by this lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition.

- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.5 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including reasonable attorney's fees. If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:
- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.6 Ownership of Improvements and Personal Property.
- a. LESSEE-owned antenna and equipment shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
 - b. If any removal of such personal property by LESSEE results in damage to the tower or real property on the Premises, LESSEE agrees to repair all such damage.

- c. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- d. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said Premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.7 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.8 Hazardous/Toxic Waste. LESSEE will not allow the installation of underground storage tanks or release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. In addition, LESSEE shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At anytime within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, if CITY reasonably believes hazardous substances have been released by LESSEE on, in or under the Premises, shall cause an environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.9 New or Modified System. No new or modified installations or structures will be permitted until a review of the technical data and structural installation plans have been completed and approval granted by the City Manager. Prior to activating new or modified installations or structures for operations, an inspection by City personnel and an on-the-air test must be conducted to ensure that the system or structure is installed in accordance with the approved plans and the installed system or structure will not cause harmful interference to other lessees' systems. The owner of the new or modified system or structure will be responsible to eliminate any harmful interference, except where such interference occurs because of improper maintenance, repair, or inferior equipment of an existing system. The owner of that system will be required to bring the system up to industrial standards before the owner of the new or modified system or structure required to initiate corrective action. LESSEE agrees to comply with the *City of San Diego*

Fixed Radio Site Installation Quality Standards set forth in Exhibit "D" hereof.

- 6.10 System Placed in Operation. Upon completion of a satisfactory inspection and on-the-air test, the system may be placed in operation. Once the system is placed in operation, it shall be operated and maintained in accordance with the highest standards of the communications industry. If the system subsequently causes harmful interference to other lessee's systems, corrective action shall be initiated immediately. If the problems cannot be eliminated expeditiously, the system, or portion thereof, causing the problem may be required to be shut down until corrective action has been completed. LESSEE shall keep the CITY advised of the name(s) and telephone number(s) of person(s) to be contacted and who is/are authorized to take corrective action if harmful interference occurs because of LESSEE'S equipment. In addition, the CITY shall require the LESSEE to provide a semi-annual list of all frequencies in use at the site.
- 6.11 Access Road. CITY hereby grants to LESSEE a nonexclusive right to use, during the term of this lease, that portion of an access road which serves the Premises. Said right shall be subject to the following conditions and terms:
- a. LESSEE shall exercise said right through its authorized agents, employees, contractors, or servants whenever it is necessary for them or any of them to have access to LESSEE'S equipment now or hereafter located on Premises.
 - b. LESSEE shall use said road at its sole risk and avoid traveling upon it to the greatest practical extent at all times when weather conditions are such that excessive damage to the road surface may result from such use, and further LESSEE shall, at its expense, promptly repair any abnormal or excessive road damage caused by its use, including such road surface protective features as water drains, berms, or culverts.
 - c. In the event gates are placed in fences now or hereafter crossing said road, LESSEE shall provide locks in such a manner that the gates may be used without disturbing the locks of others. Only the LESSEE, its properly qualified and its authorized agents, employees, contractors, and servants, shall have the right of ingress to and egress from said leased Premises.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the address designated below and to CITY as follows:

Pacific Bell
Director Portfolio Management
100 N. Stoneman, Room 130
Alhambra, CA 91801

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

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent. Notice shall be effective on personal service or five days after deposit in U.S. Mail.

7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended),

EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

"LESSEE herein covenants by and for itself, its successors and assigns, and all persons claiming under and through it, and this Lease is made and accepted and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, religion, creed, natural origin, or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall LESSEE itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number or occupancy of tenants, lessees, or vendees in the land hereby leased."

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Attorneys' Fees. If either party brings any action against the other to enforce any provision of this Lease, collect any sum due under this Lease, or if CITY brings an

action of unlawful detainer of the Premises, each side shall pay their own attorneys' fees.

- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease if not consecutive are intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE and CITY, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the Leased Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.

7.13 Disabled Access Compliance. LESSEE agrees to comply with applicable regulations within the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

- 7.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Leased Premises in a credible manner.
- 7.15 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain Rental Agreement dated January 1, 1972, between the State of California and Pacific Bell, formally known as the Pacific Telephone and Telegraph Company, that terminated on December 31, 1996, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date _____

By _____
City Manager

LESSEE: PACIFIC BELL TELEPHONE COMPANY

Date 5-15-01

for By _____
Robert A. Damaschino
Director - Corporate Real Estate - Transactions

APPROVED as to form and legality this _____ day of _____, 20__.

CASEY GWINN, City Attorney

By _____
Deputy City Attorney

JPA:jmj

5/4/2001

I:\Anthony\LS-Fixed Hilltop Sites.Pacific Bell.wpd

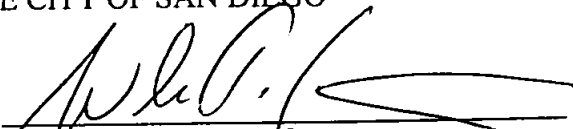
SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

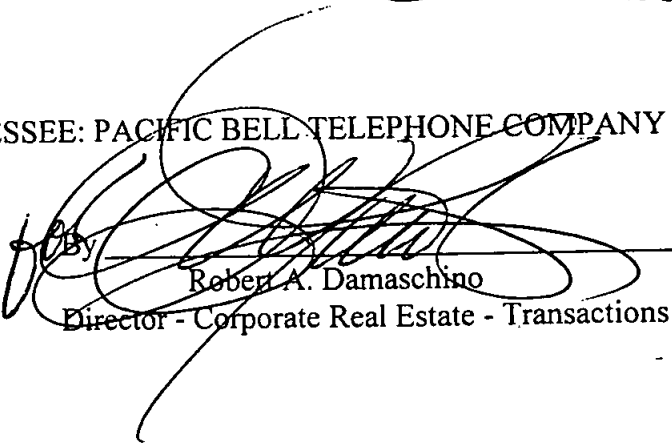
THE CITY OF SAN DIEGO

Date 06/11/01

By 
~~City Manager~~ Real Estate Assets Director

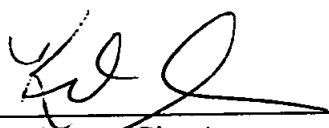
LESSEE: PACIFIC BELL TELEPHONE COMPANY

Date 5-15-01

By 
Robert A. Damaschino
Director - Corporate Real Estate - Transactions

APPROVED as to form and legality this 13 day of June, 2001

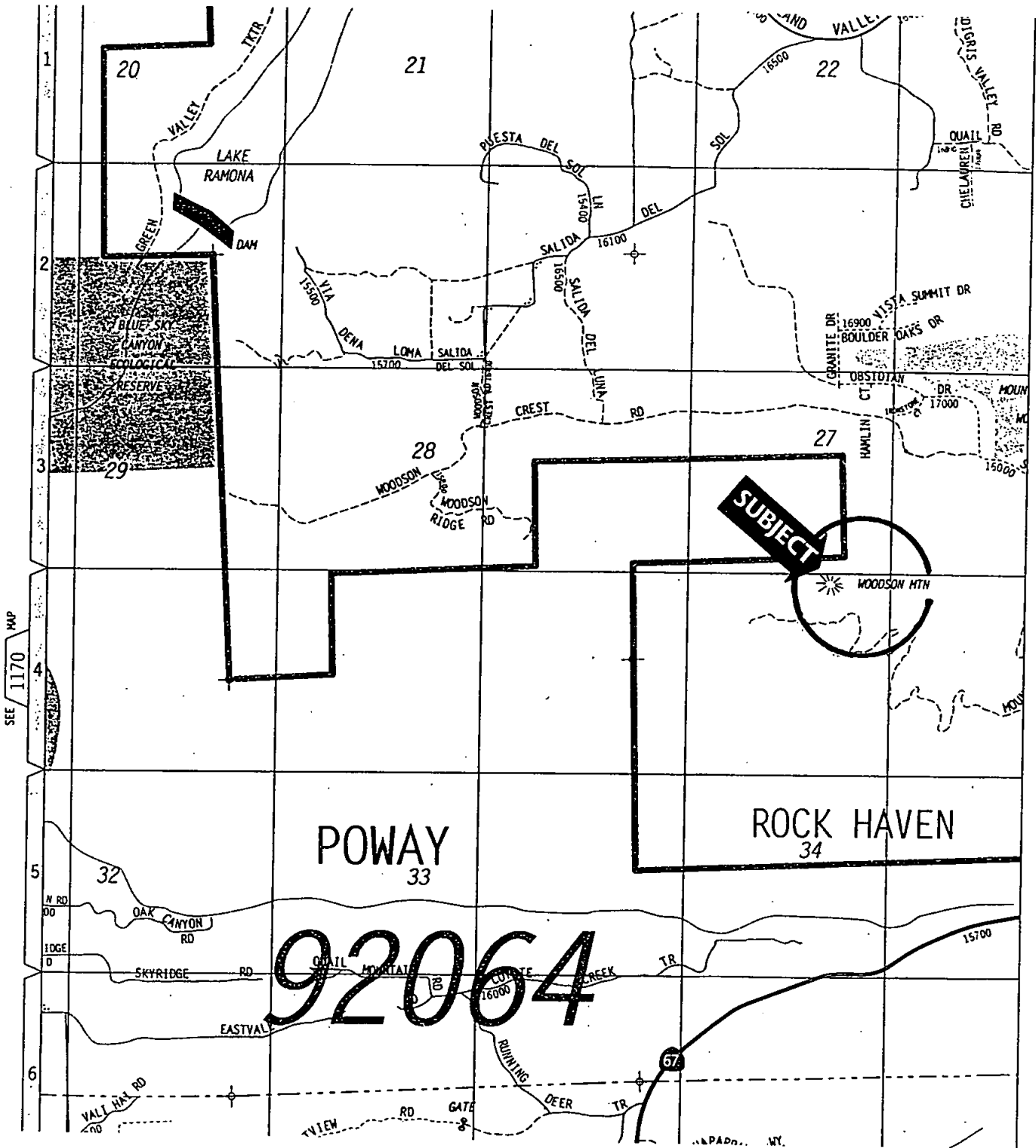
CASEY GWINN, City Attorney

By 
Deputy City Attorney

JPA:jmj
5/4/2001
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SECTION 9: EXHIBITS

9.1 Location Map



9.2 Exhibit "A" - Legal Description of Site.

MOUNT WOODSON COMMUNICATIONS COMPLEX

The South Half of the Southwest Quarter, and the Southwest Quarter of the Southeast Quarter of Section 27 and the Northwest Quarter, the West Half of the Northeast Quarter, and the Northeast Quarter of the Northeast Quarter of Section 34, Township 13 South, Range 1 West, San Bernardino Meridian, as shown on the Official United States Plot of Survey of said township. approved November 19, 1880.

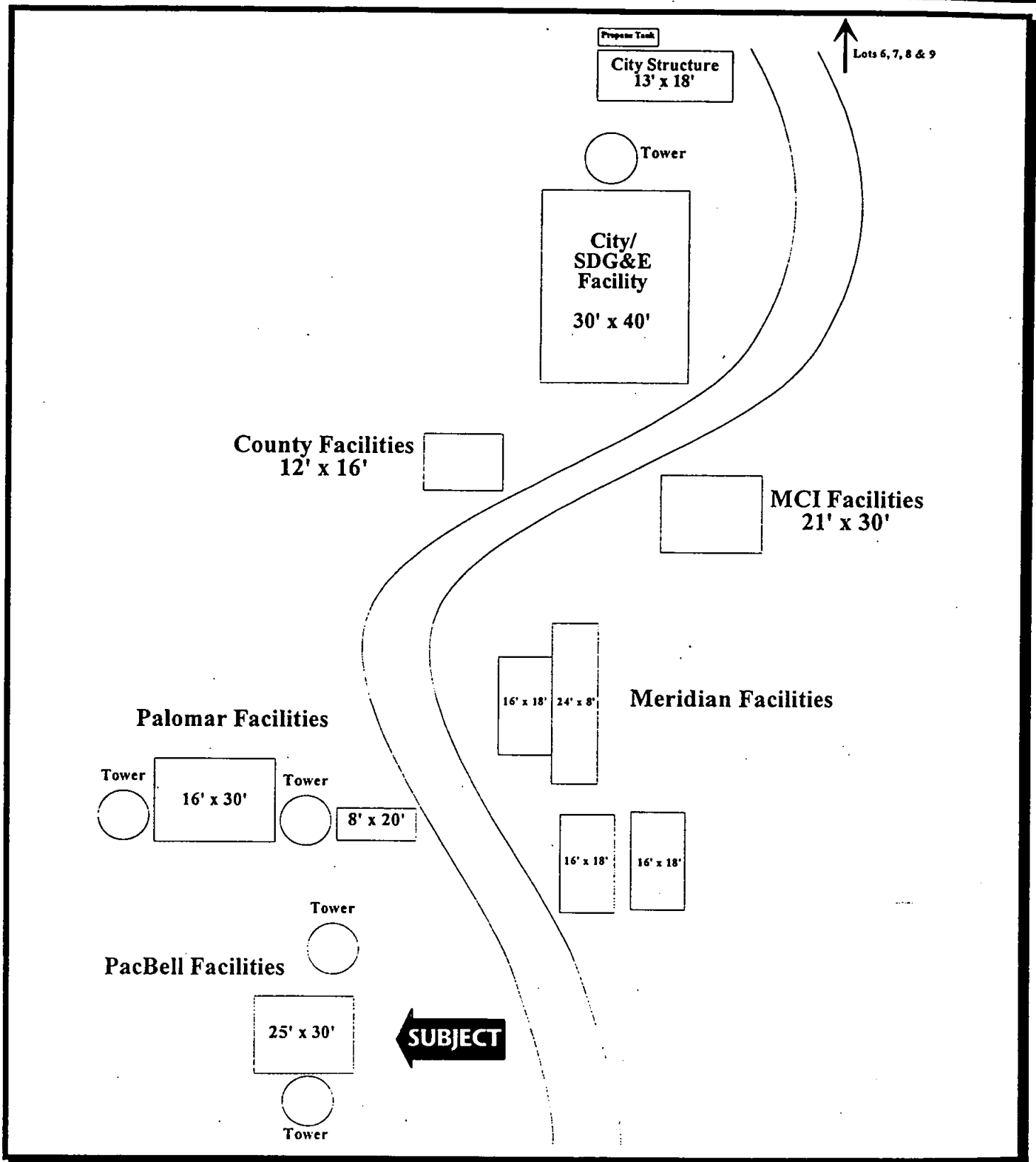
EXCEPTING unto the State of California, all oil, gas, oil shale, coal, phosphate, sodium, gold, silver and all other mineral deposits.

ALSO EXCEPTING THEREFROM, a portion of Section 27, T.13S., R.1W., S.B.B.&M., according to the U.S. Government Survey, in the County of San Diego, State of California, described as follows:

Beginning at the south quarter corner of said Section 27 from which the U.S.C. & G.S. Station "Woodson 1938," having grid coordinates $X = 1,779,325.15$, $Y = 307,106.00$ of California Coordinate System, Zone 6, bear $N. 23^{\circ} 43' 31'' W$ 406.11 feet and running thence from said point of beginning $N. 0^{\circ} 32' 30'' W$. 85.24 feet; thence $N. 36^{\circ} 59' 35'' E$. 219.59 feet; thence $N. 9^{\circ} 04' 30'' E$. 111.20 feet; thence $N 5^{\circ} 55' 20'' W$. 153.16 feet; thence $N 78^{\circ} 23' 40'' W$. 90.46 feet; thence $S. 49^{\circ} 22' 40'' W$. 165.50 feet; thence $N. 83^{\circ} 31' 50'' W$. 157.74 feet; thence $S. 60^{\circ} 55' 00'' W$, 199.00 feet to a point on a line between two 2" iron pipes with tags marked RCE 6371; thence along said line $S. 19^{\circ} 50' 00'' E$. 53.15 feet to one of said 2" iron pipes; thence continuing $S. 19^{\circ} 50' 00'' E$. 376.42' to the south line of Section 27; thence along said south line $N. 89^{\circ} 27' 30'' E$. 179.55 feet to the point of beginning. Containing 3.78 acres more or less.

Together with the right of ingress and egress thereto over and along an existing road, or its future relocation, running easterly through portions of Sections 27, 34, and 35 to the existing location of the old Ramona-Poway Road.

The bearings and distances in this description are on the California Coordinate System, Zone 6. Grid North bears $0^{\circ} 23' 44'' W$ of Geodetic North. Multiply distances by 1.0001422 to obtain ground level distance.



MT. WOODSON SITE PLAN

9.4 Exhibit "C" - Equipment

RACK SPACE

nine (9) rack spaces (6 equipment, and 3 batteries)

ANTENNAS

three (3) six foot (6') diameter dish antennas

one (1) four foot (4') diameter dish antennas

9.5 Exhibit "D"- Installation Quality Standards

**INSTALLATION QUALITY STANDARDS
FOR
CITY OF SAN DIEGO FIXED RADIO SITES**

1. All waveguide and coax cable runs shall be installed and supported on the tower, cable ladder, and ice bridges, using Microflect waveguide cushions with the appropriate standoffs and hardware for property installation.

2. All waveguide and coax cable shall be installed in a neat manner with sweeping bends and straight runs on the tower cable ladder and ice bridges.

3. Three ground kits shall be installed as follows: Near the antenna, where the coax transitions to horizontal at the junction between the cable ladder and ice bridge, and where the coax enters the building. Grounds shall be installed to shunt any lightning directly to ground.

4. All antenna mounts installed on towers and structures shall be hot dip galvanized and of standard manufacture.

5. All hardware utilized on towers and structures shall be hot dip galvanized or stainless steel.

6. All drawings submitted shall clearly show the following items:

- A plot plan of the site to include the building and tower location with the proposed equipment shown in its proposed location.

- A tower drawing clearly showing the location of the proposed antenna, other antenna on the tower, and the routing of the waveguide or coax cable specifying the hardware and grounding

- If equipment is to be located inside the building, a drawing shall be provided showing the rack location of the equipment, an elevation drawing of the rack, and a plot plan of the equipment installed in the rack.

- If equipment is to be located inside the building, show the proposed waveguide or coax cable runs inside the building, designate which cable feed through is to be used, and wire code markers.

- A list of all equipment to be installed shall be provided. This list shall include the FCC TA #, type of equipment, RF frequency, RF power, type of modulation, RF filtering, Antenna type, Antenna model, Antenna gain, direction or radiation, down tilt, waveguide and/or coax cable length and AC power requirement including any HVAC.

7.All transmitters shall have all necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as filtering and isolators.

8.To minimize the number of antennas and waveguide or coax cables to be mounted on the tower transmitter combining will be required whenever possible.

9.Grounding: All cabinets and racks shall be grounded to the site grounding system.

10.Should the City determine that a tower loading analysis is required, the requesting user shall have the tower analysis done at their expense and provide the City with the information on how their additional load to the tower will affect the tower structural integrity.

11.Tower Climbing: All tower climbing shall be done in compliance with all CAL-OSHA requirements.

12.RF Radiation: Hazardous RF radiation levels may be encountered when climbing on the tower. Refer to FCC OET Bulletin 65. When it is necessary to climb on the tower for installation or maintenance, contact the City of San Diego IT&C Fixed Maintenance Supervisor at (619) 525-8650 for shutdown procedures. Any equipment installed on the site may at times require shutdown to allow maintenance personnel to climb the tower.

13.All lessees on site shall provide the City with shutdown procedures and 24 hour contact names and telephone numbers. In addition should changes be made to the contact names and telephone numbers, the City shall be notified within 7 days.

14.Access: For access to the site, contact the City of San Diego IT&C Fixed Maintenance Supervisor at (619) 525-8650. Keys will be issued as required. **DO NOT DUPLICATE** keys.

15.Security: All sites are alarmed with silent alarms and monitored 24 hours a day by Station 38, the Public Service Dispatch Center. When entering or leaving a building call Station 38 at (619) 527-7660 or use the order wire dial #13 and identify yourself. Police respond to all unanswered alarms.

16.Cleanup: All trash and debris shall be removed from the site at the end of each work day and on completion of the project.

17.A detailed construction schedule shall be provided to IT&C prior to any installation work.

18.All antennas, waveguide, and coax cable shall be protected from lightning with the appropriate equipment to prevent damage to installed equipment.

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DOCUMENT NO. R-294942

FILED MAY 29 2001

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

COPY

R-294942

MAY 29 2001

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SAN DIEGO, CA

(R-2001-1295)

RESOLUTION NUMBER R- 294942

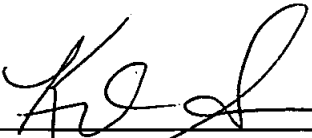
ADOPTED ON MAY 29 2001

WHEREAS, the City and Pacific Bell Telephone Company have negotiated a five-year Lease at the initial rental rate of \$20,400 per year, the fair market rate as determined by City valuation staff; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego, a lease agreement with Pacific Bell Telephone Company, for a telecommunications facility on Mount Woodson, at an initial annual rent of \$20,400 under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 294942.

APPROVED: CASEY GWINN, City Attorney

By



Kristin Schenone
Deputy City Attorney

KS:cdk
03/21/01
Or.Dept:REA
Job: 220330
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