

ORIGINAL

COPY

THE CITY OF SAN DIEGO



SAN DIEGO COUNTY WATER AUTHORITY

**at
Mount Woodson**

Lease Agreement

DOCUMENT NO. RR-299593

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA**

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**CITY OF SAN DIEGO
TELECOMMUNICATION LEASE**

THIS LEASE AGREEMENT ("Lease") is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY", and SAN DIEGO COUNTY WATER AUTHORITY, a public corporation, hereinafter called "LESSEE".

SECTION 1: EXHIBITS

- 1.1 Exhibits. This Lease contains Exhibits "A" through "F", all of which are attached hereto and made a part hereof, identified as follows:

Exhibit "A"	<u>Legal Description</u>
Exhibit "B"	<u>Site Plan/Location</u>
Exhibit "C"	<u>Equipment</u>
Exhibit "D"	<u>Interference Protection Requirements</u>
Exhibit "E"	<u>On Air Test Forms</u>
Exhibit "F"	<u>Test Results Certification</u>

SECTION 2: USES

- 2.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all that certain City-owned 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, attached hereto and by this reference made part of this Lease, shall hereinafter be referred to as the "Site." LESSEE leases from CITY that certain portion of the Site, described in Exhibit "B" - Site Plan/Location, attached hereto and by this reference made part of this Lease, which portion shall hereinafter be called the "Premises." LESSEE, its agents, employees, contractors, guests and invitees may enter the Premises using the access point shown on the attached Exhibit "B" - Site Plan/Location on a 24-hour nonexclusive basis.
- 2.2 Uses. It is expressly agreed that the Premises are leased to LESSEE, on an exclusive basis, for the sole purposes of installing, constructing, modifying, maintaining, operating, and removing, at its expense, a communications facility on the Premises, including, without limitation, antenna equipment, cable wiring, utility lines, transmission lines, air conditioned equipment shelters, back-up power

sources that may include, with proper permits obtained, back-up power generators with connected fuel storage tanks for emergency back-up power, related fixtures and, if applicable to the Premises, an antenna structure or structures ("Communications Equipment") as listed in the attached Exhibit "C" - Equipment. LESSEE may operate its Communications Equipment and use the Premises for other related or incidental activities as may be first approved in writing by the City Manager and for no other purpose whatsoever. LESSEE shall have the right to replace or repair the Communications Equipment or any portion thereof, pursuant to Section 7.3 Maintenance and Section 7.4 Improvements/Alterations herein.

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 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.

- 2.3 Related Council Actions. By the granting of this Lease, neither CITY nor the Council of CITY is making any representations or obligations on behalf of 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 that may be required for the development and operation of the Premises.
- 2.4 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 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.
- 2.5 Easements and Reservations.
- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.

- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares or access as it deems advisable for the public good.
- c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises resulting from CITY exercising the rights reserved in this section. Reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 2.6 Competent Management. Throughout the term of this Lease, LESSEE shall provide competent management of the Premises to the reasonable 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 in accordance with industry standards.
- 2.7 Co-location. Where Premises are a shared site LESSEE shall not access any CITY facility or City-owned communications equipment, including any towers, without the consent of the CITY.

SECTION 3: TERM

- 3.1 Commencement. The term of this Lease shall be five (5) years commencing on the first day of the calendar month following execution by the City Manager or his/her designee ("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 execution of this Lease by City Manager.
- 3.2 Termination.
 - a. LESSEE may terminate this Lease at any time by providing thirty (30) days prior written notice to CITY without further liability if LESSEE does not obtain all permits or other approvals (collectively, "Approval") required from any third party to operate the Communications Equipment, or if any such Approval is canceled, expires or is withdrawn or terminated by any governmental authority or any third party, or if CITY fails to have proper ownership of the Site or authority to enter into this Lease.

- b. LESSEE may terminate this Lease pursuant to the provisions of Section 2.4 Quiet Possession hereof.
 - c. LESSEE may terminate this Lease by providing sixty (60) days prior written notice to CITY if LESSEE, for any other reason, in its sole discretion, determines that it will be unable to use the Premises provided that LESSEE pays CITY a termination fee equal to twelve (12) months rent at the rental rate in effect at the time of such notice and such fee is paid prior to the termination of this Lease.
 - d. Upon termination, CITY will retain all prepaid rent, fees, and other payments.
- 3.3 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 Lease shall constitute a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to an increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 3.4 Quitclaim and Surrender of LESSEE'S Interest. On the expiration or earlier termination of this Lease, LESSEE shall deliver to CITY, within five (5) days after written CITY demand, 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 that existed on the date of execution hereof, and in substantially the same condition as on the Commencement Date, ordinary wear, tear, and casualty loss not caused by LESSEE excepted. 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.
- 3.5 Right to Extend. Provided that LESSEE is not in default of this Lease, LESSEE has the right to extend this Lease for two (2) additional term(s) of five (5) years each ("Renewal Term") subject to all original agreements, considerations, covenants, conditions, and the rent adjustment provisions of Section 4.2 a. herein. This Lease shall automatically be renewed for each successive Renewal Term unless LESSEE notifies CITY in writing of its intention not to renew at least ninety (90) days prior to commencement of the succeeding Renewal Term.

SECTION 4: RENT

- 4.1 Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. 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.

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. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

4.2 Rent.

- a. Rent Amount. Initial rent to CITY will be Two Thousand Dollars (\$2,000) per month.

Beginning with the second year of this Lease and continuing each year thereafter, the rent will be increased on the anniversary of the Commencement Date defined in Section 2.1 of this Lease. The monthly increase shall be five percent (5%) of the preceding year's monthly rent.

- b. Market Rent Adjustment - By Mutual Consent. At least six (6) months prior to the end of the fifth Lease year 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. The 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 4.2c. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of the five-year period, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.

- c. Market Rent Adjustment - By Appraisal. At the end of the fifth Lease year, the rent for the ensuing five (5) years, subject to the aforesaid adjustments, shall be determined by an appraisal of the Premises as of the adjustment

date by a qualified, competent experienced professional real estate appraiser, who has demonstrated expertise in determining rent for telecommunication sites/properties ("Qualified Appraiser"). The fair market rent of the Premises shall be determined by an appraisal made by a Qualified Appraiser selected by mutual consent of the parties from the list of Qualified Appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable Qualified Appraiser, then each party shall select a Qualified Appraiser who in turn will select a third independent Qualified Appraiser, which third Qualified 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 Qualified Appraisers fail to mutually select a third Qualified Appraiser within thirty (30) days, then the third Qualified 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 Qualified Appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. The third Qualified 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 Qualified Appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed Qualified Appraiser.

In establishing the fair market rent of the Premises, the Qualified 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 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.

- 4.3 Delinquent Rent. If LESSEE fails to pay the rent when due, 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, 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). Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE'S default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

SECTION 5: ASSIGNMENT/DEFAULT

- 5.1 Provisions Binding on Successors. 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.
- 5.2 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 permit 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. Consent of the City Manager shall not be unreasonably withheld. 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 assignment or subletting without 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 controlling 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 that will have an interest in this Lease as a sublessee or assignee which approval will not be unreasonably withheld.

- 5.3 Additional Consideration to CITY. LESSEE and CITY agree that in the event of an assignment or subletting of a portion of the leasehold to an entity other than those specifically exempted from City Manager consent, if any, as set forth in Section 5.2 Assignment and Subletting, above, for co-location of telecommunications equipment and any other incidental activities or activities relating thereto, LESSEE shall pay to CITY fifty percent (50%) of the gross rental amount paid to LESSEE from sublessee in consideration for approval of the sublease.
- 5.4 Encumbrance. Prior to causing any encumbrances to be placed on the Premises or on any permanent improvements thereon, LESSEE shall give written notice to the City Manager describing the nature and amount of such encumbrance and attaching all documentation needed to effect the encumbrance. LESSEE shall not cause any encumbrance to be placed on the Premises or any permanent improvements thereon unless and until receiving approval in writing from the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises.
- 5.5 Default and Remedies.
- a. Defaults. Each of the following shall constitute an event of default under this Lease:
- (1) LESSEE'S failure to make any payment required under this Lease when due;
 - (2) LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default, other than those requiring payment to CITY, is not curable within thirty (30) days, and fails to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion;

- (3) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (4) LESSEE is adjudicated a bankrupt;
- (5) LESSEE makes a general assignment for the benefit of creditors;
or
- (6) LESSEE uses the Premises for any unauthorized purpose.

b. Remedies

- (1) Upon default by LESSEE, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three-Day Notice to Pay or Quit, if said default is based upon Section 5.5a(1) Default and Remedies, 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 5.5a(2) - (6) 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 (i) the unpaid rent that would have been earned after termination until the time of award exceeds (ii) 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 (i) the unpaid rent for the balance of the term after the time of the award exceeds (ii) 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 (a) and (b) 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 (c) 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.

- 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 but not limited to the right to recover the rent as it becomes due, plus damages.

LESSEE and CITY agree that any personal property left at the Premises thirty (30) days after termination of this Lease 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 deems appropriate, without further liability to LESSEE or any person claiming an interest in the personal property. CITY may, at its option, remove or dispose of the abandoned personal property at LESSEE'S expense. LESSEE shall hold CITY harmless and shall defend CITY against all claims asserted by third persons claiming an interest in the personal property.

- 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 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-owned 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.

- 5.6 Eminent Domain. If all or part of the Premises is 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 (or 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 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 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 rent shall be equitably reduced to reflect the portion of the Premises taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE'S operations are reduced or impaired.
 - 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.
 - 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 6: INSURANCE RISKS/SECURITY

- 6.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the 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 use or development of the Premises or the operation of any equipment or facilities thereon, 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 the CITY, its agents, officers, or employees.

6.2 Insurance to be Carried by LESSEE.

- a. Upon the Commencement Date of this Lease, LESSEE shall include the 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 following limits:

- (1) Public liability and property damage insurance in the amount of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover 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 with respect to LESSEE'S Communications Equipment and in connection with the use or operation of the Premises.
- (2) Other Insurance. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE in pro-rata shares based upon the replacement costs of CITY'S and LESSEE'S affected properties. If there is a mortgage or trust deed on the leasehold in accordance with Section 5.4, 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 the insurance also includes the following:

- (1) Additional Insured. All public liability insurance policies will name CITY as an additional insured, protect CITY against legal costs in defending claims, and will not terminate without thirty (30) days prior written notice to CITY. All insurance companies must be reasonably 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 "use 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 certificate 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 that meets the terms of this Lease.
- (2) Modification. CITY, in its reasonable discretion, may require the revision of amounts 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 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, but in no event for more than the prorata premium, plus interest, for the period of non-compliance. 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, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 6.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days after 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 Premises shall be damaged by any cause that puts the Premises into a condition that 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 that existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the 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 that existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 6.2, 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 the period or periods that the Premises are untenable by reason of such damage.

SECTION 7: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 7.1 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.

7.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the 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. CITY must give at least twenty-four (24) hours notice and be escorted by LESSEE'S representative, if such representative is available at the time CITY wishes to inspect, when entering said Premises except in emergency situations. LESSEE shall make good faith efforts to have representatives available to escort CITY staff within twenty-four (24) hours notice from CITY. 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, if LESSEE has not commenced the required work and be diligently pursuing it to completion, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs reasonably incurred by CITY in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time said Premises are not in a decent, safe, healthy, and sanitary condition, CITY may require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition that is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the reasonable opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

7.3 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 reasonably satisfactory to CITY and in compliance with all applicable laws.

7.4 Improvements/Alterations.

- a. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE (with the exceptions of equipment replacement or repair) 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 in his sole discretion. 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.

- b. Should changes in technology occur during the term of the Lease that would require the upgrading of the Communications Equipment, the LESSEE shall have the right to perform such upgrading, providing such upgrading does not damage or interfere with any adjacent improvements, the Premises, or the land, subject to Exhibit "D" - Interference Protection Requirements.

7.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. CITY shall reasonably approve, when consistent with all local, state or federal law, at no cost to CITY, LESSEE'S permit applications for utilities and necessary utilities easements on the Premises.

7.6 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with LESSEE'S 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 for the benefit of LESSEE, and a lien or notice of lien is filed, LESSEE shall within fifteen (15) 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.

7.7 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE, levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that

LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

- 7.8 Signs. LESSEE shall only post signs which are required by federal, state or local regulations. These include safety signs required by OSHA, FAA or FCC. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost. LESSEE shall post a clearly marked sign at the Premises indicating LESSEE'S name and emergency telephone number.

7.9 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to Lease termination or one hundred eighty (180) days prior to Lease expiration, and LESSEE shall remove all the improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before Lease expiration or Lease termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE shall remove LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property by the date of the expiration or termination of this Lease. Any 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 the items at LESSEE'S expense.
- d. If any removal of personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all such damage.
- e. For any necessary removal by either CITY or LESSEE which takes place beyond the Lease expiration or Lease termination, LESSEE shall pay rent

to CITY at the rate in effect immediately prior to Lease expiration or Lease termination.

- f. Notwithstanding any of the foregoing, if LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon Lease expiration or Lease termination, then CITY shall have the first right to acquire or purchase the personal property.

7.10 Hazardous/Toxic Waste. LESSEE will not allow the installation or release of hazardous substances in, on, under or from the Premises. For the purposes of this provision, a release in violation of any applicable law, 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 in connection with LESSEE'S use of the Premises, 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 Hazardous 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. LESSEE shall not utilize any Hazardous Substance on the Premises in violation of any applicable law. In addition, LESSEE shall not sell any Hazardous Substance on the Premises.

At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at CITY'S sole option, shall cause a Phase I 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, due to LESSEE'S use of the Premises. If any such Hazardous Substances exist in quantities greater than that allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment or an additional Hazardous Materials Assessment shall include a discussion of such 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 of such substances recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 7.11 Radio-Frequency Radiation. LESSEE will maintain radio-frequency radiation within levels allowed by Federal Regulations stated in Section 1.1310 of CFR 47 and OET Bulletin 65. Any area casually accessible by the general public, or by any worker at ground level, shall be maintained below limits stated for General Population/Uncontrolled Exposure. Any areas discovered by LESSEE to exceed these Federally mandated limits, shall be reported to the CITY. LESSEE will not hold CITY responsible for radiation levels found to exceed these limits.

Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. Any equipment installed on the Site may at times require shutdown to allow maintenance on antenna structures. LESSEE agrees to allow shutdown periods when required for this maintenance.

Protection of LESSEE'S employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled limits must be clearly identified as required by CAL-OSHA.

LESSEE shall provide the CITY with shutdown procedures, contact names, and telephone numbers. Should changes be made to the contact names and telephone numbers, the CITY shall be notified within seven days.

- 7.12 Equipment. By signing this Lease, LESSEE warrants that the Communications Equipment listed in Exhibit "C" - Equipment constitutes the entire installation, which may be updated from time to time at the sole discretion of the City Manager.
- 7.13 Radio-Frequency Interference. By signing this Lease, LESSEE warrants that all Communications Equipment installations, modifications, and maintenance will not result in degraded performance or radio frequency interference to any existing authorized uses of the Site by fulfilling the requirements of Exhibit "D" - Interference Protection Requirements, which may be updated from time to time at the sole discretion of the City Manager.
- 7.14 Industry Standards. By signing this Lease, LESSEE warrants that all Communications Equipment installations, modifications, and maintenance will be performed in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© manual, or any succeeding regulations or standards.

In addition to the requirements of the Motorola R56© publication, installations on CITY property shall comply with the following supplemental requirements:

- a. All trash and debris shall be removed from the Site at the end of each workday and on completion of the project.
- b. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements.
- c. 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 cavity filtering and transmitter isolators.
- d. LESSEE installing or modifying equipment at sites used by the CITY'S Information Technology & Communications Division ("ITC") must follow additional requirements as described in Exhibit "D" - Interference Protection Requirements. These standards may be updated from time to time at the sole discretion of the City Manager.

SECTION 8: GENERAL PROVISIONS

8.1 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 the parties as follows:

To LESSEE:

San Diego County Water Authority
Attention: Right of Way Dept.
4677 Overland Avenue
San Diego, CA 92123

To CITY:

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

To CITY'S Information, Technology and Communications Department:

City of San Diego
Communications Division
Central Operations Station
1220 Caminito Centro, MS 23
San Diego, CA 92102

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- 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.
- c. Notice shall be effective on personal service or five (5) days after deposit in U.S. Mail.

- 8.2 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, if compliance with such notices is required by applicable law.

- 8.3 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.
- 8.4 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.
- 8.5 Compliance with CITY'S Equal Opportunity Contracting Program. 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, if any, 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, that 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 understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 8.6 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.
- 8.7 Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 8.8 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.
- 8.9 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.
- 8.10 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE and CITY, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the 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 that 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.

- 8.11 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.

8.12 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 Premises 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.

8.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

8.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

8.15 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 rent 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.

- 8.16 Corporate Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation in accordance with its terms.
- 8.17 Supersedure. It is mutually agreed that this Lease, upon execution, supersedes and annuls that certain Use and Occupancy Permit fully executed on the 23rd day of July, 1992, between CITY and LESSEE which is hereafter void and of no effect except as to any rentals and fees that may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 8.18 Time is of Essence. Time is of the essence of all of the terms, covenants, and conditions of this Lease.

[The remainder of this page intentionally left blank.]

SECTION 9: SIGNATURES

9.1 Signature Page.

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

CITY OF SAN DIEGO

Date SEP 07 2004

By


Real Estate Assets Director

LESSEE:

SAN DIEGO COUNTY WATER AUTHORITY,
a public corporation

Date June 25, 2004

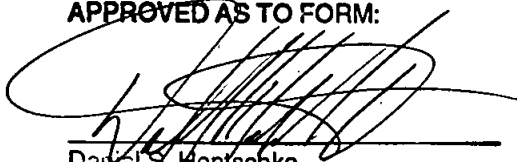
By



William J. Rose
Director of Right of Way

APPROVED as to form and legality this 14th day of September 2004.

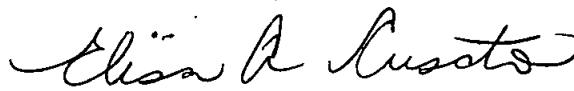
APPROVED AS TO FORM:



Daniel S. Hentschke
General Counsel
San Diego County Water Authority

CASEY GWINN, City Attorney

By



Deputy City Attorney

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July 12, 2004 (6:36AM)

Real Estate Assets Division

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SECTION 10: LEASE EXHIBITS

10.1 Exhibit "A" - Legal Description

MOUNT WOODSON TELECOMMUNICATIONS CENTER

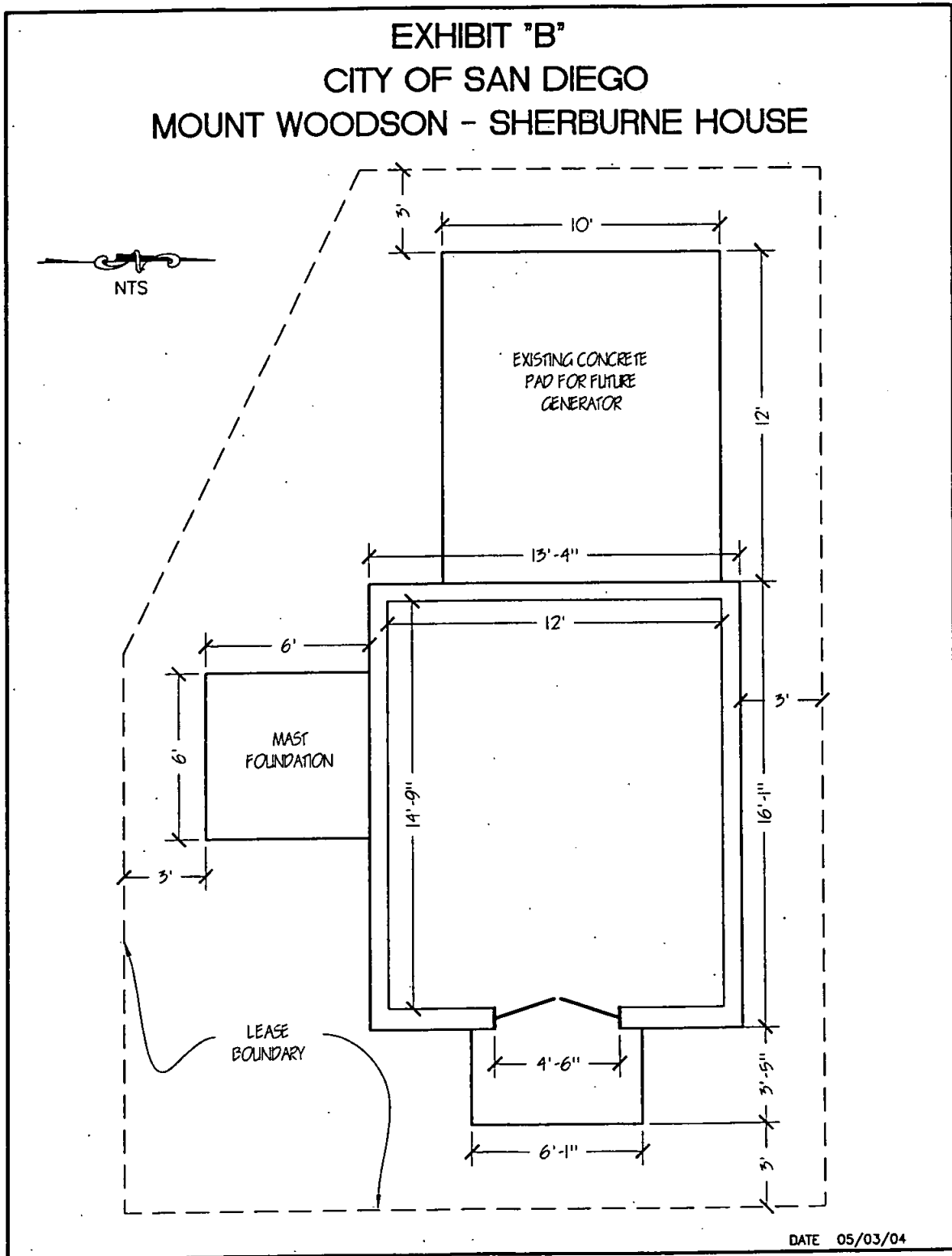
All that portion of Section 27, T13S, Range 1 West, San Bernardino Base and Meridian, according to the U.S. Government Survey, in the County of San Diego, State of California described as follows:

COMMENCING at the south quarter of said Section 27 from which the United States Coast and Geodetic Station "Woodson 1953" having the Lambert Zone 6, NAD83 coordinates of North 1,947,522.38 and East 6,340,730.94, bears North 23°43'31" W.406.11 feet; Thence South 89°19'37" West 177.51 feet along the South line of said Section 27; Thence North 19°48'36" West 376.84 feet, to a point having the Lambert Zone 6 NAD84 coordinates of North 1,947,532.05 and East 6,340,588.61, said point being the TRUE POINT OF BEGINNING; Thence South 89°11'09" West 410.94 feet; Thence North 20°08'21" West 83.00 feet; Thence South 89°11'09" West 250.00 feet; Thence South 20°08'21" East 100.00 feet; Thence South 89°11'09" West 450 feet; Thence North 20°08'21" West 200.00 feet; Thence North 89°11'09" East 250.00 feet; Thence North 20°08'21" West 50.00 feet; Thence North 89°11'09" East 450.00 feet; Thence North 20°08'21" West 53.22 feet; Thence North 89°11'09" East 210.94 feet; Thence South 20°08'21" East 64.55 feet; Thence North 89°11'09" East 201.37 feet; Thence South 19°48'36" East 221.22 feet to the TRUE POINT OF BEGINNING.

Above described exception parcel contains 5.2503 Acres.

TOGETHER WITH the right of ingress and egress thereto over and along an existing road, or its future relocation, running easterly from the Mt. Woodson/Palomar Telecommunications facility, through portions of Section 26, 34 and 35 to the existing location of the old Ramona-Poway Road. Said existing access road described in City of San Diego Field Survey notes by Lorne de Pron, January 26, 2000, L.C. Index 302-1733, W.O. 110013, on file in the Field Engineering office of the City of San Diego Land Surveyor.

10.2 Exhibit "B" - Site Plan/Location



10.3 Exhibit "C" - Equipment

RACK EQUIPMENT

Two - full racks

One - ½ rack

TOWERS

Two - 4 foot dish antennas

One - 10 foot dish antenna

One - 2.4 gigahertz antenna

One - small omni whip antenna

10.4 Exhibit "D" - Interference Protection Requirements - Information, Technology, and Communications Division Sites.

- a. Interference. Prior to the execution or at anytime during the term of this Lease, LESSEE may be required to provide an intermodulation report ("Report") to CITY. This Report shall include the calculation parameters used to compile the Report, all intermodulation "hits," a brief description of the results of the intermodulation calculations; a list of possible interference situations that may result from the proposed equipment; transmission frequencies that are currently being operated on site, and similar or other relevant data from other lessees/users operating on-site.

The information required to compile this report, including intermodulation parameters and currently known on-site transmit frequencies may be obtained from the CITY Information Technology and Communications Division (IT&C). The CITY is not responsible for any omitted data provided for the purpose of creating this report.

The Report shall be provided to the IT&C Division, Senior Communications Engineer.

- b. City of San Diego Land Radio/Electronic Use "On The Air" Test Instructions and Procedures. For the purpose of confirming interference situations calculated by the intermodulation report and for the discovery of any other actual interference situations, on premises, pre-installation or pre-use tests may be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses at the Site.

Pre-installation or pre-use Testing

- (1) It will be the responsibility of the LESSEE to notify all radio/electronic permittees/lessees at the Site of the tests and details thereof, at least fourteen (14) days in advance of the test. A listing of all radio/electronic land use permittees/lessees operating at the facility will be obtained from CITY and used to compile a notification list.
- (a) The notification shall be in the form of letter to each listed permittee/lessee giving a technical data 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. Technical Data Summary and Test Results Certification sheets are included below.

- (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, pre-paid First-Class postage, certified return receipt requested or hand delivered.
 - (d) The notification letter to the CITY'S Senior Communications Engineer shall include a list of all permittees/lessees notified.
- (2) It will be the permittee/LESSEE'S responsibility to submit to the CITY'S Senior 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.
 - (3) 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.
 - (4) It shall be the responsibility of LESSEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. 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 Site.
 - (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 or comparable to 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 Site.

d. Radio Frequency Interference to City Radio Equipment

The radio equipment use proposed by the applicant shall not directly or indirectly result in degraded technical performance of the CITY'S existing radio equipment installed at the Site or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to:

- (1) Detectable or measurable received intermodulation
- (2) Audio distortion or noise
- (3) Receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test

e. Modifications to Equipment

Notification shall be given to the CITY prior to modifications to transmitting equipment that will change Effective Radiated Power, Transmitter Frequency, Transmitter Modulation, or Transmitter Spurious and Harmonic Emissions. These modifications may require retest using this "On The Air" testing procedure and the newly proposed equipment.

f. Resulting Interference

Should an interference problem occur at the Site or in the nearby surrounding area as a result of newly installed equipment ("New Installation"), or a retuned or modified installation ("Changed Installation"), it shall be the responsibility of the LESSEE or user implementing the New or Changed installation to initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem.

CITY may recognize the right of prior authorized users and withhold approval or disallow use of a New or Changed installation or other modification pending settlement of the interference problems between the applicant/LESSEE and other authorized users. It is mutually agreed that the CITY 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.

[The remainder of this page intentionally left blank.]

10.5 Exhibit "E" - On the Air Test Forms

TECHNICAL DATA SUMMARY

One form to be completed per transmitter and supplied to all permittees operating at the facility

DATE _____

LOCATION _____ APPLICANT _____

CALL SIGN _____ CONTACT NAME _____ PHONE _____

TRANSMITTER

RECEIVER

Manufacturer _____ Manufacturer _____

Model _____ Model _____

Emission _____

Radiated ERP _____ Watts

Transmit Frequency _____

Receiver Frequency _____

CTCSS or DCS

1. _____

1. _____

1. _____

2. _____

2. _____

2. _____

3. _____

3. _____

3. _____

4. _____

4. _____

4. _____

ANTENNA

TRANSMIT CAVITY FILTER

ISOLATOR

Make _____

Make _____

Make _____

Model/Type _____

Gain _____ dBd

Azimuth _____

REMARKS:

CITY / SDCWA at Mt. Woodson

10.6 Exhibit "F" - TEST RESULTS CERTIFICATION

Top section to be completed and supplied to all permittees operating at the facility.
Bottom section to be completed by each existing site tenant after testing is complete.

SUBJECT: "On the air" interference testing

SITE LOCATION _____

FREQUENCY _____

DATE OF TEST _____

TIME OF TEST _____

PROPOSED TRANSMITTER OWNED BY _____

TEST PERFORMED BY _____

Ladies and Gentlemen:

"On-the-air" interference testing has been completed at the above stated site location. A qualified representative was present for the test to observe for possible interference problems.

With regard to the above test, this is to certify that objectionable radio frequency interference
Did ☐ Did not ☐ result during this test.

Details of interference: (if applicable)

Proposed technical resolution: (if applicable)

(Tenant)

(Tenant's Representative)

(Date)

(R-2005-217)

RESOLUTION NUMBER R- 299593ADOPTED ON SEP 07 2004

WHEREAS, the City and the San Diego County Water Authority have negotiated a five-year renewal of a lease agreement with two five-year options to extend at the initial rate of \$24,000 per year; and

WHEREAS, the purpose of the lease is for the renovation of an existing building, and the installation, operation, and maintenance of a radio communications facility at the Mount Woodson Communication Center; and

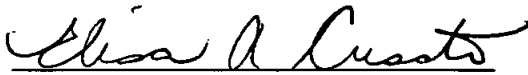
WHEREAS, the rent is at the fair market rate as determined by City valuation staff;
NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager or designee is authorized to execute, for and on behalf of the City of San Diego, a five-year lease agreement with two five-year options to extend with the San Diego County Water Authority for the installation, operation, and maintenance of a radio communications facility at the Mount

Woodson Communications Center, at an initial annual rent of \$24,000, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document

No. RR- 299593

APPROVED: CASEY GWINN, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

EAC:ai
08/24/04
Or.Dept:READ
R-2005-217

Passed and adopted by the Council of San Diego on September 7, 2004 by the following vote:

YEAS: PETERS, ZUCCHET, ATKINS, MAIENSCHEIN, FRYE, MADAFFER, MAYOR MURPHY.

NAYS: NONE

NOT PRESENT: INZUNZA

VACANT: DISTRICT FOUR

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: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-299593**, passed and adopted by the Council of The City of San Diego, California on September 7, 2004.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy
Manuel E. Ketcham

USE AND OCCUPANCY PERMIT

THIS USE AND OCCUPANCY AGREEMENT made this 23 day of July, 1992 by and between the City of San Diego, a municipal corporation in the County of San Diego, State of California, hereinafter called "City," and the San Diego County Water Authority, hereinafter called "Permittee."

W I T N E S S E T H:

The City of San Diego (City) hereby permits the San Diego County Water Authority (Permittee) to utilize the premises described herein upon the following conditions.

1. PREMISES: A portion of the City's vault and antenna location on Mt. Woodson, comprising approximately one-half of rack number 20, approximately 8 square feet. Said real property is hereinafter called the premises and is shown on Exhibit A.
2. USE: The premises shall be used during the term hereof solely and only for the purpose of constructing, maintaining, repairing, altering and operating radio transmitting and receiving equipment as City may from time to time consent to in writing, and for no other purpose or purposes whatsoever.
3. TERM: The term shall be for the period of three years beginning on August 1, 1992.
4. RENT: The Permittee shall pay rent to the City for the premises at the rental rate of Twenty-one Hundred Dollars (\$2,100) per year, payable annually in advance. Rent for a lesser period shall be prorated. Beginning with the first anniversary of the commencement of this permit and on each anniversary date thereafter, the annual rental provided for above shall be increased by an amount equal to five percent (5%) of the then current rental.

Rental payments will be addressed and mailed to the City of San Diego, City Treasurer, P.O. Box 2289, San Diego, CA 92112-4165.

5. INSTALLATION AND OPERATION OF EQUIPMENT: The installation and operation of Permittee's communications equipment in and about City's vault at Mt. Woodson shall be under the administration of the City. The use and operation of the Permittee's equipment at said site shall be subject to an "on the air" compatibility test (see Exhibit B attached). The compatibility test must result in reasonable assurance that the use will not cause interference to existing communications systems and users on Mt. Woodson. Only the Permittee, its properly qualified and authorized agents, employees, contractors, and servants, shall have the right of ingress to and egress from said premises. If communication equipment of PERMITTEE is operated or maintained by anyone other than its regular employees, the admission of such persons to said site shall be permitted only upon the express written consent of the CITY having first been obtained. The equipment shall be installed in accordance with standards provided by C.&E. Division.

Preliminary drawings shall be provided for C.&E. review prior to any installation.

6. IMPROVEMENTS AND ALTERATIONS: Permittee shall not make any improvements or alterations to the premises without the prior written consent of City. All fixtures, equipment and improvements installed or made by Permittee shall remain the property of Permittee and shall, at Permittee's expense, be removed upon expiration or termination of this agreement and the premises restored substantially to the same condition as when received; provided, however, that any repair or replacement of City's property shall remain property of City. Should Permittee fail to remove its fixtures, equipment and improvements as aforesaid, the City may do so at the expense of Permittee.
7. MAINTENANCE: Permittee agrees to assume full responsibility for the operation and maintenance of its facilities on the premises throughout the term hereof without expense to City, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to City and in compliance with all applicable laws. Permittee agrees that City shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises, and Permittee hereby waives all rights to make repairs or to cause any work to be performed at the expense of City as provided for in Sections 1941 and 1942 of the California Civil Code. During the term of this Agreement, City agrees to maintain the vault in good repair.
8. UTILITIES: City will provide a 120 volt, 60 Hz, A.C. normal and emergency power source. Cost of power is included in the rental fee.
9. ASSIGNMENT AND SUBLEASE: Permittee shall not transfer nor assign this permit, and shall not sublet, license, permit or suffer any use of the premises or any part thereof, or lease space in any building constructed on said land, provide radio equipment for the use of others, or cause or permit any change of any equipment installed in such premises, including power outputs or changes in the use of the following frequencies to transmit: 952.60625 MHz, and receive: 928.60625 MHz, except upon making a written request to City for each such transaction and the obtaining of its prior written consent thereto. Permittee shall display on each piece of equipment the appropriate license from the federal regulation agency.
10. INSURANCE: City will not keep improvements which are constructed or installed by Permittee under the provisions of this permit insured against fire or casualty, and Permittee will make no claim of any nature against City by reason of any damage to the business or property of Permittee in the event of damage or destruction by fire or other cause, arising other than from or out of negligence or wilful misconduct of agents or employees of the City of San Diego in the course of their employment.

11. ACCESS ROAD: City hereby grants to Permittee a nonexclusive right to use, during the term of this permit, that portion of an access road which serves Mt. Woodson. Said right shall be subject to provisions of paragraph 6 hereof, and to the following conditions and terms:
 - a. Permittee 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 Permittee's facilities now or hereafter located on said mountain.
 - b. Permittee 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 Permittee 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.
12. INDEMNITY: Permittee agrees that City, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Permittee, its representatives, agents, employees, guests, licensees, invitees, patrons or clientele, nor for personal injuries to, or deaths of any persons, caused by or resulting from any act or omission of Permittee or other person specified above in or about the premises. Permittee agrees to indemnify and save free and harmless City and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by City on account of any claim or claims thereof.
13. INSPECTION: City may enter and inspect the premises and the operation conducted thereon at any reasonable time.
14. ACCESS: City agrees to provide Permittee unobstructed access to the vault at all times during the term hereof.
15. NOTICES: Notices to City shall be mailed to the City of San Diego Property Director, 202 "C" Street, San Diego, California 92101. Notices to Permittee may be mailed to San Diego County Water Authority, 3211 Fifth Avenue, San Diego, California, 92103-5718, or may be personally served upon the Permittee.
16. ORAL REPRESENTATIONS: This agreement contains the complete expression of the whole agreement between the parties and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as are set forth herein. This agreement cannot be changed in any respect except by written agreement between the parties.
17. HOLDING OVER: Any holding over after the expiration of said term for any cause shall be construed to be a tenancy from month to month, at any rental selected by City which has been in effect during the term,

and shall otherwise be on the terms and conditions herein specified so far as applicable. Such holding over shall include any time employed by the Permittee in removing fixtures and improvements as hereinbefore provided.

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 8/14/92

By Robert J. Hollins
James L. Spotts
Property Director

SAN DIEGO COUNTY WATER AUTHORITY

Date 7/23/92

By Lester A. Snow
Lester A. Snow
General Manager

APPROVED as to form and legality this 11 day of August, 1992.

JOHN W. WITT, City Attorney

By John W. Witt
Deputy City Attorney

JLS:JBC:MLM:st-m(5)
7/9/92

TEMP CONTROL

PLUG

INSTALL WALL FEED THR

PLUG

PUNCH BLOCK PLANEL

BATTERY RACK

PNL "E"

PNL "C"

TRANSFER
SWITCH
SIMPLEX MOD.
CONTROLCIRCUIT
BREAKER

"J" BOX & POWER

PNL "D"

D.C. POWER PANEL

CHARGER

PLUG & BLANK
BOX

AIR COND.

PLUG

EMERG.

LIGHT SI

GLUG

EXHIBIT "B"

USER COMMITTEE ELECTRONIC LAND USE "ON THE AIR" INSTRUCTIONS AND PROCEDURES

1. Explanation

Prior to the LESSOR'S approval of an application for a new radio-electronic use authorization or modification of an existing authorization, 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.

LESSORS may recognize the right of prior authorizees and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other authorizees.

2. Pre-installation or Pre-Use Testing

A. It will be the responsibility of the applicant to make the complete arrangements and conduct all tests in a technically sound manner.

- 1) A listing of all radio-electronic land use authorizees operating at the facility will be obtained from the users committee.

B. It will be the responsibility of the applicant to notify all radio electronic authorizees at the facility of the tests and details thereof, at least 14 days in advance of the tests.

- 1) The notification shall be in the form of letter to each listed authorizee 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 authorizees to have a qualified representative present for the tests to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the authorizees.
- 2) 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.

- 3) Notifications to Permittees shall be sent via U.S. Mail or hand delivered.
 - 4) The notification letter to the City Communications Engineer shall include a list of all Permittees notified.
- C. It will be the applicant's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each PERMITTEE participating in the test and a list of those Permittees who did not respond.
- D. In the event a notified PERMITTEE fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the PERMITTEE has assured himself that his operations will not be affected.

3. On-The-Air Tests - Technical Details

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

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