

Government Site Name: Mount Otay CA.
Site Address: Otay Mountain Truck Trail S, Jamul, California 91935
Government Site: HSBP-7218-M-DA0877

GSA FORM L201A (June 2012)

The attached Memorandum of Understanding Between U.S Department of Homeland Security U.S. Customs & Border Protection & The City of San Diego, California (the "Agreement") is made and entered into between City of San Diego, with a business address of 1200 Third Avenue, Suite 1700, San Diego CA. 92101 and whose interest in the properties described herein is that of "Owner and/or Licensee", and The United States of America (the "Government"), described herein is that of "Owner and/or Licensee" acting by and through the designated representative of U.S. Customs and Border Protection ("CBP"), upon the terms and conditions set forth herein, with an office at BPAM TLP Realty Branch, 150 Westpark Way, Suite 300 Euless, TX 76040.

WITNESSETH: The parties hereto, for the consideration hereinafter mentioned, covenant and agree as follows and as set forth in the terms and conditions following the signature blocks below:

- A. GRANT OF OCCUPANCY. The "City of San Diego" hereby grants to the U.S. Government "Use & Occupancy" for Equipment Space at the following managed City of San Diego Communication Sites:
1. Mount Woodson, 17170 Mt Woodson Rd. Ramona, CA. 92065, (formerly Government Lease HSBP-1112-L-DA00405), located at Coordinates 33.008861 N x - 116.972908 W for Space (hereinafter defined)
 2. San Ysidro, 4350 Otay Mesa Rd, San Diego CA. 92154, (formerly Government Leases HSBP-1112-L-DA00369 & HSBP-1100-L-OR00678), located at Coordinates 32.561944 N x - 117.035278 W for Space (hereinafter defined)
- B. GRANT OF OCCUPANCY. The "U.S. Government" hereby grants to the City of San Diego "Use & Occupancy" for Tower Space at the following managed U.S. Government Communication Sites:
1. Mount Otay III (MCS), Otay Mountain Truck Trail S, Jamul CA. 91935, located at Coordinates 32.600729 N x - 116.84102 W for Space (hereinafter defined)
- C. TERM OF AGREEMENT. The term of this MOU set forth herein Commencing October 1, 2017 and continuing through September 30, 2037 and is hereby known as Federal MOU number HSBP-7218-M-DA0877, and will remain in effect until amended or terminated by proper procedure.

INITIALS: CITY OF SAN DIEGO



& U.S. GOVERNMENT



Government Site Name: Mount Otay CA.
Site Address: Otay Mountain Truck Trail S, Jamul, California 91935
Government Site: HSBP-7218-M-DA0877

D. THE CITY OF SAN DIEGO, CA. AND THE GOVERNMENT acknowledge that the agreement hereinafter defined will remain cost free to each party for as long as the agreement remains in-force.

IN WITNESS WHEREOF, the parties to this Agreement evidence their agreement to all terms and conditions set forth herein by their signatures below, to be effective as of the date of delivery of the fully executed Agreement to Licensor (the "Effective Date").

FOR LICENSOR:

Signature

Name: Cybele L. Thompson

Title: Director

Date: 3/28/18

FOR THE GOVERNMENT:

Signature

Name: Matthew Hancock

Title: Lease Contracting Officer

Date: 4/6/18

WITNESSED FOR LICENSOR BY:

Signature

Name: _____

Title: _____

Date: _____

Approved As To Form

Mara W. Elliott

BY: Melissa Ables Date: 3/23/18

NAME: Melissa Ables

TITLE: Deputy City Attorney

The information collection requirements contained in this Solicitation/Contract that are not required by the regulation have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

INITIALS: CITY OF SAN DIEGO

& U.S. GOVERNMENT

Memorandum of Understanding
Between
U.S Department of Homeland Security
U.S. Customs & Border Protection
&
The City of San Diego, California

This Memorandum of Understanding (MOU) is made and entered into by and between U.S. Customs and Border Protection (CBP) and the City of San Diego California, (CSD) (collectively the PARTIES) regarding the co-location of Wireless Radio & Data Communication Systems.

I. Purpose and Scope

- A. The PARTIES desire to enter into this MOU regarding co-location of specific telecommunications equipment on certain existing towers owned and operated by the PARTIES located in the San Diego area as more particularly described in Exhibit A, in order to reduce both parties' costs and avoid unnecessary construction. CBP currently leases space on two existing CSD tower communication sites (City Sites). Under this "co-location" MOU, CBP will permit CSD to utilize a CBP tower site (CBP Site) to house certain communication equipment on an existing CBP tower, more particularly described in Exhibit A, and CBP will continue to co-locate equipment on/at sites belonging to CSD. Concurrent with the execution of this MOU by all PARTIES, this MOU replaces all existing leases related to CBP's use of the City Sites, San Ysidro & Mount Woodson, and those leases shall be terminated.
- B. CBP, as a component of the Department of Homeland Security, is authorized, pursuant to various provisions, including the Homeland Security Act of 2002, Pub. L. 107-296, codified at "6 U.S.C. § 101 et seq.", Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, as amended, 8 U.S.C. § 1103 and other Acts amendatory thereof and supplementary thereto, to control and guard the boundaries and borders of the United States against illegal border crossing activities, to install border Infrastructure and technology as needed to deter illegal crossings, and obtain operational control of the border.
- C. Both CBP and the CSD operate radio communications systems that utilize buildings and towers located in the Greater San Diego, CA, area, and have a need to expand their telecommunications networks and improve their systems capabilities.
- D. Both CBP and CSD agree that sharing facilities and co-locating communication equipment, where the design of the communications system will permit, will help reduce operating cost.

Please Initial:



CBP



CSD

- E. The purpose of this MOU is to facilitate cooperation between the PARTIES, provide consistent goals, principles, and guidance, and to define the PARTIES' respective roles and responsibilities regarding the sharing of facilities and co- location of communications equipment.

II. Responsibilities and Terms of the MOU

The PARTIES hereby agree to the following terms and conditions:

A. Common Affirmations and Responsibilities of the PARTIES:

1. The CBP and CSD telecommunication sites that are suitable for sharing of facilities and co- location of communications equipment are set forth in Exhibit A to this MOU, which is attached hereto and fully incorporated herein.
2. The PARTIES shall, where necessary and appropriate, enter into site- specific agreements, which shall be consistent with and supplementary to the terms and conditions of this MOU, concerning the shared operation and use of individual telecommunications sites. Where the PARTIES determine that no site-specific agreement is necessary or warranted, the terms and conditions of this MOU shall govern.
3. The Parties, at their own respective cost and expense, will install, operate, maintain, and remove, as necessary, their respective communication equipment and facilities in accordance with the highest engineering standards generally employed.
4. The Parties agree that neither Party shall pay rent to the other for the use and occupancy of the Sites under this MOU.
5. The Parties shall comply with the Requirements Related to Co-locating on Communication Towers set forth in Exhibit B.

B. CBP's Affirmations and Responsibilities:

1. For each CBP tower site set forth in Exhibit A, to the extent permitted or not prohibited by any applicable lease, permit, license, or other governing agreement regarding the site, CBP will designate space on and permit CSD use of the CBP Site for the installation and operation of CSD communications equipment and ensure that CSD employees, authorized agents, and/or contractors have ingress and egress for said sites for the purposes of installation, maintenance, repair, and replacement of CSD communication equipment.
2. Where it is permissible under the terms of any lease, license, permit, and/or other agreement that governs or is otherwise applicable to the CBP Site set forth in Exhibit A, CBP will permit CSD to install an equipment shelter (or assist CSD with obtaining the necessary permission from any other federal or governmental agency required), if the existing building is not adequate; provided however, that any CSD shelter must be designed, constructed, and operated in a manner that is consistent with the lease, permit, license or other agreement that governs and/or is applicable to CBP regarding the CBP Site at issue. CSD shall not occupy space nor install equipment at a CBP Site without the permission of CBP.

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CSD

4. Prior to any installation of equipment or the construction of additional improvements at a CSD tower site set forth in Exhibit A, CBP shall present CSD with a written statement of work (SOW) for CSD's review and approval, provided, however, that CSD shall not unreasonably withhold its review or approval of any such SOW. CBP shall not proceed with installation or construction until a written notice has been issued by the CSD.
5. CBP shall be responsible for service, maintenance, repair and replacement of its own communications equipment or facilities. Nothing in this MOU shall be construed to impose any responsibility on CSD to maintain, repair, or replace CBP's communications equipment or facilities. CBP shall be permitted to remove CBP property at its discretion and shall retain ownership of CBP property and equipment at all times.
6. CBP agrees that it shall have no authority to assign or sub-lease CSD's communications facilities.
7. CBP agrees that it shall be solely responsible for ensuring compliance with all applicable environmental laws and regulations that are triggered by the installation, operation, maintenance, and replacement of CBP communication equipment or facilities. Any liability for damages on the part of CBP shall be governed by the Federal Tort Claims Act (FTCA).

C. CSD's Affirmations and Responsibilities:

1. For each CSD tower site set forth in Exhibit A, to the extent permitted or not prohibited by any applicable lease, permit, license, or other governing agreement regarding the site, CSD will designate space on and permit CBP use of CSD tower facilities for the installation and operation of CBP communications equipment and ensure that CBP employees, authorized agents, and/or contractors, have ingress and egress to said sites for the purposes of installation, maintenance, repair, and replacement of CBP communication equipment.
2. Where it is permissible under the terms of any lease, license, permit, and/or other agreement that governs or is otherwise applicable to the CSD sites set forth in Exhibit A, CSD will permit CBP to install an equipment shelter, if existing building is not adequate; provided however, that any CBP shelter must be designed, constructed, and operated in a manner that is consistent with the lease, permit, license or other agreement that governs and/or is applicable to the CSD site at issue. CBP shall not occupy space nor install equipment at a CSD tower site without the permission of CSD.
3. Where CSD is utilizing one of the CBP tower sites set forth in Exhibit A, CSD shall not allow any condition to exist that would cause a conflict or be allowed to cause interference, failure or interruption with the normal operation of the CBP site, including the frequency or modulation of CBP's communications equipment on or near the tower.
4. Prior to any installation of equipment or the construction of additional improvements at a CBP tower site set forth in Exhibit A, CSD shall present CBP with a written statement of work for CBP's review and approval, provided, however, that CBP shall not unreasonably withhold its review or approval of any such SOW. CSD shall not proceed with installation or construction until a written notice has been issued by CBP.

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CBP



CSD

5. CSD shall be responsible for service, maintenance, repair and replacement of its own communications equipment or facilities. Nothing in this MOU shall be construed to impose any responsibility on CBP to maintain, repair, or replace CSD's communications equipment or facilities. CSD will be responsible for any damage or loss caused by its activities or equipment.
6. CSD agrees that it shall have no authority to assign or sub-lease CBP's communications facilities.
7. CSD agrees that it shall be solely responsible for ensuring compliance with all applicable environmental laws and regulations that are triggered by the installation, operation, maintenance, and replacement of CSD communication equipment or facilities.

III. Interagency Communication

To provide for consistent and effective communication between the PARTIES, CBP and CSD shall immediately designate representatives to serve as the points of contact on all matters relating to the MOU. Each party shall advise the other party, in writing, of the names and contact information of the designated representatives within ten (10) calendar days of the execution of the MOU.

IV. Term and Effective Date

The term of this MOU set forth herein Commencing October 1, 2017 and continuing through September 30, 2037 and is hereby known as Federal MOU number HSBP-7218-M-DA0877, and will remain in effect until amended or terminated by proper procedure.

V. Modification

This MOU may be amended, in writing, at any time by mutual agreement of the PARTIES.

VI. Termination

This MOU can be terminated by either party upon one hundred and eighty (180) days written notice to the other party. Reasonable time will be allowed to remove equipment or other improvements from a shared site, but not to exceed one hundred and eighty (180) days absent further agreement of the PARTIES.

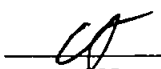
VII. Miscellaneous Provisions

1. Nothing in this MOU shall be construed to obligate the PARTIES or the United States to any current or future expenditure of funds in advance of the availability of appropriations, nor does this MOU obligate the PARTIES or the United States to spend funds for any particular project or purpose, even if funds are available.
2. This document is an agreement among the PARTIES and does not create or confer any rights, privileges, or benefits upon any person, party, or entity. This MOU is not and shall not be

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construed as a rule or regulation. Nothing in this MOU shall be construed as authority for acquiring or exchanging funds or property, nor transferring or assigning personnel.

3. This MOU is to be implemented consistent with the statutory and regulatory provisions pursuant to which the PARTIES undertake their activities. Nothing in this MOU shall be construed as affecting the authority or jurisdiction of either party in carrying out its responsibilities under applicable statutes or regulations. Nothing in this MOU is intended to conflict with current law or regulation or the directives of DHS, CBP, or CSD. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.
4. Notices. Any notice required or permitted to be given under this MOU shall be in writing and may be served personally, sent by United States mail, postage prepaid, or sent by reliable overnight courier, addressed to the PARTIES as follows:

If to CSD: City of San Diego Real Estate Assets Department Attention: Real Estate Assets Director 1200 Third Avenue, Suite 1700, MS 51A San Diego, CA 92101-4155	If to CBP: U.S. Customs & Border Protection Tower Leasing Program West Region Project Manager 150 Westpark Way, Suite 200 Eules, Texas 76040
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5. Entire Understanding. This MOU contains the entire understanding of the PARTIES. The PARTIES agree that there is no other written or oral understanding between them with respect to PARTIES' use and occupancy of the Sites. Each Party has relied on its own examination of the Sites, advice from its own attorneys, and the warranties, representations, and covenants of the MOU itself. Each Party to this MOU 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 MOU. The failure or refusal of any Party to read this MOU or other documents, inspect the Sites, 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 such actions.
6. Supersede. As of the Effective Date, this MOU shall supersede and annul all prior leases, right-of-entry permits, or other agreements concerning the Sites, by and between the PARTIES, and each such agreement shall be 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 the PARTIES under those agreements.
7. Time of the Essence. Time is of the essence for each and every term, covenant, and condition of this MOU.

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8. Standard of Conduct. The Parties and their employees shall, at all times, conduct themselves and their operations on the Sites in a creditable manner and in accordance with industry standards.
9. Unavoidable Delay. If the performance of any act required of a Party under this MOU 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, that Party shall be excused from performing that act for a period equal to the period of the prevention or delay. If either Party claims the existence of such a delay, the Party claiming the delay shall notify the other Party, in writing, of the fact within ten (10) calendar days after the beginning of any such claimed delay.
10. CSD's Consent or Approval. Whenever required under this MOU, CSD's consent or approval shall mean the written consent or approval of CSD's Mayor or his designee, unless otherwise expressly provided or required by law. CSD's discretionary acts hereunder shall be made at the Mayor's discretion, unless otherwise expressly provided.
11. Consent by Either Party. Except as otherwise expressly provided in this MOU, consent to be given by either Party may not be unreasonably withheld or delayed.
12. Survival. Any obligation under this MOU that requires a Party's performance of that obligation after the termination of the MOU shall survive termination.
13. Headings and Captions. The section headings and captions used in this MOU shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this MOU. If the page numbers and/or section numbers in this MOU are not in consecutive order, the lack of consecutive numbering shall have no effect on the enforceability of this MOU.
14. Number and Gender. In this MOU, words in the singular number shall include the plural, and *vice versa*, as appropriate to the context. Words of either gender shall include the other gender.
15. Authority to Execute and Deliver MOU. Each individual executing this MOU on behalf of a Party or PARTIES represents and warrants that he or she is authorized to execute and deliver this MOU on behalf of such Party or PARTIES and that this MOU is binding upon such Party or PARTIES in accordance with its terms.
16. Counterparts. This MOU may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
18. Exhibits and Attachments Incorporated. All exhibits and attachments referenced in this MOU are incorporated into the MOU by this reference.

Please Initial:



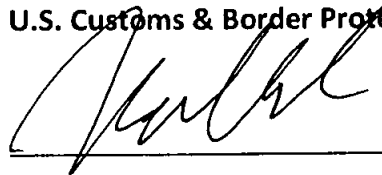
CBP



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Signatures,

U.S. Customs & Border Protection

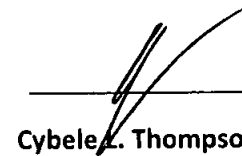
 4/6/18

Matthew Hancock

Date

Contracting Officer

City of San Diego

 3/22/18

Cybele L. Thompson

Date

Director, Real Estate Assets

Approved As To Form

Mara W. Elliott

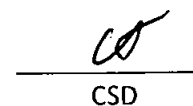
BY: Melissa Ables **Date:** 3/23/18

NAME: Melissa Ables

TITLE: Deputy City Attorney

Please Initial:


CBP


CSD

City of San Diego Install @ CBP's Otay Mountain Site co-location

Scope of Work

City of San Diego (CSD) and U.S Customs and Border Protection Mount Otay Site co-location

This document describes the scope of work that the CSD will be performing at the U.S. Customs & Border Protection communication site located at Mount Otay, CA. All work listed will be conducted by CSD's contractors at the facility, at the sole cost and expense of CSD, and any possible environmental issues that need to be resolved will be handled by CSD. The pre-construction activities include any minor site prepping such as clearing the area for installation, as needed, for equipment and a site kick-off meeting with all site stakeholders to explain the work that will be performed at the site location.

Mount Otay: Pre-construction (electrical work and existing shelter work) scheduled for October 1, 2017 thru Feb 28, 2018.

Installation is scheduled to start on or about October 1, 2017. Radio equipment and racks will not be installed until after October 1, 2017.

Scope of Work:

1. Install 1 - 12 ft. x 16 ft. equipment shelter and associated concrete pad foundation (per submitted drawings "Plan B")
2. Install 1 - 50 kW generator (per submitted drawings "Plan B")
3. Install 1 - 499-gallon propane tank (per submitted drawings "Plan B")
4. Install 1 - 24" wide cable bridge (per submitted drawings "Plan B") from CBP SST to CSD Shelter
5. Install 1 Meter Main
6. Create minor adjustments to existing access road for entree to CSD shelter
7. Install – One (1) VHLP6-11A microwave dish at 32 feet Centerline and one (1) VHLP6-6WA at 26 feet Centerline. One (1) P25 Omni Antenna at 140 Ft. Centerline and four (4) P25 Omni Antennas at 120 Ft. Centerline. One (1) SCADA Omni Antenna at 30 Ft. Centerline. Two VHF Omni Antennas, one (1) at 105 Ft. and one (1) at 140 Ft. Centerline (per submitted drawings "Plan B").

Equipment locations may be adjusted as needed to accommodate field conditions, with the approval of both Parties.

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U.S Customs and Border Protection @ Mount Woodson co-location

Scope of Work

City of San Diego and U.S Customs and Border Protection Mount Woodson Site co-location

This document describes the scope of work that was performed and currently exists by the U.S. Customs & Border Protection at City of San Diego, CA, communication location at Mount Woodson, 17170 Mt Woodson Rd Ramona CA. The Installation activities included any minor site prepping as needed for equipment installation and any possible environmental issues for the installation have been resolved by CBP.

This agreement refers to the amended fee schedule for Government Lease HSBP-1112-L-DA00405 executed October 1, 2013 between U.S. Customs & Border Protection & the City of San Diego CA. Real Estate Department as outlined in the Supplementary Lease Agreement HSBP-1112-L-DA00405-1

As noted in this MOU a Supplementary Lease Agreement HSBP-1112-L-DA00405-1 will be created & signed that all future rental fees as outlined in the aforementioned lease will be reset to Zero (\$0.00) of the effective date October 1, 2017 of this co-location agreement, and will remain in-effect until this MOU is cancelled by either party.

Any alteration, including but not limited to reduction or supplementation, to the below listed equipment will need to be agreed to by both parties.

Equipment

ANTENNAS

One (1) BA 1010 omnidirectional whip transit antenna
One (1) BA 101 O omnidirectional whip receive antenna

RACKS Equipment requirements in the Shelter

Equipment in Shelter: Three standard equipment rack 19" x 28' x 72", Two (2) Duplexers, One (1) Data communications line

Other: Use of the site also includes all common infrastructures, such as Emergency Power Generator & UPS

Equipment locations may be adjusted as needed to accommodate field conditions, with the approval of both parties.

Please Initial:



CBP



CSD

U.S Customs and Border Protection @ San Ysidro I & II co-location

Scope of Work

City of San Diego (CSD) and U.S Customs and Border Protection San Ysidro I Site co-location

This document describes the scope of work that was performed and currently exists by the U.S. Customs & Border Protection at the CSD communication site at San Ysidro I & II [a.k.a. Moody Canyon], 4350 Otay Mesa Rd, San Diego, CA 92154. The Installation activities included any minor site prepping as needed for equipment installation and any possible environmental issues for the installation have been resolved by CBP.

This agreement refers to the amended fee schedule for Government Lease HSBP-1112-L-DA00369 & HSBP-1100-L-OR00678 executed between U.S. Customs & Border Protection & the City of San Diego CA. Real Estate Department as outlined in the Supplementary Lease Agreements HSBP-1112-L-DA00369-1 & HSBP-1100-L-OR00678-1

As noted in this MOU, all existing leases to for these CSD Sites will be terminated concurrent with the execution of this MOU, and the future use and occupancy of these CSD sites will be pursuant to this MOU. There will be no rental fees due to CSD as of October 1, 2017, and the rent will remain at zero until this MOU is cancelled by either party, modified by a writing signed by both Parties, or superseded by a subsequent agreement executed by both Parties.

Any alteration, including but not limited to reduction or supplementation, to the below listed equipment will need to be agreed to by both parties.

Equipment

ANTENNAS

- One (1) BA 1010 omnidirectional whip transit antenna
- One (1) BA 101 O omnidirectional whip receive antenna

RACKS Equipment requirements in the Shelter

- One (1) 60-inch high rack
- One (1) 90-inch high rack

Other: Use of the site also includes all common infrastructures, such as Emergency Power Generator & UPS

Equipment locations may be adjusted as needed to accommodate field conditions, with the approval of both parties.

Please Initial:



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Exhibit A

Mount Otay - Site owned and managed by U.S. Customs & Border Protection, Granted by Land Permit by Department of the Interior, Bureau of Land Management.

City of San Diego has been granted a Co-Location permit by BLM to utilize unused portions of CBP's communication compound.

As a matter of this co-location MOU, CBP is granting CSD utilization of agreed mounting locations on the existing CBP 120' SST in exchange for similar accommodations and reference the SLA's amending rental fees paid for utilization of two (2) City of San Diego communication sites, identified by existing lease agreements, HSBP-1112-L-DA00405, HSBP-1112-L-DA00369 & HSBP-1100-L-OR00678.

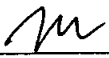
Mount Woodson - Coordinates (33.008861 N) x (- 116.972908 W). Site owned and managed by City of San Diego, Federal Lease HSBP-1112-L-DA00405 grants CBP utilization of Space on the City's Tower & Equipment Shelter for the following:

- Four (4) standard communication racks that house multiple Quantar receivers, Modems and associated power strips
- Two Omni Antennas mounted at 150' level

San Ysidro - Coordinates (32.561944 N) x (- 117.035278 W). Site owned and managed by City of San Diego, Existing Federal Leases HSBP-1112-L-DA00369 & HSBP-1100-L-OR00678 grants CBP utilization of Space on the City's Tower & Equipment Shelter for the following:

- Two (2) standard communication racks that house multiple Quantar receivers, Modems & associated power strips
- Three (3) Omni Antennas mounted at various heights

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EXHIBIT B

REQUIREMENTS APPLICABLE TO BOTH PARTIES RELATED TO COLLOCATING COMMUNICATIONS EQUIPMENT ON CSD SITES AND CBP SITES

- A. Surrender. Upon the termination of this MOU, the Parties shall surrender the CSD Sites and the CBP Site to the Party that owns the site in a decent, safe, and sanitary condition, and free and clear of all liens and encumbrances caused by or resulting from the Party's occupancy and use, except those liens and encumbrances which: (1) existed on the Effective Date, and (2) exist after the Effective Date and are not the result of the Party's use or occupancy of the Site. The CBP Site and the CSD sites shall be surrendered in the same condition as they were in, prior to the collocation of the Party on the site, normal wear and tear excepted.
- B. Acceptance of Site. The Parties represent and warrant that the Parties have independently inspected the CSD Sites and CBP Site and made all tests, investigations, and observations necessary to satisfy themselves of the condition of the CSD and CBP Sites as applicable. The Parties agree that each is relying solely on its independent inspections, tests, investigations, and observations in entering into this MOU. The Parties acknowledge that the Sites are in the condition called for herein and that neither Party shall hold the other responsible for any defects, whether apparent or latent at the Sites. The Parties have been given the opportunity to investigate the Sites for the presence of any Hazardous Substances, including without limitation the opportunity to perform soil boring and other tests. A Party shall notify the other Party, if its investigations indicate the presence of any Hazardous Substances on the Site.
- C. Site Plans. The Parties shall develop the Site in accordance with the Site Plans approved by CBP for the CBP Sites, and approved through the CSD's Wireless Services Division for the CSD Sites. If either of the Parties fail to comply with the Master Site Plan, such failure shall be a default of this MOU.
- D. Improvements and Alterations. Other than as depicted in the approved Site Plan neither Party shall construct any improvements, structures or installations on the Sites or make any alterations to the Sites (with the exception of routine maintenance and/or repairs that does not include swapping out or replacing any Communications Equipment) without the written consent of the Party that owns the Site, which consent shall be in the owning Party's sole discretion.
- E. Competent Management. The Parties shall provide competent management of the Sites for the permitted uses to the reasonable satisfaction of each other. "Competent management" shall mean demonstrated ability in the management and operation of a wireless communication facility and related activities in a responsible manner and in accordance with industry standards.
- F. Compliance with Laws and Policies.



1. General. Each Party's operations shall at all time be in compliance with all applicable laws, statutes, ordinances, and regulations of city, county, state and federal governments, at each Party's sole cost and expense. Each Party shall comply with all notices issued by any such government under the authority of all current or future laws, statutes, ordinances, or regulations. Upon receipt of same, each Party shall promptly deliver to the other Party copies of all documentary evidence of such compliance received by or otherwise available to that Party.

G. Telecommunications Provisions.

1. Radio Frequency Radiation. The Parties shall maintain any radio frequency ("RF") radiation associated with the wireless communications facility within the levels allowed by federal regulations set forth in Section 1.1310 of Title 47 of the Code of Federal Regulations. Any area within one thousand (1,000) feet of any RF transmitting antenna on the wireless communications facility, casually accessible by the general public or by any worker at ground level, shall be maintained below limits stated in CFR Title 47 for General Population/Uncontrolled Exposure. The Parties shall report to each other any areas discovered by one of the Parties to exceed such federally mandated limits.
2. Industry Standards. The Parties shall perform their operations in adherence to industry guidelines an industry standards, the Parties shall comply with the following supplemental requirements:
 - a. Each Party shall remove all trash and debris from the Site at the end of each workday;
 - b. Tower and structure climbing shall be done in compliance with all OSHA safety requirements, as it relates to CSD sites;
 - c. All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to other users at the Sites; and
3. Other Facilities. Neither Party shall access any other wireless communication facility or other Party-owned communications equipment (including any towers) located on the Sites without the other Party's prior written consent.
4. Interference with other Party Operations or Public Use. Each of the Parties' operations shall not interfere with the other Party's operations or the public's use of the other Party-owned property.
5. Disclosure of Federal Government Frequencies. All Federal government frequencies are authorized by the Department of Commerce (DOC) and are exempt from disclosure under the Freedom of Information Act. Frequencies cannot be posted at communications sites.

- H. Waste, Damage or Destruction. Each Party shall immediately give notice to the other of any fire or any other damage that occurs on any of the Sites, either during or after the completion of construction of approved improvements. Neither Party shall commit, or allow to be



committed, any waste or injury or any public or private nuisance in connection with the Party's use or occupancy of a particular Site. Neither Party shall deposit any refuse and/or obstructions on the Sites, and each Party shall dispose of all of its garbage, trash, and rubbish in a manner satisfactory to other Party. If the Sites are damaged by any cause that puts the Sites (or a Site) into a condition which is not decent, safe, healthy, and sanitary, the responsible Party shall pay the actual cost to replace, repair, and/or restore any damage to the Site(s) including the equipment (ordinary wear and tear excepted) caused by that Party, its agents, contractors, employees, exhibitors, or invitees, all subject to the procedures and limitations of the Federal Tort Claims Act (28 U.S.C §§2671-2680); or, at the other Party's option, the Party shall clear and remove from the Site(s) all debris resulting from the damage and restore the Site(s) in accordance with plans and specifications previously submitted to and approved by the Site-owning Party in writing, in order to replace in kind and scope the operation which existed prior to the damage. The Party responsible for the damage shall commence preliminary steps toward performing repairs and/or restoration of the Site(s) as in conformance with the FTCA.

- I. Hazardous Materials. Neither Party shall allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under, or from the Site(s) by any of the Parties' officers, employees, agents, contractors, invitees and guests. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency as a hazardous substance, and all types of petroleum related substances and their chemical constituents. For the purpose of this MOU, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a Hazardous Substance. The Parties and their officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Site(s) without site-owning Party's prior written consent. The Parties shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

If the Parties or their officers employees, agents, contractors, invitees and guests has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Site(s), that Party shall remove all Hazardous Substances in any type of container, equipment or device from the Site(s) immediately upon termination of this MOU. The Parties reserve the right to conduct inspections of the Site(s) and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances, wastes, or other containers, equipment or devices from the Sites(s). The Party storing, utilizing, generating, or installing the Hazardous Substances shall be responsible for any and all costs incurred by the site-owning Party to remove any container, equipment or device requiring disposal or removal as required by this provision.



If either Party knows or has reasonable cause to believe that a Hazardous Substance has been released on or beneath the Site(s), that Party shall immediately notify the other Party and any appropriate regulatory agency or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. Either Party with such knowledge shall deliver a written report thereof to the other Party within three (3) calendar days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If one Party knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and/or safety, the Party may take all actions necessary to alleviate the danger. Either Party shall notify the other Party immediately in writing of any violation, notice to comply, or notice of violation received, or the initiation of environmental actions or private suits related to the Site(s).

- J. Entry and Inspection. The site-owning Party may, at any time, without any obligation to do so, enter the Site for the purpose of viewing and ascertaining the condition of the Site(s), or to protect the site-owning's interest in the Site(s), or to inspect the operations conducted on the Site(s).
- K. Superior Interests. This MOU is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, and rights-of-way pertaining to the Sites, whether or not of record. Each Party shall obtain all licenses, permits, and agreements from such third parties as may be or may become necessary or reasonably advisable to allow that Party's occupancy and use of the Sites, relative to any such superior interest. If a Party's occupancy and use are or become inconsistent or incompatible with a preexisting, superior interest, that Party shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest, or that Party may choose to terminate the MOU.
- L. Other Governmental Actions. By entering into this MOU, neither Party is in anyway obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development, occupancy, use, or maintenance of the Sites. Discretionary action includes but is not limited to any rezoning, variance, environmental clearance or any other governmental approval that may be required for a Party's allowed uses of the Site(s). A Party shall diligently seek, at its sole costs and expense, all entitlements and actions from both the other Party and other governmental agencies with jurisdiction over the Site(s) as are necessary for that Party's use of the Site(s).
- M. Reservation of Rights.
1. Resources. CSD reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the CSD Sites.
 2. Use. CSD reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the CSD Sites for utilities, thoroughfares, or access as CSD deems advisable, in its sole discretion, for the public good.



3. Entry. CSD may enter the CSD Sites to develop and/or make repairs to municipal resources and services. CSD shall not unreasonably interfere with CBP's use of the CSD Sites and shall reimburse CBP for physical damages, if any, to the permanent improvements located on the CSD Sites or to CBP's Communications Equipment resulting from exercise of the rights reserved in this section. CSD shall pay the costs of maintenance and repair of all CSD installations made pursuant to these reserved rights.
- N. Reassignment of Space. At any time during this MOU, the site-owning Party, in its sole discretion, may reassign the other Party to a different location within the Site(s) ("Relocation Site").
1. Timing and Costs. The Party required to relocate shall relocate its communications equipment to the Relocation Site either within ninety (90) calendar days after the execution of a written agreement between the Parties concerning the location and dimensions of the Relocation Site, or otherwise as soon as possible after receipt of all necessary permits and approvals required for any site-owning Party construction or redevelopment project which requires such relocation, and receipt of all permits and approvals required for the relocating Party's use of the Relocation Site. The relocating Party shall cooperate fully with the site-owning Party and its contractors during any reassignment. Parties shall bear their own costs.
 2. Physical Relocation of Equipment. The physical relocation of all or any part of the relocating Party's Communications Equipment shall only be done by the relocating Party or its contractors.
 3. Broadcast and/or Receiving Capability. During physical relocation of the Communications Equipment to the Relocation Site, the site-owning Party will work with relocating Party to attempt to secure an alternative site-owning Party-approved site for the relocating Party to operate temporary installed communications equipment, which may include a site-owning-Party approved temporary wireless communication facility on the Site and which will be installed and maintained at relocating Party's sole cost and expense.
 4. No Agreement. If the Parties are unable to agree on an acceptable Relocation Site, then either Party may terminate this MOU, without further obligation thereto.
 5. Site Redefined. After a reassignment and relocation as provided in this section, the Exhibit A shall be amended to reflect the Relocation Site. The parties agree that "as built" drawings of the Relocation Site, including any access and utility easements, may be prepared by a licensed architect at the relocating Party's sole cost and expense. Except as expressly provided in this section, any such reassignment and relocation shall not alter, modify, or otherwise change any of the terms or conditions of this MOU.
- O. Waiver. Either Parties' waiver of a default shall not constitute a waiver of any other default. Any waiver of a default shall be in a writing executed by the non-defaulting Party in order to constitute a valid and binding waiver. The non-defaulting Party's delay or failure to exercise a remedy or right shall not be a waiver of that or any other remedy or right under



this MOU. The use of one remedy or right for any default shall not waive the use of another remedy or right for the same or any other default. The property constituting the Site(s) are publicly owned lands, held in trust for the benefit of the citizens of the United States of America and the City and County of San Diego, as applicable. A Party's failure to discover a breach or default or take prompt action to require the cure of any breach or default shall not result in an equitable estoppel, but a non-defaulting Party may, at all times, require the cure of any breach or default regardless of when discovered.

- P. Ownership of Improvements and Personal Property. Except as otherwise provided in this section, all improvements constructed on the Site by a Party or a Party's contractors and/or subcontractors at any time during the Term, including any tower structure, equipment shelters, conduit, and fence, as well as all communications equipment, machines, and appliances brought to the Site by the Party's contractors and/or subcontractors at any time during the Term shall be the property of that Party.



Exhibit D

Lessor Site Requirements and Standards

- a. Where there are existing radio frequency user(s) on the Property, CBP or CSD will provide the other party with a list of all existing radio frequency user(s) on the Property to allow the other party to evaluate the potential for interference. The Parties represent and warrant that their use of the Sites will not interfere with existing radio frequency user(s) on the Sites so disclosed by the Site-owning party, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.
- b. The Parties will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Sites, if such use may in anyway adversely affect or interfere with the Antenna Facility, the operations of the Parties at the Sites, or the rights of the Parties under this Agreement. The Site-owning party will notify the non-site owning property in writing prior to granting any third party the right to install and operate communications equipment on the Sites.
- c. The Parties will not use, nor will the Parties permit their employees, Lessees, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the use of the Site as contemplated in this Agreement. In the event of such interference, the Site-owning Party will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from the other Party. In the event any such interference does not cease within the aforementioned cure period then the Party whose use is being interfered with will have the right to terminate this Agreement.





Date of Notice: February 13, 2018

NOTICE OF RIGHT TO APPEAL

ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Memorandum of Understanding Agreement with the US Customs and Border Protection

COMMUNITY PLAN AREA: San Ysidro (Moody Canyon); Outside of City's Jurisdictional Boundary (Mt. Otay and Mt. Woodson)

COUNCIL DISTRICT: District 8 (Moody Canyon); Outside of City's Jurisdictional Boundary (Mt. Otay and Mt. Woodson)

LOCATION: Bureau of Land Management on Mt. Otay (Federal Land); Mt. Woodson; Moody Canyon

PROJECT DESCRIPTION: The City of San Diego is looking to enter into a new Memorandum of Understanding (MOU) with the US Customs and Border Protection (CBP) as it relates to its continued operations for public safety radio communications on an existing telecommunications installation located on Mt. Otay. The City of San Diego will place their antenna equipment on CBP's existing tower. The City's radio equipment will be placed within the City's (own) shelter.

The existing agreements for the Mt. Woodson and Moody Canyon locations will terminate and be succeeded by the MOU for both locations.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301(b)(e) (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines Section 15301(b)(e) (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures or facilities involving negligible or no expansion of use; and where the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project

M

is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Carla Gresham
Real Estate Assets Department
MAILING ADDRESS: 1200 Third Avenue, San Diego, CA 92101, Suite 1700 - MS51A
PHONE NUMBER: 619-236-6729

On February 13, 2018, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal CEQA determination to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**February 28, 2018**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 2/13/2018

REMOVED: 3/6/2018

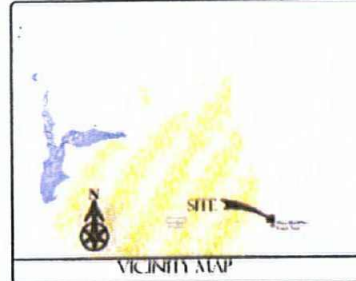
POSTED: E. Pascual



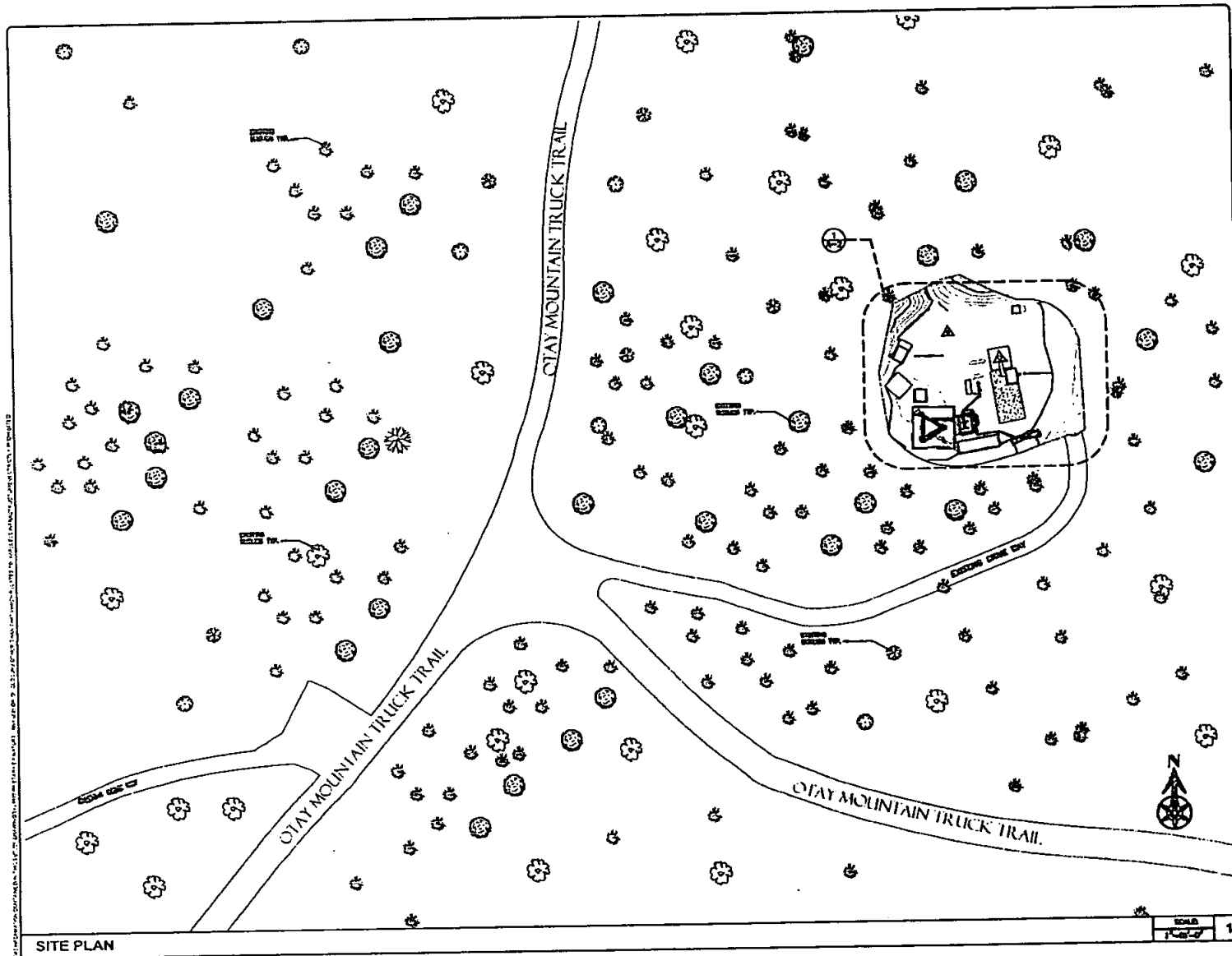


OTAY

<u>STAFF ATTENTION</u>	XX
<u>MANAGEMENT ATTENTION</u>	XX
<u>COMMENTS</u>	XXXX
<u>APPLICANT/AGENCY</u>	VIRGENS INFRASTRUCTURE SERVICES 1440 CALIFORNIA AVENUE OAKLAND, CA 94612 CONTACT: TERRY KENNEDY CELL: 714-302-1810 OFFICE: 903-371-4000 FAX: 903-371-4000
<u>PROJECT DATA</u>	
<u>ABC/CONSULTANT INFORMATION</u>	<u>ABC/CONSULTANT & PROJECT INFORMATION</u>
VIRGENS INFRASTRUCTURE SERVICES 1440 CALIFORNIA AVENUE OAKLAND, CA 94612 CONTACT: TERRY KENNEDY CELL: 714-302-1810 OFFICE: 903-371-4000 FAX: 903-371-4000	TERRY & ASSOCIATES 2005 S. 107TH SUITE 100, 9000 CINCINNATI, OH 45240 (513) 460-0200 OFFICE (513) 460-7222 FAX
<u>CLIENT INFORMATION</u>	
14281 BLISSDALE DR COLUMBUS OHIO 43240 CONTACT: GARY GIBBS PE (714) 908-8001	
CONSULTING TEAM	

[illegible][illegible][illegible]

OPERATOR:  U.S. ARMY CORPS OF ENGINEERS VICKSBURG DISTRICT, MISSISSIPPI			
PLANS PROVIDED BY:  U.S. ARMY CORPS OF ENGINEERS VICKSBURG DISTRICT, MISSISSIPPI			
CONSULTING GROUP:  U.S. ARMY CORPS OF ENGINEERS VICKSBURG DISTRICT, MISSISSIPPI			
SITE INFORMATION: OTAY N. 21° 17' 17" W. E. 107° 17' 17" W.			
CD REVISIONS			
NO.	DATE	DESCRIPTION	BY
9	02/02/17	25% S	JR
10	02/15/17	CD'S	JR
11	02/22/17	CD'S	JR
12	02/28/17	CD'S	JR
13	03/14/17	CD'S	JR
14	03/22/17	CD'S	JR
15	03/24/17	CD'S	JR
16	03/27/17	CD'S	JR
17	03/14/17	CD'S	JR
SEALED PREFABRICATED INFORMATION			
SHEET TITLE: TITLE SHEET			
SHEET NUMBER T-1			



OPERATOR:

PLANS PREPARED BY:

COMMA TWO GROUP:

SITE DESCRIPTION:

OTAY

CD REVISIONS:

NO.	DATE	DESCRIPTION	BY
9	02/02/17	2075	JR
10	02/15/17	075	JR
11	02/22/17	075	JR
12	02/28/17	075	JR
13	03/14/17	075	JR
14	03/22/17	075	JR
15	03/24/17	075	JR
16	03/27/17	075	JR
17	03/14/17	075	JR

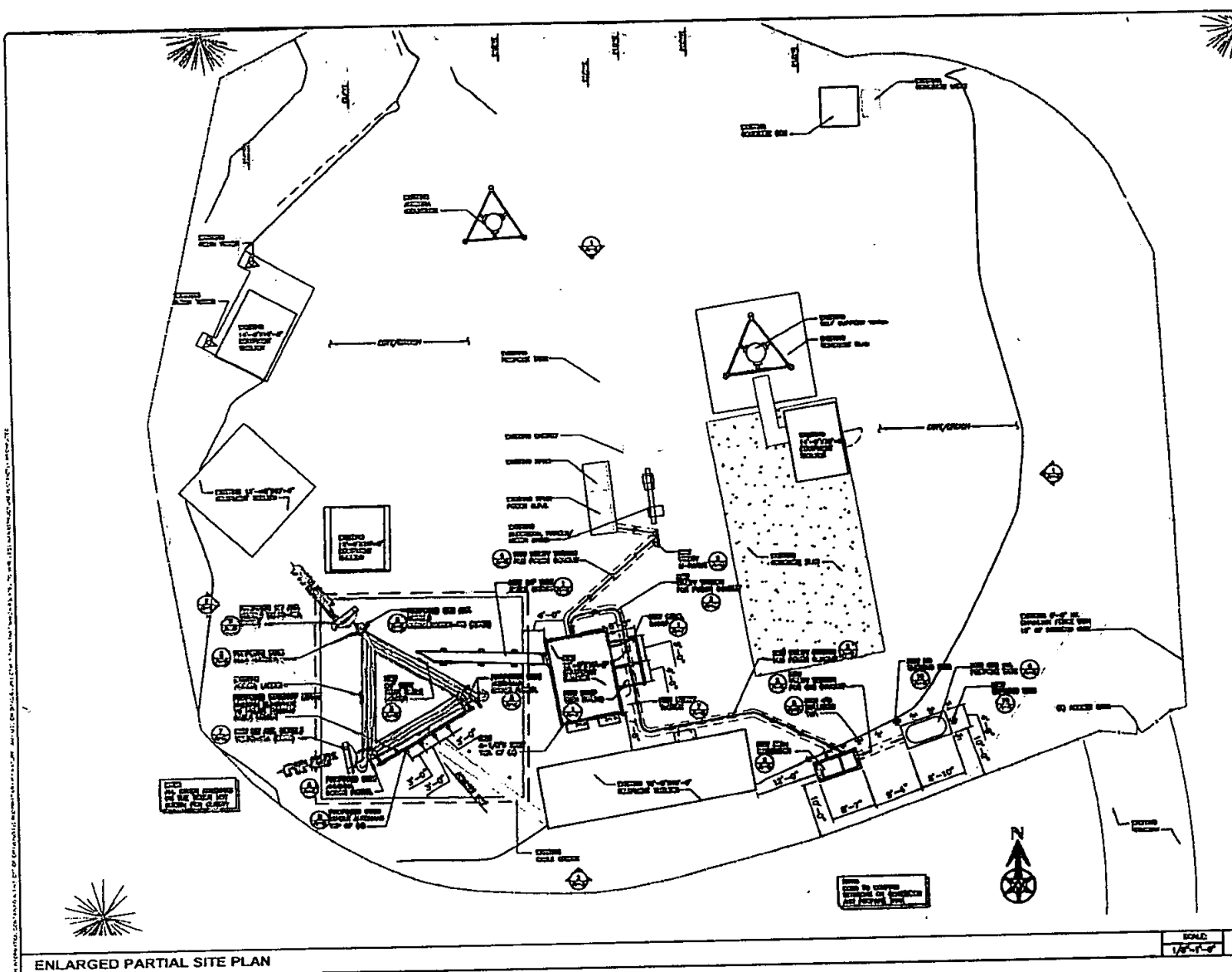
PROPRIETARY INFORMATION

SITE TITLE:

SITE PLAN

SCALE:

A-1



OPERATOR:

PLANS PREPARED BY:

CONSULTING GROUP:

SITE INFORMATION:

OTAY

62 HILL ST.
OTAY, CA 95110

CO REVIEWERS:

NO.	DATE	DESCRIPTION	BY
9	02/02/17	CO'S	JR
10	02/15/17	CO'S	JR
11	02/22/17	CO'S	JR
12	02/28/17	CO'S	JR
13	03/14/17	CO'S	JR
14	03/22/17	CO'S	JR
15	03/24/17	CO'S	JR
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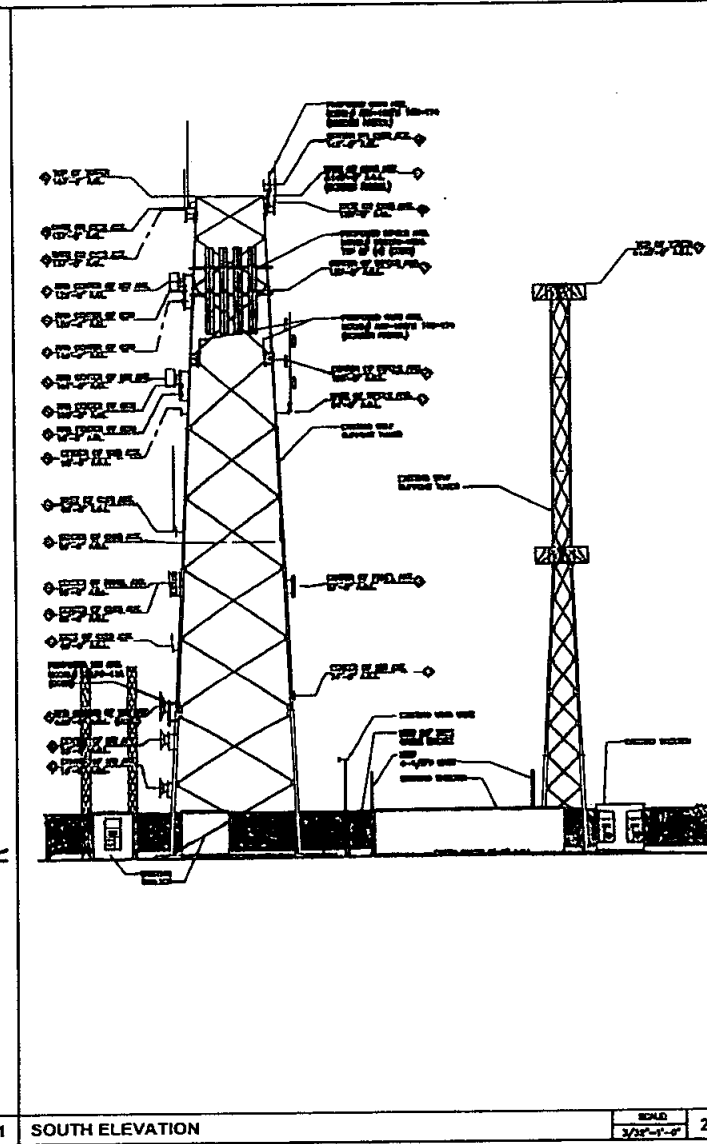
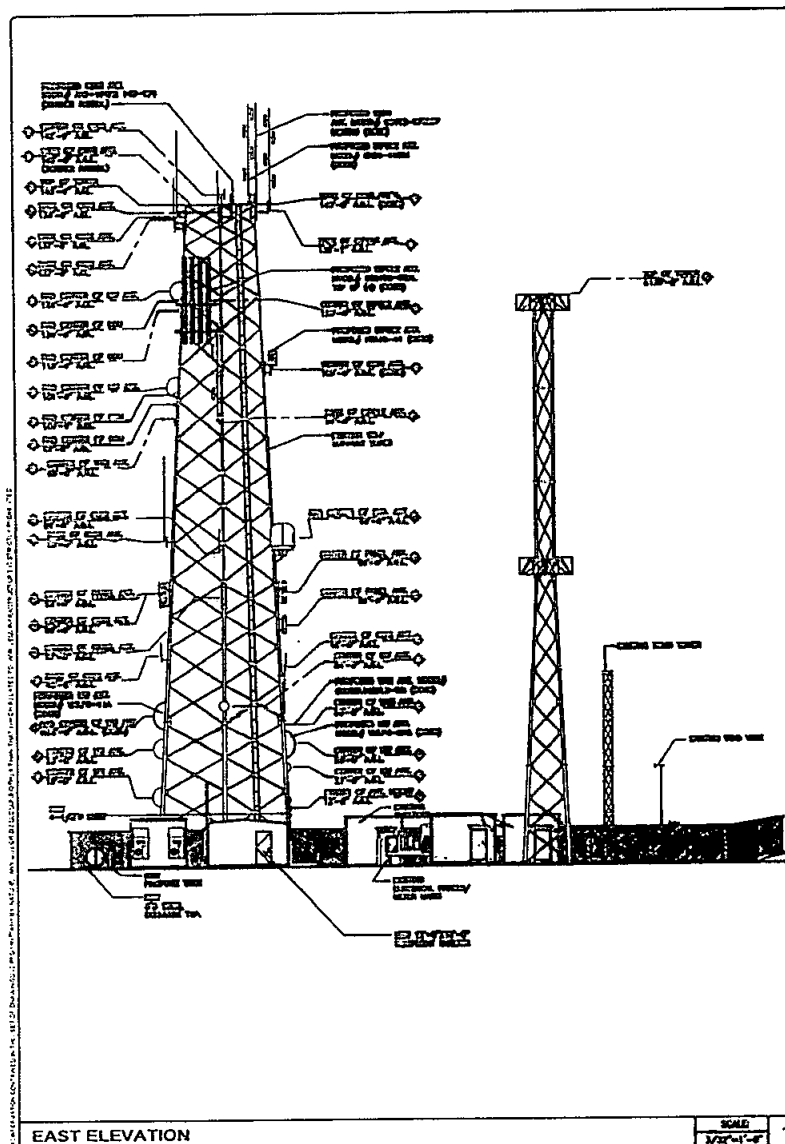
PROPRIETARY INFORMATION:

ENLARGED PARTIAL SITE PLAN

SCALE: 1/8" = 1'-0"

1

A-2



OPERATOR

PLANS PREPARED BY

OTAY

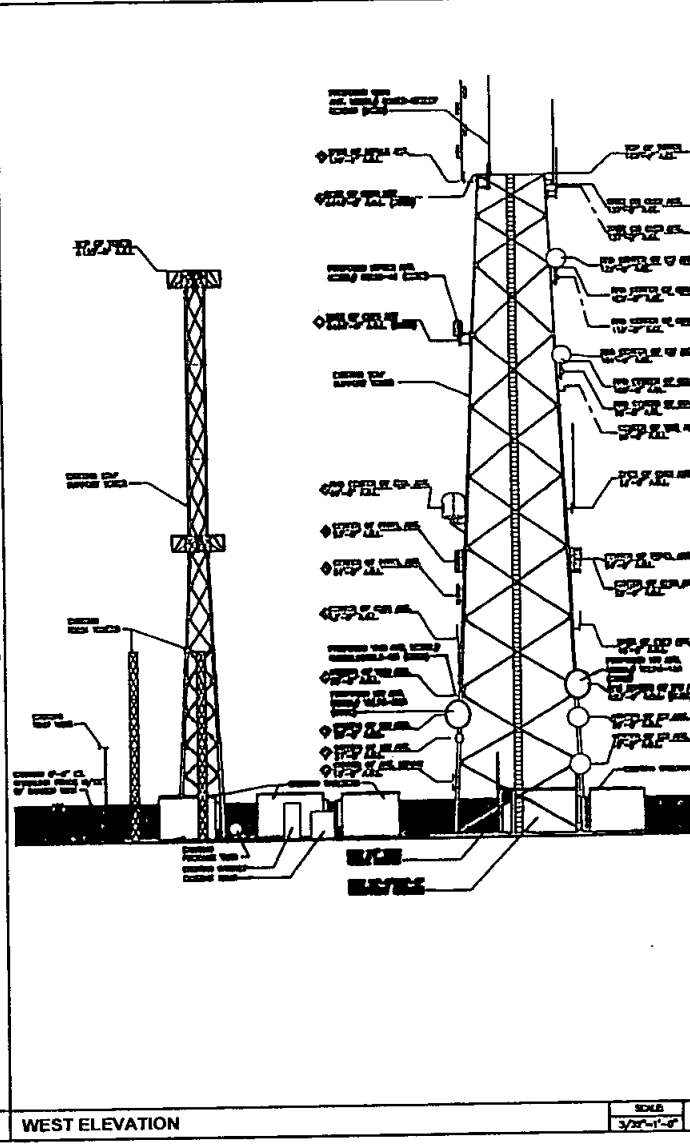
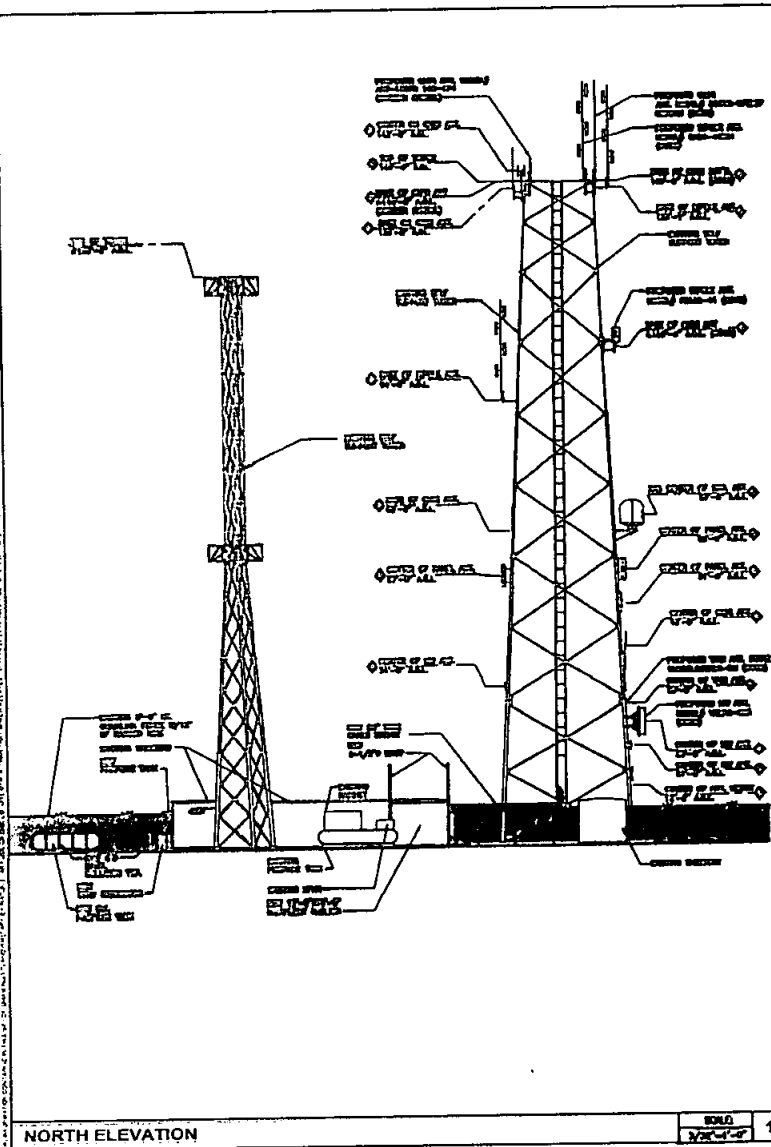
CD REVISIONS

NO.	DATE	DESCRIPTION	BY
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11	02/22/17	CD'S	JR
12	02/28/17	CD'S	JR
13	03/14/17	CD'S	JR
14	03/22/17	CD'S	JR
15	03/24/17	CD'S	JR
16	03/27/17	CD'S	JR
17	03/14/17	CD'S	JR

PROSECUTION INFORMATION

EAST AND SOUTH ELEVATIONS

A-3



OPERATOR:



NOTE: INFORMATION

OTAY

12-00000000
12-00000000

CO REVISIONS:

NO.	DATE	DESCRIPTION	BY
9	02/02/17	CO2	JR
10	02/15/17	CO2	JR
11	02/22/17	CO2	JR
12	02/28/17	CO2	JR
13	03/14/17	CO2	JR
14	03/22/17	CO2	JR
15	03/24/17	CO2	JR
16	03/27/17	CO2	JR
17	03/14/17	CO2	JR

SEAL

PROCESSES OF DEFORMATION

SPECIALTIES:

NORTH AND WEST ELEVATIONS

101576

A-4