THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON OCT 07, 2011
DOCUMENT NUMBER 2011-0527146
Ernest J. Dronenburg, Jr., COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 11:13 AM

Recording Requested by:

San Diego Gas & Electric Company

When recorded, mail to:

San Diego Gas & Electric Company
8335 Century Park Court, CP11D
San Diego, California 92123
Attention: Jeff Sykes

APN: 315-490-04

SPACE ABOVE FOR RECORDER'S USE

THE UNDERSIGNED DECLARES
CONSIDERATION IS LESS THAN
$100 AND TRANSFER TAX IS NONE.

ENCROACHMENT AGREEMENT

This Encroachment Agreement (this "**Agreement**") is made and entered into this 30TH day of SEPTEMBER, 2011 ("**Effective Date**") by SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation, ("**SDG&E**"), and CITY OF SAN DIEGO ("**Owner**")

RECITALS

A. Owner owns in fee certain real property located within the County of San Diego, State of California, Assessor's Parcel Number 315-490-04 (the "**Property**"), as more particularly described in Exhibit A attached hereto and made a part hereof.

B. SDG&E is the owner of an easement and right-of-way (the "**Easement**") for overhead electrical, underground electrical, telecommunications and pipelines and for all other purposes connected therewith ("**Permitted Purposes**"), as set forth in that certain Grant of Easement dated as of July 2, 1980 and recorded on July 3, 1980 in the Official Records of the County of San Diego (SDG&E R/W 45090). The portion of the Property encumbered by the Easement is hereinafter referred to as the "**Easement Area**" as more particularly described on Exhibit B attached hereto and made a part hereof.

C. Owner has constructed, plans to construct or plans to permit the construction by a third party of telecommunications equipment and other improvements associated therewith (collectively, the "**Improvements**") within the Easement Area, as more particularly described on Exhibit C attached hereto and incorporated by reference. The portions of the Easement Area that are or will be subject to such encroachment by Owner (the "**Encroachment Area**") are shown on the map attached hereto as Exhibit D and incorporated by reference.

D. Owner has requested permission from SDG&E to construct, maintain and operate the Improvements within the Easement Area. SDG&E has determined that the Improvements, as specifically described on Exhibit C, do not presently interfere with SDG&E's full use of the Easement Area, and SDG&E is

therefore willing to agree to allow such Improvements to remain within the Easement Area, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and SDG&E hereby agree as follows:

1. Consent to Encroachment. SDG&E hereby consents to the construction, maintenance and operation of the Improvements within the Easement Area, in the manner and location specifically set forth on Exhibits C and D, including all rights of access, ingress and egress over the Easement Area as necessary to fulfill Owner's obligations under this Agreement, in such areas as SDG&E determines, in its sole and absolute discretion, will occasion the least practicable damage and inconvenience to SDG&E, its facilities and operations. Notwithstanding anything herein to the contrary, this consent only extends to the Improvements described on Exhibit C in the locations described on Exhibit D. Owner does not have the right to locate any additional improvements in any other locations within the Easement Area unless specifically agreed to by SDG&E in writing.

2. Termination; Restoration. SDG&E may terminate Owner's rights under this Agreement, at any time, upon ninety (90) days written notice to Owner, if SDG&E, in its sole and absolute discretion, determines that Owner's use of the Easement Area is inconsistent with SDG&E's operational needs or in any way interferes with, impairs or otherwise impedes SDG&E's full use of its facilities installed within the Easement Area or any facilities that SDG&E plans to install in the Easement Area in accordance with the terms of the Easement. Upon such termination by SDG&E, Owner, at Owner's sole cost and expense, shall remove all Improvements that encroach upon the Easement Area and shall repair and restore the Easement Area to its condition immediately prior to the construction of said Improvements. Owner shall pay the entire cost of such removal and restoration, and SDG&E shall have no liability for any costs caused by or related to any such termination, removal or restoration; however, SDG&E agrees to use reasonable efforts to minimize, so far as practicable, any relocation or restoration expenses to be incurred in connection with such termination. If Owner fails to remove all Improvements that encroach onto the Easement Area or fails to repair or restore the Property within said ninety (90) day period, SDG&E may perform such removal, repair or restoration as necessary at Owner's reasonable cost and expense, which Owner shall pay to SDG&E within ninety (90) days of receipt of invoice for same. Owner hereby agrees to allow SDG&E to access the Easement Area for such purpose. Owner further acknowledges that SDG&E's termination rights shall not be affected by any Improvements that Owner has made to the Easement Area, regardless of the nature or extent of those Improvements. Owner understands and agrees that Owner shall not be entitled to any compensation whatsoever for the termination of Owner's rights under this Agreement by SDG&E, independent of the value of Owner's investment in the Improvements or the Easement Area.

3. Indemnification; Release.

(a) Indemnification. Owner shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless SDG&E, its parent corporation, subsidiaries and affiliates, and their respective officers, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an **"Indemnitee"** and collectively, **"Indemnitees"**) from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts' fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or

nature (collectively, "**Claims**"), arising from or in any way connected with the occupancy or use of the Easement Area by Owner or Owner's contractors, agents, or invitees, or the exercise by Owner of its rights hereunder, or the performance of, or failure to perform, Owner's duties under this Agreement, including, but not limited to, Claims arising out of: (1) injury to or death of persons, including but not limited to employees of SDG&E; (2) injury to property or other interest of SDG&E, Owner or any third party; and (3) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all legal requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; excepting only with respect to any Indemnitee, any Claim arising from the sole, active negligence or willful misconduct of such Indemnitee. In the event any action or proceeding is brought against any Indemnitee for any Claim against which Owner is obligated to indemnify or provide a defense hereunder, Owner upon written notice from SDG&E shall defend such action or proceeding at Owner's sole expense by counsel approved by SDG&E, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Release. Owner accepts all risks relating to its occupancy and use of the Easement Area. SDG&E shall not be liable to Owner for, and Owner hereby waives, releases, exonerates, discharges and covenants not to sue SDG&E and the other Indemnitees from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to any occurrence on or about the Easement Area, the condition of the Easement Area, the use or occupancy of the Easement Area by Owner, or SDG&E's operation and maintenance of SDG&E's facilities in the Easement Area, excepting only with respect to any Indemnitee, any injury, damage, or loss arising from the sole, active negligence or willful misconduct of such Indemnitee.

4. Compliance with Laws. Owner shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, including but not limited to the conditions of any permit relating to Owner's use or occupancy of the Easement Area.

5. Alterations. Except for the Improvements authorized pursuant to this Agreement, Owner shall not construct any additional buildings or structures on the Easement Area, nor shall Owner make any alteration, addition or improvement to the Easement Area that would increase the Encroachment Area, either horizontally or vertically. Owner shall not drill, bore or excavate on the Easement Area except in connection with the removal of the Improvements as required by this Agreement.

6. Damage or Destruction. In the event that the Improvements which encroach onto the Easement Area are destroyed or demolished, Owner shall not rebuild the Improvements on any part of the Easement Area except pursuant to plans and specifications approved by SDG&E in writing in a separate document.

7. Condition of Easement Area. Owner accepts the Easement Area in its existing physical condition, without warranty by SDG&E or any duty or obligation on the part of SDG&E to maintain the Easement Area. Owner understands that numerous hazards, environmental or otherwise, may be located in, on, or underlying the Easement Area, and that hazardous materials may be used in connection with SDG&E facilities that may be operated in the Easement Area, and agrees that entry onto the Easement Area is at Owner's sole risk and expense.

8. Maintenance. Owner shall be responsible for the maintenance of the Improvements in good order, condition and repair, and Owner shall coordinate all activities regarding the maintenance of the Improvements to reasonably minimize any interference with the use by SDG&E of the Easement Area, and Owner shall conduct its activities in such a manner so as not to endanger the Easement, the environment and human health and safety. Owner shall be responsible for remediation of any hazardous materials release caused by Owner, and to clean and remove debris and or promptly repair any damages to the Easement Area following any entry or activity by Owner, returning the Easement Area to a like or better condition.

9. Reserved Rights. SDG&E reserves the right to use the Easement Area for such purposes as it may deem necessary or appropriate if, and whenever, in the interest of its service to its patrons or consumers or the public, it shall appear necessary or desirable to do so. Furthermore, SDG&E reserves the right to access to the Easement Area if emergency repairs or maintenance are required to SDG&E facilities in the vicinity of the Easement Area

10. Insurance. Prior to the Effective Date, Owner shall procure, and thereafter Owner shall carry and maintain in effect at all times during the term of this Agreement the following insurance: Worker's Compensation in compliance with applicable labor codes, acts, laws or statutes, state or federal; Employer's Liability with limits of not less than $1,000,000 for injury or death, each accident; Commercial General Liability for bodily injury and property damage with limits of not less than $2,000,000 each occurrence and $5,000,000 in the aggregate; and Business Automobile with a combined single limit of not less than $2,000,000 each accident. Owner is also responsible for causing its agents, contractors and subcontractors to comply with these insurance requirements whenever working on Owner's behalf within the Easement Area. Notwithstanding anything to the contrary set forth in this Section 10, SDG&E acknowledges that Owner is currently self-insured for its public liability insurance. Owner's Risk Management Department, upon request, will provide SDG&E with proof of self insurance coverage that shall be kept in force at all times during the term of this Agreement.

11. Notice. Any notices or communications hereunder shall be in writing and shall be personally delivered or sent by first class mail, certified or registered, postage prepaid, or sent by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee party at its address or addresses listed below, or to such other address or addresses for a party as such party may from time to time designate by notice given to the other party. Notices shall be deemed received, if sent by personal delivery upon actual receipt by the party being sent the notice, or on the expiration of three (3) business days after the date of mailing, or on the following business day if sent by overnight courier:

If to SDG&E:

San Diego Gas and Electric Company
Land Services Department
8335 Century Park CT CP11D
San Diego, CA 92123
Telephone: 858-654-1235
Facsimile: 858-654-1263
E-mail: LandServices@semprautilities.com

If to Owner:

City of San Diego
Director, Real Estate Assets
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Telephone: 619-236-6020
Facsimile: 619-236-6706
E-mail: jbarwick@sandiego.gov

12. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California. Venue for resolution of all disputes shall be in the Superior Court for the County of San Diego.

13. Entire Agreement. This Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by the parties.

14. Binding Effect. This Agreement and the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns (subject to the provisions of Section 15 below). No assignment or delegation by Owner, whether by operation of law or otherwise, shall relieve Owner of any of its duties, obligations or liabilities hereunder, in whole or in part. The covenants of Owner hereunder shall run with the land.

15. Assignment. This Agreement and the rights of Owner hereunder are appurtenant to the Property presently owned by Owner and may not be separately assigned, transferred, conveyed or encumbered. Any purported assignment, transfer, conveyance or encumbrance violating the foregoing condition shall be void and of no effect.

16. Attorneys' Fees. Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains a judgment in its favor

17. Survival of Obligations. Owner's obligations under Sections 2 and 3 of this Agreement, and all representations, warranties, indemnifications or other provisions which by their nature survive termination shall survive the exercise of SDG&E's termination rights pursuant to Section 2 of this Agreement.

18. No Waiver. No waiver with respect to any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. No waiver of any provision of this Agreement by a party shall be construed as a waiver of my subsequent breach or failure of the same term or condition, or as a waiver of any other provision of this Agreement

19. Captions. The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

20. Counterparts. This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

21. Recording. Owners hereby consent and agree to the recording by SDG&E of this Agreement against the Property. Owner agrees to sign any additional documents reasonably required to complete such recording.

22. Ratification of Easement. Except as modified by this Agreement in regard to the Property, all of the terms, conditions and provisions of the Easement shall remain in full force and effect and are hereby ratified and confirmed. To the extent the terms of the Easement are inconsistent with this Agreement, the terms of this Agreement shall control.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SAN DIEGO GAS AND ELECTRIC COMPANY,
a California corporation

By: _____

Jeff Sykes
Land Management Supervisor

CITY OF SAN DIEGO

By: _____

David A. Sandoval, CCIM
Deputy Director
Real Estate Assets

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

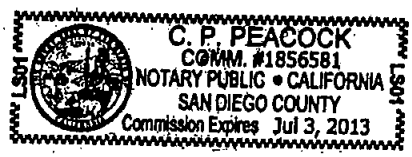
On September 30, 2011 before me C. P. Peacock, Notary Public, personally appeared Jeff Sykes, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

C. P. Peacock

C. P. Peacock, Notary Public



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of SAN DIEGO

On SEPT 28, 2011 (Date) before me, DAVID C. MARTENS (Here Insert Name and Title of the Officer),
personally appeared DAVID A SANDOVAL (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

DAVID C. MARTENS
Commission # 1823504
Notary Public - California
San Diego County
My Comm. Expires Nov 22, 2012

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature David C Martens, NOTARY (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ENCROACHMENT AGREEMENT

Document Date: _____ Number of Pages: 11

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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Exhibit "A"

All that portion of the Southeast Quarter of the Southeast Quarter of Section 13, Township 14 South, Range 3 West, San Bernardino Meridian, according to Official Plat thereof and that portion of Rancho De Los Penasquitos, in the City of San Diego, County of San Diego, State of California, according to the Map accompanying the Patent to said Rancho, recorded in the office of the County Recorder of said County in Book 2, Page 385 of Patents, together with that portion of former Ossuna Canon Road, according to Old Survey No. 3 and portion of existing traveled way commonly known as Black Mountain Road, vacated and closed to public use, described as follows:

Commencing at the Southeast corner of said Section 13, being also Corner No. 13 of said Rancho Penasquitos as shown on Record of Survey No. 6204 on file in the office of the County Recorder of San Diego County; thence along the Northerly line of said Rancho being also the Northerly line of that certain 150.00 foot easement granted to San Diego Gas & Electric Company, recorded October 8, 1959 as Recorder's File No. 208395 in Book 7924, Page 370 of Official Records South 86° 31' 28" West 1014.32 feet to the TRUE POINT OF BEGINNING; thence continuing along the Northerly line South 86° 31' 28" West 322.71 feet to the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section; thence leaving said Northerly line North 58° 49' 36" East 2527.55 feet; thence South 86° 22' 06" East 974.45 feet; thence North 68° 32' 24" East 3439.96 feet; thence North 72° 30' 49" East 853.68 feet; thence South 77° 30' 41" East 1134.78 feet to a point on the Northerly line of that previously mentioned 150.00 foot easement to SDG&E recorded as File No. 208395 October 8, 1959; thence along said Northerly line South 70° 37' 24" West 284.13 feet; thence leaving said Northerly line North 77° 30' 41" West 859.31 feet; thence South 72° 30' 49" West 808.32 feet; thence South 68° 32' 24" West 3468.14 feet; thence North 86° 22' 06" West 960.82 feet; thence South 58° 49' 36" West 2194.80 feet to the TRUE POINT OF BEGINNING.

Exhibit "B"

The property in which said easement and right of way is hereby granted is situated in the County of San Diego, State of California, and is more particularly described as follows, to-wit:

All that portion of the Southeast Quarter of the Southeast Quarter of Section 13, Township 14 South, Range 3 West, San Bernardino Meridian, according to Official Plat thereof and that portion of Rancho De Los Penasquitos, in the City of San Diego, County of San Diego, State of California, according to the Map accompanying the Patent to said Rancho, recorded in the office of the County Recorder of said County in Book 2, Page 385 of Patents, together with that portion of former Ossuna Canon Road, according to Old Survey No. 3 and portion of existing traveled way commonly known as Black Mountain Road, vacated and closed to public use, described as follows:

Commencing at the Southeast corner of said Section 13, being also Corner No. 13 of said Rancho Penasquitos as shown on Record of Survey No. 6204 on file in the office of the County Recorder of San Diego County; thence along the Northerly line of said Rancho being also the Northerly line of that certain 150.00 foot easement granted to San Diego Gas & Electric Company, recorded October 8, 1959 as Recorder's File No. 208395 in Book 7924, Page 370 of Official Records South 86° 31' 28" West 1014.32 feet to the TRUE POINT OF BEGINNING; thence continuing along the Northerly line South 86° 31' 28" West 322.71 feet to the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section; thence leaving said Northerly line North 58° 49' 36" East 2527.55 feet; thence South 86° 22' 06" East 974.45 feet; thence North 68° 32' 24" East 3439.96 feet; thence North 72° 30' 49" East 853.68 feet; thence South 77° 30' 41" East 1134.78 feet to a point on the Northerly line of that previously mentioned 150.00 foot easement to SDG&E recorded as File No. 208395 October 8, 1959; thence along said Northerly line South 70° 37' 24" West 284.13 feet; thence leaving said Northerly line North 77° 30' 41" West 853.31 feet; thence South 72° 30' 49" West 808.32 feet; thence South 68° 32' 24" West 3468.14 feet; thence North 86° 22' 06" West 960.82 feet; thence South 58° 49' 36" West 2194.80 feet to the TRUE POINT OF BEGINNING.

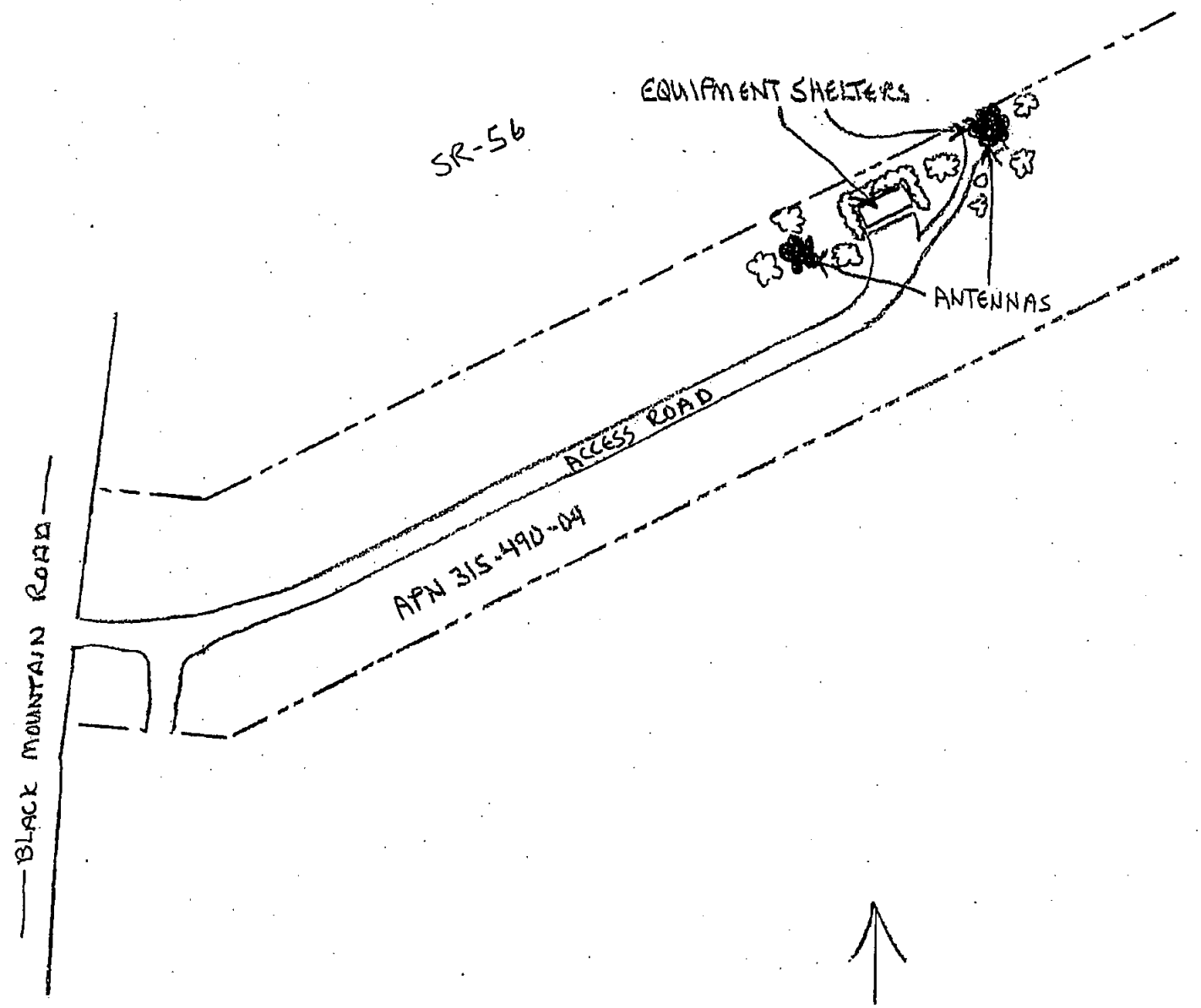
The said easement and right of way in the aforesaid land shall be more particularly described as follows:

The above described land.

Exhibit "C"

Improvements

Installation of two cellular antenna sites each with faux tree/antenna, equipment shelter, utility connections, fencing and appurtenances.



CONST. NO.:

PROJECT NO.:

THOS. BROS.:

PROJECT NAME & LOCATION	DRAWN BY: JLS	OK TO INSTALL:	DRAWING NO:
CITY OF SAN DIEGO ENCROACHMENT AGREEMENT	DATE: 7/19/11	R/W OK:	
	SCALE: NONE	JOB TYPE:	COORDINATES
	REFERENCES:		

Exhibit 'D'