

PERMIT

THIS PERMIT ("permit") is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and PACIFIC BELL, a corporation, hereinafter called "COMPANY." CITY hereby grants permission to COMPANY and COMPANY accepts permission from CITY for the purpose of installing, operating, and maintaining underground telephone facilities and appurtenances within a strictly confined ten (10)-foot-wide strip of land ("permit area"), more particularly described as follows:

Those portions of Pueblo Lots 1318 and 1319 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to map thereof made by James Pascoe in 1870 and filed for record on November 14, 1921, as Miscellaneous Map No. 36, in the Office of the County Recorder of San Diego County, lying Easterly of and coincident with the Easterly right-of-way line of State of California Interstate 11-SD-805 and Northerly of and coincident with the Northerly right-of-way line of Eastgate Mall.

The above-described telephone facilities shall be located within a strip of land ten (10.00) feet in width in said property, the centerline of which is described as follows:

Beginning at the intersection of the Easterly right-of-way line of said State of California Interstate 11-SD-805 and the Northerly right-of-way line of Eastgate Mall; thence North $74^{\circ}01'39''$ East, 5.04 feet to the TRUE POINT OF BEGINNING; thence North $08^{\circ}33'34''$ West, 482.74 feet to the beginning of a curve concave Westerly having a radius of 100.00 feet; thence Northerly along said curve through a central angle of $07^{\circ}24'50''$, 12.94 feet; thence North $15^{\circ}58'24''$ West, 1,352.61 feet to the beginning of a curve concave Westerly having a radius of 100.00 feet; thence Northerly along said curve through a central angle of $18^{\circ}14'20''$, 31.83 feet; thence North $02^{\circ}15'56''$ East, 16.00 feet to the Point of Termination.

Subject to the following terms and conditions:

1. TERM OF PERMIT

The term of this permit shall be ten (10) years commencing on the first day of the calendar month following the date of execution hereof by CITY. This permit may

DOCUMENT NO. RE-292128
SEP 14 1999

DUPLICATE

FILED
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

be terminated by CITY or COMPANY without cause upon ninety (90) days advance written notice to the other party.

2. CONSIDERATION

Consideration to CITY for granting this permit shall be a \$360 nonrefundable processing fee and a \$1,425.00 yearly permit fee commencing on the effective date hereof. Permit fees are payable at the office of the City Treasurer yearly in advance on or before the anniversary of the commencement date. The first and last years' permit fees will be prorated as necessary to achieve payment on the first of the month. Payments postmarked or paid in person after the first of the month will be subject to a 5 percent late charge if 1 to 15 days past due, and to an additional 5 percent late charge if 16 or more days past due.

Beginning with the second year of this permit, the permit fee will be adjusted annually as of the anniversary of the commencement date to reflect any increase in the Consumer Price Index during the preceding year. The index used will be the CPI for "All Urban Consumers" for the Los Angeles/Anaheim/Riverside area. COMPANY will continue paying the permit fee at the existing rate until notified of the new rate by CITY. COMPANY will then promptly remit the difference between the permit fees paid at the old rate and those due at the new rate. In no event shall the adjusted permit fee as established by the CPI be less than the permit fee in existence immediately prior to the adjustment date.

3. SELF-INSURANCE

COMPANY certifies that it is currently self-insured against public liability and property damage claims in the amount of not less than \$1 million combined single limit liability per occurrence, and that adequate self-insurance will be maintained throughout the term hereof to the satisfaction of CITY.

4. INDEMNITY

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

5. CITY PERMITTED TO USE SURFACE, SUBSURFACE, AND AIRSPACE

CITY reserves the right to use and allow the use of the surface, subsurface, and airspace over, under, and about the permit area for installation of such improvements as it shall now or in the future deem necessary; provided that said use or grant shall not interfere with or be in any manner inconsistent with COMPANY'S use of the permit area. CITY shall notify COMPANY in writing of the nature of the contemplated additional use or grant at least thirty (30) days prior to the date when said rights are to be exercised, and in the event that COMPANY objects to CITY'S proposed use or grant of the permit area, CITY and COMPANY shall endeavor in good faith to settle, adjust, and compromise such objection.

6. COMPANY PERMITTED TO KEEP PERMIT AREA CLEAR

COMPANY shall have the following rights when necessary for the operation of the permit area: (a) trim or top and keep trimmed or topped, or remove, upon prior written permission from the City Manager, any and all trees situated within the permit area; (b) clear and keep clear all brush and other material situated within the permit area; and (c) cut such roots within the permit area as necessary for the protection of any improvements located therein by COMPANY; provided, however, that COMPANY shall not by its activities hereunder cause the demise of any trees or any damage to adjacent property.

7. RESTORATION OF PERMIT AREA

Upon expiration or earlier termination by either party of this permit, COMPANY agrees to vacate the permit area and remove, within a reasonable time thereafter, any and all installations made by it pursuant to this permit, and to restore the permit area to the same or as good condition as that which existed prior to granting this permit. Such removal and restoration shall be effected to the satisfaction of the City Manager. All costs and damages directly and/or indirectly resulting from the removal and restoration of the permit area shall be borne in full by COMPANY. COMPANY shall furnish CITY on demand a good and sufficient quitclaim deed of all its rights, title, and interest in the permit area.

8. ASSIGNMENT

COMPANY shall not assign any rights granted by this permit nor any interest therein without the prior written approval of the City Manager of CITY. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this permit.

9. ASSUMPTION OF RISK

All risks in connection with COMPANY'S use of the permit area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by COMPANY.

10. NONDISTURBANCE

COMPANY shall not use the permit area in any manner which, in the opinion of the City Manager of CITY, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.

11. COMPLIANCE WITH LAW

COMPANY shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the permit area.

12. NONDISCRIMINATION

COMPANY 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 COMPANY'S use of the permit area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

13. TAXES

COMPANY recognizes and understands that this permit may create a possessory interest subject to property taxation and that COMPANY may be subject to the payment of property taxes levied on such interest. COMPANY further agrees that such tax payment shall not reduce any fee paid to CITY hereunder and that such tax shall be paid by COMPANY before becoming delinquent.

14. SUPERSEDURE

It is mutually agreed that this permit, upon its effective date, supersedes and annuls that certain permit executed on October 27, 1980, with The Pacific Telephone and Telegraph Company, City Clerk Document 00-15371, which is hereafter void and of no effect except as to any permit fees which may have accrued or any rights and remedies accrued or granted to CITY under such permit.

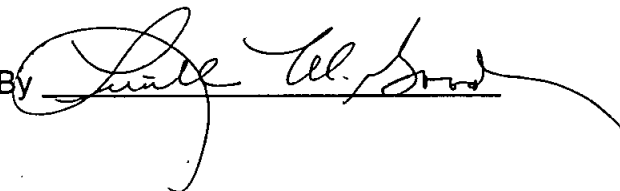
15. ENVIRONMENTAL CLEARANCE

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

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

THE CITY OF SAN DIEGO

Date 7-12-99

By 

PACIFIC BELL

Date June 29, 1999

By 
M. B. Dehesa
Right of Way Administrator
By _____

APPROVED as to form and legality this 27th day of September, 1999

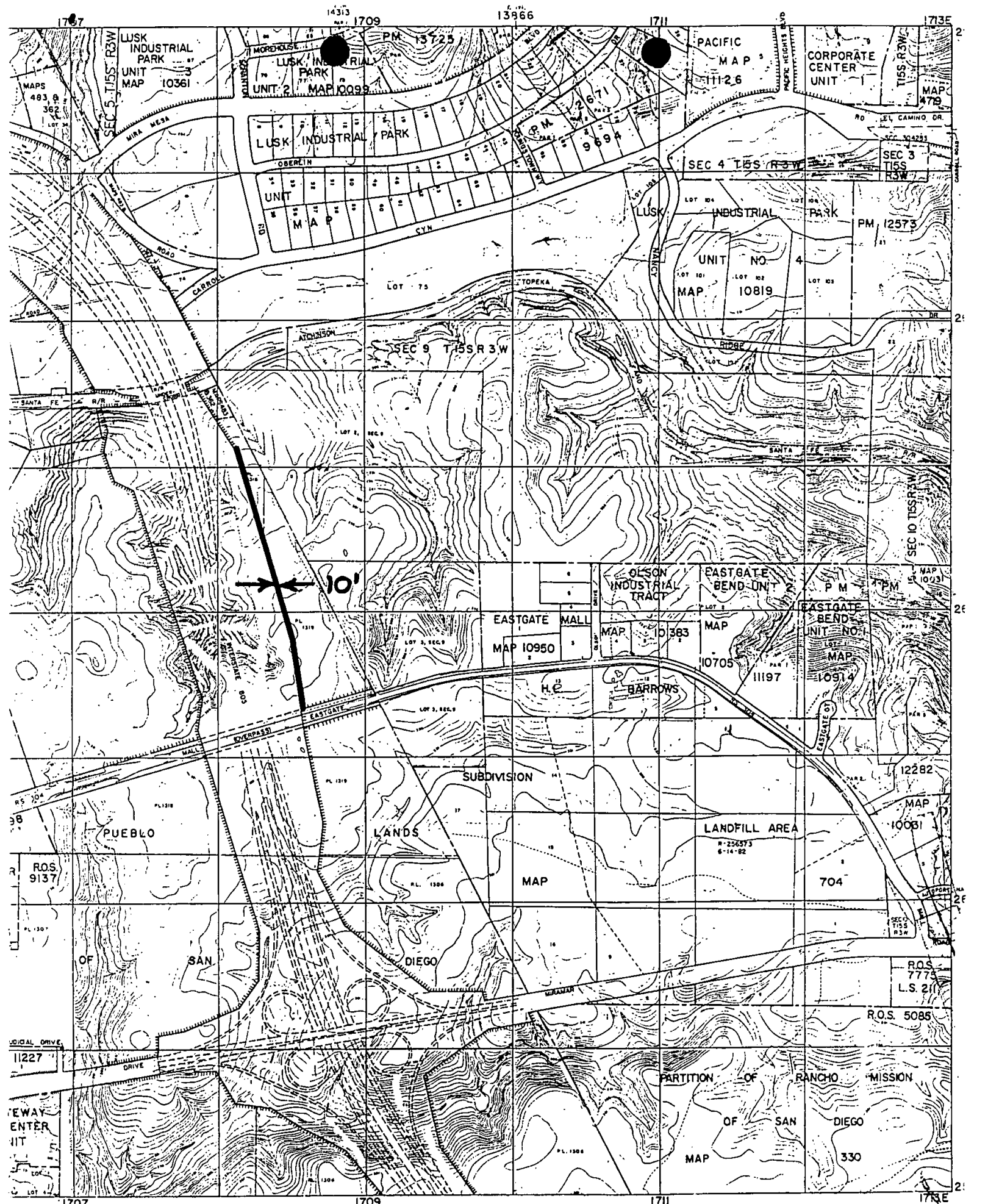
CASEY GWINN, City Attorney

By 
Deputy City Attorney

PTC:csn-j

6/10/99

I:\WPO\1999\CRAWFORD\PE-PACBE.LL



SAN DIEGO, CALIFORNIA

SCALE 1 INCH=400 FEET
 1000 IS MEAN SEA LEVEL

LOCATION MAP

	256-1701	
258-1689		258-1713

258-1701

RESOLUTION NUMBER R- **292128**

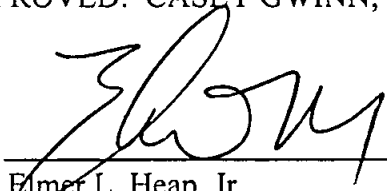
ADOPTED ON SEP 14 1999

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego, a 10-year permit agreement with Pacific Bell, a corporation, for underground telephone cables in City-owned portions of Pueblo Lots 1318 and 1319 located on the east side of Interstate 805 between Eastgate Mall and Carroll Canyon Road, at an initial annual permit fee of \$1,425, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- **292128**

APPROVED: CASEY GWINN, City Attorney

By


Elmer L. Heap, Jr.
Deputy City Attorney

PD:ELH:cdk:smf
08/12/99
08/25/99 COR. COPY
Or.Dept:REA
Aud.Cert:N/A
R-2000-190
Form=leaser.frm

Passed and adopted by the Council of the City of San Diego on SEP 14 1999 by
the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS, MCCARTY,

VARGAS, MAYOR GOLDING.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

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

(SEAL)

By: PEGGY ROGERS

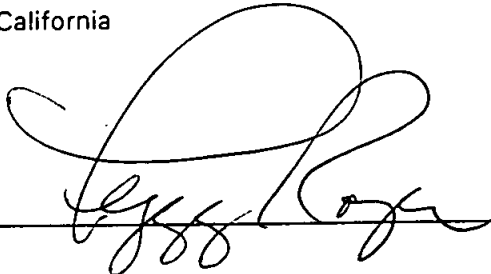
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
No. R- 292128, passed and adopted by the Council of The City of San Diego, California
on SEP 14 1999

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: 

Deputy