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**THE CITY OF SAN DIEGO
AND
COUNTY OF SAN DIEGO**



SAN DIEGO GAS & ELECTRIC

**at
Cowles Mountain**

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Communication Flat Rate Lease

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**CITY OF SAN DIEGO
COMMUNICATION FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO (CITY), a municipal corporation, and the COUNTY OF SAN DIEGO (COUNTY), which own the demised property as tenants in common, hereinafter collectively called "LANDLORD," and SAN DIEGO GAS AND ELECTRIC COMPANY, a public corporation, hereinafter called "LESSEE".

SECTION 1: USES

- 1.1 Premises. All that certain real property situated in the City of San Diego, County of San Diego, State of California, known as "Cowles Mountain" and more particularly described in Exhibit "A", *Legal Description of Site*, attached hereto and by this reference made part of this Lease, shall hereinafter be referred to as the "Site." Landlord hereby leases to LESSEE and LESSEE leases from LANDLORD that certain portion of the Site, described in Exhibit "B", *Description of Leased Premises*, attached hereto and by this reference made part of this Lease, which portion shall hereinafter be called the "Premises". LESSEE, its agents, employees, contractors, guests and invitees may use the existing access road shown on the attached Exhibit "B" for vehicular or foot access on a 24-hour nonexclusive basis.
- 1.2 Uses. It is expressly agreed that the Premises are leased to LESSEE, on a non-exclusive basis, for the sole purposes of installing, constructing, modifying, maintaining, operating, and removing, at its expense, a communications facility on the Premises, including, without limitation, antenna equipment, cable wiring, utility lines, transmission lines, air conditioned equipment shelters, back-up power sources that may include, with proper permits obtained, back-up power generators with connected fuel storage tanks for emergency back-up power, related fixtures and, if applicable to the Premises, an antenna structure or structures ("Communications Equipment"). LESSEE may operate its Communications Equipment and engage in any other incidental activities or activities relating thereto as may be permitted by applicable law in accordance with Exhibits "B" and "C," *Equipment*, hereof. LESSEE shall have the right to replace or repair the Communications Equipment or any portion thereof, pursuant to sections 6.3 and 6.4 herein.

- 1.3 Interference. Prior to the execution of this new radio/electronic use authorization or modification of an existing authorization, an intermodulation report shall be provided to the LANDLORD. This report shall include the calculation parameters used to compile the report, all intermodulation "hits", and a brief description of the results of the intermodulation calculations including a list of possible interference situations that may result from the proposed equipment.

The information required to compile this report, including intermodulation parameters and currently known on site transmit frequencies may be obtained from the CITY Communications Division. The LANDLORD is not responsible for any omitted transmitter data provided for the purpose of creating this report.

CITY OF SAN DIEGO LAND USE "ON THE AIR" TEST INSTRUCTIONS AND PROCEDURES - Once the required intermodulation report has been provided, on premises, pre-installation or pre-use tests may be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses at the Site.

Should such interference problems result, it shall be the responsibility of the new user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves: if the interference can be mitigated.

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

a. Pre-installation or pre-use Testing

- (1) It will be the responsibility of LESSEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

- (a) A listing of all radio/electronic land use Permittees/Lesseees operating at the facility will be obtained from the CITY.

- (2) It will be the responsibility of the LESSEE to notify all radio/electronic Permittees/Lessees at the Site of the tests and details thereof, at least 14 days in advance of the tests.
- (a) The notification shall be in the form of letter to each listed Permittee/Lessee giving a technical data summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the Permittees/Lessees to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the Permittee/Lessee. Technical Data Summary and Test Results Certification sheets are attached as Exhibit "D".
 - (b) A copy of these instructions, "City of San Diego Radio/Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be so noted in the notification letter.
 - (c) Notification to Permittees/Lessees shall be sent via U.S. Mail, pre-paid First-Class postage, return receipt requested or hand delivered.
 - (d) The notification letter to the City Communications Engineer shall include a list of all Permittees/Lessees notified.
- (3) It will be the Permittee/Lessee's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each Permittee/Lessee participating in the test and a list of those Permittees/Lessees who did not respond.
- (4) In the event a notified Permittee/Lessee fails to send a qualified representative to observe and participate in the tests, it will be assumed by the LANDLORD that the Permittee/Lessee has assured themselves that their operations will not be affected.

b. On-The-Air Tests - Technical Details

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

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

c. Radio Frequency Interference to LANDLORD Radio Equipment

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

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

d. Modifications to Equipment

Modifications to transmitting equipment that will change Effective Radiated Power, Transmitter Frequency, Transmitter Modulation, or Transmitter Spurious and Harmonic Emissions may require retest using this "On The Air" testing procedure and the newly proposed equipment.

1.4 Related City Council or County Board of Supervisors Actions. By the granting of this Lease, neither CITY nor Its City Council, nor COUNTY nor its Board of

Supervisors is making any representations or obligations on behalf of any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required for the development and operation of the Premises.

- 1.5 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the Premises. If LANDLORD for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the term, or if during the Lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY, then and in either of such events, LANDLORD shall not be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the LANDLORD a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises, provided however, that in the event the period of dispossession exceeds thirty (30) consecutive days, then LESSEE shall have the right, at its sole option, to terminate this lease upon ten (10) days written notice to LANDLORD.

1.6 Reservations.

- a. LANDLORD hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. LANDLORD reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares or access as it deems advisable for the public good, subject to paragraph 1.5 herein.

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

- 1.7 Competent Management. Throughout the term of this Lease, LESSEE shall provide competent management of the Premises to the reasonable satisfaction of the LANDLORD. For the purposes of this paragraph, "competent management"

shall mean demonstrated ability in the management and operation of a communication facility and related activities in a fiscally responsible manner in accordance with industry standards.

- 1.8. Co-location. Where Premises are a shared site LESSEE shall not access any LANDLORD facility or LANDLORD's Communications Equipment, including any towers, without the consent of the LANDLORD.

SECTION 2: TERM

- 2.1 Commencement. The term of this Lease shall be ten (10) years commencing on the first day of the calendar month following execution of this Lease by the LANDLORD or his/her designee ("Commencement Date"). "Lease year" as used in this Lease shall mean the 12-month period commencing on the Commencement Date and each subsequent 12-month period thereafter. Provided that LESSEE is not in default of this Lease, LESSEE has an option for four (4) additional terms of five (5) years for each renewal term subject to Paragraph 3.2b. herein. This Lease shall automatically be renewed for the successive Renewal Term unless LESSEE notifies LANDLORD in writing of its intention not to renew at least 90 days prior to commencement of the succeeding Renewal Term.

2.2 Termination.

- a. LESSEE may terminate this Lease at any time by providing 10 days prior written notice to LANDLORD without further liability if LESSEE does not obtain all permits or other approvals (collectively, "Approval") required from any governmental authority or any easements required from any third party to operate the Communication Equipment, or if any such Approval is canceled, expires or is withdrawn or terminated by any governmental authority or any third party, or if LANDLORD fails to have proper ownership of the Site or authority to enter into this Lease.
- b. LESSEE may terminate this Lease pursuant to the provisions of paragraph 1.5.
- c. LESSEE may terminate this Lease by providing 60 days prior written notice to LANDLORD if LESSEE, for any other reason, in its sole discretion, determines that it will be unable to use the Premises provided that LESSEE pays LANDLORD a termination fee equal to twelve (12) months' rent at the rental rate in effect at the time of such notice and such fee is paid prior to the termination of this Lease.

- d. Upon termination, LANDLORD will retain all prepaid rent, fees, and other payments unless such termination is due to LANDLORD's material default.

2.3 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this Lease shall constitute a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, LANDLORD shall have the right to an increase in rent to bring the rent to fair market value and to terminate the holdover tenancy on thirty (30) days notice. The fair market value of rent under this provision shall be determined by the LANDLORD in good faith. Notice of any such increase in rent shall be given in writing at least thirty (30) days prior to becoming effective, in the form of a "Notice of Increase in Rent or, In the Alternative, Termination of Lease," which will trigger the 30-day termination provision in the event that LESSEE is unwilling to accept the proposed rent increase.

2.4 Quitclaim and Surrender of LESSEE's Interest. On the expiration or earlier termination of this Lease, LESSEE shall deliver to LANDLORD a Quitclaim Deed in recordable form quitclaiming all rights in and to the Premises.

At the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to LANDLORD free and clear of all liens and encumbrances arising from or related to LESSEE'S use, except those liens and encumbrances that existed on the date of execution hereof, and in substantially the same condition as on the Commencement Date, ordinary wear, tear, and casualty loss not caused by LESSEE excepted. In the case of termination of this Lease by LANDLORD prior to the end of the specified Lease term, any liens and encumbrances must be approved in writing by the LANDLORD.

SECTION 3: RENT

3.1 Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by LANDLORD upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Rent Amount. Initial rent to the LANDLORD will be Four Thousand, Two Hundred and Twenty Five Dollars (\$4,225) per month.

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

- b. Rent Adjustment. At least six (6) months prior to the end of the 5th year of the term of this Lease, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust LESSEE's rent to be paid LANDLORD effective upon the first day of the succeeding five-year period. Said adjustment will be made to the degree necessary to provide a fair rental to LANDLORD as determined by the LANDLORD and LESSEE, taking into consideration the criteria set forth in Section 3.2c. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said five-year period, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- c. Fair Market Value Adjustments. At the end of the 5th year following the Commencement Date of this Lease, the rent for the ensuing 5 years, subject to the aforesaid adjustments, shall be determined by an appraisal of the Premises as of the adjustment date by a qualified, competent experienced professional real estate appraiser, who has demonstrated expertise in determining rent for telecommunication site(s)/properties ["Qualified Appraiser"]. The fair market rent of the Premises shall be determined by an appraisal made by a Qualified Appraiser selected by mutual consent of the parties from the list of Qualified Appraisers approved by LANDLORD. In the event the parties cannot reach agreement upon selection of a mutually acceptable Qualified Appraiser, then each party shall select a Qualified Appraiser who in turn will select a third independent Qualified Appraiser, which third Qualified Appraiser will be employed to make the appraisal of the fair market rent of the Premises and

which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected Qualified Appraisers fail to mutually select a third Qualified Appraiser within thirty (30) days, then the third Qualified Appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either LANDLORD or LESSEE with notice thereupon to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third Qualified Appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third Qualified Appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both LANDLORD and LESSEE agree to equally share the cost of the mutually selected or court appointed third Qualified Appraiser. LANDLORD and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed Qualified Appraiser.

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

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

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

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed

by the parties to be appropriate to compensate LANDLORD for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25). Acceptance of late charges and any portion of the late payment by LANDLORD shall in no event constitute a waiver of LESSEE's default with respect to late payment, nor prevent LANDLORD from exercising any of the other rights and remedies granted in this Lease.

SECTION 4: ASSIGNMENT / DEFAULT

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

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

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

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

4.3 Additional Consideration to LANDLORD. LESSEE and LANDLORD agree that in the event of an assignment or subletting of a portion of the leasehold to an entity other than those specifically exempted from LANDLORD consent, if any, as set forth in 4.2 Assignment and Subletting, above, for collocation of telecommunications equipment and any other incidental activities or activities relating thereto, LESSEE shall pay to LANDLORD fifty percent (50%) of the gross rental amount paid to LESSEE from sublessee in consideration for approval of the sublease.

4.4 Encumbrance. Prior to causing any encumbrances to be placed on the Premises or on any permanent improvements thereon, LESSEE shall give written notice to the LANDLORD describing the nature and amount of such encumbrance and attaching all documentation needed to effect the encumbrance. LESSEE shall not cause any encumbrance to be placed on the Premises or any permanent improvements thereon unless and until receiving approval in writing from the LANDLORD. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises.

4.5 Default and Remedies.

a. Defaults. Each of the following shall constitute an event of default under this Lease:

- (1) LESSEE's failure to make any payment required under this Lease when due;
- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure said default within thirty (30) days following written notice thereof from LANDLORD; or if any such default, other than those requiring payment to LANDLORD, is not curable within thirty (30) days, and fails to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion;
- (3) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (4) LESSEE is adjudicated a bankrupt;

(5) LESSEE makes a general assignment for the benefit of creditors.

(6) LESSEE uses the Premises for any unauthorized purpose.

b. Remedies

- (1) Upon default by LESSEE, LANDLORD may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three (3)-Day Notice to Pay or Quit, if said default is based upon Section 4.5a(1), or LANDLORD may terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession thereof, and LANDLORD may enter and take possession of the Premises (provided, however, in the event that any default described in Section 4.5a.(2) - (6), Default and Remedies, hereof, is not curable within thirty (30) days after notice to LESSEE, LANDLORD will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues such cure to completion), and may recover from LESSEE the sum of:
- (a) the worth at the time of award of any unpaid rent that had been due at the time of termination;
 - (b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award exceeds (ii) the amount of rental loss, if any, and LESSEE affirmatively proves could have been reasonably avoided;
 - (c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the term after the time of the award exceeds (ii) the amount of rental loss, if any, as LESSEE affirmatively proves could be reasonably avoided;
 - (d) any other amount necessary to compensate LANDLORD for the detriment proximately caused by LESSEE's failure to perform LESSEE's obligations or that, in the ordinary course of things, would be likely to result; and
 - (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (a) and (b) of this

Section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this Section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section the term "rent" shall include Base Rent, Percentage Rent and any other payments required by LESSEE.

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

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

- (a) LANDLORD may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge will be due and payable on the date that the rent is next due after presentation by LANDLORD to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (b) LANDLORD may correct said default(s) and may recover the costs thereof from the proceeds of any insurance fund held by LANDLORD, LANDLORD and LESSEE or by LANDLORD and mortgagee or beneficiary, or LANDLORD may use the funds of any faithful performance or cash bond on deposit with LANDLORD, or LANDLORD may call on the bonding agent to correct the default(s) or to pay the cost of correction performed by or at the direction of LANDLORD.

- (c) LANDLORD may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by LANDLORD. LANDLORD may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by LANDLORD in releasing to a new tenant will be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse LANDLORD for any such costs.

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

- c. Abandonment by LESSEE. Subject to LESSEE's termination rights as provided in this Lease, even though LESSEE has breached the Lease and abandoned the property, this Lease will continue in effect so long as LANDLORD does not terminate this Lease, and LANDLORD may enforce all its rights and remedies hereunder, including the right to recover the rent as it becomes due, plus damages.

LESSEE and LANDLORD agree that any personal property left at the Premises thirty (30) days after termination of this Lease shall be considered abandoned and LESSEE forfeits all ownership to the

abandoned personal property, and it is mutually agreed LANDLORD may dispose of the abandoned personal property as it solely deems appropriate, without further liability to LESSEE or any person claiming any interest in said property. LESSEE shall hold the LANDLORD harmless and shall defend LANDLORD against all claims asserted by third persons claiming an interest in said personal property.

- d. Waiver. Any waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the non-defaulting party in order to constitute a valid and binding waiver. The delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. LANDLORD's acceptance of any rents is not a waiver of any default preceding the rent payment. LANDLORD and LESSEE specifically agree that the property constituting the Premises is LANDLORD-owned and held in trust for the benefit of the citizens of the City and County of San Diego and that any failure by LANDLORD staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but LANDLORD shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council or County Board of Supervisors direct the LANDLORD's staff to take action or require the cure of any default after such default is brought to the attention of the City Council or County Board of Supervisors by the LANDLORD's staff or by any concerned citizen.

4.6 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of LANDLORD and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of LESSEE and LANDLORD, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of LESSEE and LANDLORD, the remaining part of the Premises is suitable for continued

Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken.

- d. Award. All monies awarded in any such taking shall belong to LANDLORD, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's, then-remaining leasehold interest in installations or improvements of LESSEE, for relocation expenses and for loss of goodwill. LANDLORD shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. LANDLORD has the right to transfer LANDLORD's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- f. No Inverse Condemnation. The exercise of any LANDLORD right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon LANDLORD for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the LANDLORD, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the use or development of the Premises or the operation of any equipment or facilities thereon, and all expenses of investigating and defending against same; provided, however, that LESSEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the LANDLORD, its agents, officers, or employees.

- 5.2 Insurance to be Carried by LESSEE

a. Upon the Commencement Date, LESSEE shall take out and maintain at all times during the term of this Lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover injury or damage, including death, suffered by any party or parties from acts or failures to act by LANDLORD or LESSEE or by authorized representatives of LANDLORD or LESSEE with respect to LESSEE's Communications Equipment and in connection with the use or operation of the Premises.
- (2) Other Insurance. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to LANDLORD and LESSEE in pro-rata shares based upon the replacement costs of LANDLORD's and LESSEE's affected properties. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.4, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to LANDLORD has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

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

- (1) Additional Insured. All public liability insurance policies will name LANDLORD as an additional insured, protect LANDLORD against legal costs in defending claims, and will not terminate without thirty (30) days' prior written notice to LANDLORD. All insurance companies must be reasonably satisfactory to LANDLORD and licensed to do business in California. All policies will be in effect on or before the first day of the Lease, except "use of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A certificate of the insurance policy will remain on file with LANDLORD during the entire term of the Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s)

showing that a new or extended policy has been obtained that meets the terms of this Lease.

- (2) Modification. LANDLORD, in its reasonable discretion, may require the revision of amounts at any time during the term by giving LESSEE sixty (60) days prior written notice. LANDLORD's requirements shall be designed to assure protection from and against the extent of risk existing on the Premises. LESSEE also agrees to obtain any additional insurance required by LANDLORD for new improvements, in order to meet the requirements of this Lease.
- (3) Accident Reports. LESSEE shall report to LANDLORD any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, LANDLORD has the right to obtain the insurance. LESSEE shall reimburse LANDLORD for the premiums paid with interest at the maximum allowable legal rate then in effect in California, but in no event for more than the pro rata premium, plus interest, for the period of non-compliance. LANDLORD shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by LANDLORD.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this Lease or fails to provide the proof of insurance, LANDLORD has the right to declare this Lease in default, and LANDLORD shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to LANDLORD of any fire or other damage that may occur on the Premises within ten (10) days after such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and

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

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

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease, that LANDLORD has performed all work with respect to the Premises, and that LESSEE does not hold LANDLORD responsible for any defects, whether apparent or latent, in the Premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. LANDLORD reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. LANDLORD must give at least 24 hours notice and be escorted by LESSEE'S representative, if such representative is available at the time LANDLORD wishes to inspect, when entering said Premises except in emergency situations. In the event that such entry or inspection by LANDLORD discloses that said Premises are not in a decent, safe, healthy, and sanitary condition, LANDLORD shall have the right, after ten (10) days' written notice to LESSEE, if LESSEE has not commenced the required work and be diligently pursuing it to completion, to have any necessary maintenance work

done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs reasonably incurred by LANDLORD in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time said Premises are not in a decent, safe, healthy, and sanitary condition, LANDLORD may require LESSEE to file with LANDLORD a faithful performance bond to assure prompt correction of any condition that is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the reasonable opinion of LANDLORD to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on LANDLORD or increase obligations elsewhere in this Lease imposed on LANDLORD.

6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to LANDLORD and in compliance with all applicable laws.

6.4 Improvements/Alterations.

- a. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE (with the exceptions of equipment replacement or repair) without prior written approval by the LANDLORD. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the LANDLORD in his sole discretion. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. LANDLORD shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.
- b. Should changes in technology occur during the term of the Lease that would require the upgrading of the Communications Equipment, the LESSEE shall have the right to perform such upgrading, providing such upgrading does not damage or interfere with any adjacent improvements, the Premises, or the land. See paragraph 1.3, Interference.

6.5 Reassignment of Space. LANDLORD reserves the right to reassign LESSEE an equivalent amount of space in a different location when and if the LANDLORD facility has been upgraded and reconfigured. LESSEE agrees to cooperate fully with LANDLORD and its contractors during any renovation, repair, or other

alteration of the facility. LESSEE acknowledges that its equipment may be relocated as a result of the renovation, repair, or other alteration of the facility. LANDLORD warrants that every effort will be made to ensure continuous, uninterrupted broadcast/receiving capability during any conversion. In the event any such relocation is not satisfactory to LESSEE, then LESSEE may, in its sole and absolute discretion, terminate this lease, upon 30 days written notice to LANDLORD, without further obligation hereunder.

- 6.6 Utilities. Since the Site is master metered for electrical service, LESSEE agrees to pay its pro rata share of the overall electrical utility costs generated at the Site. This pro rata share is estimated to be 33 1/3 % of the total overall utility costs at the time of execution of this Lease. This percentage of the total costs will be reviewed annually by the City of San Diego and will be open to adjustment to reflect the estimated percentage of LESSEE's energy usage at that time, or eliminated in the event of individual metering.

- 6.7 Liens. LESSEE shall at all times save LANDLORD free and harmless and indemnify LANDLORD against all claims for labor or materials in connection with LESSEE'S operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than LANDLORD for the benefit of LESSEE, and a lien or notice of lien is filed, LESSEE shall within fifteen (15) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with LANDLORD a bond, cash, or other security acceptable to LANDLORD sufficient to pay in full all claims of all persons seeking relief under the lien.

- 6.8 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE, levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due LANDLORD.

6.9 Signs. LESSEE agrees to only post signs which are required by Federal, State or Local regulations. These include safety signage required by OSHA, FAA or FCC. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of LANDLORD. If any such unauthorized item is found on the Premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by LANDLORD, or LANDLORD may thereupon remove the item at LESSEE's cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, (excluding all of LESSEE'S *Equipment* within the enclosed space of the equipment enclosure, as depicted in Exhibit "C", coax cable and antennas), structures, and installations or additions to the Premises now existing or subsequently affixed to the Premises by LESSEE shall, at Lease expiration or termination, be deemed to be part of the Premises and shall become, at LANDLORD's option, LANDLORD's property free of all liens and claims, except as otherwise provided in this Lease.
- b. LESSEE shall notify LANDLORD in writing sixty (60) days prior to the lease expiration or termination inquiring whether the LANDLORD elects to assume an ownership interest of all or any said improvements, (excluding LESSEE's *Equipment*, coax cable and antennas), structures, and installations contemplated to be left on the Premises at Lease expiration or termination. If LANDLORD does not notify LESSEE in writing of its intent to assume ownership of such improvements, structures and installations, then LESSEE shall remove all such improvements, structures and installations as directed by LANDLORD at LESSEE's sole cost on or before expiration or termination of this Lease. Failure of the LANDLORD to notify LESSEE of its intent to assume ownership shall be deemed a rejection of LESSEE's offer for LANDLORD to assume ownership of such improvements. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay LANDLORD the full cost of any removal and storage.
- c. LESSEE-owned machines, appliances, equipment, and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Lease. Any said items that LESSEE fails to remove within thirty (30) days thereafter will be considered abandoned (pursuant to Section 4.5c) and become LANDLORD's property free of all

claims and liens, or LANDLORD may, at its option, remove said items at LESSEE's expense.

- d. If any removal of such personal property by LESSEE results in damage to any LANDLORD-owned structures including tower or real property on the Premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either LANDLORD or LESSEE that occurs after said expiration or termination hereof shall require LESSEE to pay rent to LANDLORD at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said Premises upon expiration or termination of this Lease, then LANDLORD shall have the first right to acquire or purchase said personal property.

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

In the event of any release of a Hazardous Substance in connection with LESSEE's use of the Premises, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

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

If LESSEE knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, LESSEE shall give written notice to the LANDLORD within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such Hazardous Substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the LANDLORD immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the LANDLORD immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. LESSEE shall not utilize any Hazardous Substance on the Premises in violation of any applicable law. In addition, LESSEE shall not sell any Hazardous Substance on the Premises.

At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at LANDLORD's sole option, shall cause a Phase I environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, Hazardous Substances exist on, in, or under the Premises, and in what quantities, due to LESSEE's use of the Premises. If any such Hazardous Substances exist in quantities greater than that allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment or an additional Hazardous Materials Assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal of such substances recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.12 Installation Standards. By signing this Lease, LESSEE warrants that all installations, modifications, and maintenance will be performed in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© manual, except LESSEE shall not be required to ground the fence pursuant to these standards.

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

- a. All transmitters shall have all necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as filtering and isolators.
- b. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements.
- c. Radiation.
 - (1) Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. When it is necessary to climb on CITY's Information Technology & Communications [IT&C] structures with antennas, contact IT&C's Fixed Maintenance Supervisor at (619) 525-8650 for shutdown procedures. Any equipment installed on the Site may at times require shutdown to allow maintenance on antenna structures.
 - (2) LESSEE will maintain radio-frequency radiation within allowable levels. Any area casually accessible by the general public, or by any worker at ground level, shall be maintained below the levels stated in OET Bulletin 65 for Uncontrolled/General population. Any areas found to exceed the allowable levels not by fault of LESSEE shall be reported to the LANDLORD. LESSEE will not hold LANDLORD responsible for radiation levels found to exceed these limits.
 - (3) Protection of LESSEE's employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled limits must be clearly identified as required by CAL-OSHA.
- d. LESSEE shall provide the LANDLORD with shutdown procedures, contact names, and telephone numbers. Should changes be made to the contact names and telephone numbers, the LANDLORD shall be notified within seven days.
- e. All trash and debris shall be removed from the Site at the end of each workday and on completion of the project.

- f. LESSEE's installing or modifying equipment at sites used by CITY's IT&C Division must follow additional requirements as detailed in Exhibit "E", *Installation Standards for Information, Technology and Communications Division Sites*.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

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

To LESSEE:

San Diego Gas & Electric
c/o Sempra Energy
Corporate Real Estate
101 Ash Street, HQ5B
San Diego, CA 92101

To LANDLORD:

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

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

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

- 7.2 Compliance with Law. LESSEE shall at all times, in the construction, maintenance, occupancy, and operation of the Premises, comply with all applicable laws, statutes, ordinances, and regulations of LANDLORD, county, state, and federal governments at LESSEE's sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the LANDLORD or their authorized representative under the authority of any such law, statute, ordinance, or regulation, if compliance with such notices is required by applicable law.

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

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

7.5 Compliance with CITY's Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors, if any, are individually responsible to abide by its contents.

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

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

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

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent

legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease, if not consecutive are intentional and shall have no effect on the enforceability of this Lease.
- 7.10 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE and LANDLORD, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever that is not contained in this Lease.

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

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or lessees shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or lessee employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or lessee. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- 7.13 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a credible manner.
- 7.14 Unavoidable Delay. If the performance of any act required of LANDLORD or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rent as required pursuant to this

Lease. In the event LESSEE or LANDLORD claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

7.15 Corporate Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the State of California.

7.16 Time is of Essence. Time is of the essence of all of the terms, covenants, and conditions of this Lease.

[Remainder of Page Intentionally Left Blank]

SECTION 8: SIGNATURES

8.1 Signature Page.

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

Date MAR 24 2003

THE CITY OF SAN DIEGO

By [Signature]

Real Estate Assets Director

Date 11.2.01

COUNTY OF SAN DIEGO

By Thomas J. Pastuszka

Thomas J. Pastuszka
Clerk of the Board of Supervisors

Title _____

APPROVED AS TO FORM AND LEGALITY
COUNSEL

[Signature]
SENIOR DEPUTY 10/12/01

LESSEE:

SAN DIEGO GAS & ELECTRIC COMPANY by
SEMPRA ENERGY, Its authorized Agent

Date 9/26/01

By [Signature]
Jay W. Shepard
Director, Real Estate & Facilities

APPROVED as to form and legality this 2nd day of April, 2003

Approved and/or authorized by the Board
of Supervisors of the County of San Diego
Date 11/2/01 Minute Order No. _____
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
By [Signature]
Deputy Clerk

CASEY GWINN, City Attorney

By [Signature]
Deputy City Attorney

SECTION 9: EXHIBITS

9.1 Exhibit "A" - Legal Description of Site

Cowles Mountain Communications Center

All that portion of the Partition of lot 70 of Rancho Mission of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made in action entitled, San Diego Realty Company, a Corporation vs. Maria Y. Olvera De Toro, et al, said Map being filed in the Office of the County Clerk of said County in Civil Case. 15191 as conveyed to said County of San Diego by deed recorded January 2, 1975, at File/Page No. 75-000097 in the Office of the County Recorder of said County.

EXCEPTING THEREFROM that portion lying below an elevation of 1,400 feet above mean sea level based on the US Coastal and Geodetic Survey Sea Level Datum of 1929.

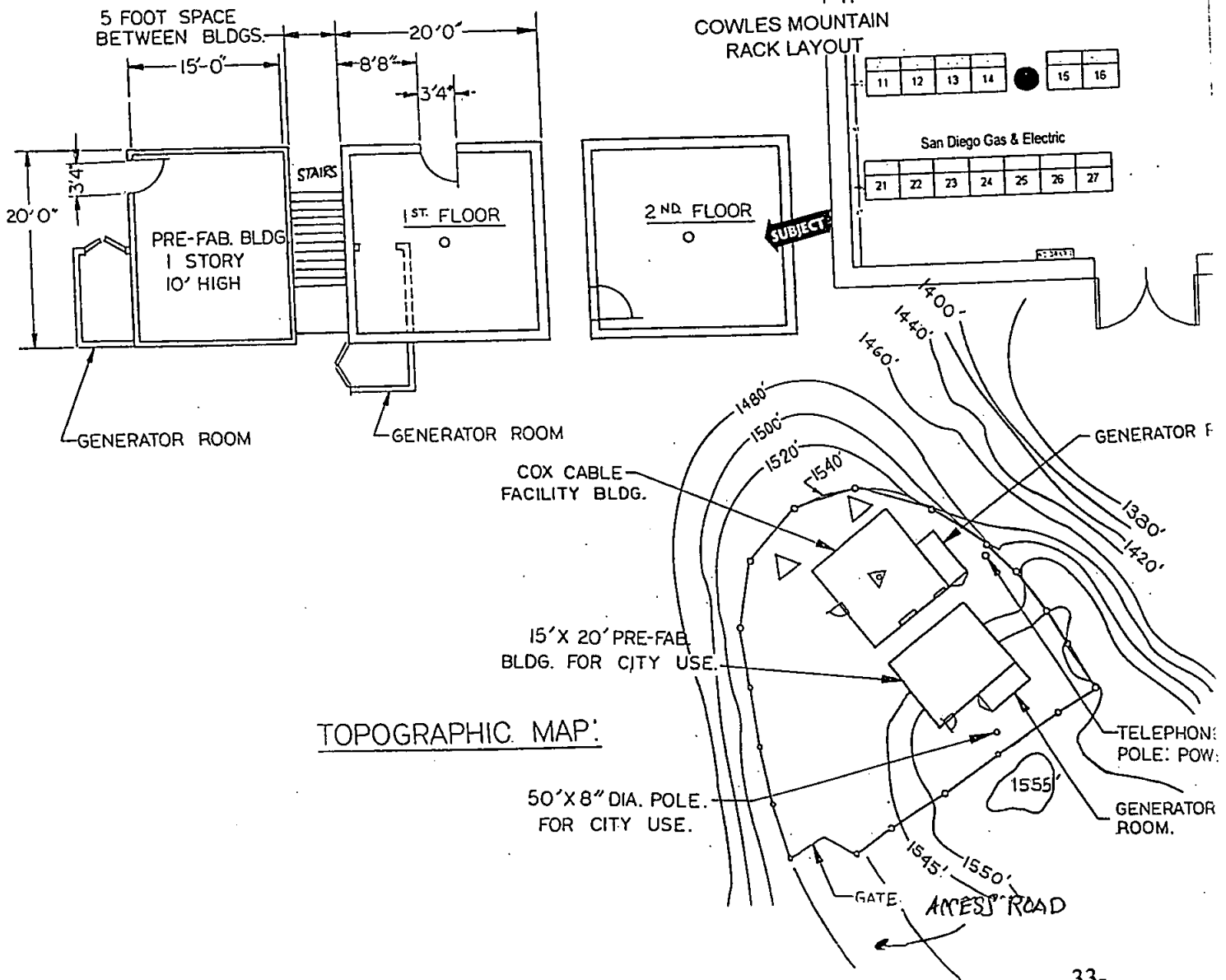
9.2 Exhibit "B" - Description of Leased Premises

The area above, below and immediately adjacent to Racks 21 to 27 on the second floor of the former "Cox Cable Facility Building", also known as the "County Building", the occupant of the first floor, and antenna locations described below.

ANTENNAS

- Four (4) 2-way antennae to be installed on the east and west side of the building
- One (1) six foot diameter microwave dish to be installed on the adjacent County tower
- One (1) 3.1 feet tall, 1.66 inch diameter, Model 1610-4 Omni whip (weighs 4 lbs.) to be installed at the 60' level of the County tower.

COWLES MT. COMPLEX



9.3 Exhibit "C" - Equipment

RACK SPACE

Five (5) tall racks (900 MHz Motorola trunked radio equipment)

Two (2) short racks

ANTENNAS

Four (4) 10.4-inch wide by 39.0-inch high by 5.1-inch deep 2-way antennae to be installed on the east and west side of the building

One (1) six foot diameter microwave dish to be installed on the front of the building.

One (1) 3.1 feet tall, 1.66 inch diameter, Model 1610-4 Omni whip (weighs 4 lbs.) to be installed at the 60' level of the County tower.

9.4 Exhibit "D" - CITY OF SAN DIEGO "ON THE AIR" TEST FORMS

TECHNICAL DATA SUMMARY

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

LOCATION _____ AGENCY _____

CALL SIGN _____ CONTACT NAME _____ PHONE _____

TRANSMITTER

RECEIVER

MANUFACTURER _____ MANUFACTURER _____

MODEL _____ MODEL _____

FCC TYPE ACCEPTANCE NUMBER _____ EMISSION _____

POWER OUTPUT _____ WATTS CABLE/COMBINER LOSSES _____

RADIATED ERP _____ WATTS

Transmit Frequency _____ Receiver Frequency _____ CTCSS or DCS _____

1. _____ 1. _____ 1. _____

2. _____ 2. _____ 2. _____

3. _____ 3. _____ 3. _____

ANTENNA

TRANSMIT CAVITY FILTER

ISOLATOR

Make _____ Make _____ Make _____

Type _____ Model _____ Model _____

Gain _____ dBd

Directional _____

Azimuth _____

REMARKS:

**Installation Standards for Information, Technology and
Communications Division Sites.**

1. All waveguide and coax cable runs shall be installed and supported on the tower, cable ladder, and ice bridges, using Microflect waveguide cushions with the appropriate standoffs and hardware for property installation.
2. All waveguide and coax cable shall be installed in a neat manner with sweeping bends and straight runs on the tower cable ladder and ice bridges.
3. Three ground kits shall be installed as follows: Near the antenna, where the coax transitions to horizontal at the junction between the cable ladder and ice bridge, and where the coax enters the building. Grounds shall be installed to shunt any lightning directly to ground.
4. All antenna mounts installed on towers and structures shall be hot dip galvanized and of standard manufacture.
5. All hardware utilized on towers and structures shall be hot dip galvanized or stainless steel.
6. All drawings submitted shall clearly show the following items:
 - a. A plot plan of the site to include the building and tower location with the proposed equipment shown in its proposed location.
 - b. A tower drawing clearly showing the location of the proposed antenna, other antenna on the tower, and the routing of the waveguide or coax cable specifying the hardware and grounding
 - a. If equipment is to be located inside the building, a drawing shall be provided showing the rack location of the equipment, an elevation drawing of the rack, and a plot plan of the equipment installed in the rack.
 - c. If equipment is to be located inside the building, show the proposed waveguide or coax cable runs inside the building, designate which cable feed through is to be used, and wire code markers.
 - d. A list of all equipment to be installed shall be provided. This list shall include the FCC TA #, type of equipment, RF frequency, RF power, type of modulation, RF filtering, Antenna type, Antenna model, Antenna gain, direction or radiation, down tilt, waveguide and/or coax cable length and AC power requirement including any HVAC.

7. All transmitters shall have all necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as filtering and isolators.
8. To minimize the number of antennas and waveguide or coax cables to be mounted on the tower transmitter combining will be required whenever possible.
9. Grounding: All cabinets and racks shall be grounded to the site grounding system.
10. Should the City determine that a tower loading analysis is required, the requesting user shall have the tower analysis done at their expense and provide the City with the information on how their additional load to the tower will affect the tower structural integrity.
11. Tower Climbing: All tower climbing shall be done in compliance with all CAL-OSHA requirements.
12. RF Radiation: Hazardous RF radiation levels may be encountered when climbing on the tower. Refer to FCC OET Bulletin 65. When it is necessary to climb on the tower for installation or maintenance, contact the City of San Diego IT&C Fixed Maintenance Supervisor at (619) 525-8650 for shutdown procedures. Any equipment installed on the site may at times require shutdown to allow maintenance personnel to climb the tower.
13. All lessees on site shall provide the City with shutdown procedures and 24 hour contact names and telephone numbers. In addition should changes be made to the contact names and telephone numbers, the City shall be notified within 7 days.
14. Access: For access to the site, contact the City of San Diego IT&C Fixed Maintenance Supervisor at (619) 525-8650. Keys will be issued as required. **DO NOT DUPLICATE** keys.
15. Security: All sites are alarmed with silent alarms and monitored 24 hours a day by Station 38, the Public Service Dispatch Center. When entering or leaving a building call Station 38 at (619) 527-7660 or use the order wire dial #13 and identify yourself. Police respond to all unanswered alarms.
16. Cleanup: All trash and debris shall be removed from the site at the end of each work day and on completion of the project.
17. A detailed construction schedule shall be provided to IT&C prior to any installation work.
18. All antennas, waveguide, and coax cable shall be protected from lightning with the appropriate equipment to prevent damage to installed equipment.

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS
TUESDAY OCTOBER 30, 2001**

MINUTE ORDER NO. 9

**SUBJECT: REGIONAL COMMUNICATION SYSTEM (RCS) – LEASE
AGREEMENTS WITH SAN DIEGO GAS AND ELECTRIC
COMPANY (DISTRICTS: 2, 3 AND 5)**

OVERVIEW:

The Regional Communications System serves public safety agencies and the day-to-day operations of public services agencies. This system has been in operation since May of 1997 encompassing San Diego County and Imperial County. San Diego Gas and Electric Company has requested that it be allowed to utilize five of these existing sites to place equipment and antennas within the areas of the existing buildings and on the existing towers. This request is for the approval of two lease agreements, one between the County and San Diego Gas and Electric Company for four of the sites, and one between the County of San Diego and City of San Diego and San Diego Gas and Electric Company for one of the sites.

FISCAL IMPACT:

If approved, this request will result in no current year or annual costs and will not require the addition of staff years. The agreements for all of the sites, except Cowles Mountain, provide for San Diego Gas and Electric Company to purchase \$1,092,000 of Communications Equipment for the Regional Communications System in lieu of rent. This amount of equipment, which has been priced at County discounted pricing, represents a payment equal to fair market rent with annual increase for cost of living for these facilities. The agreement for Cowles Mountain requires that San Diego Gas and Electric Company pay the City of San Diego an annual rental of \$50,700 with an increase thereto each year after the first year at the rate of 5% for a cost of living adjustment.

RECOMMENDATION:

CHIEF ADMINISTRATIVE OFFICER

1. Find in accordance with Section 15303 of the State CEQA Guidelines, that this project is categorically exempt from the provisions of the Guidelines, because this project constitutes the installation of small new equipment in existing small structures at existing facilities.
2. Approve and authorize the Clerk of the Board of Supervisors to execute three sets of each of the lease agreements for the following five sites: Chihuahua Valley Site No. 304, Cowles Mountain Site No. 102, Lake San Marcos Mountain Site No. 202, Rams Hill Site No. 329 and Tierra Del Sol (White Star) Site No. 315, which will result in the procurement of \$1,092,000 in electronics equipment in lieu of rents and leases.

ACTION:

ON MOTION of Supervisor Roberts, seconded by Supervisor Jacob, the Board of Supervisors took action as recommended, on Consent.

RESOLUTION NUMBER R- 297745

ADOPTED ON MAR 24 2003

WHEREAS, the City and San Diego Gas & Electric have negotiated a ten-year lease agreement with four five-year options to extend at the initial rate of \$50,700 per year; and

WHEREAS, the purpose of the lease is for the operation and maintenance of a communications facility at the City/County Cowles Mountain Communications Center to provide telecommunications service to the local community; and

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

NOW, THEREFORE,

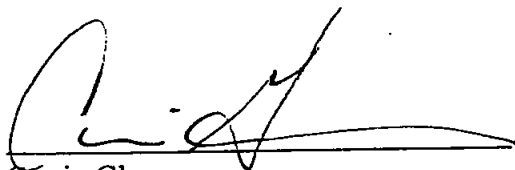
BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager or designee is authorized to execute, for and on behalf of the City of San Diego, a ten-year lease agreement with four five-year options to extend with San Diego Gas and Electric for the operation and maintenance of a communications facility at the City/County Cowles Mountain Communications Center, at an initial annual rent of \$50,700, under the terms and conditions set

forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- 297745.

APPROVED: CASEY GWINN, City Attorney

By

A handwritten signature in black ink, appearing to read 'Carrie Gleeson', written over a horizontal line.

Carrie Gleeson
Deputy City Attorney

CLG:mm
02/25/03
Job:223107
Or.Dept:READ
R-2003-729

Passed and adopted by the Council of San Diego on March 24, 2003, by the following vote:

**YEAS: PETERS, ZUCCHET, ATKINS, LEWIS, MAIENSCHIN, FRYE, MADAFFER,
INZUNZA, MAYOR MURPHY**

NAYS: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

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

(SEAL)

By: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-297745 passed and adopted by the Council of The City of San Diego,
California on March 24, 2003.

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

(SEAL)

By: Manuel E. Ketcham, Deputy

RESOLUTION NUMBER R- 297745

ADOPTED ON MAR 24 2003

WHEREAS, the City and San Diego Gas & Electric have negotiated a ten-year lease agreement with four five-year options to extend at the initial rate of \$50,700 per year; and

WHEREAS, the purpose of the lease is for the operation and maintenance of a communications facility at the City/County Cowles Mountain Communications Center to provide telecommunications service to the local community; and

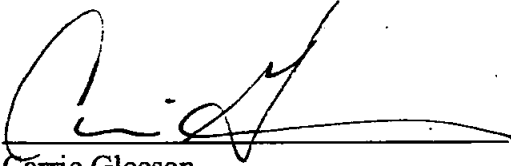
WHEREAS, the rent is at the fair market rate as determined by City valuation staff;
NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager or designee is authorized to execute, for and on behalf of the City of San Diego, a ten-year lease agreement with four five-year options to extend with San Diego Gas and Electric for the operation and maintenance of a communications facility at the City/County Cowles Mountain Communications Center, at an initial annual rent of \$50,700, under the terms and conditions set

forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- 297745.

APPROVED: CASEY GWINN, City Attorney

By 
Carrie Gleeson
Deputy City Attorney

CLG:mm
02/25/03
Job:223107
Or.Dept:READ
R-2003-729

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS (Continued):

* ITEM-105: Lease Approval - San Diego Gas and Electric at Cowles Mountain.

(Mission Trails Regional Park Community Area. District-7.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-729)

Authorizing the City Manager to execute a ten-year lease agreement with four five-year options to extend with San Diego Gas and Electric for the operation and maintenance of a communications facility at the City/County Cowles Mountain Communications Center, at an initial annual rent of \$50,700.

CITY MANAGER SUPPORTING INFORMATION:

San Diego Gas & Electric (SDG&E) is requesting a lease for the operation and maintenance of a recently constructed communications facility at the City/County Cowles Mountain Communications Center. It consists of 5 full or "tall" rack spaces, 2 half or "short" rack spaces, 4 two-way panel antennas and 1 six-foot dish antenna mounted on the west side of the former "Cox Cable" building. SDG&E requires use of this site to provide service to the local community. SDG&E has a number of leases with the City and has proved to be a reliable tenant.

BASIC TERMS of the agreement are as follows:

USE - Installation, maintenance, and operation of a communications facility for SDG&E.

TERM - Ten (10) years, with four 5-year options to extend.

GROUND RENT - Rent is \$50,700 annually (\$4,225 per month) with annual 5% rent increases and reappraisal every five years. This value is consistent with an outside independent fee appraisal dated August 2000 and updated October 2002. Rent has been collected since May 1, 2002, under a right-of-entry agreement.

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS (Continued):

* ITEM-105: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

PRIOR APPROVALS:

Mission Trails Regional Park Citizen's Advisory Committee

Mission Trails Regional Park Task Force

Park and Recreation Department

Information Technology and Communications Department

Development Services Department

San Diego County Board of Supervisors

FISCAL IMPACT:

The City will receive \$50,700 in the first year of the lease with 5% annual rent increases thereafter. Rental Proceeds generated will be credited to the Mission Trails Regional Park Fund 10580.

Herring/Griffith/JPA