



LEASE AGREEMENT

between

THE CITY AND COUNTY OF SAN DIEGO

and

SAN DIEGO ASSOCIATION OF GOVERNMENTS

And

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

at

Cowles Mountain

CITY OF SAN DIEGO
LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into by and 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 ASSOCIATION OF GOVERNMENTS, d.b.a. SANDAG, a California nonprofit corporation ("LESSEE"), to be effective upon execution by LANDLORD ("Commencement Date") and approval by the City Attorney, as follows:

SECTION 1: PREMISES

1.1 Leased Premises.

LANDLORD owns certain real property located in the City of San Diego, County of San Diego, State of California, known as "Cowles Mountain Communications Center" more particularly described in Exhibit "A" - Legal Descriptions, attached to this Lease and by this reference made part of this Lease, which shall be referred to as the "Site." LESSEE leases from LANDLORD that portion of the Site described in Exhibit "B" - Site Plan, attached to this Lease and by this reference made part of this Lease, which portions shall be referred to as the "Premises." LESSEE, its agents, employees, contractors, guests and invitees may enter the Premises using the access point shown on the attached Exhibit "B" - Site Plans on a 24-hour non-exclusive basis.

1.2 Easements and Reservations.

- a. LANDLORD 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, in its sole discretion, for the public good.
- c. LANDLORD may enter the Premises to develop and/or repair municipal resources and services.

LANDLORD shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and shall reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises or Communications Equipment (defined below) resulting from LANDLORD exercising the rights reserved in this section. The reimbursement may include a reduction in the rent proportionate to the amount of physical damage as reasonably determined by

LANDLORD. LANDLORD shall pay the costs of maintenance and repair of all LANDLORD installations made pursuant to these reserved rights.

1.3 Eminent Domain.

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

- a. Full Taking. If the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of 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. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of 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, only to the extent that LESSEE'S operations are reduced or impaired.
- d. Award. All monies awarded in any taking shall belong to LANDLORD, whether the taking results in diminution in value of the leasehold or the fee or both. 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. LANDLORD shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. LANDLORD may 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.

1.4 Related Board or Council Actions.

By entering into this Lease, neither LANDLORD nor Board of Supervisors of the COUNTY or the City Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development or operation of the Premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall diligently seek all entitlements and actions, from both CITY and other governmental agencies with jurisdiction over the Premises, as are necessary to develop and operate the uses contemplated by this Lease, all at no cost to LANDLORD.

1.5 Quiet Possession.

LESSEE, paying the rent and performing its obligations under this Lease, shall at all times during the Term (defined in Section 2.1) peaceably and quietly have, hold, and enjoy the Premises. If LANDLORD for any reason cannot deliver possession of the Premises to LESSEE on the Commencement Date (defined in Section 2.1), or if during the Term LESSEE is temporarily dispossessed through action or claim of a title superior to LANDLORD'S, then this Lease shall not be voidable nor shall LANDLORD be liable to LESSEE for any loss or resulting damage; provided, however, the Commencement Date shall automatically extend until the date LANDLORD delivers possession of the Premises to LESSEE. Notwithstanding the foregoing, if LANDLORD is unable to deliver possession of the Premises to LESSEE within six (6) months of the full execution and delivery of this Lease, LESSEE may terminate this Lease upon written notice to LANDLORD without further liability and any prepaid rent paid by LESSEE to LANDLORD, shall be returned in full to LESSEE.

1.6 Reassignment of Space.

At any time during the Term, LANDLORD, in its sole discretion, may reassign LESSEE an equivalent amount of space in a different location at the Site with equivalent levels of reception and service for Communications Equipment. LANDLORD shall exercise its reassignment right by delivering written notice (the "Reassignment Notice") to LESSEE that proposes one or more alternate locations on the Site to which LESSEE may relocate its Communications Equipment. LESSEE shall have ninety (90) days from the date it receives the Reassignment Notice to evaluate LANDLORD'S proposed relocation space, during which period LESSEE shall have the right to conduct tests to determine

the technological feasibility of the proposed relocation space. Any relocation space which LANDLORD and LESSEE agree upon in writing is referred to in this Lease as the "Relocation Space." LESSEE shall then have a period of ninety (90) days to relocate its Communications Equipment to the Relocation Space after the later to occur of: execution of a written agreement between the parties concerning the location and dimensions of the Relocation Space; or receipt by LANDLORD of all necessary permits and approvals required for any LANDLORD construction or redevelopment project which requires a relocation of the Communications Equipment (including all permits and approvals required for LESSEE'S use of the Relocation Space). LESSEE shall cooperate fully with LANDLORD and its contractors during any reassignment, shall pay all expenses associated with the reassignment; provided, however, that the actual relocation of all or any part of LESSEE'S Communications Equipment shall only be done by LESSEE or LESSEE'S contractors. LANDLORD shall use its best efforts to ensure continuous, uninterrupted broadcast/receiving capability during any conversion, including the installation and operation by LESSEE of a LANDLORD-approved temporary communications facility on the Site. If LANDLORD and LESSEE are unable to agree on a mutually acceptable Relocation Space, then LESSEE may terminate this Lease upon thirty (30) days prior written notice to LANDLORD, without further obligation. Upon relocation of the Communications Equipment, or any part thereof, to the Relocation Space, all references to the Premises in this Lease shall be deemed to be references to the Relocation Space. LANDLORD and LESSEE agree that "as built" drawings of the Relocation Space (including the access and utility easement) may be prepared by a licensed architect at the sole cost of LESSEE and such drawings shall then replace the relevant portions of Exhibit "A" – Legal Descriptions and Exhibit "B" – Site Plan and by this reference made a part of this Lease. Except as expressly provided in this Section 1.6, the relocation of the Communications Equipment, or any part thereof, shall not alter, modify or otherwise change any of the terms and conditions of this Lease.

1.7 Lease Administration

CITY'S Real Estate Assets Department, has been designated through the 1996 Joint Exercise of Powers Agreement, Exhibit "F," between the CITY and COUNTY as the on-going administrator of this Lease agreement subject to review by the Deputy Director of Communications of the CITY and the Assistant Manager, Wireless Services Division of the San Diego-Imperial County Regional Communications System. The review of this facility is documented in "Exhibit G." – LANDLORD Approval. The approval or consent of LANDLORD, wherever required in this Lease, shall mean the written approval or consent of the City Manager of CITY, or designee, unless otherwise specified, without need for further resolution by the City Council or County Board of Supervisors.

SECTION 2: TERM

2.1 Term.

The Term of this Lease shall be ten (10) years ("Term"). If the Commencement Date is not the first day of a calendar month, the Term shall include the partial calendar month from and including the Commencement Date through the last month of the full Term, so that the Term shall expire on the last day of a calendar month. "Lease Year" as used in this Lease shall mean the first full 12-month period following the Commencement Date, and each succeeding 12-month period thereafter during the Term.

2.2 Holdover.

Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. LESSEE'S occupancy of the Premises after the expiration or earlier 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. At the sole discretion of the City Manager of CITY, LANDLORD may increase the rent to bring the rent to fair market value and may terminate the holdover tenancy at will upon thirty (30) days prior written notice.

2.3 Quitclaim and Surrender of LESSEE'S Interest.

- a. Quitclaim Deed. At termination of this Lease for any reason, LESSEE shall execute, acknowledge and deliver to LANDLORD, within five (5) days after written demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, LANDLORD may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice shall be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.
- b. Surrender and Restoration of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to LANDLORD free and clear of all liens and encumbrances, except those liens and encumbrances which (i) existed on the Commencement Date, and (ii) existing after the Commencement Date and not the result of LESSEE'S use of the Premises, and in a decent, safe, and sanitary condition.

SECTION 3: USES

3.1 Sole Permitted Uses.

The Premises are leased to LESSEE solely and exclusively for the 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, backup power sources that may include, with proper permits obtained, backup power generators with connected fuel storage tanks for emergency backup power, related fixtures and, if applicable to the Premises, an antenna structure or structures (collectively, "Communications Equipment"), as listed in the attached Exhibit "C" - Equipment. The use of the Premises for any unauthorized, illegal or unpermitted purpose shall constitute a default and subject this Lease to termination at the sole option of the LANDLORD.

3.2 Competent Management.

Throughout the Term, LESSEE shall provide competent management of the Premises for the permitted uses to the reasonable satisfaction of the City Manager. For purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a communications facility and related activities in a fiscally responsible manner and in accordance with industry standards.

SECTION 4: RENT

4.1 Time and Place of Payment.

Rent is due annually in advance on or before the first day of each Lease Year. If the Commencement Date is not the first day of a calendar month, then the accrued rent for the partial month at the beginning of the Term shall be prorated on a per diem basis, and paid in conjunction with the rent for the first full month of the Term. All rents required by this Lease must 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 hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue

First Floor
San Diego, California

The place of payment may be changed at any time by LANDLORD upon thirty (30) days prior written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date the 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. LESSEE shall clearly identify the Premises by location and include CITY'S customer account number for LESSEE on the rent payment so CITY can apply the rent to the appropriate account.

4.2 Rent.

- a. Rent Amount. LESSEE shall pay LANDLORD an initial rent of nineteen thousand two hundred dollars (\$19,200) annually in advance, subject to annual adjustments on the first day of each Lease Year as provided in the following rent schedule:

Lease Year Two	\$19,968.00
Lease Year Three	\$20,766.72
Lease Year Four	\$21,597.39
Lease Year Five	\$22,461.28
Lease Year Six	\$23,359.73
Lease Year Seven	\$24,294.12
Lease Year Eight	Market Rate

The above rent schedule reflects an annual rent escalation equal to four percent (4%) of the annual rent for each preceding Lease Year. At Lease Year Six the rent is subject to the adjustment provisions by appraisal described in Section 4.2b below.

- b. Market Rent Adjustment – By Appraisal. At the end of the seventh Lease Year, the rent for the ensuing two (2) years, subject to percentage escalations for each Lease Year, seven through ten, as described in Section 4.2a above, shall be determined by an appraisal of the multiple sites under this master Lease as of the adjustment date by a Real Estate Assets Department (“READ”) staff appraiser or a California State Certified General Real Estate Appraiser who is confirmed by READ as being competent in determining market rent for telecommunication sites/properties/leases (“Qualified Appraiser”). In establishing a market rent for the leased portfolio of mini-cell sites, the Qualified Appraiser shall base his or her determination on a current appraisal by surveying comparable market rents for similar leased facilities in Southern California

or other comparable market areas. The date of value of the appraisal shall be the date of rental adjustment as established in this section. A copy of the appraisal shall be provided to LESSEE and shall include evidence that the Appraiser surveyed and compiled comparable market rents for similar leased facilities in Southern California or other comparable market areas. If the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE shall continue to pay rent in accordance with the then existing Lease rates, and the adjustment, when determined, will be retroactive to the 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 be less than the rent in existence immediately prior to the adjustment date. The City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

4.3 Delinquent Rent.

If LESSEE fails to pay rent when due, LESSEE shall 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 past due, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is 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. In no event shall the charge for late payments of rent be less than one hundred dollars (\$100). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE'S default with respect to late payment nor prevent LANDLORD from exercising any other rights and remedies available at law or in equity.

4.4 Additional Rent.

LESSEE shall pay to LANDLORD as additional rent fifty percent (50%) of gross revenue generated by each sublease of any part of the Premises, payable within thirty (30) days of payment under the sublease. As used in this Lease the term "rent" shall include such additional rent.

4.5 Rent Credit.

LESSEE shall receive a rent credit equivalent to seven (7) years rent as compensation for the LANDLORD's joint use of electrical equipment providing power to the site that was installed by LESSEE. This credit shall be applied as an offset to the first seven (7) Lease Years rent only.

SECTION 5: ASSIGNMENT

5.1 Assignment and Subletting.

At the conclusion of the first year of the Lease, LEASEE shall assign this Lease to the Metropolitan Transit System; this assignment shall not require the approval of LESSOR. With the exception of the initial assignment to MTS, the intended user of the facility, LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet the Premises, or any part of the Premises, or any right or appurtenant privilege to the Premises, or permit any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without LANDLORD'S consent shall be void and shall, at the option of LANDLORD, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager. For the purpose of this section, "assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE'S general partners, principals, or controlling shareholders. 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 assigned or subleased and that assignee or sublessee will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. As a further condition to LANDLORD'S consenting to any sublease or assignment of this Lease, the City Manager may require that this Lease or the requested sublease be amended to comply with then-current standard CITY lease requirements. Pursuant to City Charter Section 225, which is incorporated into this Lease by reference, the City Manager must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee.

5.2 Encumbrance.

Subject to prior consent by the City Manager, LESSEE may encumber this Lease, its leasehold estate, and its improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the condition that the proceeds of the loan or loans be devoted exclusively to the purpose of developing the Premises in accordance with Section 8.11 Site Plans of this Lease. A reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for

hazard insurance or other insurance or bonds required by LANDLORD; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorney fees and other normal expenses incidental to the construction. Any subsequent encumbrances on the Premises or on any permanent improvements on the Premises must first have the approval in writing of the City Manager. Subsequent encumbrances shall also be for the exclusive purpose of development of the Premises. After the Premises are fully developed in accordance with said Site Plans to the satisfaction of the City Manager, proceeds from refinancing or from subsequent encumbrances may be used to reduce LESSEE'S equity. The City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any proposed subsequent encumbrance, including but not limited to amending the Lease to provide then current rents and provisions.

If any approved deed of trust or mortgage or other security instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, LANDLORD shall accept the approved mortgagee or beneficiary as the "LESSEE" under this Lease with all the rights and obligations granted and imposed in this Lease.

Upon prior written approval by the City Manager, the mortgagee or beneficiary may assign this Lease to its nominee, if the nominee is a reputable, qualified, and financially responsible person or entity in the opinion of the City Manager. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any such terms, covenants, or conditions. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this Lease. The City Manager's approval may not be unreasonably withheld, provided all persons and entities are of good character and reputation in the community.

SECTION 6: DEFAULTS AND REMEDIES

6.1 Defaults and Remedies.

Upon default by LESSEE, LANDLORD may pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to LANDLORD in law or equity. These remedies are not exclusive but cumulative.

- 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 if the failure continues for five (5) days following written notice of the failure by LANDLORD; or
- (2) LESSEE'S breach of any of its obligations under this Lease, other than those requiring payment to LANDLORD, and LESSEE either: (i) fails to cure the breach within thirty (30) days following written notice from LANDLORD; or, (ii) if such breach is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion; or
- (3) LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or
- (4) LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) days of filing; or
- (5) LESSEE is adjudicated a bankrupt; or
- (6) LESSEE makes a general assignment for the benefit of creditors; or
- (7) LESSEE uses the Premises for any unauthorized purpose.

b. Remedies.

- (1) For Default Based Upon Nonpayment. Upon default by LESSEE for nonpayment under Section 6.1a (1) of this Lease, LANDLORD may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Five-Day Notice to Pay or Quit. Thereafter if LESSEE fails to make payment within five days, LANDLORD may terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession of the Premises, and LANDLORD may enter and take possession of the Premises and may recover the amount set forth below.
- (2) For Any Other Default. Upon default by LESSEE based upon Section 6.1a (2-7) of this Lease, LANDLORD may, at its option, terminate the Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or possession of the Premises, and LANDLORD may enter and take possession of

the Premises and may recover from LESSEE the amount set forth below. If any default described in Section 6.1a (2-7) of this Lease, 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 the cure to completion.

(3) LANDLORD Recovery Upon LESSEE Default. Upon termination of the Lease due to default, LANDLORD may recover 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 minus (ii) the amount of the rent lost, if any, that LESSEE affirmatively proved 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 minus (ii) the amount of rent lost, 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 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 terms "rent" shall include base rent, percentage rent and any other payments required of LESSEE.

(4) Default if the Leasehold Interest is Encumbered by a Deed of Trust or Mortgage. 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 mortgagee or beneficiary, LANDLORD shall give the mortgagee or beneficiary

written notice of the defaults complained of, and the mortgagee or beneficiary will have thirty (30) days from the notice to cure the default(s) or, if any default is not curable within thirty (30) days, to commence to cure the defaults) and diligently pursue the cure to completion. The thirty-day period may be extended upon written request by mortgagee or beneficiary if mortgagee or beneficiary is pursuing the cure with reasonable diligence.

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

- (a) LANDLORD may correct the default(s) and charge the costs incurred to the account of LESSEE, which charge shall 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 the costs;
- (b) LANDLORD may correct the default(s) and may recover the costs incurred 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; or
- (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 shall 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 entering into a new lease with the same terms and conditions as this Lease with the new tenant shall be the responsibility of the terminated LESSEE, and LESSEE shall 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 LANDLORD, shall have the

right to substitute itself in the place of LESSEE under this Lease and to assume all the obligations of LESSEE under this Lease. If the mortgagee or beneficiary gives notice in writing of its election to 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 the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, LANDLORD 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 and LESSEE shall assign all its interest in this Lease to mortgagee or beneficiary.

- (5) Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as LANDLORD does not terminate this Lease, and LANDLORD may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
- (6) Waiver. Any LANDLORD waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. LANDLORD'S 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. 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. Any failure by the City Manager or 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 the default is discovered or when the City Council directs the City Manager to take action or require the cure of any default after the default is brought to the attention of the City Council.

SECTION 7: INSURANCE RISKS/SECURITY

7.1 Indemnity.

LESSEE shall protect, defend, indemnify, and hold LANDLORD, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with this Lease or the development, occupancy, or use of the Premises, and all costs and expenses of investigating and defending against same, including without limitation attorney fees and costs; 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 LANDLORD, its elected officials, officers, representatives, agents and employees. LANDLORD may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If LANDLORD chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

7.2 Insurance.

- a. LESSEE represents and warrants to LANDLORD that it is self insured in accordance with applicable law, and shall pay all claims related to this Lease, the Premises, or LESSEE'S use of the Premises that would be covered by a third-party insurance company in the usual course of business, including without limitation Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000), together with All Risk Property Insurance covering one hundred percent (100%) of the replacement cost. Upon request, LESSEE shall provide CITY evidence of insurance or its ability to self-insure.
- b. Satisfactory evidence of self-insurance has been provided to and approved by LANDLORD and attached hereto. No further proof of insurance is required unless changes have been made to LESSEE's insurance status. Upon assignment to MTS, satisfactory evidence of self-insurance shall be provided to LANDLORD and no further proof of insurance shall be required unless changes are made to MTS's insurance status.

7.3 Accident Reports.

LESSEE shall report to CITY any accident causing more than five thousand dollars (\$5,000) worth of property damage or any serious injury to persons on the Premises. Such report shall contain the names and addresses of the involved

parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

7.3 Waste, Damage or Destruction.

LESSEE shall give notice to CITY of any fire or any other damage that occurs on the Premises within ten (10) days of the fire or damage. LESSEE shall not commit or allow to be committed any waste or injury or any public or private nuisance. LESSEE shall keep the Premises clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises is damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make or cause to be made full repair of the damage and restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage, using for either purpose the insurance proceeds as set forth in Section 7.2 Insurance of this Lease. LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days of the occurrence of the fire or damage, and shall complete the required repairs, restoration, or replacement of the Premises within one hundred eighty (180) days. The one hundred eighty (180) day period may be extended upon written request by LESSEE if LESSEE is pursuing the repairs with reasonable diligence.

SECTION 8: IMPROVEMENTS/ALTERATIONS/REPAIRS

8.1 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 its independent inspections, tests, investigations, and observations in entering into this Lease. LESSEE 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. It is LESSEE'S responsibility to investigate the Premises for the presence of any "hazardous substances," as defined in Section 8.12 Hazardous Substances of this Lease, and LESSEE may perform such investigation, including any soil boring or other test. LESSEE shall notify LANDLORD if LESSEE'S investigations indicate the presence of any hazardous substances on the Premises. If LESSEE fails to investigate the Premises for the presence of any hazardous substances, or

fails to notify LANDLORD of the presence of hazardous substances after its investigation, LESSEE waives any claims against LANDLORD which may result from the presence of hazardous substances on the Premises. LESSEE shall not be liable for the presence of any hazardous substances or damages caused by hazardous substances existing prior to the Commencement Date or arising during the term of this Lease caused by another tenant other than LESSEE.

8.2 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 Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. If entry or inspection by LANDLORD discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, LANDLORD may, after ten (10) days written notice to LESSEE, have any necessary maintenance work done at the expense of LESSEE, and LESSEE shall pay promptly any and all costs incurred by LANDLORD in having the necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time LANDLORD determines that the Premises are not in a decent, safe, healthy, and sanitary condition, LANDLORD may at its sole option, without additional notice, require LESSEE to file with LANDLORD a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of LANDLORD to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on LANDLORD or increase obligations elsewhere in this Lease imposed on LANDLORD.

8.4 Maintenance.

LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term of this Lease. LESSEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to LANDLORD and in compliance with all applicable laws. All applicable codes and standards of LANDLORD, state and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

8.4 Improvements and Alterations.

LESSEE shall not construct any improvements, structures, or installations on the Premises, or make any alterations to the Premises without prior written approval of the City Manager. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the

Premises without prior written approval of the City Manager, which approval shall not be unreasonably withheld.

- a. Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be necessary or reasonably advisable to validate its use of the Premises, relative to any such superior interest. If LESSEE'S use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- b. Projects. LESSEE shall notify the City Manager of all improvement projects on the Premises and shall inform permitting authorities that the Premises are LANDLORD-owned property.
- c. Repair and Restoration. These provisions shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy and sanitary condition, including without limitation structural repair and restoration of damaged or worn improvements.
- d. Entire Installation. LESSEE represents and warrants that the Communications Equipment listed in Exhibit "C" – Equipment constitutes the entire installation, which LESSEE shall update from time to time upon the request of the City Manager.

8.5 Utilities.

LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. All utilities shall be installed underground.

8.6 Liens.

LESSEE shall at all times hold LANDLORD free and harmless and indemnify LANDLORD against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against claims, including reasonable attorney fees. If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than LANDLORD, and a lien or notice of lien is filed, LESSEE shall, within five (5) days of the 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.

8.7 Taxes.

LESSEE shall 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, or levied by reason of the business or other LESSEE activities related to the Premises, including without limitation any licenses or permits. LESSEE acknowledges 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 the leasehold interest. LESSEE shall pay all possessory interest taxes. LESSEE'S payment of taxes, fees and assessments shall not reduce any rent due LANDLORD.

8.8 Signs.

LESSEE shall only post signs required by federal, state or local regulations, including without limitation safety signs required by OSHA, FAA or FCC. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises without LANDLORD'S prior written consent. If any unauthorized item is found on the Premises, LESSEE shall remove the item at its expense upon twenty-four (24) hours notice by LANDLORD, or LANDLORD may then enter the Premises and remove the item at LESSEE'S cost. LESSEE shall post a clearly marked sign at the Premises indicating LESSEE'S name and emergency telephone number.

8.9 Ownership of Improvements and Personal Property.

Any and all improvements, trade fixtures, structures, and installations or additions to the premises existing on the Commencement Date or constructed on the premises by LESSEE during the Term of this Lease shall at the expiration or earlier termination of this Lease 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.

- a. If LANDLORD elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, LANDLORD shall notify LESSEE upon early termination of this Lease or one hundred eighty (180) days prior to the expiration of this Lease, and LESSEE shall remove the improvements, trade fixtures, structures and installations as directed by LANDLORD at LESSEE'S sole cost on or before the expiration or earlier termination of this Lease. If LESSEE fails to remove

any improvements, structures, and installations as directed, LESSEE shall pay LANDLORD the full cost of any removal.

- b. LESSEE shall remove the Communications Equipment and any other LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property by the date of the expiration or earlier termination of this Lease. Any items which LESSEE fails to remove shall be considered abandoned and become LANDLORD'S property free of all claims and liens, or LANDLORD may, at its option, remove the items at LESSEE'S expense.
- c. If removal of any personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE shall repair all damage at LESSEE'S expense.
- d. If the removal of any of LESSEE'S personal property by either LANDLORD or LESSEE takes place after the expiration or earlier termination of this Lease, LESSEE shall pay rent to LANDLORD at the rate in effect immediately prior to the expiration or earlier termination of this Lease until all of LESSEE'S property has been removed from the Premises.
- e. If LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon the expiration or earlier termination of this Lease, then LANDLORD shall have the first right to acquire or purchase the personal property.

8.10 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 the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent pursuant to this Lease. If LESSEE or LANDLORD claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.

8.11 Hazardous Substances.

- a. LESSEE shall not allow the installation or release of hazardous substances in, on, under or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California'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 in this Lease.
- b. If any release of a hazardous substance occurs, LESSEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- c. LESSEE shall protect, defend, indemnify, and hold LANDLORD harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S development, use or maintenance of 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.
- d. 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 LANDLORD within three (3) days of receipt of the knowledge or cause for belief. If LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify LANDLORD immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. LESSEE shall notify LANDLORD immediately of any notice of violation received or initiation of environmental actions or private suits related to the Premises. LESSEE and LESSEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Premises without LANDLORD'S prior written consent.
- e. At any time within the twelve (12) months before the expiration, or upon earlier termination of this Lease, LESSEE, at LANDLORD'S option, based upon reasonable belief that a Hazardous Substance has been or may have been released on the Premises by LESSEE, shall cause an 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. The 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. If any hazardous substances exist in quantities greater than that allowed by LANDLORD, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these 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 recommended in the environmental assessment such that compliance with environmental law is achieved, and LESSEE shall pay all costs and expenses therefore.

8.12 Radio-Frequency Radiation.

LESSEE shall maintain radio-frequency radiation within the levels allowed by Federal Regulations stated in Section 1.1310 of CFR 47 and OET Bulletin 65. Any area casually accessible by the general public or by any worker at ground level shall be maintained below limits stated for General Population/Uncontrolled Exposure. Any areas discovered by LESSEE to exceed these federally mandated limits, shall be reported to the LANDLORD. LESSEE shall not hold LANDLORD responsible for radiation levels found to exceed these limits. Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. Any equipment installed on the Site may at times require shutdown to allow maintenance on antenna structures. LESSEE shall allow shutdown periods when required for this maintenance, provided LANDLORD shall use reasonable efforts to ensure that these shutdowns do not occur during peak hours of operation. Protection of all employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled limits must be clearly identified as required by CAL-OSHA. LESSEE shall provide LANDLORD with written shutdown procedures, contact names, and telephone numbers. LESSEE shall notify LANDLORD in writing of any changes to the shutdown procedures, contact names or telephone numbers within seven (7) days of the change.

8.13 Radio-Frequency Interference.

LESSEE warrants that all Communications Equipment installations, modifications, and maintenance shall not result in degraded performance or radio frequency interference to any existing authorized uses of the Site by fulfilling the

requirements of Exhibit "D" - Interference Protection Requirements, as may be updated from time to time at the sole discretion of the City Manager.

8.14 Industry Standards.

LESSEE warrants that all Communications Equipment installations, modifications, and maintenance shall be performed in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© Manual, or any succeeding regulations or standards. In addition to the requirements of the Motorola R56© publication, installations shall comply with the following supplemental requirements:

- a. LESSEE shall remove all trash and debris from the Premises at the end of each workday and upon completion of the project.
- b. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements.
- c. All transmitters shall have all necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as cavity filtering and transmitter isolators.
- d. LESSEE'S installation or modification of equipment at sites used by the CITY'S Information Technology & Communications Division ("IT&C") must follow the additional requirements described in Exhibit "E" - Installation Standards for Information, Technology, and Communications Division Sites, as may be updated from time to time at the sole discretion of the City Manager.

SECTION 9: LANDLORD POLICY IMPLEMENTATION PROVISIONS

9.1 LANDLORD Approval.

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

9.2 Nondiscrimination.

LESSEE shall not 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, including but not limited to the providing of goods, services, facilities,

privileges, advantages, and accommodations, and the obtaining and holding of employment.

9.3 Compliance with CITY'S Equal Opportunity Contracting Program.

LESSEE shall 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 into this Lease. LESSEE, its sublessees and all of its subcontractors are individually responsible to abide by its contents. LESSEE shall 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 shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Commencement Date, LESSEE shall submit 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, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities. LESSEE and its sublessees shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Lease so that the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff. LESSEE'S 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 leases and/or contracts for a period of not less than one (1) year.

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

9.5 CITY Employee Participation Policy.

This Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if LESSEE employs an individual who, within the twelve months immediately preceding the 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 LESSEE. These provisions do not apply to members of the City Council.

9.6 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.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and its sublessees shall be individually responsible for their own drug-free workplace programs.

9.7 Disabled Access Compliance.

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

9.8 Water Quality Assurances.

LESSEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control ("Code"), and employ "Best

Management Practices” including a “Storm Water Pollution Prevention Plan” as those terms are defined by the Code (collectively, “Prevention Plan”) and as approved by CITY under its Stormwater Management Program. Within the first ninety (90) days of the Term, LESSEE shall submit a Prevention Plan satisfactory to the City Manager that will control erosion and reduce the amount of “Pollutants,” as defined by the Code, and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within ninety (90) days of written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to the satisfaction of the City Manager. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. LESSEE shall be solely responsible for informing its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and assuring their compliance therewith.

SECTION 10: GENERAL PROVISIONS

10.1 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, COUNTY, state, and federal governments at LESSEE’S sole expense. LESSEE shall comply with all notices issued by the City Manager or his authorized representative under the authority of all current or future laws, statutes, ordinances, or regulations.

10.2 Notices.

- a. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or sent by United States mail, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to LESSEE:

SANDAG
James Dreisbach-Towle
401 B Street, Suite 800
San Diego, CA 92101

With a copy to:
MTS
Attn: Chief Executive Officer
1255 Imperial Avenue, Ste. 1000

San Diego, CA 92101-7490

If to LANDLORD:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155

If to CITY'S Information, Technology and Communications Department:

City of San Diego
Information, Technology and Communications Department
Attention: Communications Division
Central Operations
1220 Caminito Centro
San Diego, CA 92102

or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated in writing by that 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 upon personal service or five (5) days after deposit in the U. S. mail.

10.3 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 shall remain in full force and effect.

10.4 Legal Fees.

If there is any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including without limitation court costs and attorney fees.

10.5 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.

10.6 Captions.

The 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 may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Lease.

10.7 Entire Understanding.

This Lease contains the entire understanding of the parties. LANDLORD and LESSEE, by signing this Lease, agree that there is no other written or oral understanding between them 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 party to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this 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 such actions.

10.8 Lease Modifications.

This Lease shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Lease.

10.9 Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants, and conditions of this Lease. Except as otherwise provided in this Lease, 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.

10.10 Authority.

Each individual executing this Lease on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity shall provide LANDLORD with evidence, satisfactory to the City Manager that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

10.11 Survival.

Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.

10.12 Standard of Employees.

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

10.13 Cost Recovery.

CITY maintains a schedule of fees to be paid by LESSEE as an offset to administrative costs incurred for CITY staff services that are of benefit to LESSEE. CITY shall process service requests upon receipt of LESSEE'S payment of the applicable fee. The fee schedule, which is maintained by the City Clerk's Office, may be updated from time to time at the sole discretion of CITY.

10.14 Governing Law.

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California

10.15 Counterparts.

This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.16 Consents.

All consents to be given by either party shall not be unreasonably withheld or delayed.

10.17 San Diego's Strong Mayor Form of Governance.

All references to "City Manager" in this Lease and all subsequent amendments to this Lease shall be deemed to refer to "Mayor." This section became effective on January 1, 2006, and shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

[Remainder of page intentionally left blank.]

SECTION 11: SIGNATURES

11.1 Signature Page.

This Lease is executed by LANDLORD, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized signatory.

LANDLORD:

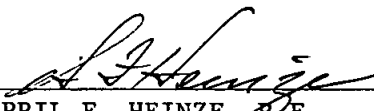
CITY OF SAN DIEGO, a California municipal corporation

Date: 2/12/08

By: 
James F. Barwick
Real Estate Assets Director

COUNTY OF SAN DIEGO

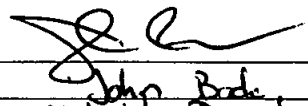
Date: 1-28-08

By: 
Name: APRIL F. HEINZE, P.E.
Title: Director
Department of General Services

LESSEE:

SAN DIEGO ASSOCIATION OF GOVERNMENTS

Date: 10/15/2007

By: 
Name: John Bode
Title: Managing Director

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 2/15/08

By: 

APPROVED as to form and legality this 19th day of February, 2007.

MICHAEL J. AGUIRRE, City Attorney

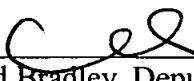
By: 
Todd Bradley, Deputy City Attorney

EXHIBIT A – Legal Descriptions.

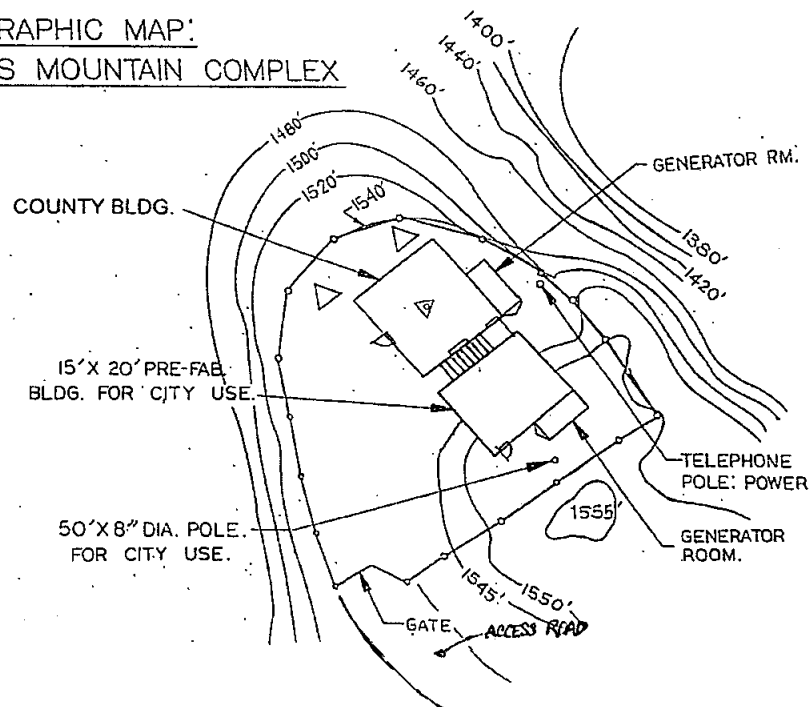
Cowles Mountain Communications Center

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.

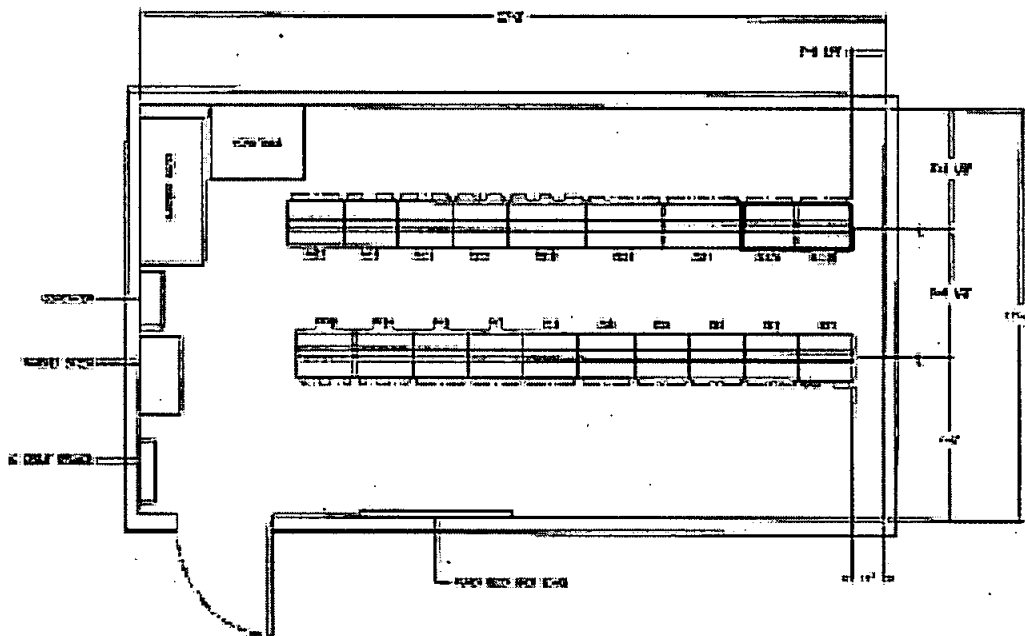
EXCEPTING THEREFROM that portion lying below an elevation of 1,400 feet above mean sea level based on the US Coastal and Geodetic Survey Sea Level Datum of 1929.

EXHIBIT B – Site Plans

TOPOGRAPHIC MAP: COWLES MOUNTAIN COMPLEX



The two (2) full racks spaces, 10A & 10B, will be located as indicated below:



INTERIOR FLOOR PLAN - RACKS - 10A & 10B

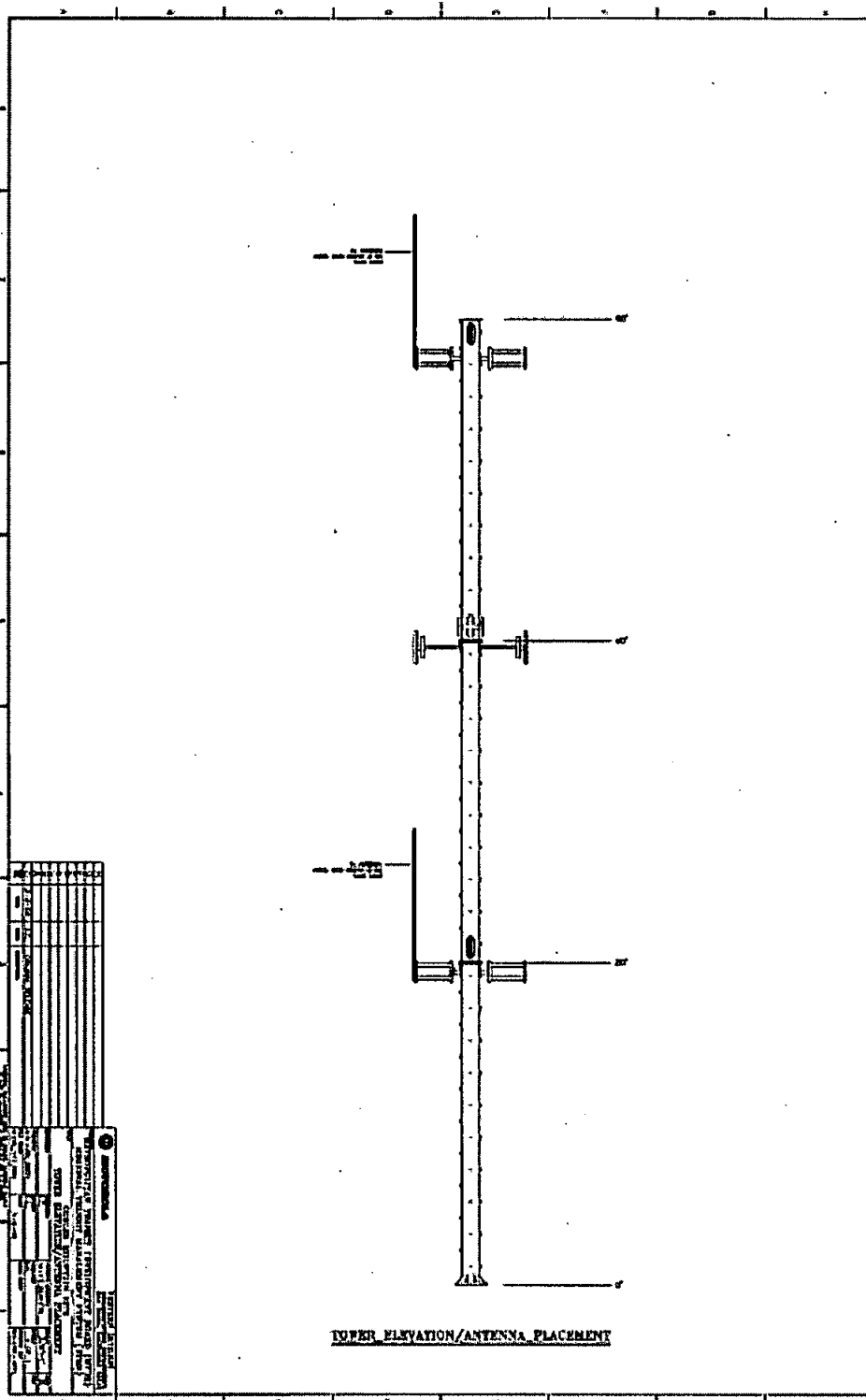


EXHIBIT C – Equipment.

SANDAG will install and operate two standard EIA equipment racks. The rack face drawing (MTDB 020 Model) depicts the two racks to be installed on the right-hand side of the drawing, which is labeled "Field Install Layout." The racks will contain five (5) Motorola Quantar Transceivers, a TeNSr Channel Bank, a Receiver Multicoupler/Transmit Combiner, a GPS standard and a DC ne 120 V AC, 1 amp circuit to power the Bay tech shelf plant. All the equipment, except the Baytech shelf will be powered by five rectifiers. We will need three 240 V AC circuits rated at 20 amps each to power the rectifiers.

SANDAG will be installing two antennas on the City's new monopole tower, located west of the building. The antennas will be installed at the twenty and sixty foot level above the ground. A spec sheet for the antenna is attached (BCD-80010-3-25). The receive antenna will be mounted at the sixty foot level on the strut located left of the ladder. The transmit antenna will be installed at the twenty foot level on the strut left of the ladder. The antennas will be serviced by 7/8" coaxial lines, grounded and surge suppressed. An existing T1 line, run underground to the RCS building, will be used to connect to the RCS microwave. The City has provided this cable to the County equipment room for interconnection of systems at the T1 level. This cable has the two pairs requested for interconnection of SANDAG equipment to the County's microwave. This cable is maintained by the City

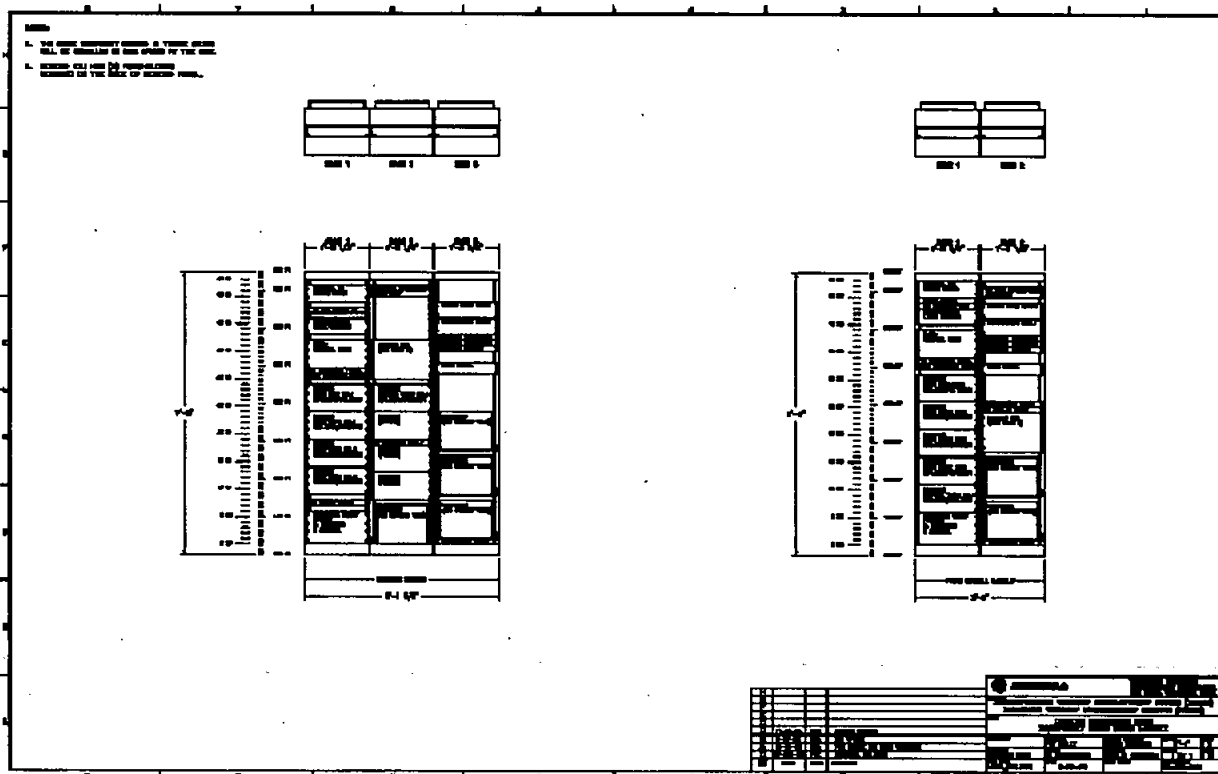


Exhibit "D" - Interference Protection Requirements - Information, Technology, and Communications Division Sites.

- a. Interference. Prior to the Commencement Date or at anytime during the Term of this Lease, LESSEE may be required to provide an intermodulation report ("Report") to CITY. This Report shall include the calculation parameters used to compile the Report, all intermodulation "hits," a brief description of the results of the intermodulation calculations; a list of possible interference situations that may result from the proposed Communications Equipment; transmission frequencies that are currently being operated at the Site, and similar or other relevant data from other permittees/lessees/users operating on-site. The information required to compile the Report, including intermodulation parameters and currently known transmission frequencies at the Site may be obtained from CITY'S Information Technology and Communications Division (IT&C). CITY is not responsible for any omitted data provided for the purpose of creating the Report. The Report shall be provided to IT&C, Senior Communications Engineer.
- b. City of San Diego Land Radio/Electronic Use "On The Air" Test Instructions and Procedures. For the purpose of confirming interference situations calculated by the Report and for the discovery of any other actual interference situations, on-premises, pre-installation or pre-use tests may be required. The tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses at the Site.

Pre-installation or pre-use Testing

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

- (b) A copy of these instructions, "City of San Diego Radio/Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be noted in the notification letter.
 - (c) Notification to permittees/lessees/users shall be sent via U.S. Mail, pre-paid First-Class postage, certified return receipt requested or hand delivered.
 - (d) The notification letter to the IT&C Senior Communications Engineer shall include a list of all permittees/lessees/users notified.
- (2) Following the completion of the tests, LESSEE shall provide a letter to the IT&C Senior Communications Engineer stating the test results obtained from each permittee/lessee/user participating in the test and a list of those permittees/lessees/users who did not respond.
 - (3) If a notified permittee/lessee/user fails to send a qualified representative to observe and participate in the tests, it will be assumed by the CITY that the permittee/lessee/user has assured themselves that their operations will not be affected.
 - (4) It shall be the responsibility of LESSEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. On-The-Air Tests - Technical Details

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

- (1) The LESSEE'S transmitting and/or receiving equipment shall be of the type planned for final use at the Site.
 - (a) The transmitted RF power shall be the maximum to be used and authorized at the Site.
 - (b) On-the-air transmitter tests shall include the use of full allowable modulation.
 - (c) Antenna height(s), location(s) and type(s) shall be the same or comparable to the final installation plan.

- (2) Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the LESSEE'S electronic equipment.
- (3) All tests will include testing with all frequencies planned for use by the LESSEE at the Site.

d. Radio Frequency Interference to City Radio Equipment

The radio equipment use proposed by the applicant shall not directly or indirectly result in degraded technical performance of the CITY'S existing radio equipment installed at the Site or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to: 1) Detectable or measurable received intermodulation

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

e. Modifications to Equipment

LESSEE shall notify CITY prior to modifications to transmitting equipment that will change effective radiated power, transmitter frequency, transmitter modulation, or transmitter spurious and harmonic emissions. These modifications may require retest using this "On The Air" testing procedure and the newly proposed equipment.

f. Resulting Interference

Should an interference problem occur at the Site or in the nearby surrounding area as a result of LESSEE'S newly installed, retuned, or modified Communications Equipment, LESSEE shall be responsible for initiating mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. CITY may recognize the right of prior authorized permittees/lessees/users and withhold approval or disallow use of a new, retuned, or modified installation pending settlement of the interference problems between LESSEE and other authorized users. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of CITY withholding approval and LESSEE waives any claim for expense or loss which LESSEE might incur as a result of CITY withholding approval.

TECHNICAL DATA SUMMARY

One form to be completed per transmitter and supplied to all permittees/lessees/users operating at the facility.

DATE _____

LOCATION _____ APPLICANT _____

CALL SIGN _____ CONTACT NAME _____ PHONE _____

TRANSMITTER

RECEIVER

Manufacturer _____ Manufacturer _____

Model _____ Model _____

Emission _____

Radiated ERP _____ Watts

Transmit Frequency _____

Receiver Frequency _____

CTCSS or DCS

1. _____

1. _____

1. _____

2. _____

2. _____

2. _____

3. _____

3. _____

3. _____

4. _____

4. _____

4. _____

ANTENNA

TRANSMIT CAVITY

FILTER ISOLATOR

Make _____ Make _____ Make _____

Model/Type _____

Gain _____ dBd

Azimuth _____

REMARKS:

TEST RESULTS CERTIFICATION

Top section is to be completed and supplied to all permittees/lessees/users operating at the Site. Bottom section is to be completed by each existing Site permittee/lessee/user after testing is finished.

SUBJECT: "On the air" interference testing

SITE LOCATION _____

FREQUENCY _____

DATE OF TEST _____

TIME OF TEST _____

PROPOSED TRANSMITTER OWNED BY _____

TEST PERFORMED BY _____

Permittee/Lessee/User:

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

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

Details of interference: (if applicable)

Proposed technical resolution: (if applicable)

(Tenant)

(Tenant's Representative)

(Date)

Exhibit "E" - Installation Standards for Information, Technology, and Communications
Division Sites.

- 1) All waveguide and coaxial cable runs shall be installed and supported on the tower, cable ladder, and ice bridges using equivalent hardware and methods to those currently used on site.
- 2) All waveguide and coaxial 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 cable enters the building. Grounds shall be installed to shunt any lightning directly to earth ground.
- 4) All antenna mounts and hardware utilized on towers and structures shall be hot-dip galvanized or stainless steel and of standard manufacture.
- 5) All drawings submitted for installation approval 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 and the routing of the waveguide or coax cable specifying grounding locations.
 - c) 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.
 - d) A list of all equipment to be installed shall be provided. This list shall include the type and manufacturer of equipment, RF frequency, RF power, modulation type, RF filtering, antenna type, antenna model, antenna gain and azimuth, waveguide and/or coax cable length and AC power requirement including any HVAC.
- 6) All transmitters shall have necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as filtering and isolators.
- 7) To minimize the number of antennas and waveguide or coax cables to be mounted on the tower, transmitter combining will be required whenever possible.
- 8) All cabinets and racks shall be grounded to the site grounding system.

- 9) Should the CITY determine that a tower loading analysis is required, the requesting user shall have the tower analysis done at its expense and provide the CITY with information on how the additional load to the tower will affect tower structural integrity.
- 10) Tower Climbing: All tower climbing shall be done in compliance with all CAL-OSHA requirements.
- 11) RF Radiation: 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 the antenna structure for installation or maintenance, contact the CITY's IT&C Fixed Maintenance Supervisor at (619) 525-8650 for shutdown scheduling and procedures. Any equipment installed on the Site may at times require shutdown to allow maintenance personnel to access the antenna structure.
- 12) Lessees 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.
- 13) Access: For access to the site, contact the CITY's IT&C Fixed Maintenance Supervisor at (619) 525-8650. Keys will be issued as required. **DO NOT DUPLICATE KEYS.**
- 14) Security: All sites are alarmed with silent alarms and monitored 24 hours per day by the Public Service Dispatch Center. When entering or leaving a building, call (619) 527-7660 or use the order wire dial #13 and identify yourself. Police respond to all unanswered alarms.
- 15) Cleanup: All trash and debris shall be removed from the site at the end of each work day and upon completion of the project.
- 16) A detailed construction schedule shall be provided to IT&C prior to any installation work.

Exhibit "F" – 1996 joint Exercise of Power Agreement

Exhibit "G" – LANDLORD Approval

COPY

COPY

EXHIBIT "F" - 1996 joint Exercise of Power Agreement

JOINT EXERCISE OF POWERS
AGREEMENT BETWEEN THE
COUNTY OF SAN DIEGO AND THE
CITY OF SAN DIEGO
FOR OPERATION OF
MISSION TRAILS PARK

THIS AGREEMENT, is made and entered into effective as of the MAR 04 1996
_____ day of _____ 199_____ by and between the City of San Diego
("City"), and the County of San Diego ("County") existing under the
laws of the State of California (hereinafter referred to
collectively as "Public Agencies").

W I T N E S S E T H

WHEREAS, the Public Agencies are each empowered by law to
acquire sites, to plan and design public facilities and
appurtenances, and to operate sites for park purposes; and

WHEREAS, the Public Agencies wish to operate Mission Trails
Regional Park together; and

WHEREAS, the Public Agencies desire to support the operation
of Mission Trails Park, it is deemed advisable for the Public
Agencies to coordinate the operation of Mission Trails Park, for
the benefit of their citizens and others, by jointly exercising
their common powers in the manner set forth in this Agreement;

NOW, THEREFORE, the Public Agencies, for and in consideration
of the mutual benefits, promises and agreements set forth herein,
agree as follows:

SECTION 1. PURPOSE.

This Agreement is made pursuant to the provisions of Article

1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500, hereinafter referred to as the "Act") relating to the joint exercise of powers common to public agencies. The Public Agencies possess the powers referred to in the above recitals. The purpose of this Agreement is to exercise such powers jointly by coordinating operations of Mission Trails Park.

SECTION 2. TERM.

This Agreement shall become effective as of the date hereof and shall continue in full force and effect for 25 years from the date hereof or until repealed by any or all parties hereto. This agreement may be extended for an additional 25 years with the written consent of all parties.

SECTION 3. DESCRIPTION.

The real property to be operated shall be those areas defined by, and depicted in, Exhibit "A", attached hereto and by this reference made a part hereof. Upon mutual agreement between the City and County, those lands currently depicted on Exhibit "A" as being managed by the County can be transferred to City management without amending this agreement.

SECTION 4. TITLE.

During the term of this Agreement, or upon termination of this Agreement, all right, title and interest to any portion of the property descibed in Section 3, above, shall belong to and be vested in the Public Agency, which acquired such portion of the property.

SECTION 5. OPERATION OF MISSION TRAILS REGIONAL PARK

The City shall, at its cost and subject to availability of funds as determined by the City Council, keep and maintain Mission Trails Regional Park on those lands as shown in Exhibit A, in a good and sanitary order, condition and repair, and in a manner acceptable to County.

SECTION 6. DEFEND, INDEMNIFY AND HOLD HARMLESS

City shall defend, indemnify, protect, and hold County and 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, ("claims") including injury to City's employees, agents or officers, to the extent such Claims arise from, are connected with, or are caused or claimed to be caused by the acts or omissions of City and its agents, officers or employees in performing this Agreement or the services herein, and all expenses of investigating and defending against same. City's duty to indemnify and hold County harmless shall, however, not include any Claims arising from the sole misconduct or negligence of the County, its agents, officers or employees.

County shall defend, indemnify, protect, and hold City and its agents, officers and employees harmless from and against any and all Claims including injury to County's employees, agents or officers to the extent such Claims arise from, are connected with, or are caused or claimed to be caused by the acts or omissions of County and its agents, officers or employees in performing this Agreement or the services herein, and all expenses of investigating

and defending against same. County's duty to indemnify and hold City harmless, however, shall not include any Claims arising from the sole misconduct or negligence of City, its agents, officers or employees.

SECTION 7. COUNTY'S ENTRY ON PREMISES

County reserves, and shall always have the right, during the term of this agreement to enter the property described in Exhibit "A" for the purpose of viewing and ascertaining the condition thereof, or to protect their interests in the premises or to inspect the operation and maintenance.

SECTION 8. MISSION TRAILS REVENUE

City and County agree that all revenues obtained from Mission Trails Regional Park on the property described in Exhibit "A", including antenna revenues and use fees, shall be collected and used by City consistent with the manner which the City expends its antenna revenues as reflected in Council Resolution R-261333 adopted August 6, 1984.

SECTION 9. COORDINATION OF OPERATIONS

On or before January 1 of each year the Chief Administrative Officer of the County and the City Manager, of the City, or their designees shall meet to discuss any issues regarding development, and operation and maintenance of the areas described in Exhibit A.

SECTION 10. GOVERNING LAW

This Agreement shall in every respect be binding upon the parties hereto and their respective successors and assigns. This Agreement shall be governed by the laws of the State of California.

SECTION 11. PROVISIONS REQUIRED BY LAW.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if for any reason any such provision is not inserted, or is not correctly stated, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 12. PARTIAL INVALIDITY.

If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

SECTION 13. EXECUTION.

This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by City and County, all with the same full force and effect as though the same counterpart has been executed simultaneously by each City and County.

SECTION 14. COMMUNICATION FACILITY

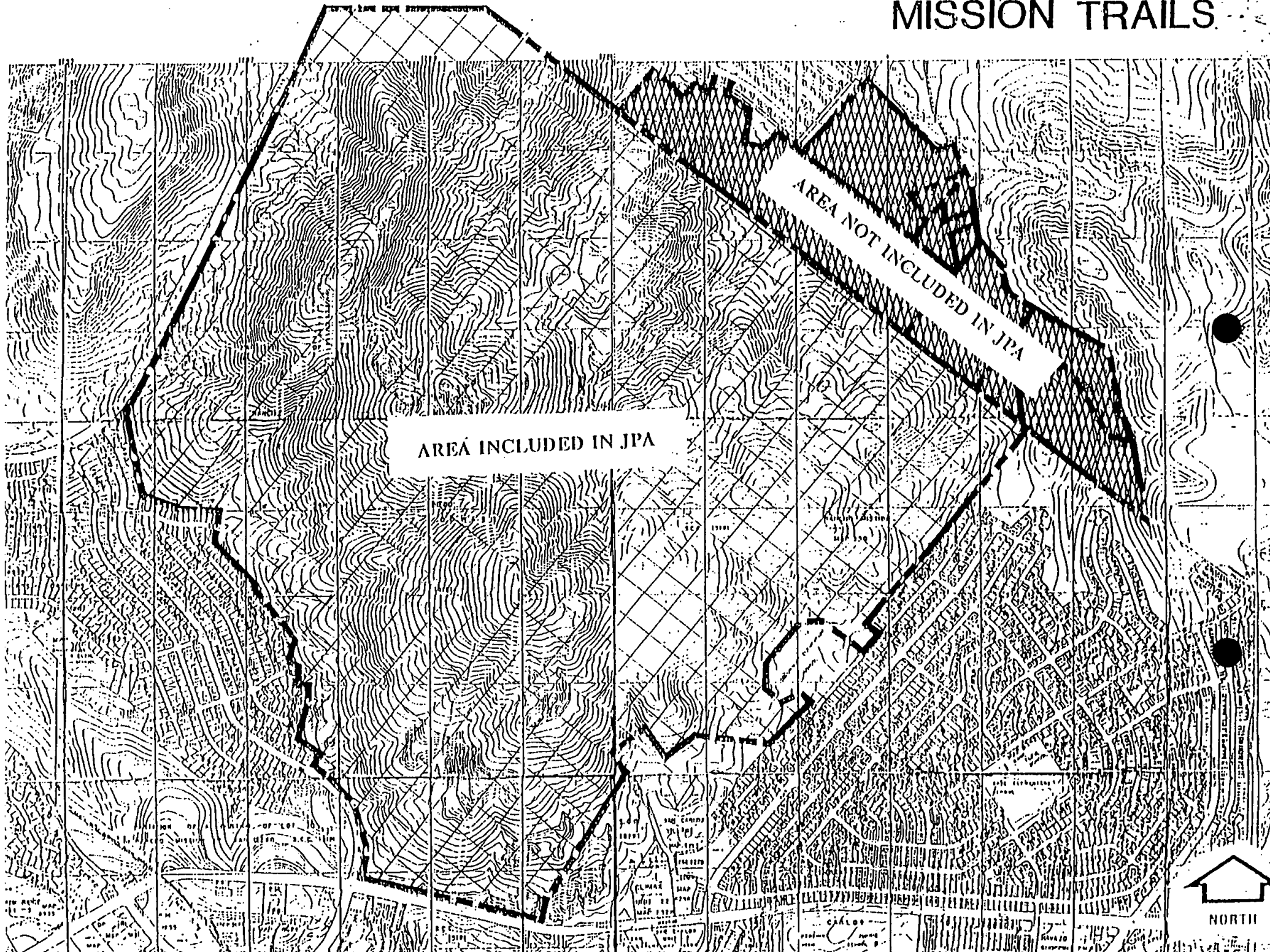
As long as a communication complex exists on the summit of Cowles Mountain, operations shall be managed by a joint City and County operations group. Membership on the operations group shall consist of the County's Manager of Microwave/Radio Communications or designee, City's Deputy Director of Communications and Electrical Division or designee, and any others appointed by the operations group. This group will be responsible for the adoption and enforcement of standards used to control the installation, operation, and maintenance of the communication facility. This group will also be responsible for the maintenance and improvement needed for the communication complex and access roadway, following guidelines adopted by the Mission Trails Task Force. Neither the County nor the City shall pay fees for use of or access to the communications facility.

SECTION 15. ENTIRE AGREEMENT.

This Agreement contains the entire agreement. Any amendments must be in writing and executed by both parties.

0 -18268

MISSION TRAILS



ORDINANCE NUMBER O- 18268 (NEW SERIES)

ADOPTED ON MAR 04 1996

ORDINANCE AUTHORIZING A JOINT POWERS AGREEMENT
WITH THE COUNTY OF SAN DIEGO REGARDING THE
OPERATION AND MAINTENANCE OF TIJUANA RIVER
VALLEY PARK AND MISSION TRAILS REGIONAL PARK

BE IT ORDAINED, by the Council of The City of San Diego,
that the City Manager or his representative is authorized and
empowered to execute, for and on behalf of the City, a 25-year
joint powers agreement with the County of San Diego relating to
the operation and maintenance of the Tijuana River Valley Park
under the terms and conditions set forth in the Joint Exercise
of Powers Agreement, on file in the office of the City Clerk as
Document Number OO- 18268-1

BE IT FURTHER ORDAINED, that the City Manager or his
representative is authorized and empowered to execute, for and
on behalf of the City, a 25-year joint powers agreement with the
County of San Diego relating to the operation and maintenance of
Mission Trails Regional Park, under the terms and conditions set
forth in the Joint Exercise of Powers Agreement, on file in the
office of the City Clerk as Document Number OO- 18268-2

BE IT FURTHER ORDAINED, that this ordinance shall take
effect and be in force on the thirtieth day from and after its
passage.

APPROVED: JOHN W. WITT, City Attorney

By

Mary Kay Jackson
Mary Kay Jackson
Deputy City Attorney

MKJ:mb
10/04/95
Or.Dept:Pk&Rec
O-96-60
Form=o+t

Passed and adopted by the Council of The City of San Diego on
MAR 04 1996 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 ORDINANCE NO. O-18268 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on
FEB 20 1996 and on MAR 04 1996.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

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

(Seal)

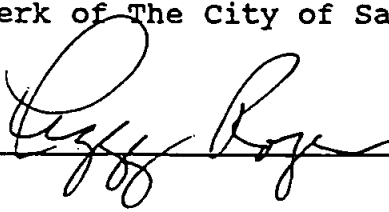
By: , Deputy

EXHIBIT "G" – LANDLORD Approval

From: "Root, Don" <Don.Root@sdsheriff.org>
To: "Dave Hazlett" <DHazlett@sandiego.gov>, "Hinshaw, Chris" <Chris.Hinshaw@sdsheriff.org>
Date: 12/13/06 8:28AM
Subject: RE: Cowles Mtn.
CC: "Angle, Len" <Leonard.Angle@sdsheriff.org>

Dave -

We're fine with it.

Len Angle will be the coordination point when the time comes for the power conversions.

Don

--
 Donald Root, Assistant Manager
 Wireless Services Division
 San Diego County Sheriff's Department
 San Diego - Imperial County Regional Communications System
 +1.858.694.3903 V +1.858.694.3433 F +1.619.405.4379 C

> -----Original Message-----
 > From: Dave Hazlett [<mailto:DHazlett@sandiego.gov>]
 > Sent: Tuesday, December 12, 2006 16:29
 > To: Hinshaw, Chris; Root, Don
 > Subject: Cowles Mtn.
 >
 > SANDAG requests to install 2 racks of radio and ancillary
 > equipment at Cowles. I believe that the City of SD
 > administers the existing lease agreement, however, I want to
 > advise you of the request and ask if you are okay with
 > proceeding and/or need more info. The city radio engineers
 > have reviewed the request and feel that it is acceptable.
 > Further, SANDAG proposes to make improvements to the
 > electrical supply system at their expense, i.e., upgrade from
 > 400A to 600A service. Please let me know at your earliest
 > convenience. Thanks.
 >
 > David Hazlett
 > Deputy Director - Communications
 > City of San Diego
 > 619.525.8651
 > dhazlett@sandiego.gov
 >
 >
 >
 >