



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS





Ground Lease Agreement

between

CITY OF SAN DIEGO

and

**STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES**

at

**Point Loma Reservoir
1057½ Catalina Boulevard**

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CITY OF SAN DIEGO
GROUND LEASE AGREEMENT

This City of San Diego Ground Lease Agreement ("Lease"), effective as of August 1, 2007, is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and the STATE OF CALIFORNIA, by and through the Director of the Department of General Services ("LESSEE"), to be effective upon execution by CITY ("Commencement Date") and approval by the City Attorney, as follows:

SECTION 1: PREMISES

1.1 Leased Premises.

CITY owns all that certain City-owned real property situated in the County of San Diego, State of California, known as "1057½ Catalina Boulevard" and more particularly described in Exhibit A - Legal Description, attached to this Lease and by this reference made part of this Lease, hereinafter referred to as the "Site." CITY hereby leases to LESSEE and LESSEE leases from CITY that certain portion of the Site of approximately 18 feet by 18 feet, described in Exhibit B - Site Plan/Location, attached to this Lease and by this reference made part of this Lease, which portion shall hereinafter be called the "Premises." LESSEE, its agents, employees, contractors, guests and invitees may enter the Premises using the access point shown on the attached Exhibit B - Site Plan/Location on a 24-hour nonexclusive basis.

1.2 Easements and Reservations.

- a. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. CITY reserves the right to grant and use easements not in conflict with LESSEE'S right under this Lease to act as telecommunications manager for the vault, to enter into leases with all non-State tenants on the Premises and to collect rents from all non-State tenants located at the Premises. CITY may establish and use rights-of-way over, under, along, and across the Premises for utilities or thoroughfares as it deems advisable, in its sole discretion, for the public good.
- c. CITY may enter the Premises to inspect LESSEE'S communications vault and develop and/or repair CITY resources and services.

CITY 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 CITY exercising the rights reserved in this section.

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 CITY 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 CITY, 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 CITY, 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 CITY, 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. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY may transfer CITY'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 CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

1.4 Related Council Actions.

By entering into this Lease, neither CITY nor the 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 CITY.

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 CITY 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 CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage; provided, however, the Commencement Date shall automatically extend until the date CITY delivers possession of the Premises to LESSEE. Notwithstanding the foregoing, if CITY 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 CITY without further liability. CITY shall return any prepaid rent paid by LESSEE to CITY.

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. Not less than eighteen (18) months prior to the end of the Term, CITY shall provide LESSEE written notification of its intent to enter into negotiations with LESSEE for a new lease for the Premises.

2.2 Early Termination by LESSEE.

LESSEE may terminate this Lease at any time without further obligation to pay Rent by giving written notice to CITY at least thirty (30) days prior to the date when such termination shall become effective.

2.3 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, CITY 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.

2.4 Quitclaim and Surrender of LESSEE'S Interest.

- a. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which (i) existed on the Commencement Date, and (ii) are existing after the Commencement Date and not the result of LESSEE'S use of the Premises, and in a decent, safe, and sanitary condition.
- b. Quitclaim Deed. At termination of this Lease for any reason, LESSEE shall have the option of removing its improvements pursuant to Section 8.3 below. LESSEE shall execute, acknowledge and deliver to CITY, 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, CITY 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.

SECTION 3: USES

3.1 Sole Permitted Uses.

The Premises are leased to LESSEE, which includes all State of California ("State") agencies, 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 CITY.

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 CITY 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. Whenever possible, 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 CITY an initial rent of Twenty-Four Thousand Dollars (\$24,000) annually in advance, subject to annual adjustments on the first day of each Lease Year as provided in the following annual rent schedule:

Lease Year Two	\$24,960.00
Lease Year Three	\$25,958.40
Lease Year Four	\$26,996.76
Lease Year Five	\$28,076.64
Lease Year Six	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 fifth Lease year, the rent for the ensuing five (5) 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 site under this 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 based upon its current use as a telecommunications facility. The cost of such appraisal shall be shared equally by CITY and LESSEE. LESSEE shall receive a copy of the full appraisal no later than ninety (90) days after the six-year anniversary of the Commencement Date. The date of value of the appraisal shall be the date of rental adjustment as established in this section. 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 CITY 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.

If LESSEE does not concur with the results of the appraisal, then LESSEE may terminate this Lease within thirty (30) days of receipt of the appraisal by giving written notice to CITY of its intent to terminate. LESSEE shall have ninety (90) days from the date the termination notice is sent by LESSEE to remove its radio equipment without further obligation.

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 CITY 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 CITY from exercising any other rights and remedies available at law or in equity.

4.4 Additional Rent.

LESSEE shall pay to CITY as additional rent fifty percent (50%) of net receipts (gross receipts less direct expenses) generated by each non-State agency 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 Inspection of Records.

LESSEE shall maintain complete and accurate records and accounts showing all income and receipts from use of the Premises. LESSEE shall make any and all records and accounts available to CITY for inspection at a reasonable location and at all reasonable times so that CITY can determine LESSEE'S compliance with this Lease. LESSEE'S failure to keep and maintain records and make them available for inspection by CITY shall be a default of this Lease and cause for termination. LESSEE shall maintain all records and accounts according to the laws governing records. This section shall survive the expiration or earlier termination of this Lease.

SECTION 5: ASSIGNMENT

5.1 Assignment and Subletting.

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; provided however, LESSEE may add or substitute other State agencies. Consent shall not be unreasonably withheld. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without CITY'S consent shall be void and shall, at the option of CITY, 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 CITY'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. 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 CITY; 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. 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, CITY 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, CITY may pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY 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 thirty (30) days following written notice of the failure by CITY; or
- (2) LESSEE'S breach of any of its obligations under this Lease, other than those requiring payment to CITY, and LESSEE either: (i) fails to cure the breach within thirty (30) days following written notice from CITY; 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, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Five-Day Notice to Pay or Quit. If LESSEE fails to cure its default within the five-day notice period, CITY may terminate the Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or to possession of the Premises, and CITY 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, CITY 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 CITY 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, CITY 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) City Recovery Upon LESSEE Default. Upon termination of the Lease due to default, CITY 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 CITY 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 CITY with an address where notice can be sent to the mortgagee or beneficiary, CITY 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 CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (a) CITY 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 CITY to LESSEE and mortgagee or beneficiary of a statement of the costs;
- (b) CITY may correct the default(s) and may recover the costs incurred from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY 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 CITY; or
- (c) CITY 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 CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY 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 CITY for any such costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, 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 CITY 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, CITY 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 terminate ninety (90) days after such abandonment.
- (6) Waiver. Any CITY 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. CITY'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. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. The property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego. Any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY 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 does hereby agree to indemnify and save the City of San Diego harmless from any damage proximately caused by LESSEE, or arising out of, or in any way connected with the exercise by LESSEE of any rights herein granted or that may arise from the use of the Premises by LESSEE, to the extent legally permissible by Government Code Section 14662.5 et seq.

7.2 Insurance.

City understands and agrees to the following.

- a. Self Insurance Status. The State of California, LESSEE, has elected to be insured for its motor vehicle and general liability exposures through a self-insurance program. The State Attorney General administers the general liability program through an annual appropriation from the General Fund.

The Office of Risk and Insurance Management administers the motor vehicle liability program.

Under this form of insurance, the State and its employees (as defined in Section 810.2 Government Code) are insured for any tort liability that may develop through carrying out official activities, including State official operations on non-State owned property. Should any claim arise by reason of such operations or under an official contract or license agreement, they should be referred to the Attorney General, State of California, Tort Liability Section, 1300 "I" Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. Claims arising from operations of a State-owned vehicle should be forwarded to the Office of Risk and Insurance Management, Auto Self-Insurance, 707 Third Street, West Sacramento, CA 95605.

LESSEE warrants that it has entered into a master agreement with the State Compensation Insurance Fund to administer workers' compensation benefits for all State employees, as required by the Labor Code.

- b. 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 copies of claim forms submitted, along with attachments or supporting documentation including 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, this Lease shall, at LESSEE'S option, terminate ninety (90) days after such occurrence and LESSEE shall remove all improvements placed by LESSEE on the Site. Upon mutual agreement between CITY and LESSEE, LESSEE may 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.

SECTION 8: IMPROVEMENTS/ALTERATIONS/REPAIRS

8.1 Entry and Inspection.

CITY shall 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 inspect the operations conducted on the Premises so long as CITY has given LESSEE ten (10) days notice and LESSEE will be with CITY during such entry. If entry or inspection by CITY discloses that the Premises are not in a safe, healthy, and sanitary condition, CITY will request LESSEE to have any necessary maintenance work done at the expense of LESSEE.

8.2 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 CITY and in compliance with all applicable laws. All applicable codes and standards of State and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

8.3 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 CITY-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.

8.4 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.

8.5 Liens.

LESSEE shall at all times hold CITY free and harmless and indemnify CITY to the extent permitted by California Government Code Section 14662.5 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, and a lien or notice of lien is filed, LESSEE shall, within five (5) days of the filing take all actions necessary to record a valid release of lien.

8.6 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 CITY'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 CITY, or CITY may then enter upon 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.

8.7 Ownership of Improvements and Personal Property.

Any Communications Equipment 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 be removed by LESSEE at LESSEE'S expense. If LESSEE and CITY agree that LESSEE shall not remove the Communications Equipment at the expiration or earlier termination of this Lease, the Communications Equipment shall be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.

- a. If CITY elects not to assume ownership of LESSEE'S Communications Equipment, CITY 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 LESSEE'S Communications Equipment as directed by CITY 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 CITY the full cost of any removal.
- b. LESSEE shall remove the Communications Equipment and any other LESSEE-owned machines, appliances, equipment, 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 CITY'S property free of all claims and liens, or CITY 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 CITY or LESSEE takes place after the expiration or earlier termination of this Lease, LESSEE shall pay rent to CITY 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 CITY shall have the first right to acquire or purchase the personal property.

8.8 Unavoidable Delay.

If the performance of any act required of CITY 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 CITY 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.

8.9 Hazardous Substances.

- a. LESSEE shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept or used in or about the Premises or CITY land under the Site by LESSEE, its agents, employees, contractors or invitees, without the prior written consent of CITY, which CITY shall not unreasonably withhold as long as LESSEE demonstrates to CITY'S satisfaction that such Hazardous Materials: (i) are necessary or useful to LESSEE'S business and will be used, kept and stored in a manner that complies with all laws, statutes, ordinances, rules, regulations, orders, requirements, and policies of any and all governmental agencies and authorities and any fire insurance underwriters applicable to any such Hazardous Materials ("Hazardous Materials Laws") and (ii) do not otherwise, due to the quantity, nature or use of such Hazardous Materials, substantially increase the risk of fire or other casualty to the Premises.
- b. To the extent any Hazardous Materials are used, kept, or are present in or on the Premises or CITY land under the Site after the commencement of this Lease, LESSEE shall ensure that all such Hazardous Materials, and all uses thereof, are in full compliance with all Hazardous Materials Laws.
- c. If LESSEE breaches the obligations stated in this Section 8.9 by causing or allowing the presence of Hazardous Materials on or about the Premises or CITY land under the Site after the commencement of this Lease that results in contamination of the Premises or CITY land under the Site, then LESSEE shall indemnify, defend (with counsel approved by CITY) and hold CITY harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses which arise during or after the term of this Lease as a result of such breach or contamination to the extent permitted by law. Upon termination or expiration of this Lease, LESSEE shall surrender the Premises to CITY free of any and all Hazardous Materials to the extent caused by LESSEE and in compliance with all Hazardous Materials Laws. This indemnification shall survive the termination or expiration of this Lease.

- d. As used herein, the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), Section 25117 of the California Health and Safety Code, Section 25316 of the California Health and Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.
- e. CITY acknowledges that LESSEE has installed a propane-powered generator and a propane fuel tank, which has been permitted by the appropriate regulatory authorities. CITY agrees that such facilities do not violate the terms of this Section 8.9.

8.10 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 CITY. LESSEE shall not hold CITY 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 CITY shall use reasonable efforts to ensure that these shutdowns do not occur during peak hours of operation. Protection of LESSEE'S employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is a primary concern. Any areas in which these employees may be subjected to radiation levels that exceed the General Population/Uncontrolled limits must be clearly identified as required by CAL-OSHA. LESSEE shall provide CITY with written shutdown procedures, contact names, and telephone numbers. LESSEE shall notify CITY in writing of any changes to the shutdown procedures, contact names or telephone numbers within seven (7) days of the change.

8.11 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.

8.12 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.

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

SECTION 9: CITY POLICY IMPLEMENTATION PROVISIONS

9.1 CITY Approval.

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

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 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.

9.4 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.

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 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:

State of California
Department of General Services
Real Estate Services Division
Lease Management Unit
707 Third Street, 5th Floor
West Sacramento, CA 95605-2811

With a courtesy copy to:

California Highway Patrol
Telecommunications Section
Radio Systems Support Unit
PO Box 942898
Sacramento, CA 94298-0001

and

Department of General Services
Attn: Telecommunications Site Management
601 Sequoia Pacific Boulevard
Sacramento, CA 95814-0282

If to CITY

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

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, certified and postage prepaid.

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. CITY 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 CITY 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.

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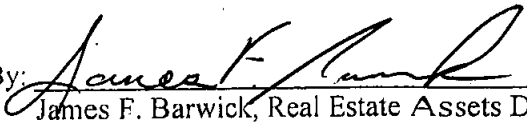
SECTION 11: SIGNATURES

11.1 Signature Page.

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

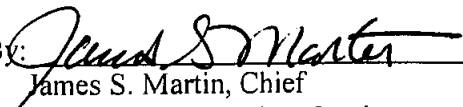
CITY OF SAN DIEGO, a California municipal corporation

Date: 6/30/08

By: 
James F. Barwick, Real Estate Assets Director

LESSEE: STATE OF CALIFORNIA, by and through the Department of General Services

Date: 6-25-08

By: 
James S. Martin, Chief
Real Property Services Section

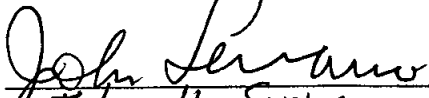
ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 7/3/08

By: 
Name: Martha Blake
Title: Senior Planner

APPROVED as to form and legality this 7th day of July, 2008.

MICHAEL J. AGUIRRE, City Attorney

By: 
Name: John H. Serrano
Title: Deputy City Attorney

6/24/08

I:\Young\State of CA\LEASE-CHP @ 1057 Catalina-10

EXHIBIT A – Legal Descriptions.

P. L. 190 POR

1057½ Catalina Boulevard
San Diego, CA 92107

APN: 531-110-10 (POR)

Exhibit B – Site Plan/Location



EXHIBIT D – Interference Protection Requirements.

- a. Interference. Prior to the Commencement Date or at any time 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 at the Site. The information required to compile the Report, including transmit frequencies currently operated at the Site, may require collection of data from other lessees operating at the Site. A listing of other permittees/lessees/users of the site may be obtained from the CITY. CITY is not responsible for any omitted data provided for the purpose of creating the Report. If required, the Report shall be provided to CITY’S Information Technology and Communication (“IT&C”) Division, Senior Communications Engineer.
- b. Pre-installation Notification. LESSEE shall notify all permittees/lessees/users at the Site of the proposed Communications Equipment installation/changes within fourteen (14) days of signing this document. A listing of all Site permittees/lessees/users operating at the Site may be obtained from CITY and used to compile a notification list.
 - (1) The notification shall be in the form of a letter to each listed permittee/lessee giving a technical data summary of the proposed Communications Equipment or modified Communications Equipment or Changed Installation (defined below) to be installed or proposed at the Site and shall specify the approximate date of installation or change.
 - (2) An additional notification letter shall be sent to CITY’S IT&C Senior Communications Engineer that includes a list of all permittees/lessees/users notified. LESSEE shall make complete arrangements and conduct all tests and operations in accordance with applicable Federal/FCC rules and regulations.
 - (3) Radio Frequency Interference with CITY’S Radio Equipment. The Communications Equipment use proposed by the LESSEE shall not directly or indirectly result in degraded technical performance of CITY’S existing radio equipment installed at the Site or used in the general area. Resulting degraded technical performance in this instance shall include but not be limited to:
 - (a) Detectable or measurable received intermodulation;

- (b) Audio distortion or noise;
 - (c) Receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test.
- c. Modifications to Equipment. LESSEE'S modifications to its Communications Equipment that will change effective radiated power, transmitter frequency, transmitter modulation, or transmitter spurious and harmonic emissions may require re-notification to existing permittees/lessees/users at the Site and providing a new Report.
- d. 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. If harmful interference cannot be resolved, CITY may recognize the right of prior authorized users and withhold approval or disallow use of LESSEE'S new or modified Communications Equipment pending settlement of the interference problems between the 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'S withholding approval. LESSEE waives any claim for expense or loss which LESSEE might incur as a result of CITY withholding approval.

[Remainder of page intentionally left blank.]

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)

ASSIGNMENT OF PERSONAL PROPERTY

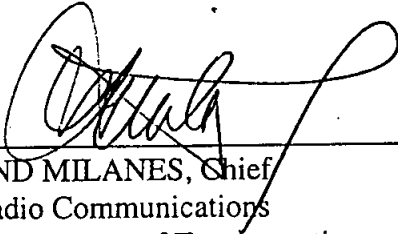
The California Department of Transportation, by and through its Office of Radio Communications, hereby assigns all right, title and interest in the following radio communications equipment (including vault) to the California Highway Patrol, Radio Systems Support Unit.

Description of Property:

The following radio communication equipment located at 1055 Catalina Boulevard, San Diego.

1. Metal Building 10' 8" x 12' 0" with shed roof
2. Communication Rack
3. Tower
4. 3 poles (approximately 10', 15', 20')

Dated: 9/8/05


By: FERDINAND MILANES, Chief
Office of Radio Communications
California Department of Transportation

bc: California Department of Transportation, Service Transactions and Asset
Reconciliation, MS 33 Attention: Janice Hall