

VIA CERTIFIED MAIL

NOTICE OF TERMINATION

August 23, 2013

Pierre Saladin
Metropolitan Transit System
1255 Imperial Ave, Suite 1000
San Diego, CA 92101

Dear Mr. Saladin:

Re: MTS Sub-Lease Agreement, Document Number G1293.0-10, dated November 3, 2009 to Maintain and Operate three (3) radio communication racks and four (4) dishes on the City of San Diego Tower Located at Catalina Standpipe in the City of San Diego

By this letter, the District is exercising its right of termination as provided in the Term Paragraph of the above-referenced document, which is on file in the Office of the Clerk of District bearing Document No. 55722. The termination is effective October 31, 2013. Please ensure that all invoices for services performed are properly submitted within 30 days of this expiration date.

If you have any questions, please call Wendy Ong, Asset Manager, in Real Estate Department, at (619) 686-6240.

Sincerely,



Karen Weymann
Director
Real Estate

KW/WO/jc

cc: Wendy Ong, Asset Manager, Real Estate
Tony Gordon, Area Manager, Real Estate
Kay Kay Weir, Senior Management Analyst, Real Estate
Thomas Lockwood, Technology Services Supervisor, BITS

SDUPD Docs No. 594591

DUPLICATE

MTS Doc. #G1216.0-09
OPS 960.6



LEASE AGREEMENT

between

THE CITY OF SAN DIEGO

and

**SAN DIEGO
METROPOLITAN TRANSIT SYSTEM**

at

Catalina Standpipe

DOCUMENT NO.	RR-304639
FILED	FEB 17 2009
OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA	

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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 ("CITY"), and the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a California public agency ("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 certain real property located in the City of San Diego, County of San Diego, State of California, known as "Catalina Standpipe" more particularly described in Exhibit "A" - Legal Description, attached to this Lease and by this reference made part of this Lease, which shall be referred to as the "Site." LESSEE leases from CITY that portion of the Site described in Exhibit "B" - Site Plan/ Location, 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 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 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. CITY may enter the Premises to develop and/or repair municipal 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. The reimbursement may include a reduction in the rent proportionate to the amount of physical damage as reasonably determined by CITY. CITY shall pay the costs of maintenance and repair of all CITY 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, other than CITY, 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 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 and any prepaid rent paid by LESSEE to CITY, shall be returned in full to LESSEE.

1.6 Reassignment of Space.

At any time during the Term, CITY, in its sole discretion, may reassign LESSEE an equivalent amount of space in a different location at the Site. CITY 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 CITY'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 CITY 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 CITY of all necessary permits and approvals required for any CITY 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 CITY and its contractors during any reassignment, and 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. CITY shall use its best efforts to ensure continuous, uninterrupted broadcast/receiving capability during any conversion, including the installation and operation by LESSEE of a CITY-approved temporary communications facility on the Site. If CITY 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 CITY, 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. CITY 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 Description and Exhibit "B" - Site Plan/Location 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.

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, 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.

2.3 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 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.
- b. Surrender and Restoration 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) 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 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. 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 thirty thousand dollars (\$30,000) 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	\$31,200.00
Lease Year Three	\$32,448.00
Lease Year Four	\$33,745.92
Lease Year Five	\$35,095.76
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 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. 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.

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.

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4.4 Additional Rent.

LESSEE shall pay to CITY as additional rent fifty percent (50%) of gross revenue generated by each sublease of any part of the Premises entered into by LESSEE and a third party, 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 for a minimum period of five (5) years. 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, which 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. After the Premises are fully developed 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, 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.

Exhibit "A" - Legal Description of Site

CATALINA STANDPIPE

That certain parcel designated as "City Reservoir" in the Subdivision of Vista de Mexico Tract, as shown on Map No. 1084, filed in the office of the Recorder of San Diego County, State of California, on September 4, 1907, said map being a subdivision of the westerly portion of Pueblo Lot 102 of the Pueblo Lands of the City of San Diego, State of California.

APN: 532-400-01

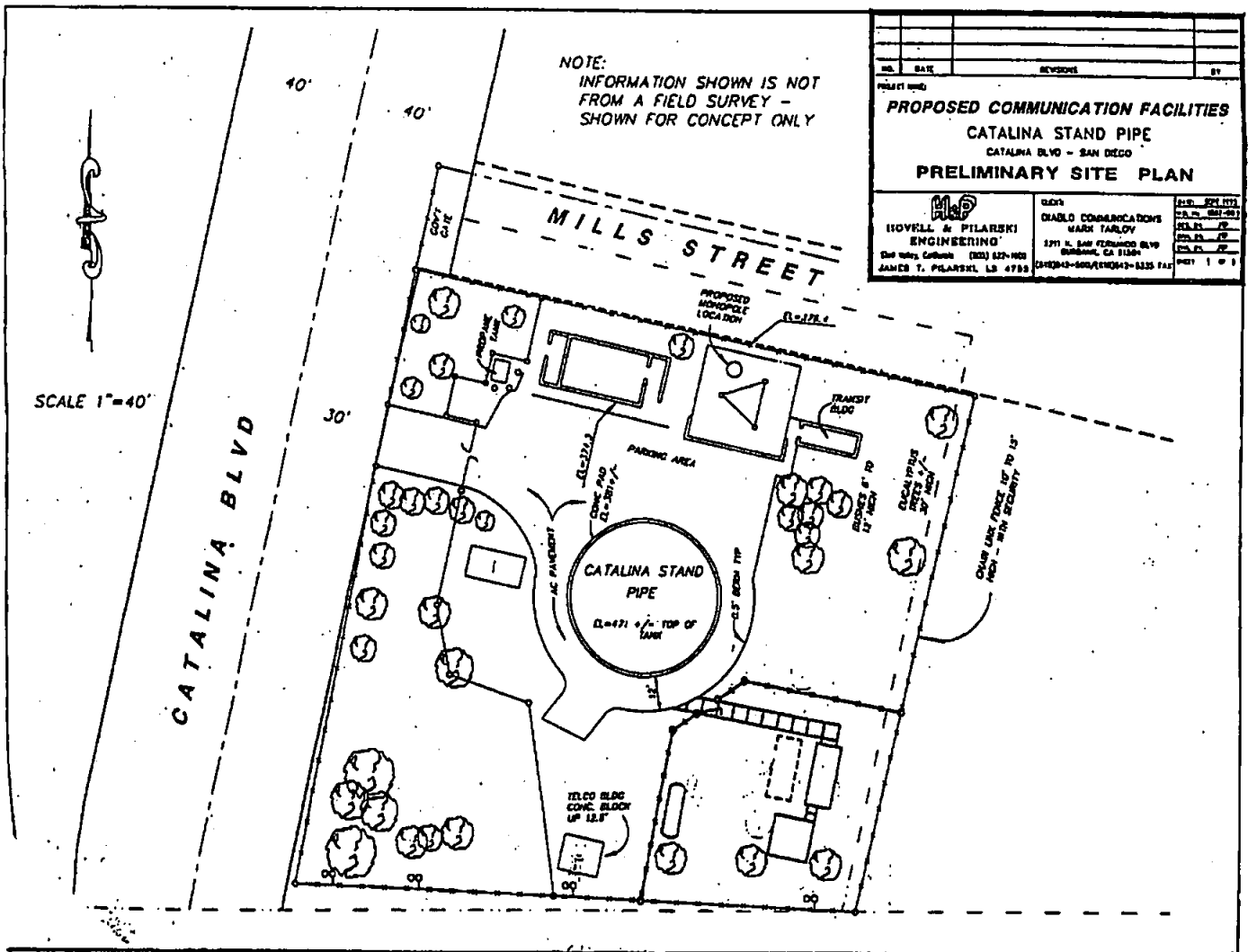


Exhibit "B" - Site Plan of Leased Premises

Rohm ESB820 Equipment Shelter located easterly of the City's lattice antenna tower at Catalina Standpipe, described in Exhibit "A," and more particularly depicted in the drawing below:

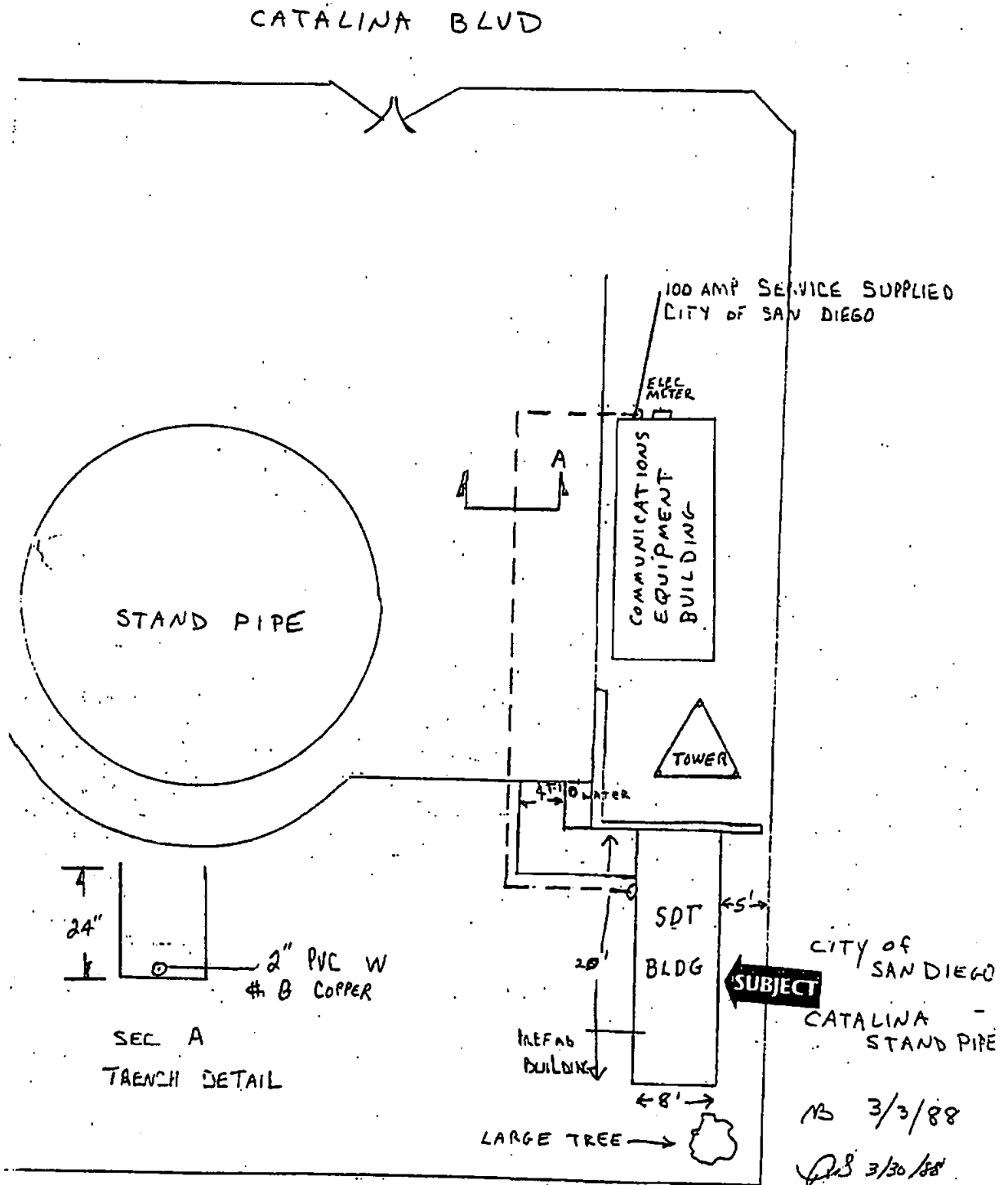


Exhibit "C" - Equipment

Rohm ESB820 Equipment Shelter - Serial No. RES00633

One (1) antenna on City tower

Equipment Location

