

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.	<i>RR-304639</i>
FILED	FEB 17 2009
OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA	

LEASE OUTLINE

SECTION 1: PREMISES	1
1.1 Leased Premises	1
1.2 Easements and Reservations	1
1.3 Eminent Domain	2
1.4 Related Council Actions	3
1.5 Quiet Possession	3
1.6 Reassignment of Space	3
SECTION 2: TERM	4
2.1 Term	4
2.2 Holdover	4
2.3 Quitclaim and Surrender of LESSEE'S Interest	5
SECTION 3: USES	5
3.1 Sole Permitted Uses	5
3.2 Competent Management	5
SECTION 4: RENT	6
4.1 Time and Place of Payment	6
4.2 Rent	6
4.3 Delinquent Rent	7
4.4 Additional Rent	8
4.5 Inspection of Records	8
SECTION 5: ASSIGNMENT	8
5.1 Assignment and Subletting	8
5.2 Encumbrance	9
SECTION 6: DEFAULTS AND REMEDIES	10
6.1 Defaults and Remedies	10
SECTION 7: INSURANCE RISKS/SECURITY	14
7.1 Indemnity	14
7.2 Insurance	14
7.3 Waste, Damage or Destruction	16
SECTION 8: IMPROVEMENTS/ALTERATIONS/REPAIRS	17
8.1 Acceptance of Premises	17
8.2 Entry and Inspection	17
8.3 Maintenance	18
8.4 Improvements and Alterations	18
8.5 Utilities	19
8.6 Liens	19
8.7 Taxes	19
8.8 Signs	19
8.9 Ownership of Improvements and Personal Property	20
8.10 Unavoidable Delay	20
8.11 Hazardous Substances	21
8.12 Radio-Frequency Radiation	22
8.13 Radio-Frequency Interference	23
8.14 Industry Standards	23

8.15	Site Access and Security.....	23
SECTION 9: CITY POLICY IMPLEMENTATION PROVISIONS		23
9.1	CITY Approval.....	23
9.2	Nondiscrimination.....	24
9.3	Compliance with CITY'S Equal Opportunity Contracting Program.....	24
9.4	Local Business and Employment.....	24
9.5	CITY Employee Participation Policy.....	25
9.6	Drug-free Workplace.....	25
9.7	Disabled Access Compliance.....	25
9.8	Water Quality Assurances.....	26
SECTION 10: GENERAL PROVISIONS		26
10.1	Compliance with Law.....	26
10.2	Notices.....	26
10.3	Partial Invalidity.....	27
10.4	Legal Fees.....	27
10.5	Number and Gender.....	28
10.6	Captions.....	28
10.7	Entire Understanding.....	28
10.8	Lease Modifications.....	28
10.9	Time is of Essence; Provisions Binding on Successors.....	28
10.10	Authority.....	29
10.11	Survival.....	29
10.12	Standard of Employees.....	29
10.13	Cost Recovery.....	29
10.14	Governing Law.....	29
10.15	Counterparts.....	29
10.16	Consents.....	30
10.17	San Diego's Strong Mayor Form of Governance.....	30
10.18	Supersedure.....	30
SECTION 11: SIGNATURES.....		31
11.1	Signature Page.....	31

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.

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.

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 five (5) 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 or 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 continue in effect as long as CITY does not terminate this Lease, and CITY 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 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 shall protect, defend, indemnify, and hold CITY, 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 CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY 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 shall acquire and maintain at all times during the Term of this Lease the following insurance at its sole expense:

- (1) Commercial General Liability Insurance. Commercial general liability coverage with limits of not less than two million dollars (\$2,000,000) per occurrence. This policy shall cover all claims for property damage and/or personal or bodily injury, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the Premises.
- (2) Fire, Extended Coverage, and Vandalism Insurance. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 5.2 Encumbrance of this Lease, the proceeds may be paid to the approved mortgagee or beneficiary if mortgagee or beneficiary has provided CITY with evidence that all proceeds shall be used for

repair and restoration of damaged or destroyed improvements on the Premises.

- b. LESSEE'S responsibility to maintain the insurance also includes the following:
- (1) Additional Insured. All insurance policies, by separate endorsement, shall name CITY, its elected officials, officers, representatives, agents, and employees as additional insureds, protect CITY against legal costs in defending claims, and shall not terminate without sixty (60) days prior written notice to CITY.
 - (2) Insurer Qualifications. All insurance required by this Lease must be provided by insurers licensed to do business in California. The insurer must be rated "A-, VI" or better by the AM Best Rating Guide and must be acceptable to CITY. Non-admitted or "surplus lines" carriers will be accepted if the carrier appears on the current California LESLI (List of Eligible Surplus Lines Insurers) list.
 - (3) Effective Date of Policy. All policies shall be in effect on or before the Commencement Date, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement.
 - (4) Evidence of Insurance. A copy of the insurance policy or insurance certificate along with any required endorsements shall be furnished to CITY prior to the Commencement Date and shall remain on file with CITY during the entire Term of this Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s), along with any required endorsements, showing that a new or extended policy has been obtained which meets the terms of this Lease. All certificates and endorsements shall clearly identify the LESSEE, site location, and contract number.
 - (5) Modification. CITY, at its discretion, may require the reasonable revision of amounts and coverages at any time during the Term of this Lease by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the extent of risk existing on the Premises. LESSEE shall obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.

- (6) 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) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY may obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, name of the insurer and rate of interest. The reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY. Notwithstanding the preceding provisions of this subsection (7), if LESSEE fails or refuses to take out or maintain insurance as required by this Lease, or fails to provide the proof of insurance, CITY may declare this Lease in default without further notice to LESSEE, and CITY may exercise all available remedies in the event of a default.

(c) In lieu of the foregoing insurance requirements in sections (a) and (b), satisfactory evidence of self insurance may be provided by LESSEE and approved by CITY. No further proof of insurance is required unless changes are made to LESSEE'S insurance status.

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.

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 CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY 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 CITY 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 CITY of the presence of hazardous substances after its investigation, LESSEE waives any claims against CITY which may result from the presence of hazardous substances on the Premises.

8.2 Entry and Inspection.

CITY 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, upon reasonable notice. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY 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 CITY 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 CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY 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 CITY 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 CITY or increase obligations elsewhere in this Lease imposed on CITY.

8.3 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 CITY, 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 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.

8.5 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 CITY free and harmless and indemnify CITY 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 CITY, 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 CITY a bond, cash or other security acceptable to CITY 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 CITY.

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 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 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 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 all or any improvements, trade fixtures, structures, and installations, 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 the improvements, trade fixtures, structures and installations 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 (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 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.

8.10 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.

8.11 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 CITY 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 CITY 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 CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. LESSEE shall notify CITY 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 CITY'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 CITY'S option, 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 CITY, 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 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.

8.13 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.

- 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.

8.15 Site Access and Security.

LESSEE shall comply with the procedures described in Exhibit "E" - Water Department Site Security Access Procedures, as may be updated from time to time by the City Manager. LESSEE'S failure to comply with these procedures shall constitute a default by LESSEE.

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 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:

MTS
Manager, Real Estate Assets
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

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

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. 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.

10.18 Supersedure.

It is mutually agreed that this Lease, upon execution, supersedes and annuls that certain Right of Entry Permit dated December 2, 1985 with the San Diego Transit Corporation, and amended March 18, 1991 with the Metropolitan Transit Development Board, Document RR-277512, which is hereafter void and of no effect except as to any rentals and fees that may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

[The remainder of this page intentionally left blank.]

SECTION 11: SIGNATURES

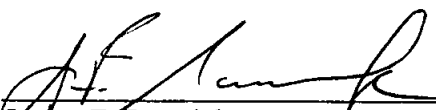
11.1 Signature Page:

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:

CITY OF SAN DIEGO, a California municipal corporation

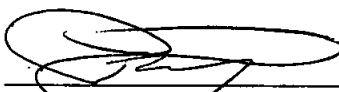
Date: 3/24/09

By: 
James F. Barwick
Real Estate Assets Director

LESSEE:

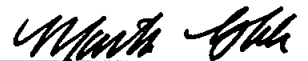
SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a public agency

Date: 10/20/08

By: 
Paul C. Jablonski
Chief Executive Officer

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 13/26/2009

By: 
Name: Martha Blake
Title: Senior Planner

R. 304639

APPROVED as to form and legality this 17th day of March, 2009

JAN I. GOLDSMITH, City Attorney

By:

Debra J. Bevier
Debra J. Bevier, Deputy City Attorney

APPROVED as to form for LESSEE on this 10th day of September, 2008.

By:

[Signature]
MTS Office of General Counsel

9/10/08

I:\READ\Young\MTS\LEASE-MTS@Catalina-2

R- 304639

CATALINA STANDPIPE

APN: 532-400-01

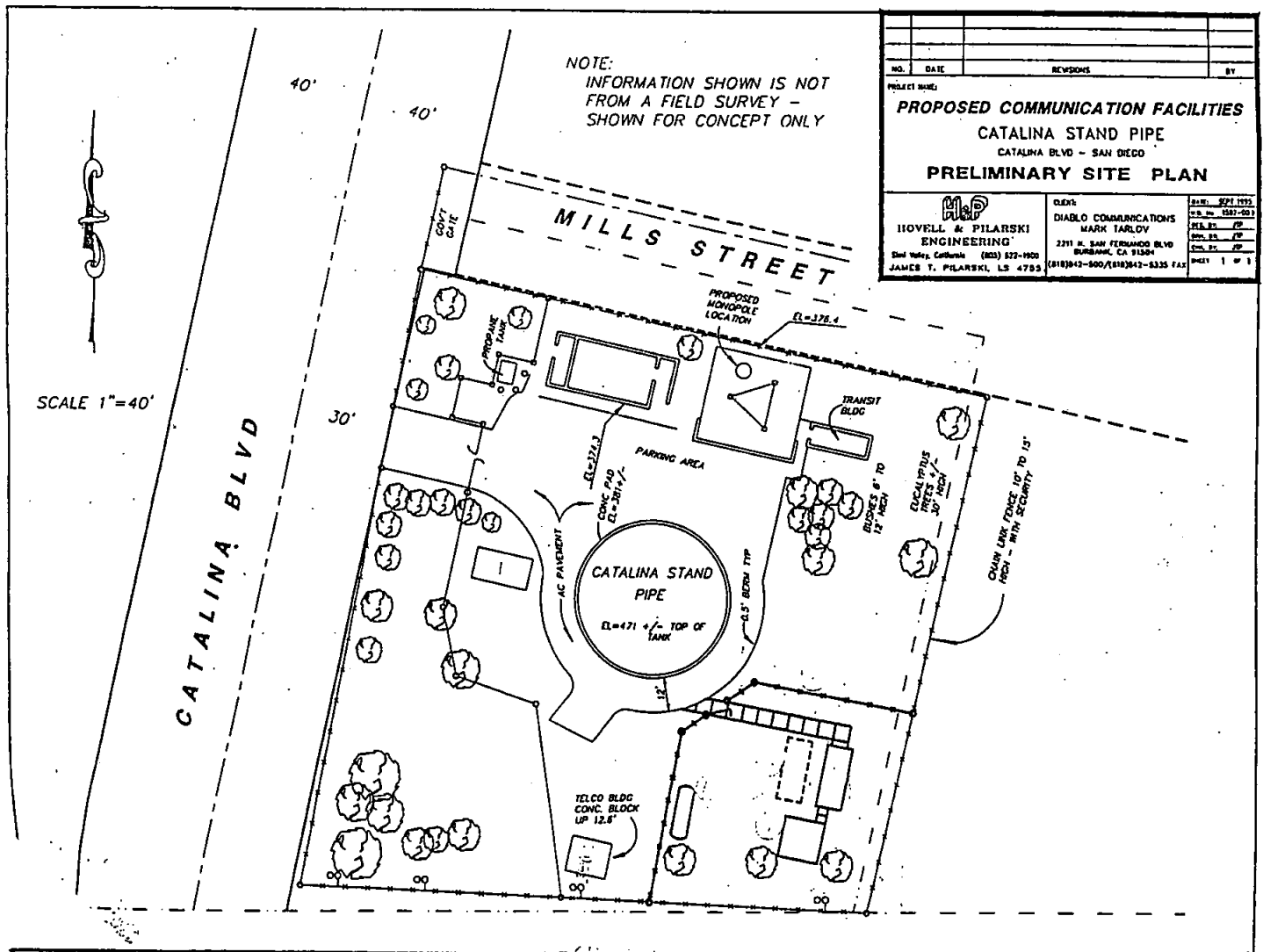


Exhibit "B" - Site Plan of Leased Premises

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:

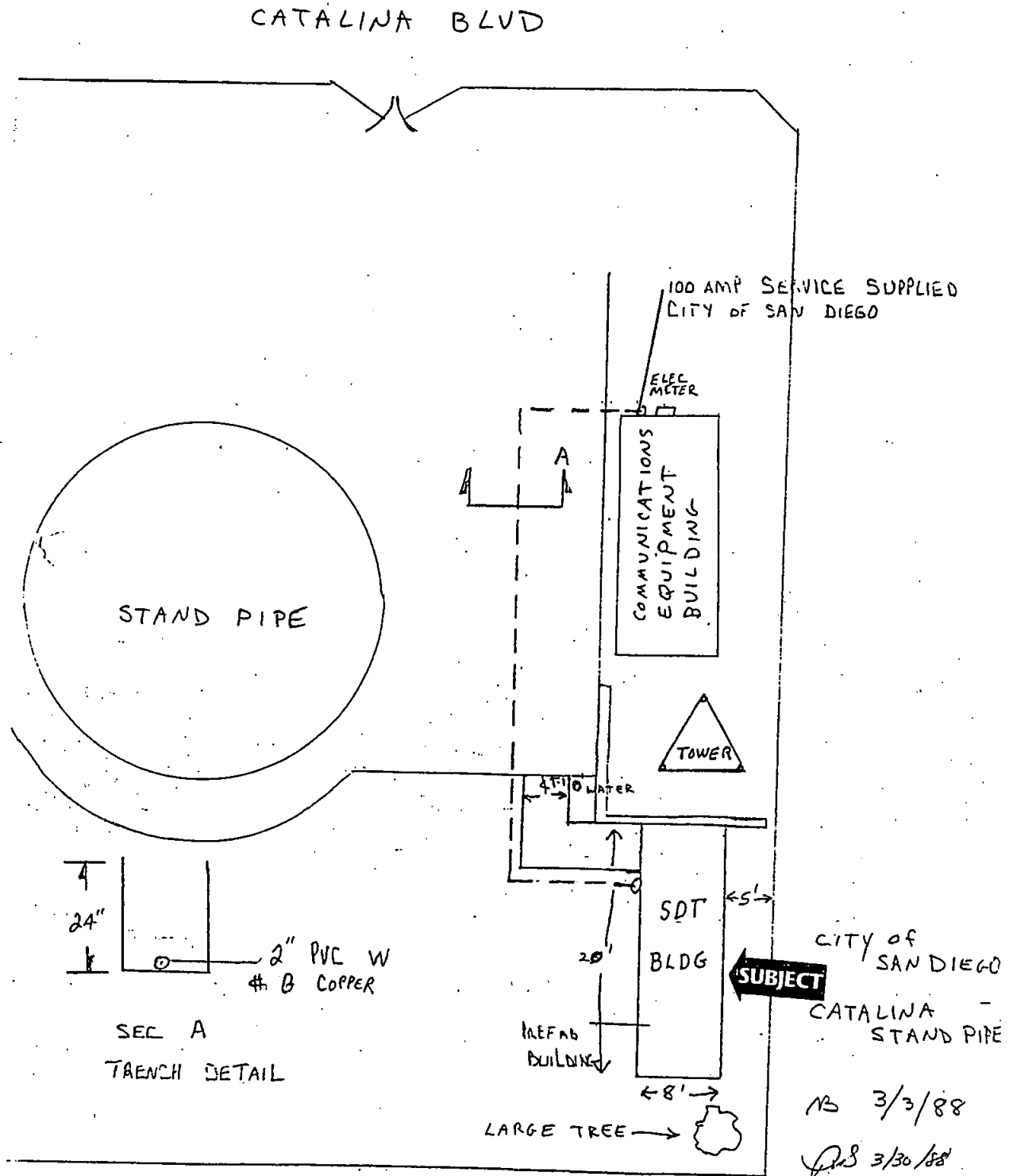


Exhibit "C" - Equipment

Rohm ESB820 Equipment Shelter - Serial No. RES00633

One (1) antenna on City tower

Equipment Location

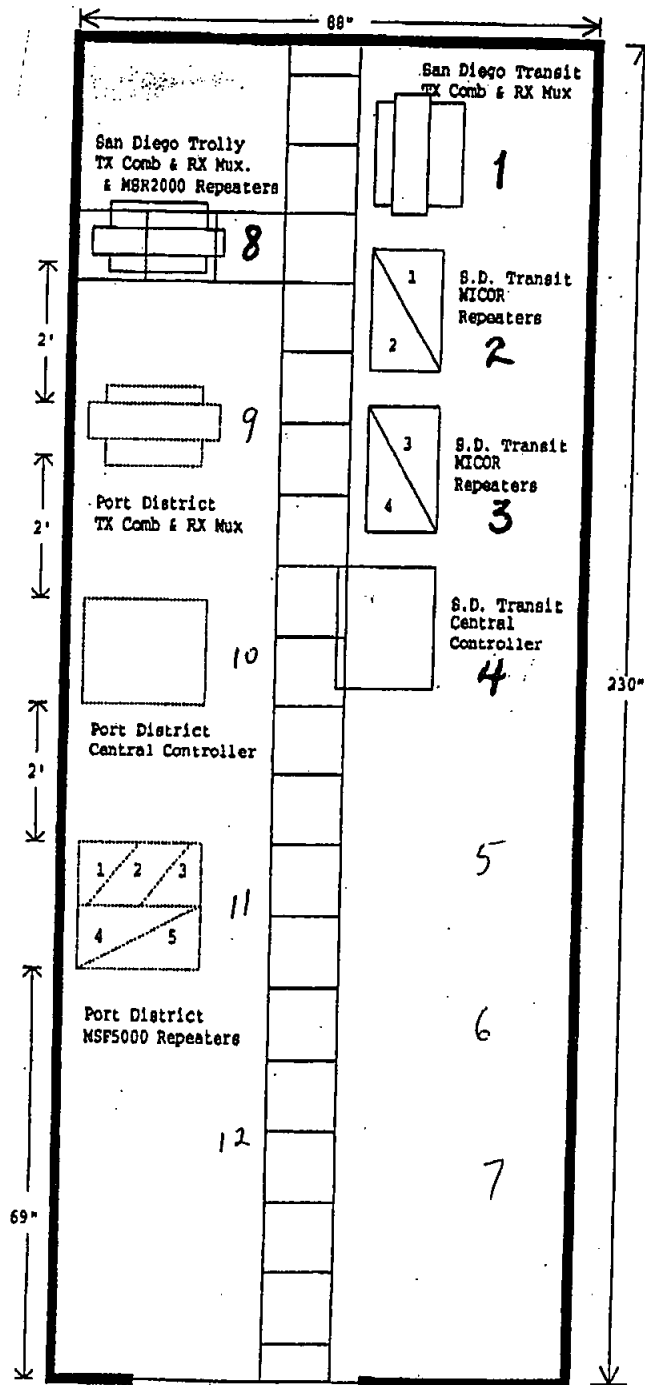


Exhibit D - Interference Protection Requirements - Information, Technology, and Communications Division Sites.

- 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 – Water Department Site Security Access Procedures.

1 PURPOSE

To establish procedures that will be used to provide access to Water Department facilities for all telecommunication service providers.

2 AUTHORITY

2.1 Deputy Director, Water Operations Division

2.2 Real Estate Asset Department Lease Agreement for each specific property

3 DEFINITION

Access: the right, possibility, or means to entering or approach a place.

SCADA: Supervisory Control and Data Acquisition of the water distribution system through the use of sensors, telemetry, a staffed command center, and records storage.

SWIM: Sewer-Water-Infrastructure-Management; a computerized maintenance management system.

4 POLICY

Procedures listed below will be used to provide access to Water Department facilities for all telecommunication service providers.

Specific contract lease agreements with the telecommunication service providers may contain different requirements and restrictions regarding access to Water Department facilities. If the requirements within an existing agreement conflicts with the requirements herein, then the requirements within the lease agreement shall take precedence.

Non-emergency and emergency procedures are listed below and will be used.

5 RESPONSIBILITIES

5.1 System Operations, Water Operations Division

a. The Operations District Manager is responsible to provide direction and instruction to SCADA operators in order to ensure performance of the access procedure written below.

- b. The Reservoir/Plant/Pump Maintenance District Manager is responsible to provide direction and instruction to the Planner/Scheduler, and to field crews, in order to ensure performance of the access procedure written below.

5.2 Water Operations Division employees

- a. Employees of the water operations division shall forward requests for access to SCADA, according to the procedure below.

5.3 Real Estate Asset Department

- a. Employees of the Real Estate Asset Department shall forward requests for access to SCADA, according to the procedure below.

6 PROCEDURE

6.1 Non-Emergency Access Procedure

- a. Telecommunication service providers will be required to call the SCADA Operator, at (619)668-2025 at least two days in advance to schedule their required access. At the time of the request, the provider will give the SCADA Operator the following: 1) Location for access; 2) Date and start time; 3) Expected duration of access; 4) List of names of those employees who will be working at the site; and 5) Contact name and phone number to confirm information or reschedule access. The information given by the provider should be logged onto the Telecom Service Provider Access Form (see attached).
- b. The SCADA Operator will route the Telecom Service Provider Access Form via e-mail or fax, to the System Operations Planner/Scheduler. For after hours access the SCADA Operator will schedule the stand-by crew using the procedures #6.2a and #6.2b below.
- c. The Planner/Scheduler will issue a SWIM service request (SR) to assign a crew to escort and supervise the access. The Planner/Scheduler will provide the crew with the Telecom Service Provider Access Form authorizing visitor entry into the facility. The Planner/Scheduler has the discretion to verify the access request and refuse entry (Please note that access should only be denied if access request is not verified by contact).
- d. The dispatched crew shall verify all visitors against the Telecom Service Provider Access Form by checking for valid ID and company issued ID card. Only those employees listed on the Form should be allowed to access the facility.
- e. The dispatched crew shall complete the Telecom Service Provider Access Form and return it to the Planner/Scheduler following the completion of the access.

6.2 Emergency Access Procedure:

- a. Telecommunication service providers will be required to call the SCADA Operator, at (619)668-2025, to request emergency access. At the time of the request, the provider will give the SCADA Operator the information as required in #6.1a above. The information given by the provider should be logged onto the Telecom Service Provider Access Form (see attached). The SCADA Operator has the discretion to verify the access request and refuse entry (Please note that access should only be denied if access request is not verified by contact).
- b. The SCADA Operator will contact the Planner/Scheduler during normal working hours or dispatch a stand-by crew during non-normal working hours. During non-normal hours, the SCADA Operator will issue a SWIM service request (SR) to assign the stand-by crew to allow entry and to supervise the visitors. The SCADA Operator will provide the crew with the Telecom Service Provider Access Form authorizing visitor entry into the facility.
- c. The dispatched crew shall verify all visitors against the Telecom Service Provider Access Form by checking for valid ID and company issued ID card. Only those employees listed on the Form should be allowed to access the facility.
- d. The dispatched crew shall complete the Telecom Service Provider Access Form and return it to the Planner/Scheduler following the completion of the access.

RESOLUTION NUMBER R- **304639**DATE OF FINAL PASSAGE MAR 02 2009

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A 10-YEAR LEASE AGREEMENT WITH THE SAN DIEGO
METROPOLITAN TRANSIT SYSTEM FOR USE OF AN
EQUIPMENT SHELTER AND PLACEMENT OF AN
ANTENNA AT THE CATALINA STANDPIPE AREA.

WHEREAS, the City of San Diego [City], and the San Diego Metropolitan Transit System [MTS] have negotiated a ten-year lease agreement [Agreement] for use of an approximately 160 square-foot equipment shelter and the placement of one antenna on the City's lattice antenna tower, both of which are located at 200 Catalina Boulevard, San Diego, California, at the area known as Catalina Standpipe, for the installation, construction, modification, maintenance, operation and removal, at MTS' expense, of a Communications facility; and

WHEREAS, under the proposed Agreement, the initial annual rent for the premises will be \$30,000, which will be increased annually by 4% for years two through five, and with rent for years six through ten to be determined by an appraisal of the site, at year six, with 4% annual escalations to be added to each previous rent for years seven through ten; NOW THEREFORE,

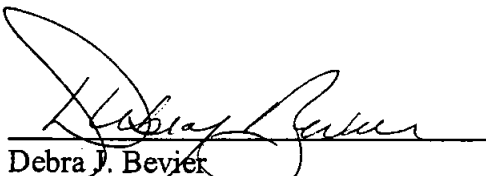
BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee be and is hereby authorized and empowered to execute, for and on behalf of the City of San Diego, a ten-year lease agreement with the San Diego Metropolitan Transit System, a California public agency, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR **304639**, for use of an approximately 160 square-foot equipment shelter and the placement of one antenna on the City's lattice antenna

tower located at 200 Catalina Boulevard, San Diego, California at the area known as Catalina Standpipe.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that the City Comptroller be and is hereby authorized and empowered, to accept rents pursuant to the Agreement and deposit the funds into Water Department Fund 41500, Revenue Account 75660.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Debra J. Bevier
Deputy City Attorney

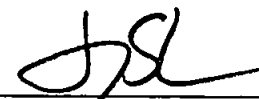
DJB:mm
01/30/09
Or.Dept:READ
R-2009-769
MMS# 7347

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 17 2009.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3-2-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on February 17, 2009, by the following vote:

YEAS: **LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAIO, FRYE, EMERALD, & HUESO.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **GIL SANCHEZ**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. **R-304639**, approved by the Mayor of The City of San Diego,
California on **March 2, 2009**.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

101
Carol
Young

RESOLUTION NUMBER R- 304639DATE OF FINAL PASSAGE MAR 02 2009

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A 10-YEAR LEASE AGREEMENT WITH THE SAN DIEGO
METROPOLITAN TRANSIT SYSTEM FOR USE OF AN
EQUIPMENT SHELTER AND PLACEMENT OF AN
ANTENNA AT THE CATALINA STANDPIPE AREA.

WHEREAS, the City of San Diego [City], and the San Diego Metropolitan Transit System [MTS] have negotiated a ten-year lease agreement [Agreement] for use of an approximately 160 square-foot equipment shelter and the placement of one antenna on the City's lattice antenna tower, both of which are located at 200 Catalina Boulevard, San Diego, California, at the area known as Catalina Standpipe, for the installation, construction, modification, maintenance, operation and removal, at MTS' expense, of a Communications facility; and

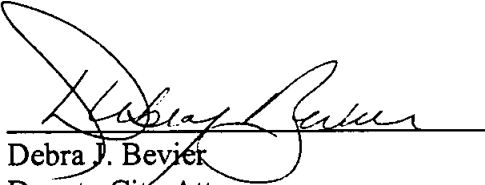
WHEREAS, under the proposed Agreement, the initial annual rent for the premises will be \$30,000, which will be increased annually by 4% for years two through five, and with rent for years six through ten to be determined by an appraisal of the site, at year six, with 4% annual escalations to be added to each previous rent for years seven through ten; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee be and is hereby authorized and empowered to execute, for and on behalf of the City of San Diego, a ten-year lease agreement with the San Diego Metropolitan Transit System, a California public agency, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR 304639, for use of an approximately 160 square-foot equipment shelter and the placement of one antenna on the City's lattice antenna

tower located at 200 Catalina Boulevard, San Diego, California at the area known as Catalina Standpipe.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that the City Comptroller be and is hereby authorized and empowered, to accept rents pursuant to the Agreement and deposit the funds into Water Department Fund 41500, Revenue Account 75660.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Debra J. Bevier
Deputy City Attorney

DJB:mm
01/30/09
Or.Dept:READ
R-2009-769
MMS# 7347

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 17 2009.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3-2-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

READ 08-018
1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)
N/A

TO:
CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
Real Estate Assets

3. DATE:
October 13, 2008

4. SUBJECT:
New Lease Agreement with the San Diego Metropolitan Transit System

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)
Carol Young, 619-236-6081, MS 51A

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)
Gary Jones, 619-236-6264, MS 51A

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					Fiscal Impact: \$30,000 initial annual
ORGANIZATION					rent deposited into Fund 41500,
OBJECT ACCOUNT					Revenue Acct 75660
JOB ORDER					Job: 220349
C.I.P. NUMBER					cc: Dept. Docket Clerk
AMOUNT					Thomas Guide: 1188 J-4

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	10/14/08	8	DEPUTY CHIEF	<i>[Signature]</i>	11-24-08
2	WATER DEPARTMENT	<i>[Signature]</i>	10/20/08	9	COO	<i>[Signature]</i>	12/04/08
3	DSD/EAS	<i>[Signature]</i>	10/27/08	10	CITY ATTORNEY	<i>[Signature]</i>	2/2/09
4	EOCP	<i>[Signature]</i>	10/30/08	11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	7-1-09
5	COUNCIL LIAISON	<i>[Signature]</i>	11/12/08	DOCKET COORD: _____ COUNCIL LIAISON: _____			
6	AUDITORS	<i>[Signature]</i>	11/20/08 ✓	COUNCIL PRESIDENT ☐ SPOB ☐ CONSENT ☐ ADOPTION			
7	FM	<i>[Signature]</i>	11/18/08	☐ REFER TO: _____ COUNCIL DATE: _____			

11. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing the Mayor to execute a 10-year lease agreement with the San Diego Metropolitan Transit System, a California public agency, for use of an approximately 160 square foot equipment shelter and the placement of one antenna on the City tower located at 200 Catalina Boulevard at the Catalina Stand Pipe area. The authorized use is the installation, construction, modification, maintenance, operation and removal, at the lessee's expense, of a communications facility at the premises.

11A. STAFF RECOMMENDATIONS:
Adopt the Resolution.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 02

COMMUNITY AREA(S): POINT LOMA

ACTION REQUESTED BY: Real Estate Assets Department

LOCATION: 200 CATALINA BOULEVARD

ENVIRONMENTAL IMPACT: This activity is exempt under CEQA Guidelines Section 15301 (Existing Facilities).

ATTACHMENTS: Report to Council, leasehold boundary map, area map, lease agreement.

CITY CLERK INSTRUCTIONS: DO NOT RECORD. Return documents to Real Estate Assets Department, Attn: Carol Young, M.S. 51A for further handling.

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: _____ REPORT NO: _____
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Real Estate Assets
SUBJECT: New Lease Agreement with the San Diego Metropolitan
Transit System
COUNCIL DISTRICT(S): 2
CONTACT/PHONE NUMBER: Carol Young / 236-6081

REQUESTED ACTION: Authorization to execute a 10-year lease agreement with the San Diego Metropolitan Transit System, a California public agency (MTS), for use of an approximate 160 square foot equipment shelter and the placement of one antenna on the City tower located at 200 Catalina Boulevard at the Catalina Stand Pipe area.

STAFF RECOMMENDATION: Authorize the execution of the lease agreement.

BACKGROUND: The City executed a 5-year Right of Entry Permit (Permit) with the San Diego Transit Corporation (successor to MTS) on November 20, 1985, for use of the premises as a communications facility. On March 18, 1991, the City Council approved an amendment to the Permit extending the term to December 1, 1995. The Permit has been on holdover status since 1995. It was determined by the City's Communication Division that the City tower at the Catalina Stand Pipe area, which was a previously-used tower that was installed in 1962, had to be replaced. The Communications Division and MTS negotiated for several years about replacement of the City tower. At one point, MTS told the Communications Division that MTS would replace the City tower in lieu of rent at the site. Due to safety concerns about the existing tower, the Communications Division concluded that it would be in the best interest of the City to discontinue negotiations with MTS and proceed with the installation of a new tower. Construction of a new tower is scheduled to commence on October 13, 2008. Consequently, MTS and staff were able to move forward to negotiate a new lease for the site.

SUMMARY: Staff has negotiated a new 10-year lease with the MTS. Under the proposed lease, the initial annual rent for the premises will be \$30,000. The rent will be increased annually by 4%: \$31,200 for year two, \$32,448 for year three, \$33,745.92 for year four and \$35,095.76 for year five. The rent for year six of the lease term will be determined by an appraisal of the site. The rent for years seven through ten will include an annual four percent (4%) escalation.

FISCAL CONSIDERATIONS: Rent will be deposited into the Water Department Fund 41500, Revenue Account 75660. The initial annual rent is \$30,000 with an annual rent escalation of 4%. At the end of the fifth year of the new lease, a market rate adjustment will be determined by an appraisal of the site.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Resolution No. R-277512, adopted on March 18, 1991, amending the Permit to extend the term for an additional five years.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The San Diego Metropolitan Transit System.


James F. Barwick, CCIM
Director, Real Estate Assets

David Jarrell
Deputy Chief Operating Officer
Public Works



CITY OF SAN DIEGO

M E M O R A N D U M

DATE: October 30, 2008

TO: Council President Peters & City Council

FROM: Beryl Bailey Rayford, Equal Opportunity Contracting Program
Manager

SUBJECT: New Lease Agreement with the San Diego Metropolitan Transit System

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

CC: Fischle-Faulk, Debra
James F. Barwick, CCIM

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:

October 30, 2008

SUBJECT: New Lease Agreement with the San Diego Metropolitan Transit System

GENERAL CONTRACT INFORMATION

Recommended Consultant: Not Applicable

Amount of this Action: Not Applicable

SUBCONSULTANT PARTICIPATION

There is no subconsultant activity associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity Required:

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

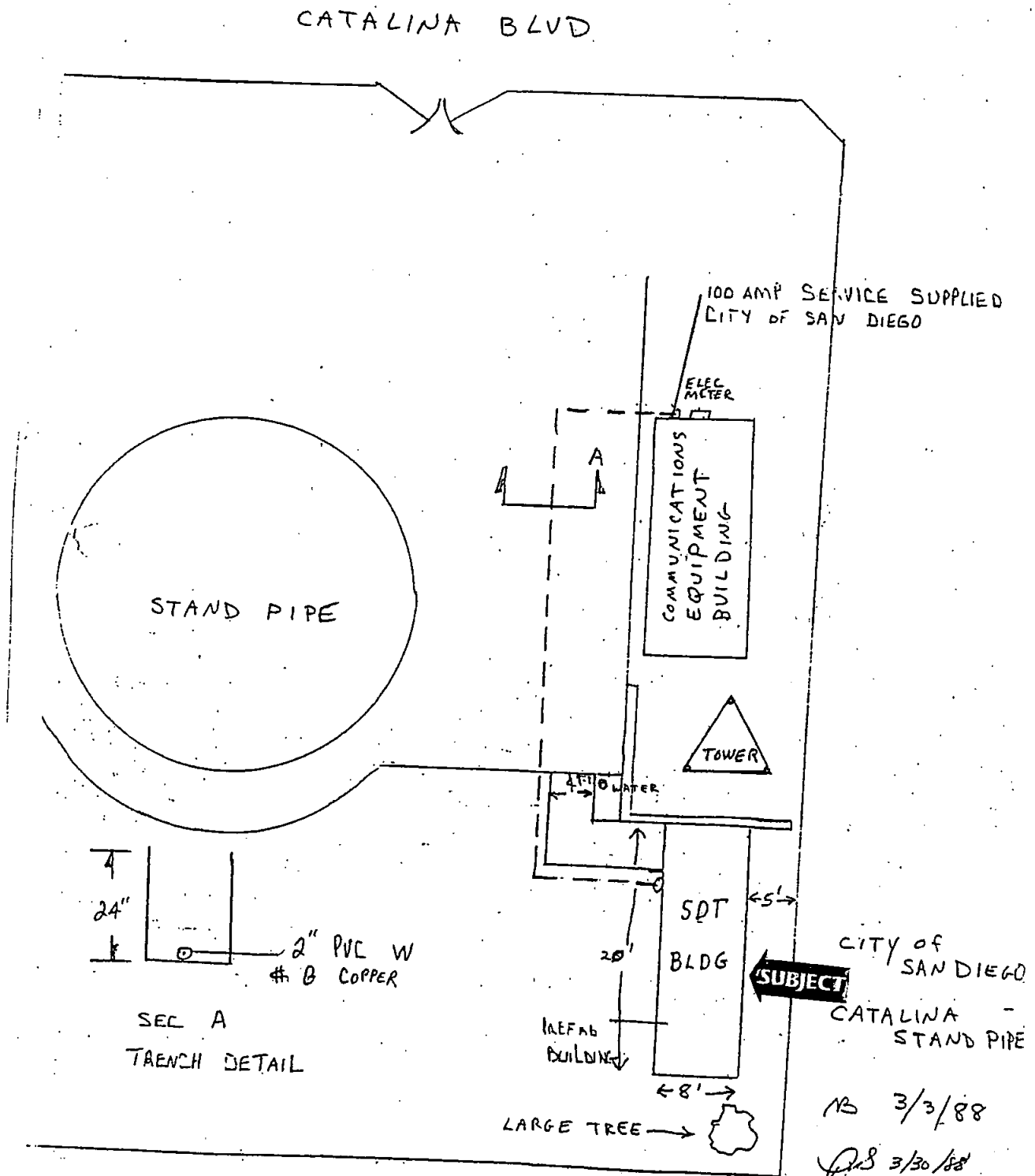
ADDITIONAL COMMENTS

This action is to authorize the Mayor to execute a 10-year lease agreement with the San Diego Metropolitan Transit System, a California Public Agency. The lease agreement provides revenue to the City of San Diego. The City does not pay out any funds under the terms of this agreement.


by MM-J

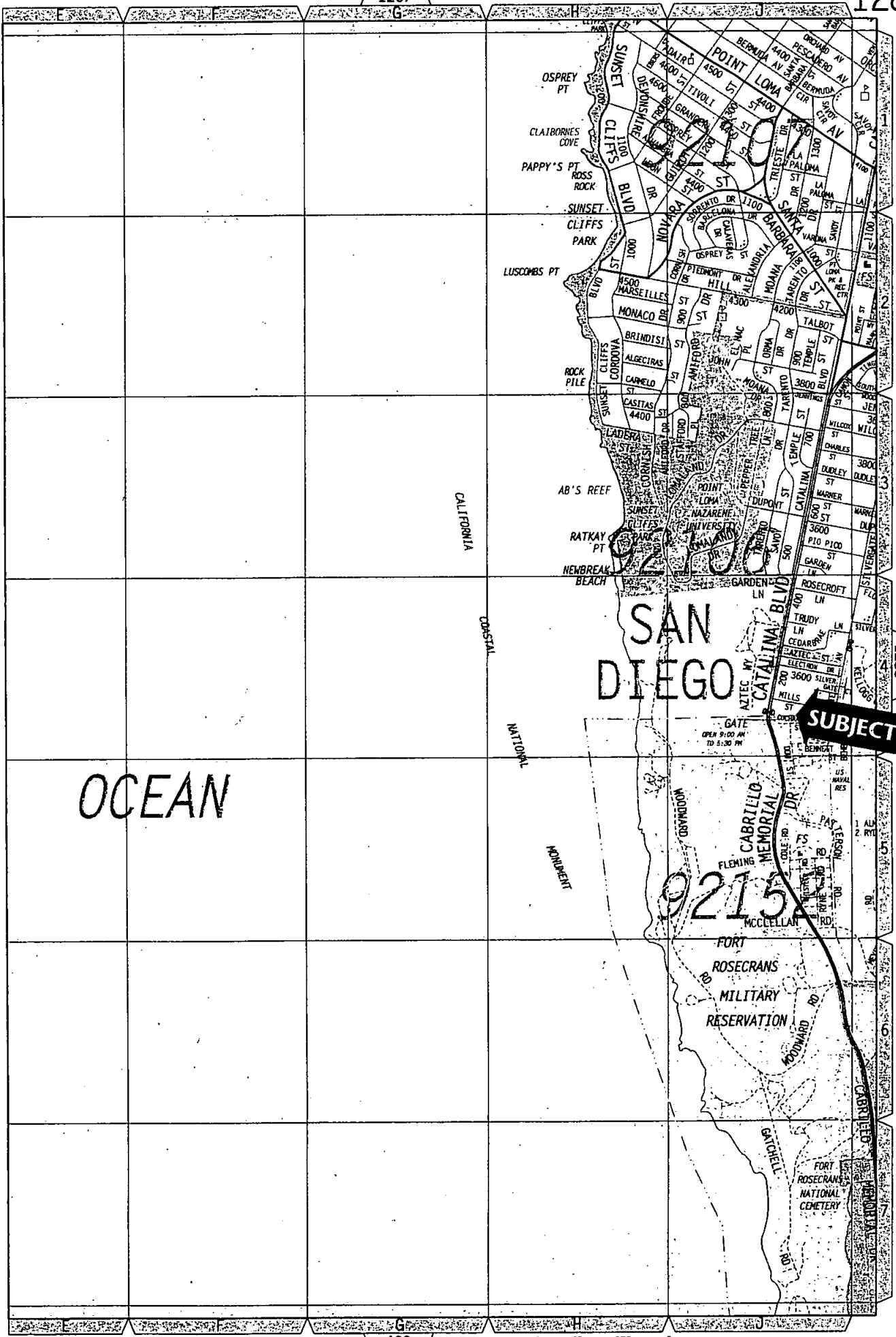
Exhibit "B" - Site Plan of Leased Premises

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:



© 2005 Thomas Bros. Maps®

SAN DIEGO, CO



OCEAN

SAN
DIEGO

SUBJECT

92152

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A 10-YEAR LEASE AGREEMENT WITH THE SAN DIEGO
METROPOLITAN TRANSIT SYSTEM FOR USE OF AN
EQUIPMENT SHELTER AND PLACEMENT OF AN
ANTENNA AT THE CATALINA STANDPIPE AREA.

WHEREAS, the City of San Diego [City], and the San Diego Metropolitan Transit System [MTS] have negotiated a ten-year lease agreement [Agreement] for use of an approximately 160 square-foot equipment shelter and the placement of one antenna on the City's lattice antenna tower, both of which are located at 200 Catalina Boulevard, San Diego, California, at the area known as Catalina Standpipe, for the installation, construction, modification, maintenance, operation and removal, at MTS' expense, of a Communications facility; and

WHEREAS, under the proposed Agreement, the initial annual rent for the premises will be \$30,000, which will be increased annually by 4% for years two through five, and with rent for years six through ten to be determined by an appraisal of the site, at year six, with 4% annual escalations to be added to each previous rent for years seven through ten; NOW THEREFORE,

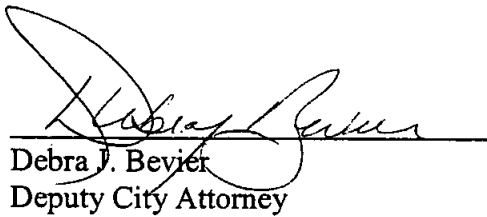
BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee be and is hereby authorized and empowered to execute, for and on behalf of the City of San Diego, a ten-year lease agreement with the San Diego Metropolitan Transit System, a California public agency, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR _____, for use of an approximately 160 square-foot equipment shelter and the placement of one antenna on the City's lattice antenna

tower located at 200 Catalina Boulevard, San Diego, California at the area known as Catalina Standpipe.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that the City Comptroller be and is hereby authorized and empowered, to accept rents pursuant to the Agreement and deposit the funds into Water Department Fund 41500, Revenue Account 75660.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Debra J. Bevier
Deputy City Attorney

DJB:mm
01/30/09
Or.Dept:READ
R-2009-769
MMS# 7347

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor



CITY OF SAN DIEGO

MEMORANDUM

DATE: October 30, 2008

TO: Council President Peters & City Council

FROM: Beryl Bailey Rayford, Equal Opportunity Contracting Program
Manager

SUBJECT: New Lease Agreement with the San Diego Metropolitan Transit System

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

CC: Fischle-Faulk, Debra
James F. Barwick, CCIM



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

TO: City of San Diego (City)

FROM: Tiffany Lorenzen, MTS General Counsel

SUBJECT: Stormwater Pollution Prevention Plan for Metropolitan Transit System (MTS)
Communications Equipment at Catalina Standpipe (Pursuant to the Lease Agreement
between the City and MTS)

1.0 INTRODUCTION

This Stormwater Pollution Prevention Plan concerns installation and maintenance of communications equipment by MTS at the Rohm ESB820 Equipment Shelter located easterly of the City's lattice antenna tower at Catalina Standpipe.

2.0 GENERAL NATURE OF FACILITY ACTIVITIES

The communications equipment consists of a metal antenna and wiring that is intended to transmit regional public transportation information to MTS and other providers of public transportation information. The installation of the communications equipment will not result in any grading or other ground disturbance. MTS or its subcontractors will visit the site on as needed basis to repair and maintain its communications equipment.

3.0 DESCRIPTION OF STORM DRAINAGE SYSTEM AND OUTFALLS

The communications equipment has no drainage pipes, outfalls, catch basins or sumps. No drainage or treatments system was deemed necessary based on the type of equipment installed.

4.0 IDENTIFICATION OF POTENTIAL STORMWATER POLLUTANTS

No potential stormwater pollutants or impact from stormwater runoff from the communications equipment is anticipated.

5.0 IDENTIFICATION OF POTENTIAL NON-STORMWATER POLLUTANTS

No potential non-stormwater pollutants or impact from non-stormwater runoff from the communications equipment is anticipated.



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

6.0 BEST MANAGEMENT PRACTICES

The lease states that MTS is to put in place Best Management Practices (BMPs) to reduce the contamination or potential for contamination of stormwater. No contamination from the communications equipment is anticipated therefore BMPs are unnecessary at this time. MTS will take the following precautions to ensure stormwater is not contaminated due the communications equipment: MTS will keep the work areas clean during installation and maintenance activities; maintain the communications equipment in a way that anticipates problems that could occur, resulting in no pollution; ensure that no spills occur at the site during installation and maintenance activities; inform MTS employees who may visit the site to prevent any activity from occurring during installation and maintenance of the communications equipment that could lead to stormwater contamination.

7.0 INSPECTIONS AND MONITORING

MTS will inspect and monitor the communications equipment as needed to ensure it is not causing and will not potentially cause contamination of stormwater.