

USE AND OCCUPANCY PERMIT

THIS USE AND OCCUPANCY AGREEMENT made this 26th day of January, 1993 by and between the City of San Diego, a municipal corporation in the County of San Diego, State of California, hereinafter called "City," and the San Diego Unified Port District, hereinafter called "Permittee."

W I T N E S S E T H:

The City of San Diego (City) hereby permits the San Diego Unified Port District (Permittee) to utilize the premises described herein upon the following conditions.

1. PREMISES: A portion of the City's vault and antenna location on Catalina Reservoir, comprising approximately three racks, numbers 9, 10, & 11, approximately 24 square feet. Said real property is hereinafter called the premises and is shown on Exhibit A.
2. USE: The premises shall be used during the term hereof solely and only for the purpose of constructing, maintaining, repairing, altering and operating radio transmitting and receiving equipment as City may from time to time consent to in writing, and for no other purpose or purposes whatsoever.
3. TERM: The term shall be for a period of three years beginning on February 1, 1993.
4. RENT: The Permittee shall pay rent to the City for the premises at the rental rate of Ten Thousand Eight Hundred Dollars (\$10,800) per year, payable annually in advance. Rent for a lesser period shall be prorated. Beginning with the first anniversary of the commencement of this permit and on each anniversary date thereafter, the annual rental provided for above shall be increased by an amount equal to five percent (5%) of the then current rental.

Rental payments will be addressed and mailed to the City of San Diego, City Treasurer, P.O. Box 2289, San Diego, CA 92112-4165.

5. INSTALLATION AND OPERATION OF EQUIPMENT: The installation and operation of Permittee's communications equipment in and about City's vault at Catalina Reservoir shall be under the administration of the City. The use and operation of the Permittee's equipment at said site shall be subject to an "on the air" compatibility test (see Exhibit B attached). The compatibility test must result in reasonable assurance that the use will not cause interference to existing communications systems and users on Catalina Reservoir. Only the Permittee, its properly qualified and authorized agents, employees, contractors, and servants, shall have the right of ingress to and egress from said premises. If communication equipment of Permittee is operated or maintained by anyone other than its regular employees, the admission of such persons to said site shall be permitted only upon the express written consent of the City having first been obtained. The equipment shall be installed in accordance with standards provided by C.&E.

Division. Preliminary drawings shall be provided for C.&E. review prior to any installation.

6. IMPROVEMENTS AND ALTERATIONS: Permittee shall not make any improvements or alterations to the premises without the prior written consent of City. All fixtures, equipment and improvements installed or made by Permittee shall remain the property of Permittee and shall, at Permittee's expense, be removed upon expiration or termination of this agreement and the premises restored substantially to the same condition as when received; provided, however, that any repair or replacement of City's property shall remain property of City. Should Permittee fail to remove its fixtures, equipment and improvements as aforesaid, the City may do so at the expense of Permittee.
7. MAINTENANCE: Permittee agrees to assume full responsibility for the operation and maintenance of its facilities on the premises throughout the term hereof without expense to City, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to City and in compliance with all applicable laws. Permittee agrees that City shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises, and Permittee hereby waives all rights to make repairs or to cause any work to be performed at the expense of City as provided for in Sections 1941 and 1942 of the California Civil Code. During the term of this Agreement, City agrees to maintain the vault in good repair.
8. UTILITIES: Permittee shall install a new 220/110 volt, 60 Hz, A.C. normal power circuit. Cost of power is included in the rental fee.
9. ASSIGNMENT AND SUBLEASE: Permittee shall not transfer nor assign this permit, and shall not sublet, license, permit or suffer any use of the premises or any part thereof, or lease space in any building constructed on said land, provide radio equipment for the use of others, or cause or permit any change of any equipment installed in such premises, including power outputs or changes in the use of the following frequencies to transmit: 952.60625 MHz, and receive: 928.60625 MHz, except upon making a written request to City for each such transaction and the obtaining of its prior written consent thereto. Permittee shall display on each piece of equipment the appropriate license from the federal regulation agency.
10. INSURANCE: City will not keep improvements which are constructed or installed by Permittee under the provisions of this permit insured against fire or casualty, and Permittee will make no claim of any nature against City by reason of any damage to the business or property of Permittee in the event of damage or destruction by fire or other cause, arising other than from or out of negligence or willful misconduct of agents or employees of City in the course of their employment.

11. INDEMNITY: Permittee agrees that City, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Permittee, its representatives, agents, employees, guests, licensees, invitees, patrons or clientele, nor for personal injuries to, or deaths of any persons, caused by or resulting from any act or omission of Permittee or other person specified above in or about the premises. Permittee agrees to indemnify and save free and harmless City and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by City on account of any claim or claims thereof.
12. INSPECTION: City may enter and inspect the premises and the operation conducted thereon at any reasonable time.
13. ACCESS: City agrees to provide Permittee unobstructed access to the vault at all times during the term hereof.
14. NOTICES: Notices to City shall be mailed to the City of San Diego Property Director, 202 "C" Street, San Diego, California 92101. Notices to Permittee may be mailed to San Diego Unified Port District, 3165 Pacific Highway, San Diego, California, 92101, or may be personally served upon the Permittee.
15. ORAL REPRESENTATIONS: This agreement contains the complete expression of the whole agreement between the parties and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as are set forth herein. This agreement cannot be changed in any respect except by written agreement between the parties.
16. HOLDING OVER: Any holding over after the expiration of said term for any cause shall be construed to be a tenancy from month to month, at any rental selected by City which has been in effect during the term, and shall otherwise be on the terms and conditions herein specified so far as applicable. Such holding over shall include any time employed by the Permittee in removing fixtures and improvements as hereinbefore provided.

IN WITNESS WHEREOF, this Use and Occupancy Agreement is executed by City, acting by and through its City Manager, and by Permittee, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 2-19-93

By Robert J. Collins for
James L. Spotts
Property Director

SAN DIEGO UNIFIED PORT DISTRICT

Date January 26, 1993

By [Signature]
Assistant Port Director

PORT ATTORNEY

Date 1/27/93

By [Signature]
Joseph D. Patello

APPROVED as to form and legality this 22 day of February, 1993.

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

MLM:st(4)
11/24/92

EXHIBIT "A"

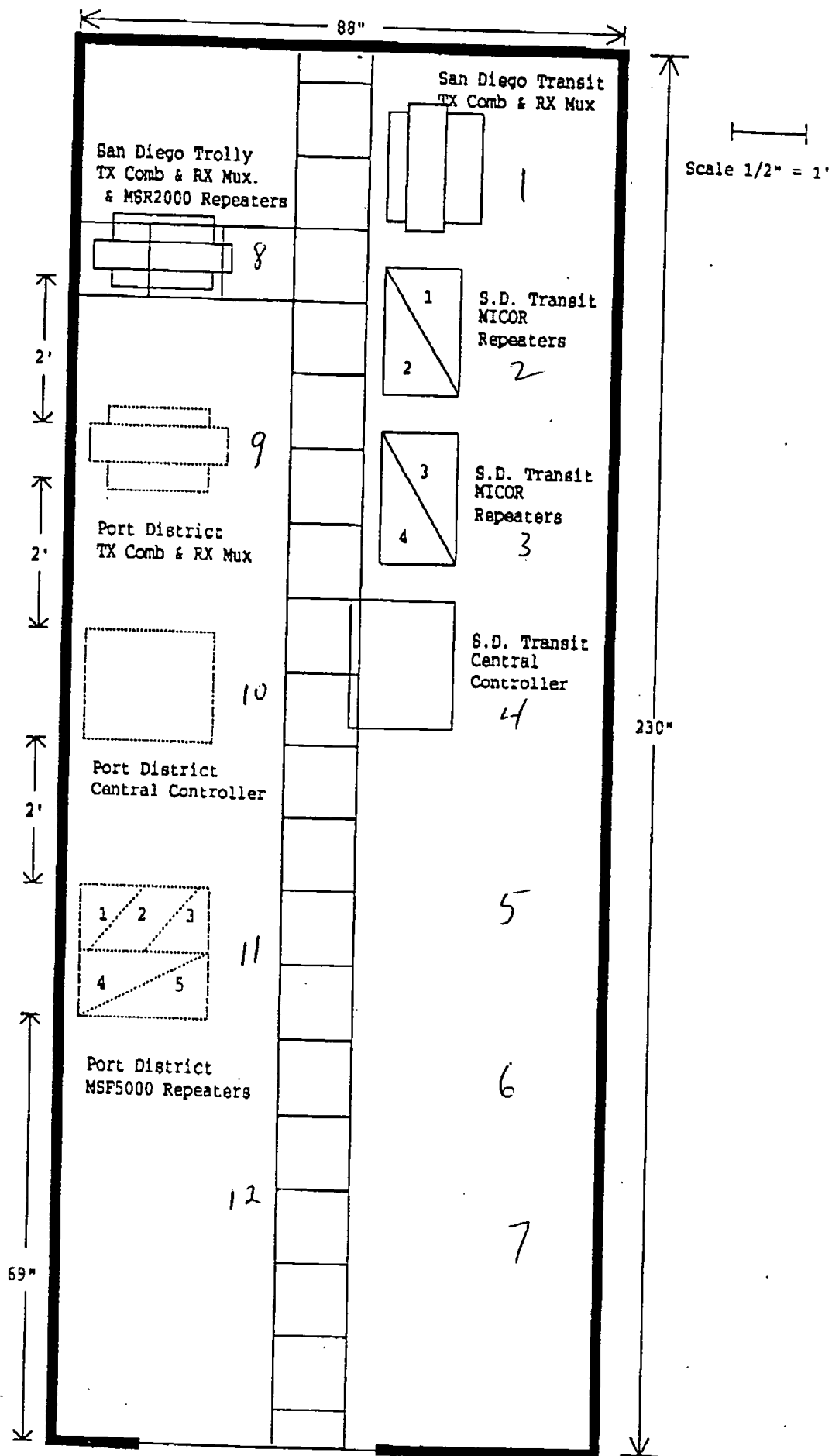


EXHIBIT "B"

USER COMMITTEE ELECTRONIC LAND USE "ON THE AIR" INSTRUCTIONS AND PROCEDURES

1. Explanation

Prior to the City's approval of an application for a new radio-electronic use authorization or modification of an existing authorization, pre-installation or pre-use tests will be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to the existing authorized radio electronic type uses at the facility.

Should the interference problems result, it will be the responsibility of the user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves.

City may recognize the right of prior authorizees and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other authorizees.

2. Pre-installation or Pre-Use Testing

A. It will be the responsibility of the applicant to make the complete arrangements and conduct all tests in a technically sound manner.

1) A listing of all radio-electronic land use authorizees operating at the facility will be obtained from the users committee.

B. It will be the responsibility of the applicant to notify all radio electronic authorizees at the facility of the tests and details thereof, at least 14 days in advance of the tests.

1) The notification shall be in the form of letter to each listed authorizee giving a technical summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the authorizees to have a qualified representative present for the tests to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the authorizees.

2) A copy of these instructions, "City of San Diego Radio-Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be so noted in the notification letter.

3) Notifications to Permittees shall be sent via U.S. Mail or hand delivered.

- 4) The notification letter to the City Communications Engineer shall include a list of all Permittees notified.
 - C. It will be the applicant's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each PERMITTEE participating in the test and a list of those Permittees who did not respond.
 - D. In the event a notified PERMITTEE fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the PERMITTEE has assured himself that his operations will not be affected.
3. On-The-Air Tests - Technical Details
- Pre-installation or pre-use on-the-air tests shall be conducted by the applicant under the following technical conditions:
- A. The applicant's transmitting and receiving equipment shall be of the type planned for final use at the site.
 - 1) The transmitted RF power shall be the maximum to be used and authorized at the location.
 - 2) On-the-air transmitter tests shall include the use of full allowable modulation.
 - 3) Antenna height(s), location(s) and type(s) shall be the same as the final installation plan.
 - B. Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the applicant's electronic equipment.
 - C. All tests will include testing will all frequencies planned for use by the applicant at the location.

MLM:st(2)
11/24/92

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 1563

AN ORDINANCE
AUTHORIZING AND ACCEPTING A
USE AND OCCUPANCY PERMIT
FROM THE CITY OF SAN DIEGO

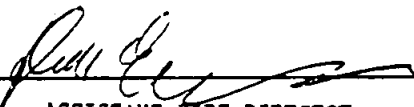
The Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. That Use and Occupancy Permit from The City of San Diego, a municipal corporation, to the San Diego Unified Port District, a public corporation, on file in the office of the District Clerk as Document No. 29389, covering certain premises located on Mills Street and Catalina Boulevard in the City of San Diego to be used by the District for the purpose of constructing, maintaining, repairing, altering and operating radio transmitting and receiving equipment, is hereby authorized, approved and accepted.

Section 2. The Port Director or his authorized representative is hereby directed to execute the said Use and Occupancy Permit with The City of San Diego on behalf of the District.

Section 3. This ordinance shall take effect on the 31st day from its publication.

Presented By: DON L. NAY, Port Director

By 
ASSISTANT PORT DIRECTOR

Approved: JOSEPH D. PATELLO, Port Attorney



San Diego Unified Port District

Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified Port District on January 26, 1993, by the following vote:

Commissioners	Yeas	Nays	Excused	Absent	Abstained
Raymond W. Burk	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Clifford W. Graves	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
W. Daniel Larsen	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Robert Penner	<u> </u>	<u> </u>	<u>X</u>	<u> </u>	<u> </u>
Frank J. Urtasun	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Jess Van Deventer	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

AUTHENTICATED BY:

Raymond W. Burk
Chairman of the Board of Port Commissioners

CHRISTINE M. STEIN
Clerk of the San Diego Unified Port District

By: Jocelyn M. Beale-Turner
Deputy Clerk

(Seal)

Resolution Number:

or

Ordinance Number: 1563

Adopted: 01/26/93