

COPY



THE CITY OF SAN DIEGO

GTE WIRELESS OF THE PACIFIC, INC.

Torrey Pines Road and Expedition Way

Flat Rate Lease

CITY / GTE Lease - Torrey Pines Rd & Expedition

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SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and GTE WIRELESS OF THE PACIFIC, INC., a Delaware corporation, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY is the fee owner of all that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement (the "site".) CITY hereby leases to LESSEE and LESSEE leases from CITY that certain portion of the site, described in Exhibit "B" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises." LESSEE may use the existing access road shown on the attached Exhibit "B" for vehicular or foot access on a 24-hour nonexclusive basis.
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of installing, constructing, maintaining and operating its Communications Center and any other incidental activities or activities relating thereto as may be permitted by applicable law in accordance with Exhibits "B" and "C" hereof. LESSEE shall have the right to replace or repair the Communications Equipment or any portion thereof.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Interference. A. LESSEE's non-interference with pre-existing Users. Prior to the CITY'S approval of this application for a new radio-electronic use authorization or modification of an existing authorization on the site, pre-installation or pre-use tests shall be required by the CITY. 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 site.

Should the interference problems result, it will be the responsibility of the LESSEE to initiate mutually agreeable actions of the parties involved to settle the problem among themselves and, if the matter cannot be settled, to discontinue any new installation until such interference is resolved.

CITY may recognize the right of prior authorized users and withhold approval of LESSEE'S radio-electronic authorization application or authorization modification pending settlement of interference problems between LESSEE and other authorizees. The LESSEE has the right to terminate this lease at any time if the line of sight is blocked or obstructed. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of termination of this Lease, and, further, that LESSEE expressly waives any claim for expense or loss which LESSEE might incur as a result of termination of this lease.

a. Pre-installation or pre-use Testing

- (1) It will be the responsibility of the LESSEE to make the complete arrangements and conduct all tests in a technically sound manner.
 - (a) A listing of all radio-electronic land use third parties operating at the site will be obtained from, and provided by, the CITY.
- (2) It will be the responsibility of the LESSEE to notify all radio-electronic third parties at the site of the tests and details thereof, at least 14 days in advance of the tests.
 - (a) The notification shall be in the form of a letter to each listed third party 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 third party 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 third parties.
 - (b) A copy of the instructions entitled, "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.

- (c) Notification to third parties shall be sent via U.S. Mail or hand delivered.
 - (d) The notification letter to the City Communications Engineer shall include a list of all third parties notified.
- (3) It will be the LESSEE'S responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each third party participating in the test and a list of those third parties who did not respond.
 - (4) In the event a notified third party fails to send a qualified representative to observe and participate in the tests, it will be assumed by the CITY that the third party has assured themselves that their operations will not be affected. The CITY shall not thereafter require LESSEE to alter its operation as a result of a subsequent claim of interference from such third party.

b. 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 premises.
 - (a) The transmitted RF power shall be the maximum to be used and authorized at the location.
 - (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 as 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 premises.

- 1.4 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to 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 leased premises.
- 1.5 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises; provided however that in the event the period of dispossession exceeds thirty (30) days, then LESSEE shall have the right, at its sole option, to terminate this Lease upon ten (10) days written notice to the CITY.
- 1.6 Reservations. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section.
- 1.7 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a communication facility and related activities in a fiscally responsible manner.

SECTION 2: TERM

2.1 Commencement. The term of this agreement shall be Ten (10) years commencing the later of (i) the date that CITY executes this lease, or (ii) the first day that LESSEE shall have (a) received and approved the results of soils studies of the Leased Premises and easements granted hereunder, and radio frequency tests to determine the suitability of the Leased Premises for radio wave capacity, angle, coverage and direction; (b) received a commitment and/or policy for title insurance from a title insurance company acceptable to LESSEE showing title to the Leased Premises, and any easements granted hereunder, vested in CITY with no exceptions objectionable to LESSEE; (c) received a survey and a certification on the survey, satisfactory to LESSEE; (d) obtained all regulatory, municipal or county approvals, including, but not limited to, the approvals of the Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA"), applicable subdivision or zoning boards or commissions, the Public Service Commission ("PSC") or the Public Utility Commission ("PUC") for the maintenance and operation of LESSEE'S facilities; (e) received and approved the results of a Phase I environmental survey of the Leased Premises and any easements granted hereunder, and a Phase II environmental survey, if recommended by the Phase I environmental survey; and (f) received and approved the results of the interference testing required by the CITY; and (g) obtained any necessary easements for ingress and egress to the Leased Premises. The later of (i) or (ii) (a), (b), (c), (d), (e), (f) and (g) is hereinafter known as the "Commencement Date." "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the Commencement Date. CITY or LESSEE may terminate this lease at any time after providing 180 days written notice of intention to do so.

Termination. In addition to other rights of termination LESSEE may have under this lease, LESSEE shall have the right to terminate this Lease at any time after the Commencement Date, upon the occurrence of any of the following events:

- a. If the approval (including any required renewal(s) or extension(s) of any agency, board, court, or other government authority necessary for the construction and/or operation of the Communications Equipment or any other intended and permitted use of LESSEE of the Leased Premises cannot be obtained, or is revoked or if LESSEE in its sole discretion determines that the cost of obtaining or retaining such approval is cost prohibitive or commercially unreasonable; or
- b. If LESSEE determines at any time that the Leased Premises is not appropriate for locating LESSEE'S Communications Equipment for technological reasons, including, but not limited to, signal interference.

LESSEE shall give CITY thirty (30) days written notice of termination of this lease under subparagraphs (a) or (b) above. Upon termination, neither party shall have any further obligation to the other under the terms of this lease, except LESSEE shall remove its Communications Equipment from the Leased Premises within thirty (30) days following termination. LESSEE agrees to restore the portions of the Leased Premises occupied by LESSEE to its original condition, normal wear and tear, damage by storm, fire, lightning, earthquake and other conditions beyond LESSEE'S control excepted.

2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement shall be month-to-month, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will. Notice of any such increase in rent shall be given in writing at least thirty (30) days prior to becoming effective.

2.3 Quitclaim and Surrender of LESSEE'S Interest. On the expiration or earlier termination of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises.

At 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 existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

Memorandum of Lease. CITY and LESSEE hereby agree, following the execution of this lease, to execute the short form of Memorandum of Lease, in form suitable for recording under the laws of the state in which the Leased Premises is located, substantially in the form of Exhibit "D" attached hereto and incorporated herein by reference. LESSEE, at its sole expense, shall have the right to file the Memorandum of Lease of record in the county and state where the Leased Premises is located.

SECTION 3: RENT

3.1 Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City

Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such 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.

3.2 Rent.

- a. Rent Amount. The minimum rent to the CITY will be One Thousand Two Hundred Dollars (\$1,200) per month.

Beginning with the second year of this lease and continuing each year thereafter, the rent will be increased annually on the commencement date defined in Section 2.1 of this lease. The monthly increase shall be five percent (5%) of the preceding years monthly rent.

- b. Rent Adjustment. At least six (6) months prior to the end of the 5th year of the term of this agreement and at least six (6) months prior to the end of each five-year period thereafter, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust LESSEE'S rent to be paid CITY effective upon the first day of the succeeding five-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.2c. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said five-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- c. Fair Market Value Adjustments. At the end of the 5th year following the effective date of this agreement and at the end of the 10th, 15th and 20th year, the rent for the ensuing 5 years, subject to the aforesaid adjustments, shall be determined by an appraisal of the Leased Premises as of the adjustment date by a qualified, competent experienced real estate appraiser, who has demonstrated expertise in determining rent for telecommunication site(s)/properties. The fair market rent of the Leased Premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers

approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market rent of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market rent of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this lease at the commencement of the rental period under review, and that the authorized communication system is considered the highest and best use.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said 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, AS ESTABLISHED BY PERIODIC APPRAISALS AS PROVIDED FOR HEREIN, BE LESS THAN THE RENT IN EXISTENCE IMMEDIATELY PRIOR TO THE ADJUSTMENT DATE. Notwithstanding the foregoing, 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.

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent within five (5) days after receipt of written notice of delinquency from CITY, LESSEE will 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 from such written notice, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually 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. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, 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.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. Consent of the City Manager shall not be unreasonably withheld. Notwithstanding the foregoing, LESSEE shall have the right to assign this Lease and sublet the premises without the prior consent of the City Manager to any entity which controls, is controlled by, or is under common control with LESSEE; or to any entity resulting from the merger of consolidation with LESSEE; or any entity which controls, is controlled by, or is under common control with the LESSEE as the general partner; or to any person or

entity which acquires substantially all of LESSEE'S assets, provided that such assignee assumes in full all of LESSEE'S obligations under this lease.

- 4.3 Encumbrance. Any encumbrances by LESSEE on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE commences to cure the default within said thirty (30) days and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and

diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. 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 absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Subject to LESSEE'S termination rights as provided in this lease, even though LESSEE has breached the lease and abandoned the premises, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any 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 non-defaulting party in order to constitute a valid and binding waiver. The 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. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that 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 and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen. Should CITY breach any material term

or covenant in this lease or fail to perform any obligation under this lease, and such breach shall continue uncured thirty (30) days following receipt of written notice, as provided in paragraph 4.4 above, LESSEE may terminate this lease effective upon receipt of written notice by CITY or, at its option, cure such default. All sums expended by LESSEE in connection therewith shall be paid by CITY to LESSEE upon demand, and if CITY fails to reimburse LESSEE promptly, LESSEE shall have the right, upon written notice to CITY, to set-off or deduct such amount from subsequent installments of rent.

- 4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE will be as follows:
- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking, if, in the opinion of LESSEE, 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. In the event of a partial taking, if, in the opinion of LESSEE, 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 minimum rent shall be equitably reduced to reflect the portion of the premises taken.
 - d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, 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, for relocation expenses and for loss of goodwill. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. Transfer. CITY has the right to 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.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold by LESSEE or the work and operations to be performed by LESSEE under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence, or sole willful misconduct of the CITY, its agents, officers, or employees. The foregoing indemnity provision shall not be applicable in the event that any claims, demands, actions, etc. arise from or are caused by the negligence of CITY, its boards, officers, agents, or employees.
- 5.2 Insurance to be Carried by LESSEE - (Option One). Upon the effective date of this lease, LESSEE shall include the Leased Premises in its program of liability self-insurance, covering LESSEE'S occupancy and use thereof. Self-insurance program shall be evidenced by a "Statement of Coverage" issued by LESSEE to CITY. Self-insurance limits must be, at a minimum, the limits in Paragraph 5.3(a)(1 & 2). The CITY is a self insured Municipal Corporation.
- 5.3 Insurance to be Carried by LESSEE - Option Two).
- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, 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) Other Insurance. Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover

100 percent 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 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.

5.4 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said 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 such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. As of the Commencement Date, 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 such independent inspection, tests, investigations, and observations in making this lease. LESSEE further 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, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, if LESSEE has not commenced the required work and be diligently prosecuting it to completion, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said 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. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY. LESSEE requires that CITY give at least 24 hours notice and be escorted by LESSEE'S representative when entering said premises except in emergency situations.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will 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 the Equipment and Antennas Locations as described in Exhibit "C" hereof and with all applicable laws.
- 6.4 Improvements/Alterations.

- a. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- b. Should changes in technology occur during the term of the lease which would require the upgrading of the facility, the LESSEE shall have the right to perform such upgrading, providing such upgrading does not damage or interfere with any adjacent improvements or the land. See paragraph 1.3, Interference.

6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Leased Premises.

6.6 Liens. LESSEE shall at all times save 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 such claims, including reasonable attorney's 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 such 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.

6.7 Taxes. LESSEE agrees to 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 leased premises, including any licenses or permits. LESSEE recognizes and agrees 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 such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.8 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9 Ownership of Improvements and Personal Property.

- a. All LESSEE-owned improvements, including but not limited to, antennas, machines, appliances, and equipment shall be deemed personal property and shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- b. If any removal of such personal property by LESSEE results in damage to the tower or real property on the premises, LESSEE agrees to repair all such damage.
- c. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- d. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 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 an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

- 6.11 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks 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'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 herein.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on 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.

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 the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, 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 the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, if CITY reasonably believes hazardous substances have been released by LESSEE on, in or under the premises, 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. Said 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 said 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. If the hazardous substances were released by LESSEE, LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

GTE Wireless of the Pacific, Incorporated
12677 Alcosta Blvd., Dept. 491
P.O. Box 5011
San Ramon, CA 94583-0811
Attn: Director of Network

With a copy to:
GTE Wireless
Mail Code: GA1B3LGL
Alpharetta, GA 30004-8511
Attn: Legal Department

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective 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.

Approval. No prior approval required by this lease shall be unreasonably withheld or delayed.

- 7.2 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 cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.4 Nondiscrimination. LESSEE agrees not to 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.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program.
- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will 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 herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will 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 will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of 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 agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. 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 contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 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 will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 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.
- 7.9 Captions. The Lease Outline, 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. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased 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 of the parties

in 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 these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such 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 contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 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 leasehold 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 sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

7.14 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain Right of Entry agreement executed on the 19th day of February, 1997 between the CITY and GTE Mobilnet of San Diego, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to LESSEE or CITY under such agreement.

- 7.15 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

SECTION 8: SIGNATURES

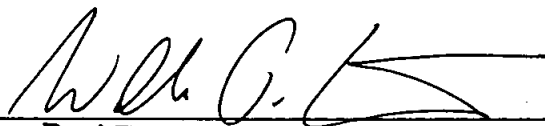
8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date JAN 22 2001

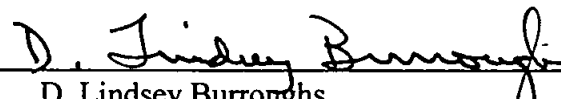
By


Real Estate Assets Director

LESSEE: GTE WIRELESS OF THE PACIFIC,
INCORPORATED

Date 6/28/00

By

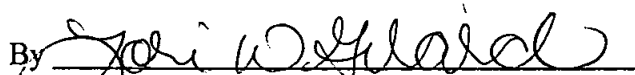

D. Lindsey Burroughs

Its: Area President - San Diego

APPROVED as to form and legality this _____ day of JAN 22 2001, 2000.

CASEY GWINN, CITY ATTORNEY

By


Deputy City Attorney

JBL:jmj

02/18/00

C:\Telecom\LEASE-GTE-TORREY PINES RD & EXPEDITION WAY.wpd

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

} ss.

On _____, before me, _____,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared _____,
Name(s) of Signer(s)

- ☐ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

SECTION 9: EXHIBITS

9.1 Parcel Map(s).

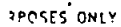
9.2

Exhibit A

DESCRIPTION OF LEASED PREMISES

A portion of the Southwest Corner of Torrey Pines Road and Expedition Way

2



MM 36 - PUEBLO LANDS - POR LOT 1299

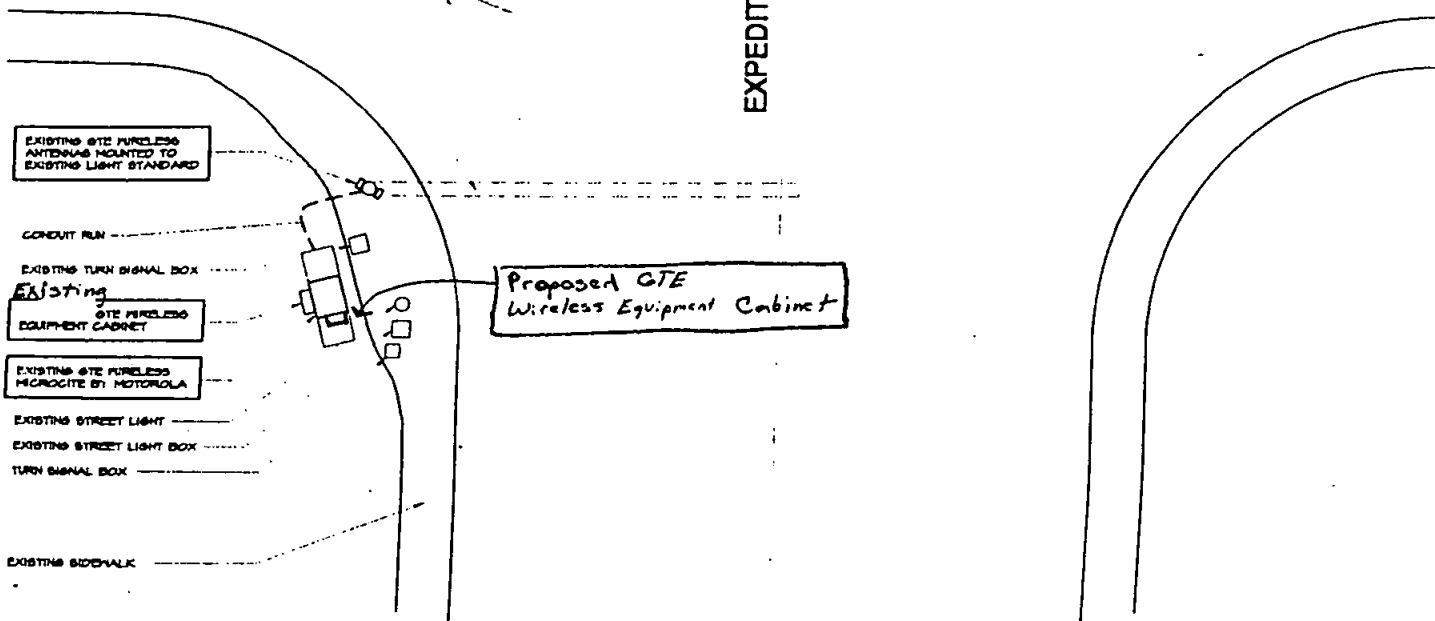
9.3 Exhibit B - Site Map



TORREY PINES ROAD

EXPEDITION
WAY

LINE OF TRAFFIC SIGNAL OVERHANG



ENLARGED SITE PLAN
SCALE: 1/8" = 1'-0"



OWNER APPROVAL
SIGNATURE

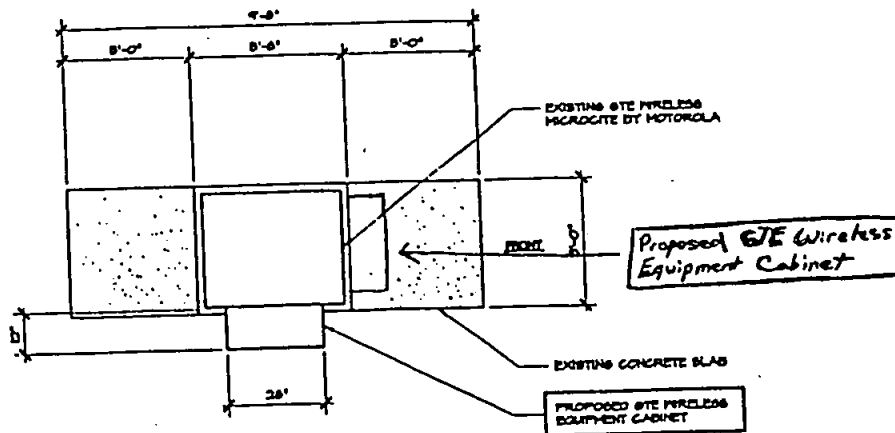
Exhibit "B" & "C"

EXHIBIT B

9.4 Exhibit C - Equipment and Antenna Location

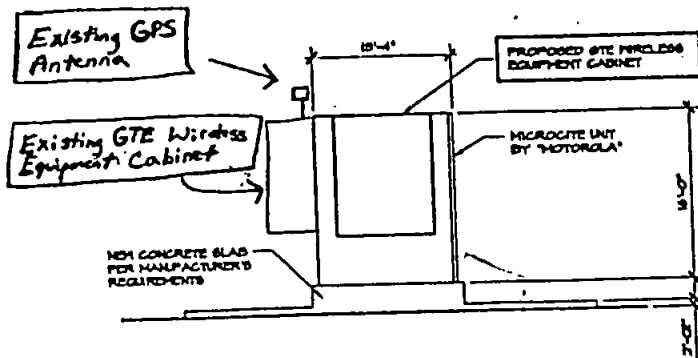
REVISIONS

DATE	DESCRIPTION
4/14/98	GTE REVISIONS

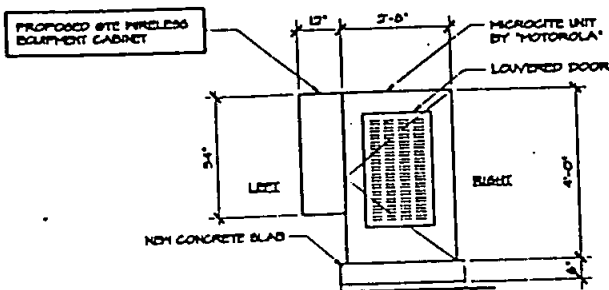


ENLARGED SITE PLAN
SCALE: 1/8" = 1'-0"

NORTH



LEFT SIDE ELEVATION
SCALE: 1/8" = 1'-0"



FRONT SIDE ELEVATION
SCALE: 1/8" = 1'-0"

ENLARGED :
SCALE: 1/8" = 1'-0"

EXHIBIT C

9.5 Exhibit D - Memorandum of Lease

Recording Requested By and
When Recorded, Mail To:

GTE Wireless of the Pacific
PO Box 5011
San Ramon, CA 94583

MEMORANDUM OF LEASE AGREEMENT

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

THIS MEMORANDUM OF LEASE AGREEMENT ("Memorandum"), made this _____ day of _____, 2000, by and between City of San Diego, whose address is 202 "C" Street, San Diego, CA ("Landlord") and GTE Wireless of the Pacific Incorporated of the State of California, whose address is P.O. Box 5011, San Ramon, CA 94583 ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into that certain Lease Agreement dated _____, 2000, (the "Lease"); and

WHEREAS, Landlord and Tenant desire to file this Memorandum of record in the County of San Diego, in order to provide record notice to all third parties of Tenant's rights under the Lease;

NOW, THEREFORE, for and in consideration of the Leased Premises (as defined herein), the covenants and promises of the parties set forth herein and in the Lease, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is expressly acknowledged by the parties hereto, Landlord and Tenant agree and acknowledge for themselves, their respective successors and assigns, as follows:

Upon, subject to and in consideration of the terms and conditions set forth in the Lease, Landlord leases to Tenant, and Tenant agrees to lease from Landlord, a portion of that certain tract of land located in San Diego County, California, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Leased Premises");

To have and to hold the Leased Premises unto Tenant, its successors and assigns, for a term of Ten (10) years, commencing on _____ 1, 2000 and ending _____, 2010 (the "Initial Term").

Landlord grants to Tenant an Access Easement and a Utility Easement upon the terms set forth in the Lease.

The rent and other obligations of Landlord and Tenant are set forth in the Lease, to which reference is made for further information. If a conflict exists between the terms of the LEase and those contained in this Memorandum, those contained in the Lease shall govern and be controlling;

This Memorandum contains only selected provisions of the Lease, and reference is made to the full text of the Lease for the full terms and conditions. This Memorandum shall not, in any way, amend or supersede the terms and conditions of the Lease;

This Memorandum and the Lease are governed by the laws of the State of California.

IN WITNESS WHEREOF, the Landlord and Tenant have caused their names to be signed as of the date and year first above written.

CITY OF SAN DIEGO

Date JAN 22 2001

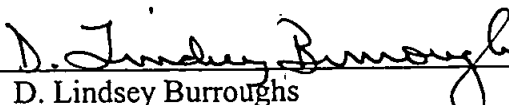
By 

Printed Name _____

Title Real Estate Assets Director

GTE WIRELESS OF THE PACIFIC

Date 6/28/00

By 
D. Lindsey Burroughs
Its: Area President - San Diego

I:\WPO\2000\Anthony\MEMO OF LEASE AGREEMENT - GTE.wpd

EXHIBIT "A"

DESCRIPTION OF LEASED PREMISES

A portion of the Northwest Corner of Torrey Pines Road and Expedition Way.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Diego

} ss.

On June 28, 2000

Date

before me, Anne L. Johnson

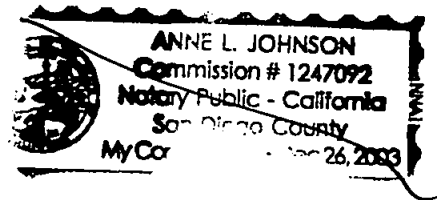
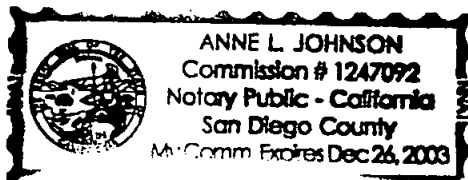
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

D. Lindsey Burroughs

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



Place Notary Seal Above

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Anne L. Johnson

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

9.6 Corporate Name.

CORPORATE NAME

I, _____, certify that I am the
_____ of the corporation named in the attached agreement; that
_____, who signed this agreement on behalf of the corporation, was then
_____ of said corporation; that said agreement was duly signed for and
on behalf of said corporation by authority of its governing body, pursuant to a resolution duly
adopted by its Board of Directors on _____, 19 ____, and is within the scope
of its corporate powers; and that set out below are the names of the officers and directors of said
corporation.

By _____

CORPORATE SEAL

Name _____
Title _____

Name _____
Title _____

Name _____
Title _____

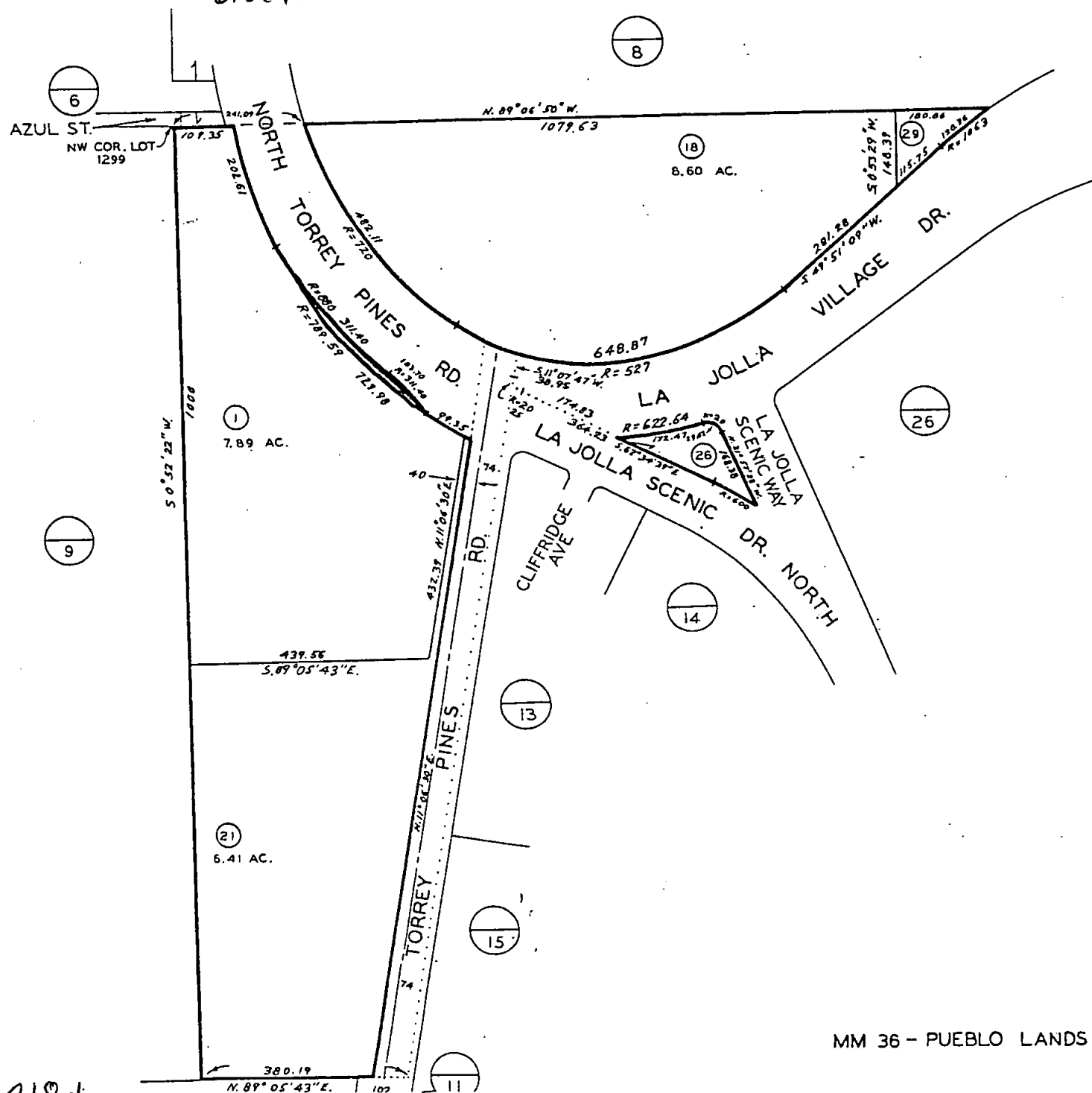
Name _____
Title _____

D

2 8628

1" = 200

2



CHANGES

[illegible]

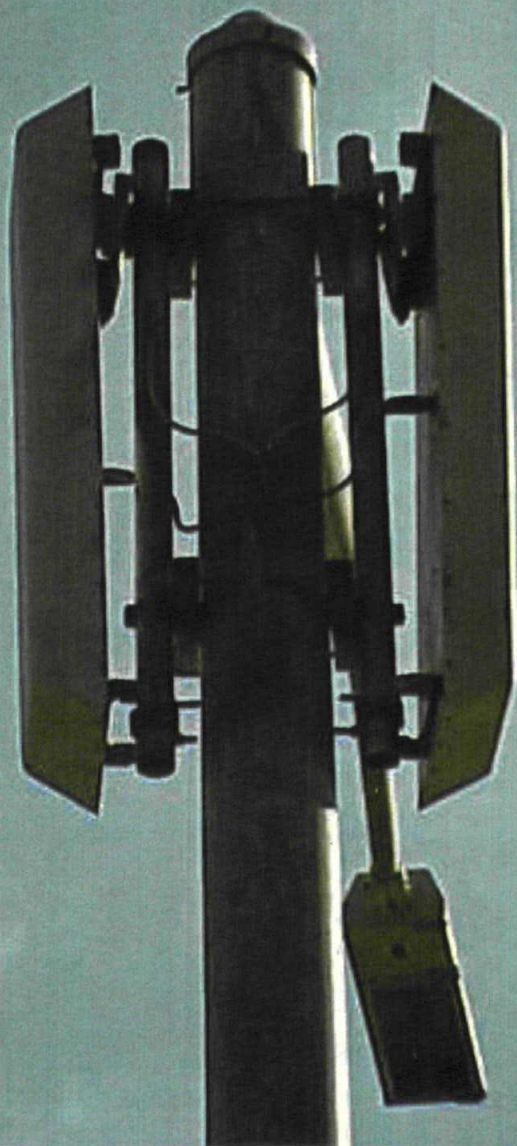
MM 36 - PUEBLO LANDS - POR LOT 1299 WEST 1/2

12

2218-1









RESOLUTION NUMBER R- 294464

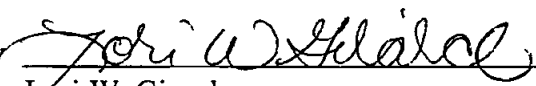
ADOPTED ON JAN 22 2001

WHEREAS, GTE Wireless of the Pacific, Inc. [GTE] currently has right of entry permits with the City for the operation of two telecommunications facilities located along North Torrey Pines Road [Facilities]; and

WHEREAS, the City and GTE have negotiated two ten-year leases for the continued operation of the Facilities at the initial rental rate of \$14,400 per year, the fair market rate as determined by City valuation staff; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City, two ten-year lease agreements with GTE for the operation of the Facilities under the terms and conditions set forth in those lease agreements on file in the office of the City Clerk as Document Nos. RR- 294464 -1 and RR- 294464 -2.

APPROVED: CASEY GWINN, City Attorney

By 
Lori W. Girard
Deputy City Attorney

LWG:cdk
09/27/00
Or.Dept:REA
Aud.Cert:N/A
R-2001-527
Form=leaser.frm

Passed and adopted by the Council of San Diego on January 22, 2001 by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS, MAIENSCHIN, STALLINGS, MADAFFER, MAYOR MURPHY.

NAYS: NONE

NOT PRESENT: _____

VACANT: DISTRICT 8

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

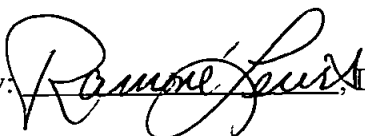
By: Ramone Lewis, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 294464, passed and adopted by the Council of The City of San
Diego, California on January 22, 2001.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS (Continued):

ITEM-203: Approval of Two (2) Leases - GTE Wireless Along N. Torrey Pines Road.
(La Jolla Community Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2001-527)

Authorizing the City Manager to execute two ten-year lease agreements with GTE for the operation of two telecommunications facilities located along North Torrey Pines Road at the initial rental rate of \$14,400 per year, the fair market rate as determined by City valuation staff.

CITY MANAGER SUPPORTING INFORMATION:

The existing GTE Wireless of the Pacific, Inc. facilities each consist of two 48" high by 12" wide by 5" deep panel antennas mounted at the top of an existing 30' high traffic signal, with a 48" high by 40" wide by 32" deep weather proof equipment cabinet on a concrete pad located near a corner of the intersection. Both sites have been in operation since February 1997 via Right of Entry Permits. These permits are currently on holdover status. GTE has proved to be a reliable tenant over that period of time.

Basic terms of the agreement are as follows:

USE - To construct, maintain, repair, alter and operate a wireless telecommunications facility consisting of antennas, power and radio communications equipment, and cabling.

TERM - Ten (10) years.

RENT - Minimum rent is one thousand two hundred dollars (\$1,200) per month with annual 5% rent increases and reappraisal at year five. This value is consistent with a recent outside appraisal dated August 2000.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS (Continued):

ITEM-203: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

PRIOR APPROVALS: University Community Planning Group (1/9/01)
 Planning and Development Review

FISCAL IMPACT:

The City will receive \$14,400 in the first year of the lease with 5% annual rent increases thereafter. Rental proceeds generated will be credited to the General City Fund.

Loveland/Griffith/JPA

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

3. DATE

August 18, 2000

TO: CITY ATTORNEY

2. FROM: (Originating Department)

REAL ESTATE ASSETS DEPARTMENT

4. SUBJECT: Approval of Two (2) Leases - GTE Wireless Along N. Torrey Pines Road

5. FOR INFORMATION CONTACT (NAME & MAIL STA.)

GOODMAN/Anthony 51A

6. TELEPHONE NO.

66720/36509

7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2:



8. COMPLETE FOR ACCOUNTING PURPOSES

FLUND				
DEPT				
ORGANIZATION				
OBJECT				
JOB ORDER				
C.I.P. NO.				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:

Cost: None

Job: 222957 and 222378

cc: Dept. Docket Clerk

Thomas Guide Page: 1227J1 & 3

10. ROUTING AND APPROVALS

ROUTE	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
X	Department Director	<i>[Signature]</i>	8/22/00	X	CITY MANAGER LOVELAND	<i>[Signature]</i>	9.23.02
X	P&DR/EAS	<i>[Signature]</i>	8/23/00		AUDITOR	<i>[Signature]</i>	
X	EOCP	<i>[Signature]</i>	8/28/00	X	CITY ATTORNEY	<i>[Signature]</i>	10.17.00
X	FINANCIAL MGMT.	<i>[Signature]</i>	9/20/00	X	ORIGINATING DEPARTMENT	<i>[Signature]</i>	10/18/00
					MGR. DOCKET COORD.		
					COUNCIL REP.		
					RULES COMMITTEE		
					☐ CONSENT	☐ ADOPTION	
					☐ Refer to	☐ Date	

11. PREPARATION OF:

☒ RESOLUTION(S)

☐ ORDINANCES(S)

☐ AGREEMENT(S)

☐ DEED(S)

Authorizing the City Manager to execute two leases with GTE Wireless San Diego of the Pacific, Inc., for two telecommunications facilities along N. Torrey Pines Road.

11a. MANAGER'S RECOMMENDATION:

Adopt the resolution.

12. SPECIAL CONDITIONS (REFER TO A.R. 9.20 FOR INFORMATION ON COMPLETING THIS SECTION).

COUNCIL DISTRICT: 1

COMMUNITY AREA: LA JOLLA

ACTION REQUESTED BY: Real Estate Assets Director

DESCRIPTIVE LOCATION: Along N. Torrey Pines Road at Extension Way and Torrey Pines Scenic Drive.

ENVIRONMENTAL ASSESSMENT: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

HANDLING: DO NOT RECORD. Return documents to Real Estate Assets Department, Attention: Jim Anthony, M.S. 51A, for further handling.

DOCKET SUPPORTING INFORMATION

CITY OF SAN DIEGO

DATE

August 18, 2000

SUBJECT

Approval of Two (2) Leases - GTE Wireless Along N. Torrey Pines Road

BACKGROUND:

The existing GTE Wireless of the Pacific, Inc. facilities each consist of two 48" high by 12" wide by 5" deep panel antennas mounted at the top of an existing 30' high traffic signal, with a 48" high by 40" wide by 32" deep weather proof equipment cabinet on a concrete pad located near a corner of the intersection. Both sites have been in operation since February 1997 via Right of Entry Permits. These permits are currently on holdover status. GTE has proved to be a reliable tenant over that period of time.

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FISCAL IMPACT: The City will receive \$14,400 in the first year of the lease with 5% annual rent increases thereafter. Rental proceeds generated will be credited to the General City Fund.

BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/Author Initials)

LOVELAND:Griffith:JPA

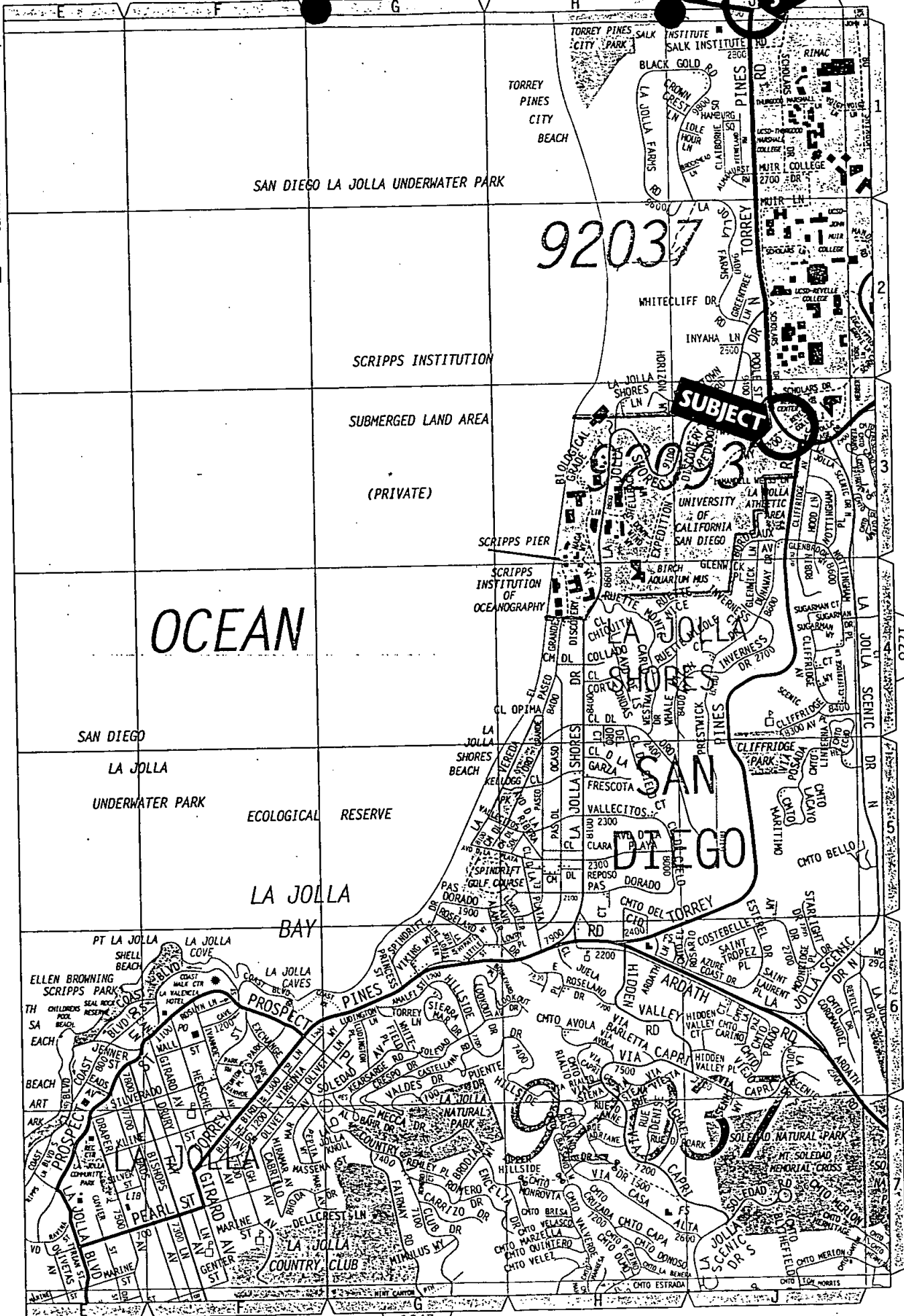
Job: 222957 & 222378

SIGNATURES:

ORIGINATING DEPT. HEAD

CITY MANAGER:

(FOR MANAGERIAL DEPARTMENTS ONLY)



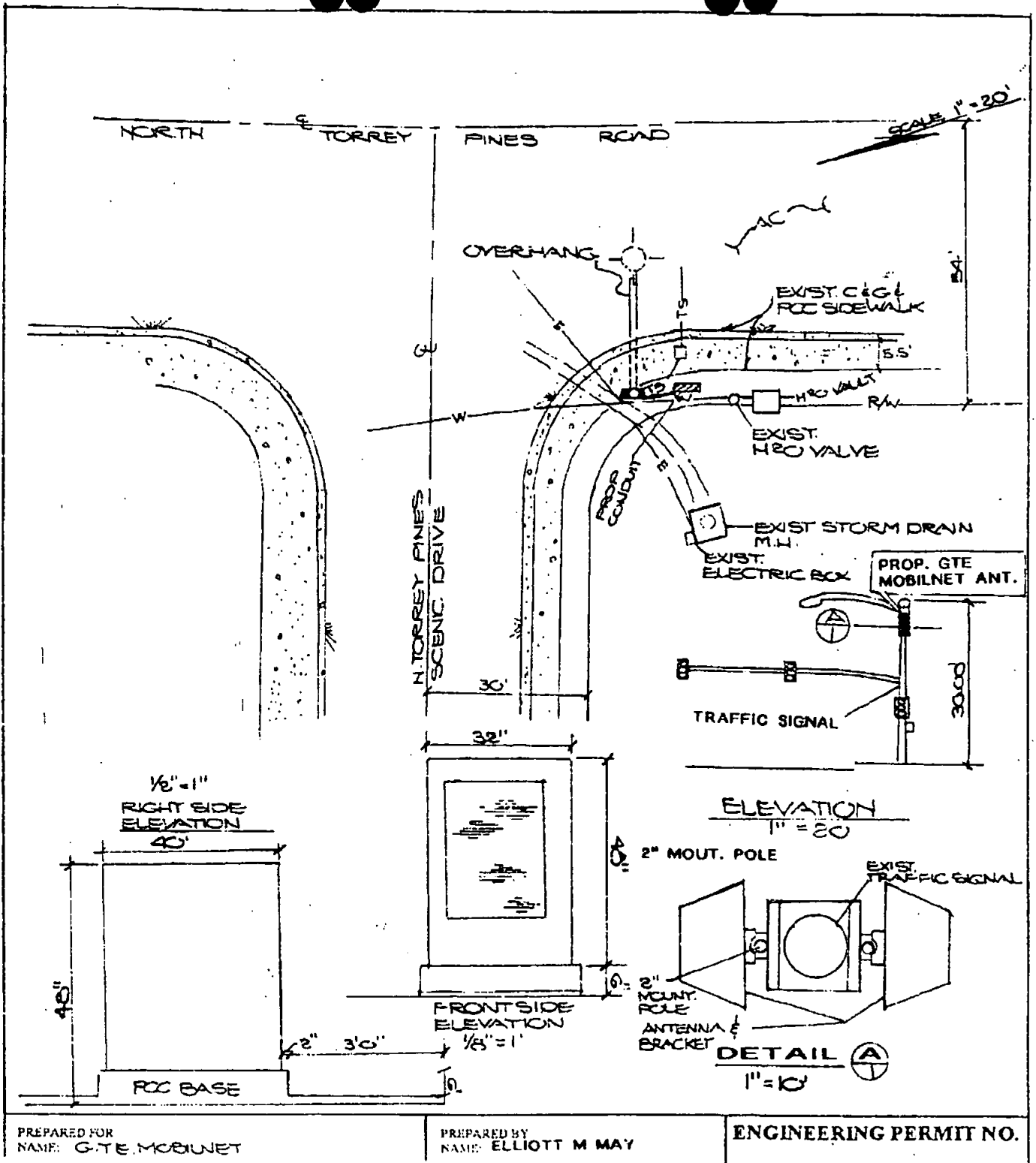
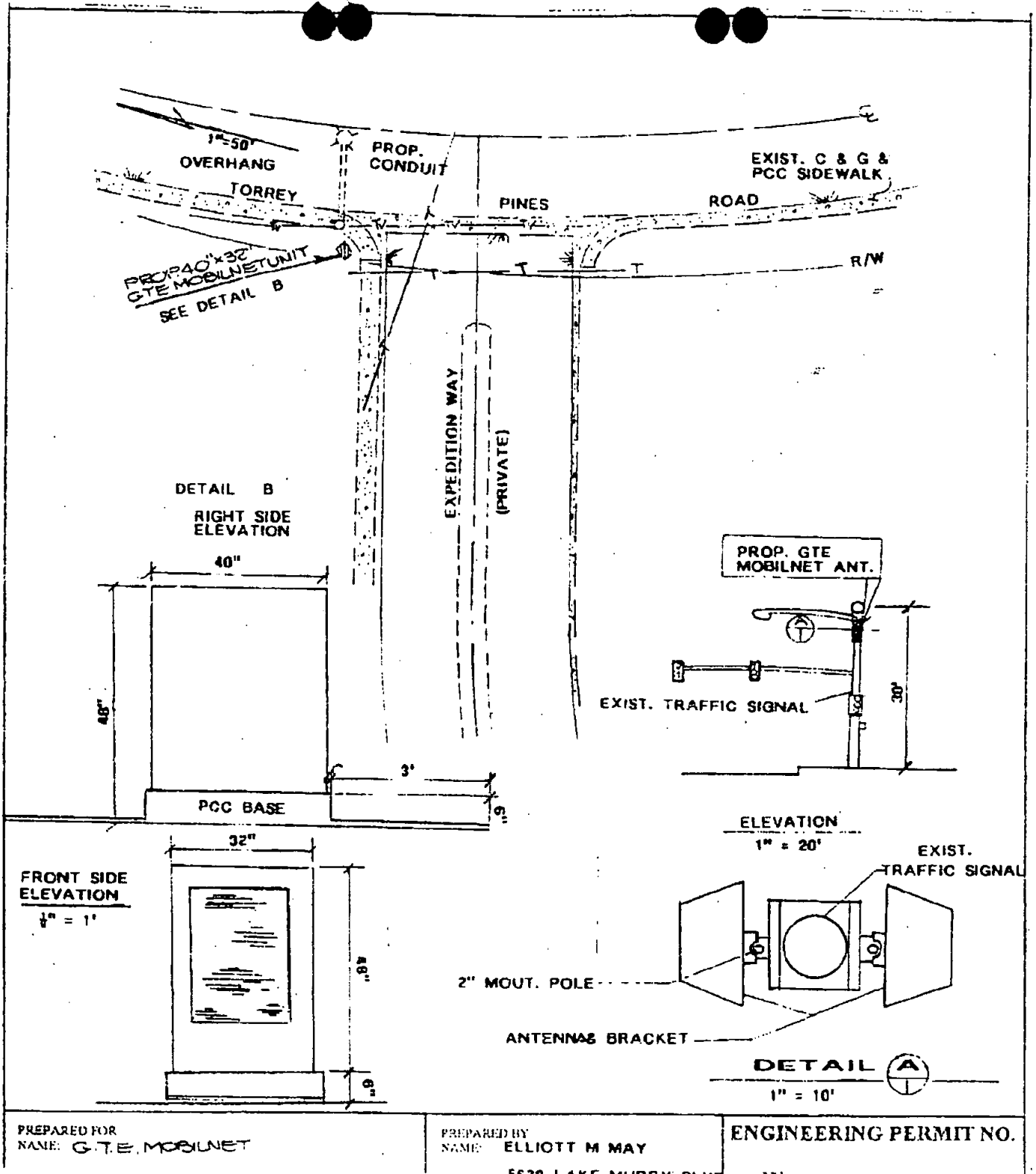


EXHIBIT "C"

Page 1 of 1



PREPARED FOR
NAME: G.T.E. MOBILNET

PREPARED BY
NAME: ELLIOTT M MAY

ENGINEERING PERMIT NO.

EXHIBIT "C"

Page 1 of 1