

**COPY**

**THE CITY OF SAN DIEGO**



**STATE OF CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES  
California Highway Patrol**

**at  
Moody Canyon  
Communications Center**

**CITY ATTORNEY  
MAR 6 3 33 PM '02**

**Communication Flat Rate Lease**

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**CITY OF SAN DIEGO  
COMMUNICATION FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY", and THE STATE OF CALIFORNIA, by and through the Director of the Department of General Services, hereinafter called "STATE."

**SECTION 1: USES**

- 1.1 Premises. All that certain real property situated in the City of San Diego, County of San Diego, State of California, known as "Moody Canyon" in San Ysidro and more particularly described in Exhibit "A", *Legal Description of Site*, attached hereto and by this reference made part of this Lease, shall hereinafter be referred to as the "Site." CITY hereby leases to STATE and STATE leases from CITY that certain portion of the Site, described in Exhibit "B", *Floor Plan of City Vault including Leased Premises*, attached hereto and by this reference made part of this Lease, which portion shall hereinafter be called the "Premises." STATE, its agents, employees, contractors, guests and invitees may use the existing access road for vehicular or foot access on a 24-hour nonexclusive basis.
- 1.2 Uses. It is expressly agreed that the Premises are leased to STATE, on a non-exclusive basis, for the sole 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, back-up power sources that may include, with proper permits obtained, back-up power generators with connected fuel storage tanks for emergency back-up power, related fixtures and, if applicable to the Premises, an antenna structure or structures ("Communications Equipment"). STATE may operate its Communications Equipment and engage in any other incidental activities or activities relating thereto as may be permitted by applicable law in accordance with Exhibits "B" and "C," *Equipment*, hereof. STATE shall have the right to replace or repair the Communications Equipment or any portion thereof, pursuant to sections 6.3 and 6.4 herein.
- 1.3 Interference. Prior to the execution of this new radio/electronic use authorization or modification of an existing authorization, an intermodulation report shall be provided to the CITY. This report shall include the calculation parameters used to compile the report, all intermodulation "hits", and a brief description of the results

of the intermodulation calculations including a list of possible interference situations that may result from the proposed equipment.

The information required to compile this report, including intermodulation parameters and currently known on site transmit frequencies may be obtained from the CITY Communications Division. The CITY is not responsible for any omitted transmitter data provided for the purpose of creating this report.

*CITY OF SAN DIEGO LAND USE "ON THE AIR" TEST INSTRUCTIONS AND PROCEDURES* - Once the required intermodulation report has been provided, on premises, pre-installation or pre-use tests may be required. Such 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.

Should such interference problems result, it shall be the responsibility of the new user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves: if the interference can be mitigated.

CITY may recognize the right of prior authorized users and withhold approval of a radio/electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other authorizes. 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 STATE as a result of termination of this lease, and, further, that STATE expressly waives any claim for expense or loss which STATE might incur as a result of termination of this lease.

a. Pre-installation or pre-use Testing

- (1) It will be the responsibility of STATE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.
  - (a) A listing of all radio/electronic land use Permittees/Lessees operating at the facility will be obtained from the City.
- (2) It will be the responsibility of the STATE to notify all radio/electronic Permittees/Lessees 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 letter to each listed Permittee/Lessee 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/Lesseees 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. Technical Data Summary and Test Results Certification sheets are not required this renewal period.

- (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 so noted in the notification letter.
  - (c) Notification to Permittees/Lesseees shall be sent via U.S. Mail, pre-paid First-Class postage, return receipt requested or hand delivered.
  - (d) The notification letter to the City Communications Engineer shall include a list of all Permittees/Lesseees notified.
- (3) It will be the Permittee/Lessee's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each Permittee/Lessee participating in the test and a list of those Permittees/Lesseees who did not respond.
  - (4) In the event a notified Permittee/Lessee fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the Permittee/Lessee has assured themselves that their operations will not be affected.

b. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the STATE under the following technical conditions:

- (1) The STATE'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 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 STATE's electronic equipment.

(3) All tests will include testing with all frequencies planned for use by the STATE at the Site.

c. 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

d. Modifications to Equipment

Modifications to transmitting equipment that will change Effective Radiated Power, Transmitter Frequency, Transmitter Modulation, or Transmitter Spurious and Harmonic Emissions may require retest using this "On The Air" testing procedure and the newly proposed equipment.

- 1.4 Related Council Actions. By the granting of this Lease, neither CITY nor the Council of CITY is making any representations or obligations on behalf of 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 that may be required for the development and operation of the Premises.

1.5 Quiet Possession. STATE, 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 STATE at the commencement of the term, or if during the Lease term STATE is temporarily dispossessed through action or claim of a title superior to CITY, then and in either of such events, CITY shall not be liable to STATE 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 STATE 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) consecutive days, then STATE shall have the right, at its sole option, to terminate this lease upon ten (10) days written notice to CITY.

1.6 Reservations.

- a. CITY hereby 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 for the public good, subject to paragraph 1.5 herein.

However, CITY shall not unreasonably or substantially interfere with use of the Premises and will reimburse STATE for physical damages, if any, to the permanent improvements located on the Premises resulting from CITY exercising the rights reserved in this section. Reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.7 Competent Management. Throughout the term of this Lease, STATE shall provide competent management of the 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 in accordance with industry standards.

1.8 Co-location. Where Premises are a shared site STATE shall not access any CITY facility or City's Communications Equipment, including any towers, without the consent of the CITY.

## **SECTION 2: TERM**

- 2.1 **Commencement.** The term of this Lease shall be 5 years commencing on the first day of the calendar month following execution of this lease by the City Manager or his/her designee ("Commencement Date"). "Lease year" as used in this Lease shall mean the 12-month period commencing on the Commencement Date and each subsequent 12-month period thereafter. Provided that STATE is not in default of this Lease, STATE has an option for 1 additional term of 5 years subject to Paragraph 3.2b. herein. This Lease shall automatically be renewed for the Renewal Term unless STATE notifies CITY in writing of its intention not to renew at least 90 days prior to commencement of the succeeding Renewal Term.
- 2.2 **Termination.**
- a. STATE may terminate this Lease at any time by providing 10 days prior written notice to CITY without further liability if STATE does not obtain all permits or other approvals (collectively, "Approval") required from any governmental authority or any easements required from any third party to operate the Communication Equipment, or if any such Approval is canceled, expires or is withdrawn or terminated by any governmental authority or any third party, or if CITY fails to have proper ownership of the Site or authority to enter into this Lease.
  - b. STATE may terminate this Lease pursuant to the provisions of paragraph 1.5.
  - c. STATE may terminate this Lease by providing 60 days prior written notice to CITY if STATE, for any other reason, in its sole discretion, determines that it will be unable to use the Premises provided that STATE pays CITY a termination fee equal to twelve (12) months' rent at the rental rate in effect at the time of such notice and such fee is paid prior to the termination of this Lease.
  - d. Upon termination, CITY will retain all prepaid rent, fees, and other payments unless such termination is due to CITY's material default.
- 2.3 **Holdover.** Any holding over by STATE 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 Lease shall constitute a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to an increase in rent to bring the rent to fair market value and to terminate the holdover

tenancy on thirty (30) days notice. The fair market value of rent under this provision shall be determined by the City in good faith. Notice of any such increase in rent shall be given in writing at least thirty (30) days prior to becoming effective, in the form of a "Notice of Increase in Rent or, In the Alternative, Termination of Lease," which will trigger the 30-day termination provision in the event that STATE is unwilling to accept the proposed rent increase.

- 2.4 Quitclaim and Surrender of STATE's Interest. On the expiration or earlier termination of this Lease, STATE shall deliver to CITY a Quitclaim Deed in recordable form quitclaiming all rights in and to the Premises.

At the expiration or earlier termination of this Lease, STATE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances that existed on the date of execution hereof, and in substantially the same condition as on the Commencement Date, ordinary wear, tear, and casualty loss not caused by STATE excepted. 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.

### **SECTION 3: RENT**

- 3.1 Time and Place of Payment. Rent is due monthly in arrears on or before the first day of calendar month following rent period end 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 122289, 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 STATE. 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. STATE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 3.2 Rent.

- a. Rent Amount. Initial rent to the CITY will be Six Hundred and Ninety Dollars (\$690) per month.

Beginning with the second year of this Lease and continuing each year thereafter, the rent will be increased on the anniversary of 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 Lease, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust STATE'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 STATE, 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 Commencement Date of this Lease, the rent for the ensuing 5 years, subject to the aforesaid adjustments, shall be determined by an appraisal of the Premises as of the adjustment date by a qualified, competent experienced professional real estate appraiser, who has demonstrated expertise in determining rent for telecommunication site(s)/properties ["Qualified Appraiser"]. The fair market rent of the Premises shall be determined by an appraisal made by a Qualified Appraiser selected by mutual consent of the parties from the list of Qualified Appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable Qualified Appraiser, then each party shall select a Qualified Appraiser who in turn will select a third independent Qualified Appraiser, which third Qualified 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 Qualified Appraisers fail to mutually select a third Qualified Appraiser within thirty (30) days, then the third Qualified 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 STATE 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 Qualified Appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third Qualified 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 STATE agree to equally share the cost of the mutually selected or court appointed third Qualified Appraiser. CITY and STATE agree to accept and be bound by the valuation determined by the selected or appointed Qualified Appraiser.

In establishing the fair market rent of the Premises, the Qualified 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, STATE 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 STATE 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 STATE fails to pay the rent when due when a state budget is in place, STATE 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, STATE 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). Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of STATE's 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 / DEFAULT**

- 4.1 Provisions Binding on Successors. 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. STATE 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 permit any other person, except employees, agents, and guests of STATE, 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. 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 such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of STATE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this section shall include any transfer of any ownership interest in this Lease by STATE or by any partners, principals, or controlling stockholders, as the case may be, from the original STATE, its general partners, or principals.

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 thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. The City Manager may require that this lease or any proposed sublease be revised to comply with current standard CITY lease requirements. Pursuant to San Diego Charter section 225, which is incorporated herein by this reference, the City Manager must review and approve every person or entity that will have an interest in this Lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, conditioned, or delayed, provided all such persons and entities are of good character and reputation in the community.

- 4.3 Additional Consideration to CITY. STATE and CITY agree that in the event of an assignment or subletting of a portion of the leasehold to an entity other than those specifically exempted from City Manager consent, if any, as set forth in 4.2 Assignment and Subletting, above, for collocation of telecommunications equipment and any other incidental activities or activities relating thereto, STATE shall pay to CITY fifty percent (50%) of the gross rental amount paid to STATE from sublessee in consideration for approval of the sublease.

4.4 Encumbrance. Prior to causing any encumbrances to be placed on the Premises or on any permanent improvements thereon, STATE shall give written notice to the City Manager describing the nature and amount of such encumbrance and attaching all documentation needed to effect the encumbrance. STATE shall not cause any encumbrance to be placed on the Premises or any permanent improvements thereon unless and until receiving approval in writing from the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises.

4.5 Default and Remedies.

a. Defaults. Each of the following shall constitute an event of default under this Lease:

- (1) STATE's failure when a state budget is in place to make any payment required under this Lease when due;
- (2) STATE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by STATE and fails to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default, other than those requiring payment to CITY, is not curable within thirty (30) days, and fails to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion;
- (3) STATE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (4) STATE is adjudicated a bankrupt;
- (5) STATE makes a general assignment for the benefit of creditors.
- (6) STATE uses the Premises for any unauthorized purpose.

b. Remedies

- (1) Upon default by STATE, CITY may, at its option, give STATE, or any person claiming rights through STATE, a written Three (3)-Day Notice to Pay or Quit, if said default is based upon Section 4.5a(1), or CITY may terminate the Lease and all rights of STATE and of all persons claiming rights through STATE 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 4.5a.(2) - (6), Default and Remedies, hereof, is not curable within thirty (30) days after notice to STATE, CITY will not terminate this Lease pursuant to the default, if STATE immediately commences to cure the default and diligently pursues such cure to completion), and may recover from STATE 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 exceeds (ii) the amount of rental loss, if any, and STATE affirmatively proves 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 exceeds (ii) the amount of rental loss, if any, as STATE affirmatively proves could be reasonably avoided;
  - (d) any other amount necessary to compensate CITY for the detriment proximately caused by STATE's failure to perform STATE'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 from time to time 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 term "rent" shall include Base Rent, Percentage Rent and any other payments required by STATE.
- (2) If there is a deed of trust or mortgage on the leasehold interest, and STATE has provided CITY with an address where notice can be sent to the respective mortgagee or beneficiary, CITY will give the

mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary will have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within 30 days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty (30) day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

If the mortgagee or beneficiary will be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY will have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (a) CITY may correct said default(s) and charge the costs thereof to the account of STATE, which charge will be due and payable on the date that the rent is next due after presentation by CITY to STATE and mortgagee or beneficiary of a statement of said costs.
- (b) CITY may correct said default(s) and may recover the costs thereof from the proceeds of any insurance fund held by CITY, CITY and STATE 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.
- (c) CITY may terminate this Lease as to the rights of STATE by assuming or causing the assumption of liability for any trust deed or mortgage. STATE agrees to 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 STATE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant will be the responsibility of the terminated STATE, and STATE hereby agrees to reimburse CITY for any such costs.

Should the default(s) be noncurable by STATE, then any lender holding a beneficial interest in the leasehold, whose

qualifications as an assignee have been approved by CITY, will have the absolute right to substitute itself to the estate of STATE hereunder and to commence performance of this Lease. If such mortgagee or beneficiary will give notice in writing of its election to so 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 such mortgagee or beneficiary, then this Lease will 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 all the rights, privileges, and obligations of STATE, subject to cure of the default, if possible, by mortgagee or beneficiary. STATE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by STATE. Subject to STATE's termination rights as provided in this Lease, even though STATE has breached the Lease and abandoned the property, this Lease will continue in effect so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including the right to recover the rent as it becomes due, plus damages.

STATE and CITY agree that any personal property left at the Premises thirty (30) days after termination of this Lease shall be considered abandoned and STATE forfeits all ownership to the abandoned personal property, and it is mutually agreed CITY may dispose of the abandoned personal property as it solely deems appropriate, without further liability to STATE or any person claiming any interest in said property. STATE shall hold the CITY harmless and shall defend CITY against all claims asserted by third persons claiming an interest in said personal property.

- 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 STATE 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.

- 4.6 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 STATE (or beneficiary or mortgagee) 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 STATE and 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. In the event of a partial taking, if, in the opinion of STATE and 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.
  - 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, STATE shall be entitled to any award attributable to the taking of, or damages to STATE's, then-remaining leasehold interest in installations or improvements of STATE, for relocation expenses and for loss of goodwill. CITY shall have no liability to STATE 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, STATE 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. STATE 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 STATE's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the use or development of the Premises or the operation of any equipment or facilities thereon, and all expenses of investigating and defending against same; provided, however, that STATE'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 the CITY, its agents, officers, or employees.

- 5.2 Insurance to be Carried by STATE  
City understands and agrees to the following. The State of California, STATE, has elected to be insured for its motor vehicle and general liability exposures through a self-insurance program. The State Attorney General administers the general liability program through an annual appropriation from the General Fund. The Office of Risk and Insurance management administers the motor vehicle liability program.

Under this form of insurance, The State and its employees (as defined in Section 810.2 Government Code) are insured for any tort liability that may develop through carrying out official activities, including State official operations on non-State owned property. Should any claim arise by reason of such operations or under an official contract or license agreement, they should be referred to the Attorney General, State of California, Tort Liability Section, 1300 "I" Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. Claims arising from operations of a State-owned vehicle should be forwarded to the Office of Risk and Insurance management, Auto Self-Insurance, 1325 J Street, Suite 1800, Sacramento, CA 95814.

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

STATE shall defend, indemnify, hold and save lessor harmless from and against any and all loss, cost, liability or damage (including reasonable attorney's fees and

court costs) arising by reason of the willful misconduct or negligence of STATE or its officers, agents or employees in connection with the premises.

STATE 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.

Notwithstanding the preceding provisions of this Subsection (2), if STATE fails or refuses to take out or maintain insurance as required in this Lease or fails to provide the proof of insurance, CITY has the right to declare this Lease in default, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. STATE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days after such fire or damage. STATE 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 Premises shall be damaged by any cause that puts the Premises into a condition that is not decent, safe, healthy, and sanitary, STATE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition that existed prior to said damage; or, at CITY's option, STATE agrees to clear and remove from the 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 that existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2 and 5.3, Insurance, hereof.

STATE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by STATE 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 rent requirement for such period or periods that said Premises are untenantable by reason of such damage.

## **SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS**

- 6.1 Acceptance of Premises. By signing this Lease, STATE 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.

STATE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. STATE 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 STATE 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 the 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. CITY must give at least 24 hours notice and be escorted by STATE'S representative, if such representative is available at the time CITY wishes to inspect, when entering said Premises except in emergency situations. 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 STATE, if STATE has not commenced the required work and be diligently pursuing it to completion, to have any necessary maintenance work done at the expense of STATE, and STATE hereby agrees to pay promptly any and all costs reasonably 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 LESSEE fails to pay said costs incurred by CITY within ten (10) days from the date of the invoiced costs, said failure to pay shall be grounds to terminate this Lease pursuant to Section 4.5. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.
- 6.3 Maintenance. STATE agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the term. STATE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY and in compliance with the *Floor Plan of City Vault* described in Exhibit B 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 STATE (with the exceptions of equipment replacement or repair) without prior written approval by the City Manager. Further, STATE 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 in his sole discretion. This provision shall not relieve STATE 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 that would require the upgrading of the Communications Equipment, the STATE shall have the right to perform such upgrading, providing such upgrading does not damage or interfere with any adjacent improvements, the Premises, or the land. See paragraph 1.3, Interference.

6.5 Reassignment of Space. CITY reserves the right to reassign STATE an equivalent amount of space in a different location when and if the CITY facility has been upgraded and reconfigured. STATE agrees to cooperate fully with CITY and its contractors during any renovation, repair, or other alteration of the facility. STATE acknowledges that its equipment may be relocated as a result of the renovation, repair, or other alteration of the facility. CITY warrants that every effort will be made to ensure continuous, uninterrupted broadcast/receiving capability during any conversion. In the event any such relocation is not satisfactory to STATE, then STATE may, in its sole and absolute discretion, terminate this lease, upon 30 days written notice to CITY, without further obligation hereunder.

6.6 Utilities. STATE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. CITY shall reasonably approve, when consistent with all local, state or federal law, at no cost to CITY, STATE's permit applications for utilities and necessary utilities easements on the Premises.

6.7 Liens. STATE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with STATE'S 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 STATE or by any party other than CITY for the benefit of STATE, and a lien or notice of lien is filed, STATE shall within fifteen (15) 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.

- 6.8 Taxes. STATE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon STATE 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 STATE, levied by reason of the business or other STATE activities related to the Premises, including any licenses or permits. STATE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that STATE may be subject to the payment of taxes levied on such interest, and that STATE shall pay all such possessory interest taxes. STATE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.
- 6.9 Signs. STATE agrees to only post signs which are required by Federal, State or Local regulations. These include safety signage required by OSHA, FAA or FCC. STATE 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, STATE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at STATE's cost.
- 6.10 Ownership of Improvements and Personal Property.
- a. Any and all improvements, (excluding all of STATE'S *Equipment* within the enclosed space of the equipment enclosure, as depicted in Exhibit "C", coax cable and antennas), structures, and installations or additions to the Premises now existing or subsequently affixed to the Premises by STATE shall, at Lease expiration or termination, 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.
  - b. STATE shall notify CITY in writing sixty (60) days prior to the lease expiration or termination inquiring whether the CITY elects to assume an ownership interest of all or any said improvements, (excluding STATE's *Equipment*, coax cable and antennas), structures, and installations contemplated to be left on the Premises at Lease expiration or termination. If CITY does not notify STATE in writing of its intent to assume ownership of such improvements, structures and installations, then STATE shall remove all such improvements, structures and installations as directed by CITY at STATE's sole cost on or before expiration or termination of this Lease. Failure of the CITY to notify STATE of its intent to assume ownership shall be deemed a rejection of STATE's offer for CITY to assume ownership of such improvements. If STATE fails to

remove any improvements, structures, and installations as directed, STATE agrees to pay CITY the full cost of any removal and storage.

- c. STATE-owned machines, appliances, equipment, and other items of personal property shall be removed by STATE by the date of the expiration or termination of this Lease. Any said items that STATE fails to remove within thirty (30) days thereafter will be considered abandoned (pursuant to Section 4.5c) and become CITY's property free of all claims and liens, or CITY may, at its option, remove said items at STATE's expense.
- d. If any removal of such personal property by STATE results in damage to any City-owned structures including tower or real property on the Premises, STATE agrees to repair all such damage.
- e. Any necessary removal by either CITY or STATE that occurs after said expiration or termination hereof shall require STATE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event STATE 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.

6.11 Hazardous/Toxic Waste. STATE will not be allowed to install underground storage tanks. STATE shall not "release" Hazardous Substances in, on, under, or from the Premises in violation of any applicable law. For the purposes of this provision, a release in violation of any applicable law, 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 in connection with STATE's use of the Premises, STATE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

STATE 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 STATE'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.

In the event that a government order is issued naming STATE or the STATE incurs liability, during or after its Lease term, in connection with contamination which pre-existed the STATE's occupancy under this Lease or which were not caused by STATE, CITY shall hold harmless, indemnify and defend STATE in connection therewith and shall be solely responsible as between STATE and CITY for all efforts and expenses thereof.

If STATE knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, STATE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if STATE knows or has reasonable cause to believe that such Hazardous Substance is an imminent and substantial danger to public health and safety, STATE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. STATE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. STATE shall not utilize any Hazardous Substance on the Premises in violation of any applicable law. In addition, STATE shall not sell any Hazardous Substance on the Premises.

Upon good cause, City reserves and shall always have the right, but not the obligation, to require STATE to complete a Phase I 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 STATE and shall establish what, if any, Hazardous Substances exist on, in, or under the Premises, and in what quantities, due to STATE's use of the Premises. If any such Hazardous Substances exist in quantities greater than that allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment or an additional Hazardous Materials Assessment shall include a discussion of such 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. STATE shall cause the remediation and/or removal of such substances recommended in the environmental assessment such

that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.12 Installation Standards. By signing this Lease, STATE warrants that all installations, modifications, and maintenance will be performed in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© manual.

In addition to the requirements of the Motorola R56© publication, installations on CITY property shall comply with the following supplemental requirements:

- a. 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 filtering and isolators.
- b. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements.
- c. Radiation.
  - (1) Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. When it is necessary to climb on CITY's Information Technology & Communications [IT&C] structures with antennas, contact IT&C's Fixed Maintenance Supervisor at (619) 525-8650 for shutdown procedures. Any equipment installed on the Site may at times require shutdown to allow maintenance on antenna structures.
  - (2) STATE will maintain radio-frequency radiation within allowable levels. Any area casually accessible by the general public, or by any worker at ground level, shall be maintained below the levels stated in OET Bulletin 65 for Uncontrolled/General population. Any areas found to exceed the allowable levels not by fault of STATE shall be reported to the CITY. STATE will not hold CITY responsible for radiation levels found to exceed these limits.
  - (3) Protection of STATE'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.

- d. STATE shall provide the CITY with shutdown procedures, contact names, and telephone numbers. Should changes be made to the contact names and telephone numbers, the CITY shall be notified within seven days.
- e. All trash and debris shall be removed from the Site at the end of each workday and on completion of the project.
- f. STATE's installing or modifying equipment at sites used by IT&C Division must follow additional requirements as detailed in Exhibit "D", *Installation Standards for Information, Technology and Communications* Division sites.

## **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 the parties as follows:

#### **To STATE:**

State of California  
Department of General Services  
1102 Q Street, Suite 6000  
Sacramento, CA 95814-6511  
Attn: Lease Management

With courtesy copy to:  
Department of California Highway Patrol  
PO Box 942898  
Sacramento, CA 94298-0001  
Attention: Telecommunications Section

#### **To CITY:**

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

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.
- c. Notice shall be effective on personal service or five days after deposit in U.S. Mail.

7.2 Compliance with Law. STATE 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 STATE's sole cost and expense. In addition, STATE 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, if compliance with such notices is required by applicable law.

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. STATE 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 STATE's use of the Premises, and the obtaining and holding of employment.

7.5 Compliance with CITY's Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. STATE 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. STATE and all of its subcontractors, if any, are individually responsible to abide by its contents.

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

STATE 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, that sets forth the actions that STATE will take to achieve the CITY's commitment to equal employment opportunities.

STATE 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. STATE 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. STATE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. STATE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. STATE agrees to hire qualified local residents and firms whenever feasible.

STATE 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 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, if not consecutive are intentional and shall have no effect on the enforceability of this Lease.

[illegible]

- 7.10 Entire Understanding. This Lease contains the entire understanding of the parties. STATE and CITY, by signing this Lease, agrees that there is no other written or oral understanding between the parties 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 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 that 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. STATE 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 STATE'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.

7.13 Disabled Access Compliance. STATE agrees to comply with applicable regulations within 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. STATE's compliance shall include but not necessarily be limited to the following:

- a. STATE 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 STATE.
- c. STATE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, STATE shall comply with CITY's disabled access requirements by bringing up to code and making accessible any areas of the Premises that deny access to disabled persons. All such improvements and alterations shall be at the sole cost of STATE.

STATE 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 Standard of Employees. STATE and its employees shall at all times conduct themselves and the operations on the Premises in a credible manner.

7.15 Unavoidable Delay. If the performance of any act required of CITY or STATE 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 rent as required pursuant to this Lease. In the event STATE 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.

- 7.16 Corporate Authority. Each individual executing this Lease on behalf of STATE 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 STATE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify STATE to do business in the State of California.
- 7.17 Supersedure. It is mutually agreed that this Lease, upon execution, supersedes and annuls that certain Right of Entry Permit executed on the 1<sup>st</sup> day of July, 1996, between the City and State of California, Department of General Services, 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.
- 7.18 Time is of Essence. Time is of the essence of all of the terms, covenants, and conditions of this Lease.

**[Remainder of Page Intentionally Left Blank]**

**SECTION 8: SIGNATURES**

**8.1 Signature Page.**

IN WITNESS WHEREOF, this Lease is executed by CITY, acting by and through its City Manager, and by STATE, acting by and through its lawfully authorized officers.

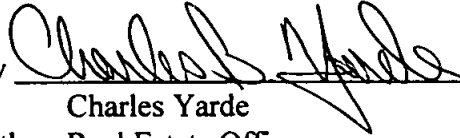
THE CITY OF SAN DIEGO

Date 3-6-02

By   
Real Estate Assets Director

STATE: STATE OF CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES

Date 11-01-01

By   
Charles Yarde  
Title: Real Estate Officer

APPROVED:

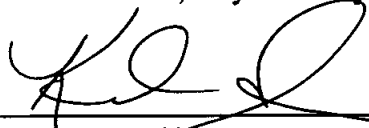
DIRECTOR OF THE DEPARTMENT  
OF GENERAL SERVICES

Date 11-06-2001

By   
Cheryl L. Allen, Manager  
State Owned Leasing & Development

APPROVED as to form and legality this 7 day of March, 2002.

CASEY GWINN, City Attorney

By   
Deputy City Attorney

## **SECTION 9: EXHIBITS**

### **9.1 Exhibit "A" - Legal Description of "Site"**

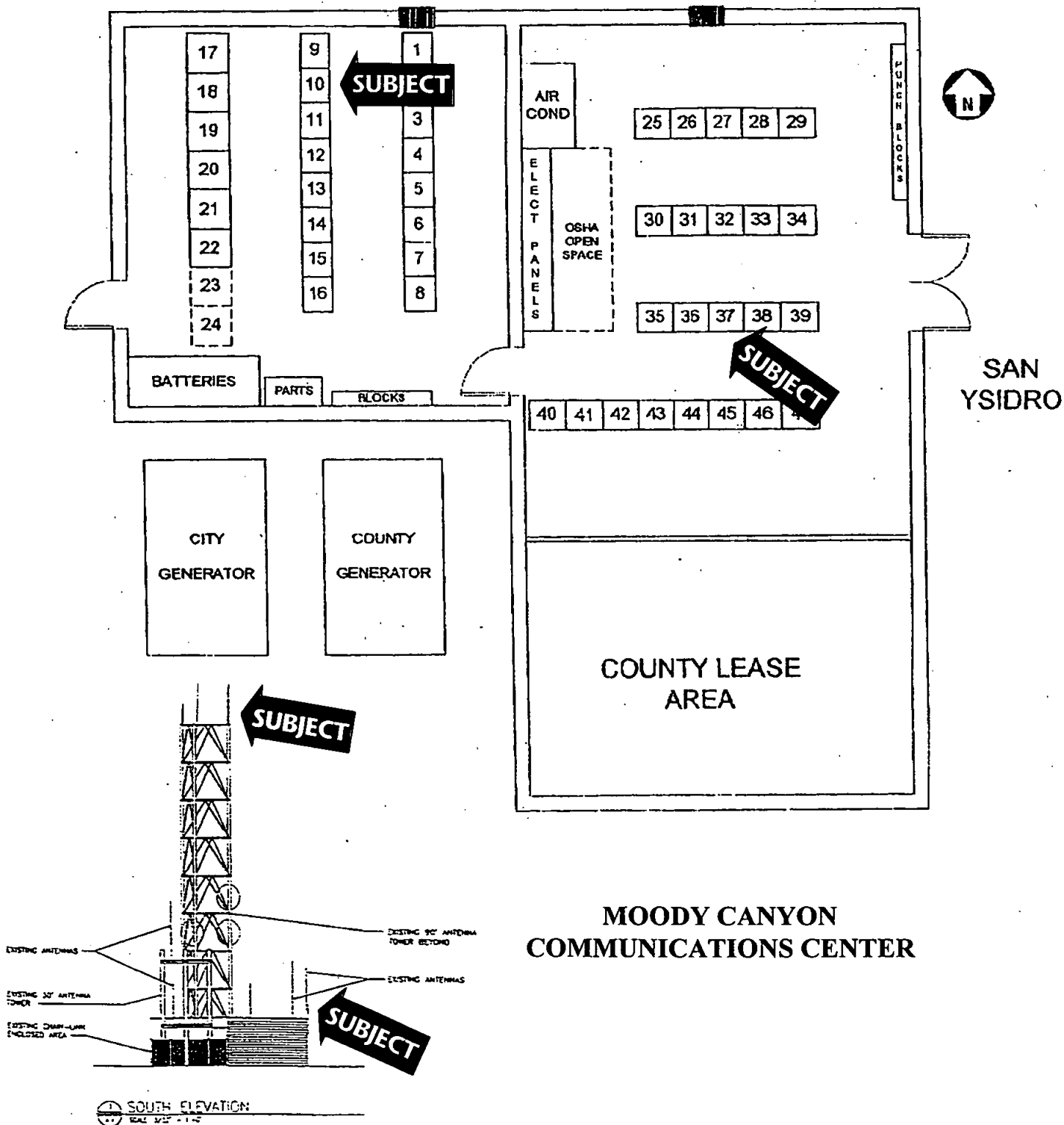
#### **Moody Canyon (San Ysidro) Communications Site**

A parcel of land situated in the City of San Diego, County of San Diego, State of California, in the East ½ of Section 36, Township 18 South, Range 2 West, San Bernardino Meridian, described as follows, basis of bearings being California Coordinate System, Zone 6, (Chapter 1307, Statutes of 1947):

Commencing at the East 1/4 corner of said Section 36; thence South 82°59' 21" West 778.74 feet to the Point of Beginning; thence South 63°20' 56" West 59.50 feet; thence North 59° 38' 06" West 34.00 feet; thence North 26° 39' 04" feet West 77.00 feet; thence North 27° 06' 54" East, 35.00 feet; thence 33° 47' 30" West 22.17 feet; thence North 27° 06' 54" East, 36.00 feet; thence North 63° 20" 56" East 23.50 feet; thence South 26°39' 04" East, 169.50 feet to the Point of Beginning.

Containing 0.26 acre, more or less.

9.2 Exhibit "B" - Floor Plan of City Vault including Premises



### 9.3 Exhibit "C" - Equipment

#### RACK SPACE:

- Rack 10 -two receivers for Bortac, 155.370 MHz and 42.64 MHz
- Rack (unnumbered) - one GE low band base station

#### ANTENNAS:

Two low band Kreco omnidirectional whip antennas

- one located at the top (90-foot level) of the City's tower and
- one on the side of the vault building.

9.4 Exhibit "D" - Installation Standards for Information, Technology and  
Communications Division Sites.

1. All waveguide and coax cable runs shall be installed and supported on the tower, cable ladder, and ice bridges, using Microflect waveguide cushions with the appropriate standoffs and hardware for property installation.
2. All waveguide and coax cable shall be installed in a neat manner with sweeping bends and straight runs on the tower cable ladder and ice bridges.
3. Three ground kits shall be installed as follows: Near the antenna, where the coax transitions to horizontal at the junction between the cable ladder and ice bridge, and where the coax enters the building. Grounds shall be installed to shunt any lightning directly to ground.
4. All antenna mounts installed on towers and structures shall be hot dip galvanized and of standard manufacture.
5. All hardware utilized on towers and structures shall be hot dip galvanized or stainless steel.
6. All drawings submitted shall clearly show the following items:
  - a.A plot plan of the site to include the building and tower location with the proposed equipment shown in its proposed location.
  - a.A tower drawing clearly showing the location of the proposed antenna, other antenna on the tower, and the routing of the waveguide or coax cable specifying the hardware and grounding
  - a.If equipment is to be located inside the building, a drawing shall be provided showing the rack location of the equipment, an elevation drawing of the rack, and a plot plan of the equipment installed in the rack.
  - a.If equipment is to be located inside the building, show the proposed waveguide or coax cable runs inside the building, designate which cable feed through is to be used, and wire code markers.
  - a.A list of all equipment to be installed shall be provided. This list shall include the FCC TA #, type of equipment, RF frequency, RF power, type of modulation, RF filtering, Antenna type, Antenna model, Antenna gain, direction or radiation, down tilt, waveguide and/or coax cable length and AC power requirement including any HVAC.

7. 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 filtering and isolators.
8. To minimize the number of antennas and waveguide or coax cables to be mounted on the tower transmitter combining will be required whenever possible.
9. Grounding: All cabinets and racks shall be grounded to the site grounding system.
10. Should the City determine that a tower loading analysis is required, the requesting user shall have the tower analysis done at their expense and provide the City with the information on how their additional load to the tower will affect the tower structural integrity.
11. Tower Climbing: All tower climbing shall be done in compliance with all CAL-OSHA requirements.
12. RF Radiation: Hazardous RF radiation levels may be encountered when climbing on the tower. Refer to FCC OET Bulletin 65. When it is necessary to climb on the tower for installation or maintenance, contact the City of San Diego IT&C Fixed Maintenance Supervisor at (619) 525-8650 for shutdown procedures. Any equipment installed on the site may at times require shutdown to allow maintenance personnel to climb the tower.
13. All lessees on site shall provide the City with shutdown procedures and 24 hour contact names and telephone numbers. In addition should changes be made to the contact names and telephone numbers, the City shall be notified within 7 days.
14. Access: For access to the site, contact the City of San Diego IT&C Fixed Maintenance Supervisor at (619) 525-8650. Keys will be issued as required. **DO NOT DUPLICATE** keys.
15. Security: All sites are alarmed with silent alarms and monitored 24 hours a day by Station 38, the Public Service Dispatch Center. When entering or leaving a building call Station 38 at (619) 527-7660 or use the order wire dial #13 and identify yourself. Police respond to all unanswered alarms.
16. Cleanup: All trash and debris shall be removed from the site at the end of each work day and on completion of the project.
17. A detailed construction schedule shall be provided to IT&C prior to any installation work.
18. All antennas, waveguide, and coax cable shall be protected from lightning with the appropriate equipment to prevent damage to installed equipment.

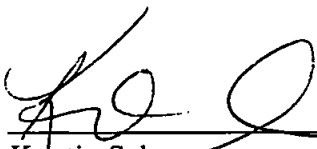
RESOLUTION NUMBER R- **296108**

ADOPTED ON **FEB 25 2002**

WHEREAS, the City and the State of California, Department of General Services for the California Highway Patrol have negotiated a five-year lease agreement with an option for one additional term of five years at the initial rental rate of \$8,280 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 of San Diego, a five year lease agreement with an option for one additional term of five years with the State of California, Department of General Services for the California Highway Patrol, for a telecommunication facility at Moody Canyon Communications Center, at an initial annual rent of \$8,280, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- **296108**.

APPROVED: CASEY GWINN, City Attorney

By   
Kristin Schenone  
Deputy City Attorney

KS:mm  
02/11/02  
Or.Dept:REA  
Job No. 222163  
R-2002-1080  
Form=leaser.frm

Passed and adopted by the Council of San Diego on February 25, 2002 by the following vote:

**YEAS: PETERS, WEAR, ATKINS, STEVENS, MAIENSCHIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY**

**NAYS: None**

**NOT PRESENT: None**

**VACANT: None**

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: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. R- 296108, passed and adopted by the Council of The City of San Diego,  
California on February 25, 2002.

**CHARLES G. ABDELNOUR**

City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy