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THE CITY OF SAN DIEGO

Flat Rate Lease

SAN YSIDRO

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OFFICE OF THE CITY CLERK
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 COUNTY OF SAN DIEGO, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of 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. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of the 800 MHZ radio system for communication in accordance with the General Development Plan referenced in Exhibit D hereof, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The intent of this lease is for the CITY to replace some of its old, bulky communications equipment within its San Ysidro communications shelter with new, more space-efficient equipment purchased by the County and given to the CITY in order to make the space available shown in Exhibit "A" for the County's communications equipment described herein.

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 continuously 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. LESSEE'S microwave antennas require direct line of sight with communications facilities at Otay Mountain, Rattlesnake Peak, Monte Vista Dispatch, and Alpine Heights. Prior to the CITY'S approval of an application for a new radio-electronic use, authorization or modification of an existing authorization, pre-installation or pre-use tests will be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to the existing authorized radio electronic type uses at the facility.

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

CITY may recognize the right of prior authorizes and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other authorizees. The LESSEE has the right to terminate this lease at anytime that 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 Permittees/Lessees operating at the facility will be obtained from the City.
- 2). It will be the responsibility of the LESSEE to notify all radio-electronic Permittees/Lessees at the facility 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 summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the Permittees/Lessees 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.

- (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/Lessees 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 Permittees/Lessees 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 Permittee/Lessee participating in the test and a list of those Permittees/Lessees 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 LESSEE under the following technical conditions:

- 1. The LESSEE's transmitting and/or receiving equipment shall be of the type planned for final use at the site.
 - (a) The transmitted RF power shall be the maximum to be used and authorized at the 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 location.
- 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.
- 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 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 10 years commencing on the first day of the calendar month following execution by the City Manager. An option for an additional 10 years is granted contingent upon LESSEE agreeing to the 10th year market value adjustment. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager. CITY or LESSEE may terminate this lease at any time after providing 180 days written notice of intention to do so.
- 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 constitutes a month-to-month tenancy, 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.
- 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 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.

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 Three Thousand Two Hundred and Fifty Dollars (\$3,250) per month. The Three Thousand Two Hundred and Fifty Dollars (\$3,250) rent is consideration for rack space for up to ten (10) racks and up to three (3) antennas. Any additional antennas after the above mentioned three antennas subject to prior approval as specified in Section 6.4, will be at a rate of One Hundred Dollars (\$100.00) per antenna per month. The rent for the first five years of this lease will be One Hundred and Ninety Five Thousand Dollars (\$195,000) [$\$3,250 \times 12 \text{ months} = \$39,000 \times 5 \text{ years} = \$195,000$]. This initial five year rent will be prepaid to CITY in the form of new communications equipment as described in Exhibit B. This equipment will be purchased by LESSEE, and transferred to CITY by bill of sale and delivered as soon as reasonably practical after execution of this lease. LESSEE will also provide necessary tenant improvements and building upgrades as described in Exhibit C. If during the first five years LESSEE wants to add additional racks, the rent will be increased Three Hundred and Twenty Five Dollars (\$325) per rack space per month. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.
- b. CPI Index Adjustments. At the end of the fifth year and at the end of the fifteenth year following the effective date of the lease the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI). The CPI adjustments have a maximum allowable increase of no more than eight percent (8%) annually over the five years preceding the adjustment date.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Anaheim/Riverside, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the

aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

- (1) Index Adjustment Computation. The rent for each rental period following the adjustment until the next adjustment or other rental determination, as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month), and

January (fourth month) preceding May would be averaged to establish the base figure.

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

The "base figure" for the adjustment at the end of the fifteenth year shall be the three-month average of index figures from the CPI. The three months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the fair market value adjustment date provided in 3.2 c. and d. below.

- c. Rent Adjustment. At least six (6) months prior to the end of the tenth year of the term of this agreement 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 3.2d. 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 period, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- d. Fair Market Value Adjustments. At the end of the tenth year following the effective date of this agreement the rent for the ensuing five years, unless determined by mutual consent of the parties as described above, 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 APPRAISAL 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 when due, 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, 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.
- 4.3 Encumbrance. Any encumbrances 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 immediately commences to cure the default 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. Even though LESSEE has breached the lease and abandoned the property, 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 CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY 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-leased 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.

- 4.5 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 or 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 LESSEE 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 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. 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 or the work and operations to be performed 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 active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance to be Carried by LESSEE. 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. Evidence of such program of self-insurance shall be evidenced by a "Statement of Coverage" issued by LESSEE to CITY. The CITY is a self insured Municipal Corporation.

5.3 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 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. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on 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, 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 Development Plan described in Exhibit D 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, or does not contravene the Master Lease CITY has with Pacific Bell.

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. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE 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. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment, and other items of personal property 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.
- d. 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.

- e. 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.
 - f. 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 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 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, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. 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. 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.

- 6.12 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Development Plan are described in Exhibit D hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk.

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 Manager
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.

- 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, 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 if not consecutive are 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 and CITY, 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.

7.13 Disabled Access Compliance. LESSEE 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. 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.

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.

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 10-2-94

By [Signature]

LESSEE: COUNTY OF SAN DIEGO

Date 10/11/96

By Thomas J. Pastuszka
Thomas J. Pastuszka
Clerk of the Board of Supervisors

APPROVED as to form and legality this 4 day of October, 1996.

Approved and/or authorized by the Board
of Supervisors of the County of San Diego

Date: 8/20/96 Minute Order No. 9

THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

JVN/dcj

8/2/96

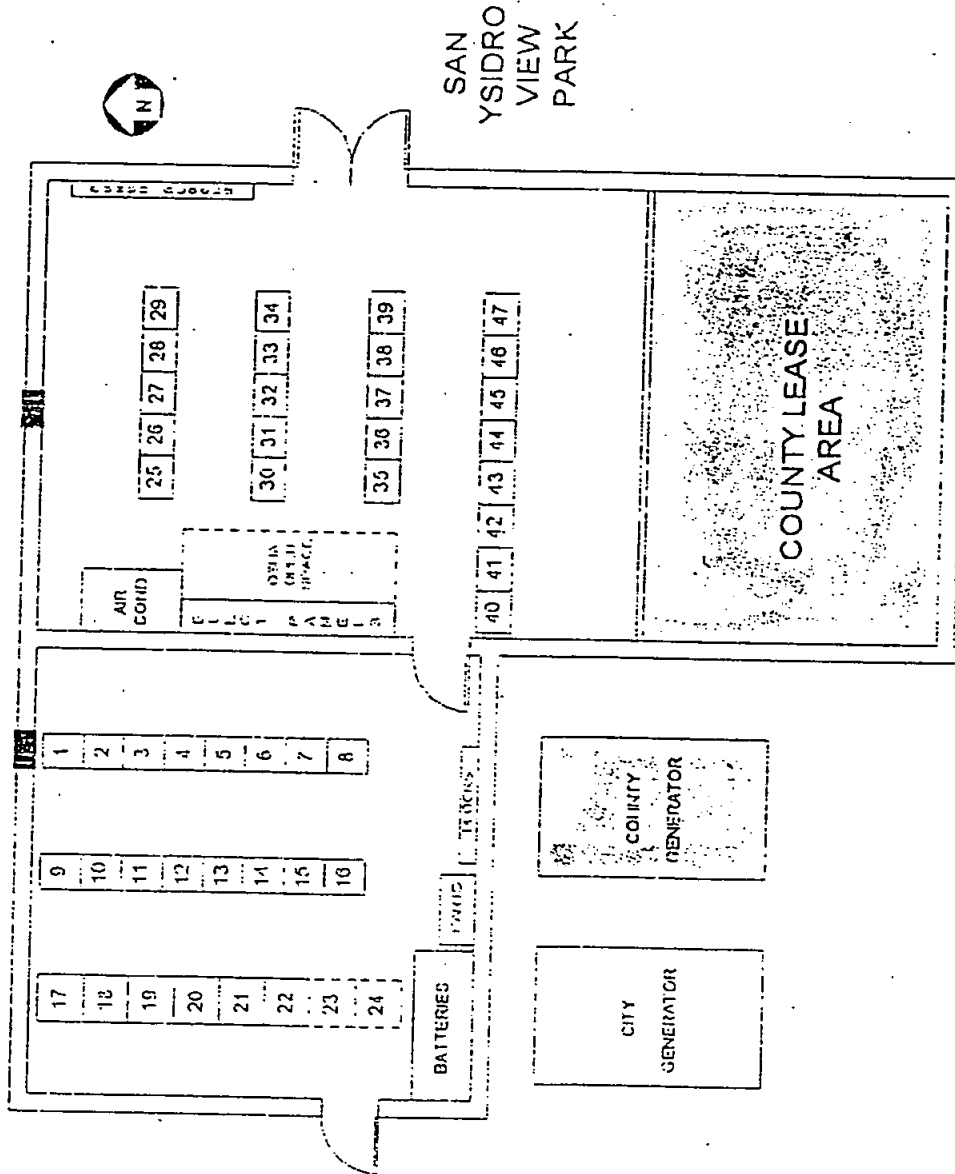
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[Signature]
Clerk

SECTION 9: EXHIBITS

EXHIBIT A

SAN YSIDRO VIEW PARK - BUILDING LAYOUT



SAN YSIDRO VIEW PARK - EQUIPMENT REQUIREMENTS

ITEM	QUANTAR	STREETS	PDF4	PD INQ	PD TAC	PD CLEMARS	FDF1	FDF2	RED	WHITE	TOTAL COST
VHF STATION	5,326	1	1	1	1	1	1	1	1	1	47,934
100 WATT PA	3,243	1	1	1	1	1	1	1	1	1	25,187
CONVENTIONAL OPERATION	0										0
REPEATER OPERATION	0	1	1	1							0
DUPLEXER	1,242	1	1	1							3,726
RACK MOUNTING (4 STATIONS)	442	1	1	1	1	1	1	1	1	1	3,978
XTAL FILTER	475	1	1	1	1	1	1	1	1	1	4,275
SURGE PROTECTOR	60	1	1	1	1	1	1	1	1	1	540
MTG. HARDWARE	15	1	1	1	1	1	1	1	1	1	135
TEST MICROPHONE	49	1	1	1	1	1	1	1	1	1	441
DIAGNOSTIC PANEL	775	1	1	1	1	1	1	1	1	1	8,975
SPARE RECEIVER + PRESELECTOR	850	1									850
SPARE EXCITER	850	1									850
SPARE PA	2,300	1									2,350
SPARE CONTROL MODULE	1,700	1									1,700
SPARE 4-WIRE MODULE	850	1									850
SPARE POWER SUPPLY	1,700	1									1,700
SERVICE MANUAL	170	4									600
REMOTE DIAGNOSTICS	170	1	1	1	1	1	1	1	1	1	1,530
RSS SOFTWARE AND CABLE	400	4									1,600
MAINTENANCE TRAINING	10,000	1									10,000
1/2" HARDLINE	3	125	125	125	125	125	125	125	125	125	3,375
1/2" CONNECTORS	40	4	4	4	4	4	4	4	4	4	1,440
1/2" SUPERFLEX	3	50	50	50	50	50	50	50	50	50	1,350
1/2" SUPERFLEX CONNECTOR	34	4	4	4	4	4	4	4	4	4	1,224
1/4" SUPERFLEX CABLE	115	30	30	30	30	30	30	30	30	30	31,050
1/4" SUPERFLEX CONNECTOR	21	2	2	2	2	2	2	2	2	2	378
MTG. HDW, DONUTS, GND KITS	200	1	1	1	1	1	1	1	1	1	1,600
DOUBLE CIRCULATOR	1,273	1	1	1	1	1	1	1	1	1	11,475
5 PORT COMBINER	9,000	2									18,000
VSWR/POWER METERS	1,500	2									3,000
											192,431

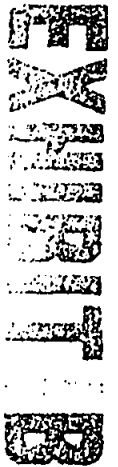


EXHIBIT C

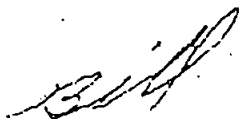
Jim,

Per your telephone request, here is the breakdown of the \$42K.

- decontamination of the area
- tiling the floor (we will not be able to tile under City equipment but will obtain the tile necessary for the City to lay it down at your convenience)
- sealing the walls
- installation of cable tray
- installation of electrical outlets
- cable fee-thru installation
- breaker distribution box
- minor materials
- miscellaneous items

As we discussed, Motorola and Richard Chuck had their wires crossed on the radio costs listed as the first item. The price listed is \$140,450. It may be that the price will have to be adjusted upward to reflect the actual amount paid. According to Richard, Motorola claims that the type of operation required by the City may increase the cost of the radios to something approximating \$192K, in which case we will work with you and RC to adjust the rent pre-payment.

Hope this takes care of it.



Bill

SHEET TWO

PRELIMINARY EQUIPMENT SPACE REQUIREMENTS CONT.

SITE NAME : VIEW PARK
 SITE NO. : 107

6-95 - A
 7-96 , trt

EXHIBIT D

7. ANTENNAS:

A. LAND MOBILE , VOICE RADIO SYSTEM(S) . and DATA RADIO SYSTEM

1. ANTENNA ~~800MHz, 2/8 Bate, PABX~~ MODEL ~~SRL-402C~~ , MFG. ~~SINCLAIR-LAS~~
 MOUNT AGL ~~30~~ ft. , DIRECTION ~~180~~ ° T , ~~No~~ OMNI .
- *2. ANTENNA 800MHz, T, Collinear , MODEL BMR-12T1.2ea , MFG. CELLWAVE
 MOUNT AGL 40 to 60 FT. , DIRECTION North ~~XXX~~ , ~~Yes~~ OMNI .
3. ANTENNA 800 MHz, R, Collinear , MODEL BMR-12T-1.1, ea , MFG. CELLWAVE
 MOUNT AGL tower top, 90FT. , DIRECTION North x ~~XX~~ , ~~Yes~~ OMNI .
4. ANTENNA _____ , MODEL _____ , MFG. _____
 MOUNT AGL _____ FT. , DIRECTION _____ ° T , _____ OMNI .
5. ANTENNA _____ , MODEL _____ , MFG. _____
 MOUNT AGL _____ FT. , DIRECTION _____ ° T , _____ OMNI .
6. ANTENNA _____ , MODEL _____ , MFG. _____
 MOUNT AGL _____ FT. , DIRECTION _____ ° T , _____ OMNI .
7. ANTENNA _____ , MODEL _____ , MFG. _____
 MOUNT AGL _____ FT. , DIRECTION _____ ° T , _____ OMNI .
8. ANTENNA _____ , MODEL _____ , MFG. _____
 MOUNT AGL _____ FT. , DIRECTION _____ ° T , _____ OMNI .

B. MICROWAVE , POINT TO POINT

1. ANTENNA SIZE 8/solid FT. , MODEL P8-65D / Dome, MFG. ANDREW
 C.L. AGL 30-40 FT. , DIRECTION 330.5° T , PATH G.C. HILL CENTER
2. ANTENNA SIZE 8/solid FT. , MODEL P8-65D / Dome, MFG. ANDREW
 C.L. AGL 30-40 FT. , DIRECTION 75.3° T , PATH OTAY MT.
3. ANTENNA SIZE _____ FT. , MODEL _____ , MFG. _____
 C.L. AGL _____ FT. , DIRECTION _____ ° T , PATH _____
4. ANTENNA SIZE _____ FT. , MODEL _____ , MFG. _____
 C.L. AGL _____ FT. , DIRECTION _____ ° T , PATH _____
5. ANTENNA SIZE _____ FT. , MODEL _____ , MFG. _____
 C.L. AGL _____ FT. , DIRECTION _____ ° T , PATH _____
6. ANTENNA SIZE _____ FT. , MODEL _____ , MFG. _____
 C.L. AGL _____ FT. , DIRECTION _____ ° T , PATH _____
7. ANTENNA SIZE _____ FT. , MODEL _____ , MFG. _____
 C.L. AGL _____ FT. , DIRECTION _____ ° T , PATH _____
8. ANTENNA SIZE _____ FT. , MODEL _____ , MFG. _____
 C.L. AGL _____ FT. , DIRECTION _____ ° T , PATH _____

8. NOTES :
1. All 800 MHz feedlines are 7/8 in. HELIAX type , 1 per antenna
 2. Both microwave radios are 6 GHz band . Feedlines are one each elliptical type EM-63
 3. ** Transmit antennas could be inverted if required.
 4. Antenna # 1 not required

ORDINANCE NUMBER O- 18348 (NEW SERIES)

ADOPTED ON SEP 30 1996

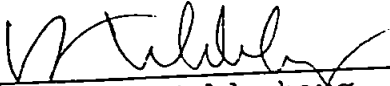
AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A TEN-YEAR LEASE AGREEMENT, WITH ONE TEN-YEAR OPTION TO RENEW, WITH THE COUNTY OF SAN DIEGO FOR THE COUNTY'S USE OF A PORTION OF SAN YSIDRO VIEW PARK COMMUNICATIONS FACILITY

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a ten-year lease agreement, with one ten-year option to renew, with the COUNTY OF SAN DIEGO, for the County's use of a portion of San Ysidro View Park communications facility solely and exclusively for the purposes of the 800 MHz radio system, at an initial annual rental of \$39,000, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. OO- 18348.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Head Deputy City Attorney

HOV:ps
08/26/96
Or.Dept:REA
Job:221724
O-97-25

DUPLICATE

This copy must be
returned to City
Clerk, San Diego

THE CITY OF SAN DIEGO

Flat Rate Lease

SAN YSIDRO

DOCUMENT NO. 00-18348

FILED SEP 30 1993

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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 COUNTY OF SAN DIEGO, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of 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. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of the 800 MHZ radio system for communication in accordance with the General Development Plan referenced in Exhibit D hereof, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The intent of this lease is for the CITY to replace some of its old, bulky communications equipment within it San Ysidro communications shelter with new, more space-efficient equipment purchased by the County and given to the CITY in order to make the space available shown in Exhibit "A" for the County's communications equipment described herein.

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 continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

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 Three Thousand Two Hundred and Fifty Dollars (\$3,250) per month. The Three Thousand Two Hundred and Fifty Dollars (\$3,250) rent is consideration for rack space for up to ten (10) racks and up to three (3) antennas. Any additional antennas after the above mentioned three antennas subject to prior approval as specified in Section 6.4, will be at a rate of One Hundred Dollars (\$100.00) per antenna per month. The rent for the first five years of this lease will be One Hundred and Ninety Five Thousand Dollars (\$195,000) [$\$3,250 \times 12 \text{ months} = \$39,000 \times 5 \text{ years} = \$195,000$]. This initial five year rent will be prepaid to CITY in the form of new communications equipment as described in Exhibit B. This equipment will be purchased by LESSEE, and transferred to CITY by bill of sale and delivered as soon as reasonably practical after execution of this lease. LESSEE will also provide necessary tenant improvements and building upgrades as described in Exhibit C. If during the first five years LESSEE wants to add additional racks, the rent will be increased Three Hundred and Twenty Five Dollars (\$325) per rack space per month. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.
- b. CPI Index Adjustments. At the end of the fifth year and at the end of the fifteenth year following the effective date of the lease the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI). The CPI adjustments have a maximum allowable increase of no more than eight percent (8%) annually over the five years preceding the adjustment date.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Anaheim/Riverside, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the

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 10-2-94

By [Signature]

LESSEE: COUNTY OF SAN DIEGO

Date 10/11/96

By Thomas J. Pastuszka
Thomas J. Pastuszka
Clerk of the Board of Supervisors

APPROVED as to form and legality this 4 day of October, 1996.

Approved and/or authorized by the Board
of Supervisors of the County of San Diego
Date: 8/20/96 Minute Order No. 9
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
By: [Signature]
Deputy Clerk

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

JVN/dcj

8/2/96

I:\WPQ\1996\VANMAILS-CNTY.SY

[Signature]

ORDINANCE NUMBER O- 18348 (NEW SERIES)

ADOPTED ON SEP 30 1996

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A TEN-YEAR LEASE AGREEMENT, WITH ONE TEN-YEAR OPTION TO RENEW, WITH THE COUNTY OF SAN DIEGO FOR THE COUNTY'S USE OF A PORTION OF SAN YSIDRO VIEW PARK COMMUNICATIONS FACILITY

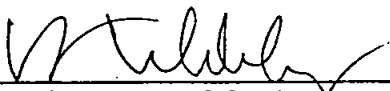
BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a ten-year lease agreement, with one ten-year option to renew, with the COUNTY OF SAN DIEGO, for the County's use of a portion of San Ysidro View Park communications facility solely and exclusively for the purposes of the 800 MHz radio system, at an initial annual rental of \$39,000, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. OO- 18348.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Head Deputy City Attorney

HOV:ps
08/26/96
Or.Dept:REA
Job:221724
O-97-25

Passed and adopted by the Council of The City of San Diego on
September 30, 1996 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS,

MCCARTY, VARGAS, MAYOR GOLDING

NAYS: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Lori A. Duhon, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-18348 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on September 9, 1996 and on September 30, 1996.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Lori A. Duhon, Deputy

(O-97-25)

ORDINANCE NUMBER O- 18348 (NEW SERIES)ADOPTED ON SEP 30 1996

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A TEN-YEAR LEASE AGREEMENT, WITH ONE TEN-YEAR OPTION TO RENEW, WITH THE COUNTY OF SAN DIEGO FOR THE COUNTY'S USE OF A PORTION OF SAN YSIDRO VIEW PARK COMMUNICATIONS FACILITY

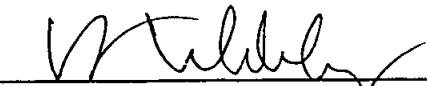
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APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Head Deputy City Attorney

HOV:ps
08/26/96
Or.Dept:REA
Job:221724
O-97-25

DETERMINATION OF: ENVIRONMENTAL EXEMPTION

Pursuant to The California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO

DEP FILE NO.: Miscellaneous

DATE: September 6, 1996

Action/Permit(s) CITY COUNCIL APPROVAL

Permit No. N/A

Description of Activity: COUNTY OF SAN DIEGO COMMUNICATIONS LEASE Utilization of existing City communications facility by the County; minor additions to existing antenna tower.

Location of Activity: San Ysidro View Park, Assessor's Parcel Number 630-070-24.

1. ☐ This activity is EXEMPT FROM CEQA pursuant to:
- ☐ Section 15061(b)(1) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
 - ☐ Section 15061(b)(3) of the State CEQA Guidelines ("General Rule").
2. ☒ This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

ARTICLE 19 of GUIDELINES CATEGORICAL EXEMPTIONS (Incomplete list)

Sec.	Short Name
☒ 15301 1	Existing Facilities
☐ 15302 2	Replacement or Reconstruction
☐ 15303 3	New Construction or Conversion of Small Structures
☐ 15304 4	Minor Alterations to Land
☐ 15305 5	Minor Alterations in Land Use Limitations
☐ 15306 6	Information Collection
☐ 15311 11	Accessory Structures
☐ 15312 12	Surplus Government Property Sales
☐ 15315 15	Minor Land Divisions
☐ 15317 17	Open Space Contracts or Easements
☐ 15319 19	Annexation of Existing Facilities and Lots for Exempt Facilities
☐ 15325 25	Transfer of Ownership of Interest in Land to Preserve Open Space

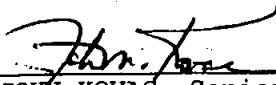
ARTICLE 18 of GUIDELINES STATUTORY EXEMPTIONS (Incomplete list)

Sec.	Short Name
☐ 15261	Ongoing Project
☐ 15262	Feasibility and Planning Studies
☐ 15265	Adoption of Coastal Plans and Programs
☐ 15268	Ministerial Projects
☐ 15269	Emergency Projects

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Distribution:

Exemption or Project file
Responsible Departments:


JOHN KOVAC, Senior Planner
Environmental Analysis Section

James van Norman, MS 51A
REAL ESTATE ASSETS DEPARTMENT
DEVELOPMENT SERVICES DEPARTMENT

MEMORANDUM OF LEASE

WHEN RECORDED, PLEASE MAIL
THIS INSTRUMENT TO:

FOR RECORDER'S USE ONLY:

Clerk, Board of Supervisors
San Diego County Administration Center
1600 Pacific Highway
San Diego, California 92101

Assessor Parcel No. 638-070-24

NO TRANSFER TAX DUE

MEMORANDUM OF LEASE

THE CITY OF SAN DIEGO ("Lessor"), and the County of San Diego, a political subdivision of the State of California ("County"), entered into a lease, dated as of October 11, 1996, of certain premises as shown in Exhibit "A" attached hereto.

1. Grant. Lessor grants to County a leasehold estate in the Premises in accordance with the terms, covenants and conditions of the Lease.

2. Term. The term of the Lease is ten (10) years with a commencement date and a termination dated as provided in the Lease. An additional 10-year option is available.

3. Summary. This Memorandum of Lease does not include all the terms, covenants and conditions of the Lease. The provisions of this Memorandum of Lease shall not be used in interpreting the terms, covenants and conditions of the Lease and shall not be deemed to modify or otherwise change any of the terms, covenants or conditions of the Lease. In the event of a conflict between the Lease and this Memorandum of Lease, the terms, covenants and conditions of the Lease shall control.

IN WITNESS WHEREOF, Lessor and County have executed this Memorandum of Lease as of the 11th day of December, 1996.

LESSOR:

CITY OF SAN DIEGO

By: Robert J. Collins
Real Estate Assets Mgr.

By: _____

COUNTY:

The County of San Diego, a political
subdivision of the State of
California

By: _____
JOHN KROSS, Deputy Director
Real Property Division

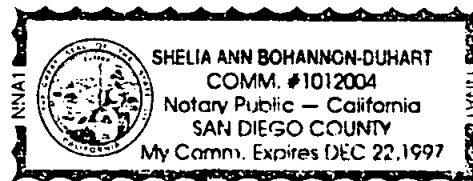
(NOTARY JURAT)

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On December 11, 1996 before me, Shelia Ann Bohannon-Duhart
Shelia Ann Bohannon-Duhart
personally appeared Robert J. Collins

personally known to me ~~(or 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) ~~(he/she/they)~~ executed the same in (his) ~~(his/her/their)~~ authorized capacity(ies), and that by (his) ~~(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.

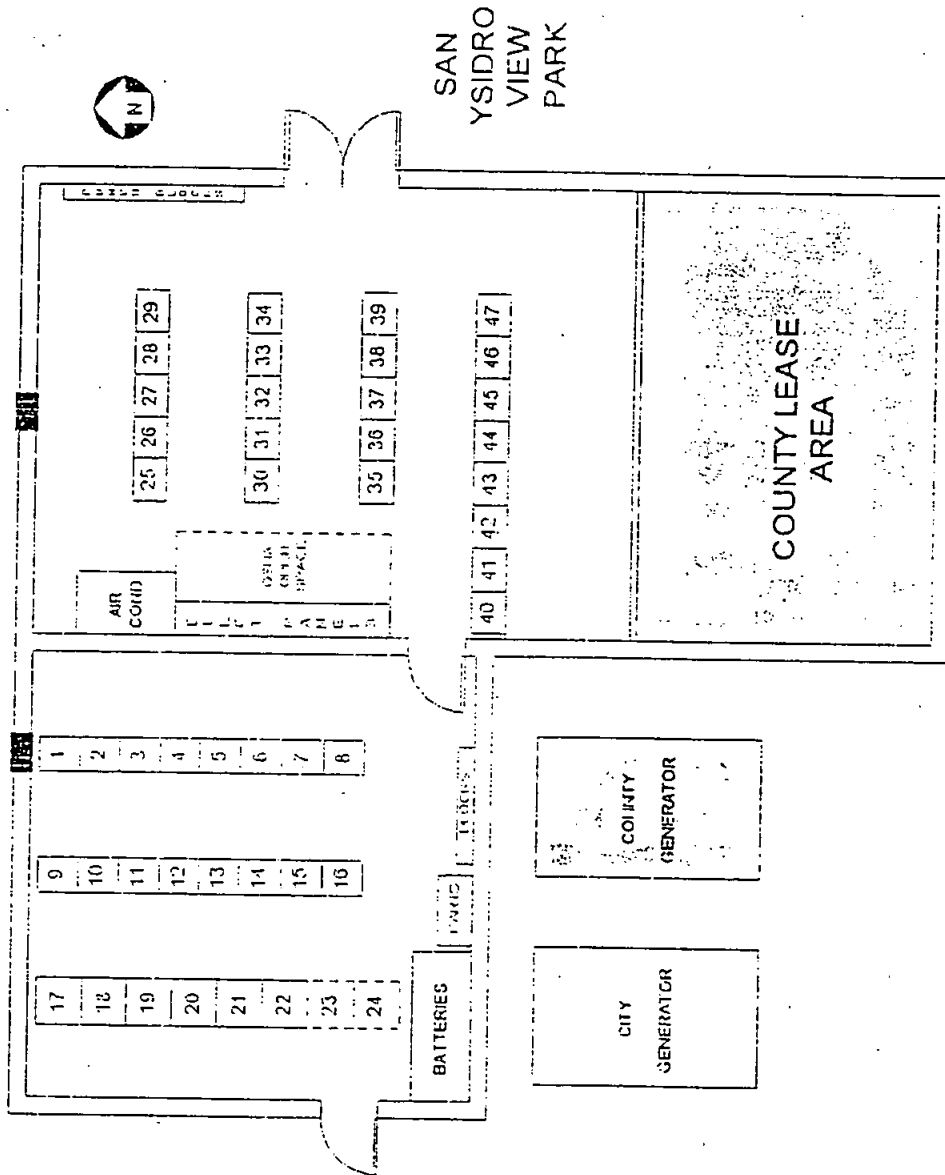


Signature: Shelia Ann Bohannon-Duhart

(SEAL)

EXHIBIT A

SAN YSIDRO VIEW PARK - BUILDING LAYOUT



STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On _____, before me, GREGORY J. SMITH, Assessor/Recorder/County Clerk in and for said County and State, personally appeared JOHN KROSS, Deputy Director of the Real Property Division of the Department of General Services, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on this instrument the County executed the same.

WITNESS my hand and official seal.

GREGORY J. SMITH, Assessor/Recorder/County Clerk

By: _____
Deputy

Lewis L. Farias
Name (typed or printed)

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO:

CITY ATTORNEY

2. FROM: (Originating Department)

REAL ESTATE ASSETS DEPARTMENT

3. DATE

August 16, 1996

4. SUBJECT:

County of San Diego Communications Lease - San Ysidro

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

Groarke/Van Norman 51-A

6. TELEPHONE NO.

66766/66792

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

8.

COMPLETE FOR ACCOUNTING PURPOSES

FUND

DEPT.

ORGANIZATION

OBJECT ACCOUNT

JOB ORDER

C.I.P. NO.

AMOUNT

9. ADDITIONAL INFORMATION / ESTIMATED COST:)

Cost: None

Job: 221724

cc: Docket

THOMAS GUIDE PAGE 1350 G-4

10.

ROUTING AND APPROVALS

ROUTE (✓)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	Department Manager	<i>[Signature]</i>	8-26-96	X	CITY MANAGER LOVELAND	<i>[Signature]</i>	8-26-96
X	IT&C	<i>[Signature]</i>	8/26/96		AUDITOR	<i>[Signature]</i>	8-26-96
X	E.O.C.P. / Memo 5-3-96			X	CITY ATTORNEY	<i>[Signature]</i>	8-26-96
X	DEP/EAS 40X	<i>[Signature]</i>	8/26/96	X	ORIGINATING DEPARTMENT	<i>[Signature]</i>	8-26-96
					MGR. DOCKET COORD. _____	COUNCIL REP. _____	
				✓	RULES COMMITTEE ☐ CONSENT ☐ ADOPTION ☐ Refer to _____ ☐ Date _____		

11. PREPARATION OF:

☐ RESOLUTION(S)☒ ORDINANCES(S)☐ AGREEMENT(S)☐ DEED(S)

Authorize the City Manager to lease a portion of the San Ysidro View Park communications facility to the County of San Diego.

11a. MANAGER'S RECOMMENDATION:

Adopt the Ordinance.

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

COUNCIL DISTRICT: 8**COMMUNITY AREA: SAN YSIDRO****ACTION REQUESTED BY:** Real Estate Assets Manager.**DESCRIPTIVE LOCATION:** San Ysidro.**ENVIRONMENTAL ASSESSMENT:** This activity is exempt from CEQA pursuant to Section 15301 of the State Guidelines, Existing Facilities.**HANDLING: DO NOT RECORD.** Deliver documents to Real Estate Assets Department, Attention: Jim Van Norman, MS 51A, for further handling.

DOCKET SUPPORTING INFORMATION

CITY OF SAN DIEGO

DATE

August 16, 1996

SUBJECT

County of San Diego Communications Lease - San Ysidro

BACKGROUND:

The County of San Diego is upgrading its current emergency communications network to an 800 megahertz (MHz) system. This upgrade involves leasing space inside an existing City communications building located at San Ysidro View Park. The proposed lease would allow the County to place their communications equipment inside an existing City communications facility. The proposed lease will include space for up to ten racks of County equipment plus three antennas.

A rental rate of \$39,000 per year has been negotiated for this agreement. The City Manager recommends approval of this lease. The County Board of Supervisors has already authorized this agreement. The following is a summary of the lease (if approved):

USE - Solely and exclusively for the purposes of the 800 MHz radio system.

TERM - Ten years with an option for an additional ten years contingent upon County agreeing to the tenth year market value adjustment. Commencement of this agreement will be the first day of the month following execution by the City Manager.

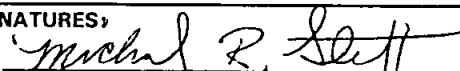
RENT - It is proposed that the County provide \$195,000 worth of new replacement communications equipment in lieu of monetary rent for the initial five year term. The new smaller equipment will replace dated City equipment, and will make the necessary space available for the County's equipment. At the end of the fifth year of this lease, the City will begin to receive monetary rent. The rent will be deposited into the General Fund 100. CPI adjustments will be performed at the end of the fifth and fifteenth years; and a fair market value adjustment at the end of the tenth year.

FISCAL IMPACT: Equipment and building upgrades valued at \$195,000 will be provided to the City in FY'97. At the end of the fifth year of this lease, the City will begin to receive \$39,000 per year in rent. The rent will be deposited into the General Fund 100.

BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/AUTHOR INITIALS)

LOVELAND/Collins:JVN

SIGNATURES:



ORIGINATING DEPT. HEAD



CITY MANAGER:
(FOR MANAGERIAL DEPARTMENTS ONLY)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO
EXECUTE A TEN-YEAR LEASE AGREEMENT, WITH ONE
TEN-YEAR OPTION TO RENEW, WITH THE COUNTY OF
SAN DIEGO FOR THE COUNTY'S USE OF A PORTION
OF SAN YSIDRO VIEW PARK COMMUNICATIONS
FACILITY

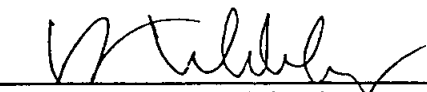
BE IT ORDAINED, by the Council of The City of San Diego, as
follows:

Section 1. That the City Manager is hereby authorized and
empowered to execute, for and on behalf of The City of San Diego,
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with the COUNTY OF SAN DIEGO, for the County's use of a portion
of San Ysidro View Park communications facility solely and
exclusively for the purposes of the 800 MHz radio system, at an
initial annual rental of \$39,000, under the terms and conditions
set forth in that lease agreement on file in the office of the
City Clerk as Document No. OO-_____.

Section 2. This ordinance shall take effect and be in force
on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Head Deputy City Attorney

HOV:ps
08/26/96
Or.Dept:REA
Job:221724
O-97-25