



City Council Staff Report

DATE: January 13, 2016

CONSENT AGENDA

SUBJECT: FACILITY USE AGREEMENT WITH PALM SPRINGS UNIFIED SCHOOL DISTRICT FOR THE USE OF SPACE AT EDM HILL LOCATED AT 70200 EDM HILL ROAD, SITE F, DESERT HOT SPRINGS, CALIFORNIA WITH FIVE YEAR EXTENSIONS

FROM: David Ready, City Manager

BY: Palm Springs Fire Department

SUMMARY

The City of Palm Springs has been leasing 3,000 square feet of space in Section 35, Township 3 South, Range 5 East since June 23, 1977. This leased land has one building, emergency generator, and antenna towers to boost radio signals. Attached is a Facility Use Agreement authorizing Palm Springs Unified School District to lease space at Edom Hill Site F for a monthly fee of \$250.00 or \$3,000 per year per rack.

RECOMMENDATION:

1. Approve the facility use agreement with Palm Springs Unified School District for space at Edom Hill located at 70200 Edom Hill Road through June 30, 2020, at the rate of \$250 per month per rack.
2. Allow for renewal in five year extensions with an increase of 10% in the monthly fee with each renewal.
3. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The City of Palm Springs has been leasing space at Edom since June 23, 1977 to boost the signal of the City's radios. By boosting radio signals communication coverage area shortfalls can be reduced. The Fire Department currently only utilizes one rack space at the site. The Police Department through the Eastern Riverside County Interoperable Communication authority aka ERICA program is utilizing six rack spaces. The Fire Department-Emergency Management has allowed Desert Radio Amateur Transmitting

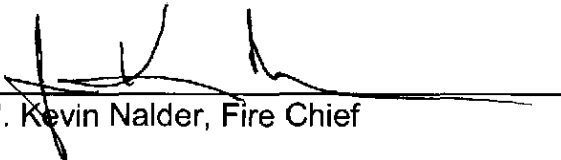
Society (RATS) two rack spaces. The Desert RATS volunteer their time in a disaster to assist the City radio communications utilizing the amateur radio bands.

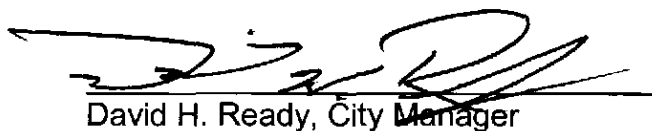
Palm Springs Unified School District needs to boost its radio signal signals as well to provide for coverage shortfalls. Edom Hill is directly north of the City which provides an idea location to boost the radio signals for the Palm Springs Unified School District. Palm Springs Unified School District radios will not interfere with the City's radio frequencies at the site.

This agreement will allow Palm Springs Unified School District to lease one rack space at the site and the associated antenna for a five year period. The agreement can be renewed at the end of five years with a price increase of 10%. The agreement has a 90 day notice to terminate by either Party.

FISCAL IMPACT:

The proposed agreement requires Palm Springs Unified School District to pay a monthly fee of \$250.00 that will be used to offset the maintenance costs and site lease fees.


J. Kevin Nalder, Fire Chief


David H. Ready, City Manager

Attachment: Facility Use Agreement with Palm Springs Unified School District

CITY OF PALM SPRINGS

**COMMUNICATIONS FACILITIES SITE SUBLEASE
Edom Hill Tower Compound**

This Site Facilities Sublease (the "Sublease") is made and entered into this 1st day of July, 2015, by and between the CITY OF PALM SPRINGS (herein "SUBLESSOR" or "CITY"), and PALM SPRINGS UNIFIED SCHOOL DISTRICT, (herein "SUBLESSEE" or "SCHOOL DISTRICT"). (SUBLESSOR and SUBLESSEE are at times hereinafter collectively referred to as "Parties" or individually as the "Party").

RECITALS

WHEREAS, SUBLESSOR is the Lessee of the Edom Hill Tower Compound communications site located in the City of Desert Hot Springs, California (the "Property") described more particularly in Exhibit A attached hereto, which description is fully incorporated herein by this reference, pursuant to a Ground Lease Agreement dated September 19, 1990, by and between SUBLESSOR and Insight Towers, LLC, as assignee lessor ("Lease"); and

WHEREAS, SUBLESSEE desires to lease space on the Property from said SUBLESSOR on the terms and conditions herein and subject to the Lease, in order to install and operate a digital mobile radio telecommunications site as more fully described herein below and in Exhibit C (the "Facilities") attached hereto and incorporated herein.

SUBLEASE

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, conditions, and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Sublease do hereby agree as follows:

1. SUBLEASED PREMISES:

1.1 DEMISE: SUBLESSOR leases to SUBLESSEE a portion of the Property as more particularly described in Exhibit B (the "Premises") attached hereto and incorporated herein by this reference, for SUBLESSEE 's installation, operation, and maintenance of the Facilities, at SUBLESSEE 's sole expense.

1.2 SUBLESEE ACCESS: The Premises are to be used by SUBLESSEE for operation and maintenance (or relocation, if necessary) of SUBLESSEE's Facilities. SUBLESSOR understands that SUBLESSEE's use of the Premises relates to SUBLESSEE's capacity and function as a government agency that functions to maintain the public health, safety and welfare. SUBLESSEE may modify the nature and scope of the Equipment providing advance written consent is provided by CITY to SUBLESSEE. All Equipment or other property attached

to or otherwise brought onto Leased Property in furtherance of Lessee's use of the Leased Property shall at all times remain the personal property of the Lessee.

2. USE OF SUBLEASED PREMISES: To the extent provided in this Sublease, SUBLESSEE may use the Premises to facilitate provision of communication services, including the transmission and the reception of communication signals of various frequencies. Subject to the terms and conditions of this Sublease, SUBLESSEE may install, construct, maintain, repair, replace and operate on the Premises the communications and other facilities depicted and/or described in general in Exhibit C, as approved by SUBLESSOR in writing prior to taking such actions. To the extent reasonable, SUBLESSOR shall cooperate with SUBLESSEE in applying for and obtaining all licenses, permits, and any and all other necessary approvals that may be required for SUBLESSEE's use of the Premises.

3. SUBLEASE TERM:

3.1 INITIAL TERM: The initial term of this Sublease shall commence on the date SUBLESSEE obtains all permits necessary allowing SUBLESSEE the right to construct the Facilities (the "Commencement Date") and shall continue for five (5) years from that date (the "Initial Term") unless terminated earlier pursuant to Section 8 herein below.

3.2 RENEWAL TERM: SUBLESSOR grants SUBLESSEE an option to renew this Sublease for an additional five (5) years ("Renewal Term"). This Sublease shall automatically renew for the Renewal Term unless SUBLESSEE provides SUBLESSOR notice of its intention not to renew not less than thirty (30) days prior to the expiration of the Initial Term. The Initial Term and the Renewal Term shall be collectively referred to herein as the "Term."

4. PAYMENT OF RENT: At the Commencement Date, SUBLESSEE agrees to pay to SUBLESSOR the annual Base Amount, as defined below, as rental for said Premises for the first year of the Initial Term of the Sublease, payable to the City of Palm Springs, 3200 East Tahquitz Canyon Way, Palm Springs, California 92262, Attn: Accounts Receivable, Finance Department. Subsequently, on the anniversary of the Commencement Date, SUBLESSEE agrees to pay to SUBLESSOR the annual Base Amount as rental for said Premises for one year of the Initial Term and the Renewal Term, if exercised, of the Sublease. In addition, SUBLESSEE agrees to do and perform all other covenants and agreements contained in this Sublease.

4.1 BASE RENTAL PAYMENT: The base rental payment under this Sublease shall be TWO HUNDRED FIFTY DOLLARS (\$250.00) per month per radio rack installed on the Premises ("Base Rental"). It is contemplated that SUBLESSEE will install ONE (1) radio rack on the Premises which will result in a monthly payment due SUBLESSOR in the amount of TWO HUNDRED AND FIFTY DOLLARS (\$250) or THREE THOUSAND DOLLARS (\$3,000) per year. If the Commencement Date is a date other than the first day of the month, the Base Rental for the first calendar month shall be paid on the Commencement Date and

prorated on the basis of the number of actual days in such partial month.

- 4.2 BASE RENTAL ADJUSTMENT: The then-current base rental payment shall be increased by ten percent (10%) at the beginning of each five year extension term. Monthly payments are to be made in advance no later than the 10th of each calendar month.
- 4.3 LATE CHARGE: SUBLESSEE acknowledges that late payment by SUBLESSEE to SUBLESSOR of Base Rental will cause SUBLESSOR to incur costs not contemplated by this Sublease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges. Therefore, if any installment of Base Rental due from SUBLESSEE is not received by SUBLESSOR within ten (10) days after written notice is received from SUBLESSOR that the same is due and payable, SUBLESSEE shall pay to SUBLESSOR an additional sum of three percent (.25%) per month of the overdue Base Rental as a late charge. The Parties agree that this late charge represents a fair and reasonable estimate of the costs that SUBLESSOR will incur by reason of such late payment by SUBLESSEE. Acceptance of any late charge shall not prevent SUBLESSOR from exercising any of the other rights and remedies available to SUBLESSOR.

5. PROPERTY TAXES: SUBLESSEE recognizes and understands that this Sublease may create a possessory interest subject to property taxation pursuant to Revenue and Taxation Code section 107.7 and that SUBLESSEE may be subject to the payment of property taxes levied on such interest. SUBLESSEE shall timely pay all property taxes and assessments directly attributable to SUBLESSEE's possessory interest. In no event shall SUBLESSOR be liable for any taxes owed as a result of this Sublease.

6. SUBLESSOR INSPECTION AND ENTRY; ACCESS FOR INSPECTIONS:

- 6.1 SUBLESSOR and/or its authorized representatives shall have the right to enter the Premises upon reasonable prior notice to SUBLESSEE (which shall not be less than twenty-four (24) hours unless the SUBLESSOR's Emergency Services Coordinator or the City Manager's designee determines that exigent circumstances warrant a shorter period of time, so long as such entrance does not unreasonably interfere with SUBLESSEE's use of the Premises):
- A. To determine whether the Premises are in good condition and whether SUBLESSEE is complying with its obligations under this Sublease.
 - B. To do any necessary maintenance and to make any restoration to the Premises that SUBLESSOR has the right or obligation to perform.
 - C. To serve, post, or keep posted any notices required or allowed under the provisions of this Sublease.
 - D. To run electric or telephone conductors, pipes, conduits, or ductwork

where necessary or desirable over, under, or through the Premises in a manner which will not unreasonably interfere with SUBLESSEE's use of the Premises.

- 6.2 SUBLESSOR shall not be liable in any manner for any inconvenience, disturbance, loss of business, or nuisance arising out of SUBLESSOR's entry on the Premises as provided in this section, except for damage resulting from the acts or omissions of SUBLESSOR or its authorized representatives. SUBLESSEE shall not be entitled to an abatement or reduction of rent if SUBLESSOR exercises any rights reserved in this section.

7. CONSTRUCTION AND MAINTENANCE OF FACILITIES AND PREMISES:

- 7.1 SUBLESSEE'S CONSTRUCTION: SUBLESSEE shall have the right to install, construct, maintain, repair, replace, and operate the Facilities on the Premises that are depicted in Exhibit C. The Parties intend that the antennas and appurtenances related thereto which are a part of the Facilities shall be constructed in such manner as to make the cabinetry blend into the surroundings, i.e., SUBLESSEE shall screen the equipment. Therefore, construction by SUBLESSEE of any improvement, structure or work on the Premises, shall be permitted only upon the express written consent of the SUBLESSOR, which SUBLESSOR may either grant or withhold in its reasonable discretion.

- 7.2 CONSTRUCTION OF IMPROVEMENTS: All improvements to the Premises shall be made in a good and workmanlike manner, at SUBLESSEE's expense, in accordance with the requirements of all laws, ordinances, and regulations applicable thereto, including zoning requirements and building code requirements of the City of Palm Springs, and any municipal or other governmental agency having jurisdiction over the Premises and Facilities at the time the improvements are constructed. SUBLESSOR agrees to cooperate with SUBLESSEE in connection with applying for any municipal permits for the construction of the aforementioned improvements. It is understood and agreed that such cooperation shall not be implied to include any expenditures of funds on the part of SUBLESSOR or any implied promise or warranty that such permits, discretionary, or otherwise, will be issued to SUBLESSEE. SUBLESSEE shall provide reasonable notice to the SUBLESSOR prior to entering the Premises for purposes of constructing the Facilities, and shall coordinate the scheduling and logistics of same with the Public Works Director to avoid any interference with the SUBLESSOR's operations. Once commenced, any and all improvements made by SUBLESSEE with respect to the installation of the Facilities shall be diligently pursued to completion.

- 7.3 MECHANIC'S LIENS: SUBLESSEE shall not allow or permit to be enforced against the Premises, or any part thereof, and shall defend, indemnify, and hold SUBLESSOR harmless from any mechanic's, material suppliers', contractors', tax, or subcontractors' liens arising from any claim, for damage, or growing out of the

work of any construction, repair, restoration, replacement, or improvement made by or alleged to have been made by or on behalf of SUBLESSEE. SUBLESSEE shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Premises. If SUBLESSEE shall in good faith contest the validity of any such claim, lien, or demand, then SUBLESSEE shall, at its expense, defend itself and SUBLESSOR against same and shall pay and satisfy any settlement or adverse judgment that may be entered thereupon prior to the execution thereof. In the event of any such contest, SUBLESSEE shall provide SUBLESSOR with a security bond in a form and amount SUBLESSOR deems sufficient to allow the lien of record to be discharged as a matter of law.

- 7.4 CARE DURING CONSTRUCTION: SUBLESSEE shall exercise great care during construction. All applicable CITY standards and specifications shall be followed. SUBLESSOR's Public Works Director shall approve all work in writing prior to commencement.
- 7.5 SUBLESSEE MAINTENANCE OF FACILITIES AND PREMISES: SUBLESSEE's maintenance of the Facilities and Premises shall include, but is not limited to:
- A. Maintenance of all landscaping installed by SUBLESSEE, if any;
 - B. Repairs and/or replacements to SUBLESSEE's Facilities caused by acts of third parties, including theft, graffiti, and intentional acts;
 - C. Maintaining, in good, clean, safe, and sanitary condition and repair, all of SUBLESSEE's personal property. All Facilities on the Property must be maintained in a first-class condition without rust, paint, or surface deterioration. All maintenance must conform to the standards utilized by SUBLESSOR; and
 - D. All work necessary to comply with Federal, State, County, municipal, and other governmental agencies and bodies having jurisdiction.
- 7.6 RELOCATION: In the event relocation is necessary due to public improvements, SUBLESSEE will pay for relocation, provided that SUBLESSOR provides a suitable alternate location for the Facilities at the Property. SUBLESSEE shall relocate the Facilities within six (6) months of SUBLESSOR's notice thereof.
- 7.7 ABANDONMENT: If use of the Facilities is abandoned for at least two (2) months, SUBLESSEE or its designee shall be responsible for removing the Facilities and returning the Premises to their original condition as approved by the Public Works Director. SUBLESSOR shall provide notice to SUBLESSEE of said abandonment. In the event SUBLESSEE fails to comply with this provision in regard to the removal of the Facilities and restoration of the Premises within ten

(10) days of said notice, SUBLESSOR shall have the right to remove the Facilities and SUBLESSEE relinquishes any and all rights thereto, said Facilities shall become the property of SUBLESSOR by virtue of SUBLESSEE's abandonment hereunder.

8. TERMINATION:

8.1 SUBLESSOR'S RIGHT TO TERMINATE:

A. SUBLESSOR may pursue any remedies available to it under applicable law, including, but not limited to, the right to terminate this Sublease, upon the earliest of any of the following events:

1. SUBLESSEE's failure to pay rent within fifteen (15) days following nonpayment;
2. SUBLESSEE's failure to comply with any term, covenant, or condition of this Sublease after SUBLESSEE has been given written notice of the violation and has had thirty (30) days to cure same or, if such default is not curable within such thirty (30) day period, has not proceeded to commence such cure within such thirty (30) day period and diligently proceeds to completion;
3. Interference by the Facilities with other electrical or radio frequency equipment installed on or around the Property, which interference is not cured by SUBLESSEE within ten (10) days following written notice thereof; or
4. Interference with SUBLESSOR's operations, or use of the Property by SUBLESSOR or third parties after SUBLESSEE has been given written notice of the violation and has had thirty (30) days to cure same or, if such default is not curable within such thirty (30) day period, has not proceeded to commence such cure within such thirty (30) day period and diligently proceeds to completion.

B. Additionally, upon a finding by SUBLESSOR's City Council that the Premises are needed for other public purposes, SUBLESSOR shall have the right, after the expiration of the Initial Term, to terminate this Sublease without liability upon one (1) year's written notice of termination to SUBLESSEE.

8.2 SUBLESSEE'S RIGHT TO TERMINATE: SUBLESSEE may terminate this Sublease without further liability for any reason whatsoever upon ninety (90) days written notice to SUBLESSOR. Upon termination, all prepaid rent will be retained by SUBLESSOR unless such termination is due to SUBLESSOR's failure of proper ownership or authority, or such termination is a result of

SUBLESSOR's default hereunder. In the event SUBLESSEE terminates the Sublease prior to commencement of construction of the Facilities, all SUBLESSEE's obligations under this Sublease shall terminate without further liability.

8.3 RETURN OF PREMISES UPON TERMINATION: Except as otherwise provided herein, SUBLESSEE shall at its sole expense remove all of SUBLESSEE's Facilities within sixty (60) days following expiration or termination of this Sublease. Upon the expiration or termination of this Sublease, SUBLESSEE shall surrender the Premises to SUBLESSOR in a condition at least as good as existed on the date SUBLESSEE executes this Sublease, less ordinary and reasonable wear and tear. The Parties intend that SUBLESSEE shall not remove or destroy any improvements to the Premises that, subsequent to surrender of the Premises by SUBLESSEE, will benefit or be of use to SUBLESSOR. Therefore, upon expiration or termination of this Sublease, SUBLESSOR may request that SUBLESSEE not remove or destroy all or any portion of the SUBLESSEE's Facilities, and, except for any electrical (other than lighting), mechanical, computer, or similar equipment (including antennas), SUBLESSEE shall not remove the portion of the SUBLESSEE's Facilities that is the subject of SUBLESSOR's request. SUBLESSEE shall thereafter execute any and all documents as are reasonably required to evidence that title to such improvements have been transferred to SUBLESSOR, in their "as-is" condition.

9. INTERFERENCE:

9.1 SUBLESSEE'S OBLIGATIONS: Prior to occupancy of the Premises and operation of the Facilities by SUBLESSEE or its agents, assigns or SUBLESSEE's employees, SUBLESSEE agrees to:

- A. Submit to LESSOR, within forty-five (45) days prior to operation, proposed plans for antenna type and size, along with operating frequencies, effective radiated power, and other necessary on-air technical data at SUBLESSOR's discretion for SUBLESSOR's review and approval. If SUBLESSOR does not respond in writing to SUBLESSEE within ten (15) working days following SUBLESSEE'S request for approval, such request will be deemed to have been approved by SUBLESSOR.
- B. Install or cause to be installed, all equipment according to generally accepted standard engineering practices and in a good and workmanlike manner.
- C. Use reasonable efforts to investigate the cause of, and mitigate any interference caused by, SUBLESSEE on existing radio frequency equipment of SUBLESSOR following written notification of interference from SUBLESSOR.

9.2 SUBSEQUENT PROPERTY SUBLEASES: SUBLESSOR agrees to include in all subleases between SUBLESSOR and future sublessee's of the Property a covenant that the sublessee shall not interfere with other electrical or radio frequency equipment previously installed on the Property and that if the sublessee is not able to mitigate the interference, the sublease shall provide for termination thereof. Likewise, SUBLESSOR will not permit or allow the installation of any future equipment which (i) results in technical interference problems with SUBLESSEE's then existing equipment or (ii) encroaches onto the Premises.

9.3 NON-INTERFERENCE: The communication equipment and the use thereof shall not interfere with the use of any other communication or similar equipment of any kind and nature owned or operated by SUBLESSOR or other occupants of the Property existing as of the Commencement Date, except as may be permitted by applicable laws; provided, however that subsequent to the installation by SUBLESSEE of the Facilities, SUBLESSOR agrees not to install and to exercise commercially reasonable effort to not allow installation of new equipment on the Premises if such equipment causes interference with SUBLESSEE's operations. All interference claims shall be settled in accordance with the then prevailing interference rules and regulations promulgated by the Federal Communications Commission.

10.0 DESTRUCTION OF PREMISES: If either the Premises or the Property is destroyed or damaged as a result of a catastrophic event to the extent that, in SUBLESSEE's reasonable discretion, SUBLESSEE may no longer use the Premises for the intended purposes, SUBLESSEE may elect to either:

- A. Terminate this Sublease, effective upon the date of the damage or destruction, by delivering written notice within ninety (90) days of the date of the damage or destruction and a request to terminate; or
- B. Upon consent of SUBLESSOR, which shall not be unreasonably withheld, conditioned or delayed, use a portion of the Premises specified by SUBLESSOR for provision of Communication Services on a temporary basis until such time as the SUBLESSEE's Facilities on the Premises are repaired or reconstructed so that SUBLESSEE can resume the provision of Communication Services from the Premises. If SUBLESSEE elects to continue this Sublease and in the event that SUBLESSOR unreasonably delayed its consent for SUBLESSEE to install the temporary facility in order for SUBLESSEE to continue its operation, Rent shall abate for the period of non-use. Any such repair or reconstruction shall be completed in an expeditious manner.

11. UTILITIES AND PROVISION OF SERVICE: SUBLESSEE shall determine the availability of and shall, at its sole cost and expense, cause to be installed in, on, and about the Premises all facilities necessary to supply thereto all electricity, telephone, and other similar services required to service the Premises. SUBLESSOR shall allow SUBLESSEE to have its

own electrical metering equipment installed. SUBLESSEE shall obtain all necessary approvals for the installation of the meter. An electrical plan shall be submitted to SUBLESSOR for approval, which approval shall not be unreasonably withheld, conditioned or delayed prior to commencement of such work. SUBLESSOR agrees to cooperate with SUBLESSEE in its efforts to obtain such utility service. During the Initial Term and the Renewal Term, SUBLESSEE agrees to pay directly to the servicing utility when due all charges for electricity, telephone and all other utility services of every kind and nature supplied to and used by SUBLESSEE on the Premises. SUBLESSOR shall be responsible for its electrical and other utility service and for the regular payment of electrical and other utility charges attributable to the Property other than the Premises.

12. INDEMNIFICATION AND INSURANCE:

12.1 INDEMNIFICATION: SUBLESSEE agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, employees, and agents from and against any and all claims, demands, judgments, actions, damages, losses, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), arising out of SUBLESSEE'S use of the sub-leased property provided for under the terms of this Sublease.

12.2 ASSUMPTION OF RISK: SUBLESSEE, as a material part of the consideration to SUBLESSOR, hereby assumes all risk of damage to the Premises, including, without limitation, injury to persons in, upon or about the Premises during SUBLESSEE's use of the Premises, arising from any use of the SUBLESSEE's Facilities or other activities of SUBLESSEE or SUBLESSEE's agents, employees, guests, or invitees (collectively "SUBLESSEE's Parties") on the Premises. SUBLESSEE hereby waives all claims with respect thereof against SUBLESSOR, except as otherwise stated in this Sublease. SUBLESSOR shall not be liable for any injury to SUBLESSEE's Facilities, Premises, or injury to or death of any of SUBLESSEE's Parties, or injury to SUBLESSEE's Facilities, or injury to or death of any other person in or about the Premises from any cause except to the extent such is caused by the negligence or willful misconduct of the SUBLESSOR, SUBLESSOR's Parties, or SUBLESSOR's agents, contractors, tenants, guests, invitees, or licensees.

12.3 INSURANCE:

A. Casualty Insurance: During the term of this Sublease, SUBLESSEE shall, at its sole cost and expense, keep SUBLESSEE's interest in the Premises and the Facilities, including any improvements thereon both in the course of construction and through the remainder of any term of this Sublease, insured by responsible insurance companies, licensed to do business in the State of California or self insurer, against loss or damage by fire and other

such casualties as are included in extended coverage. Such coverage shall include stipulated value, vandalism and malicious mischief endorsements, in such amounts so as to provide for the then actual replacement cost of all improvements on the Premises.

- B. SUBLESSEE agrees, at its sole expense, and at all times during the term of this Sublease, to maintain in full force, or cause to be maintained in full force, a policy or policies of comprehensive general liability insurance in an amount of ONE MILLION DOLLARS (\$1,000,000.00), including property damage, written by one or more responsible insurance companies licensed to do business in the State of California or a self insurer. SUBLESSEE shall ensure that SUBLESSOR is named as an additional insured and such additional insured certificate shall be provided to SUBLESSOR prior to the commencement of any work. Such policies shall insure against liability for injury to persons and/or property and death of any person or persons which may occur as a result of or in connection with the existence of the Facilities and improvements in, on or about the Premises.

13. DAMAGE OR DESTRUCTION OF IMPROVEMENTS TO PREMISES: SUBLESSOR shall have no duty or obligation to rebuild the Facilities or the improvements thereon if such Facilities or improvements are substantially damaged during the Term, in whole or in part by any casualty. SUBLESSOR will give SUBLESSEE (a) notice of such casualty within thirty (30) days after the date of the casualty and (b) the right to terminate in sixty (60) days from said casualty date. In the event SUBLESSOR chooses not to rebuild the Facilities or improvements thereon, SUBLESSEE shall be entitled to terminate the Sublease.

14. ASSIGNMENT AND SUBLEASING:

14.1 ASSIGNMENT: SUBLESSEE shall not voluntarily assign or transfer its interest under this Sublease or in the Premises without first obtaining the prior written consent of SUBLESSOR.

14.2 SUBLEASING/SUBLESSEE SUBSIDIARIES. SUBLESSEE may sublease portions of the Premises to a wholly-owned subsidiary of SUBLESSEE with SUBLESSOR'S written consent, which such consent shall not be unreasonably withheld.

14.3 COLLOCATION: SUBLESSEE shall cooperate with future communications operators that would request collocation as long as there is no adverse impact on SUBLESSOR from an operational, maintenance, and repair standpoint.

15. RENEWAL/HOLDING OVER: Upon the expiration or termination of this Sublease, SUBLESSEE shall surrender the Premises to SUBLESSOR. If SUBLESSEE shall remain in possession of the Premises after the expiration or termination of the Sublease, with the consent of SUBLESSOR, either express or implied, such holding over shall be construed to create a month

to month tenancy subject to all the covenants, conditions, and obligations hereof, and SUBLESSEE hereby agrees to pay SUBLESSOR, as monthly rental, an amount equal to one hundred twenty-five percent (125%) of the most recent monthly rental price. Nothing above shall be construed to give SUBLESSEE any rights to so hold over and to continue in possession of the Premises after the expiration of the Term without the express consent of SUBLESSOR.

16. ENVIRONMENTAL: SUBLESSEE and its agents, employees, or contractors subcontractors or other representatives shall not bring upon the Premises, or permit or authorize any other person or entity to bring upon the Property, including the Premises, any hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof). Notwithstanding the foregoing, SUBLESSEE may bring such fuels and lubricants onto the Premises as may be required for operation of construction vehicles during construction and backup power for generators during, maintenance or repair of the SUBLESSEE's Facilities. In addition, SUBLESSEE may also bring onto the Premises, any lead-acid batteries, cleaning solvents, and other chemicals necessary for proper utilization and maintenance of the SUBLESSEE's Facilities. In bringing any materials or substance onto, or using any materials and substances on, the Premises, SUBLESSEE shall comply with all federal, State, and local government laws, regulations, and rules. SUBLESSEE shall be solely responsible for any damages or costs incurred by SUBLESSOR due to any environmental contamination, arising from the presence or use on SUBLESSEE's behalf of any hazardous materials or substances that SUBLESSEE, its agents, employees, contractors, subcontractors or other representatives bring onto the Premises.

17. MISCELLANEOUS:

17.1 NO WAIVER: No covenant, term, or condition thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed. Any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition. Acceptance by SUBLESSOR of performance other than full performance by SUBLESSEE after the time the performance shall have become due shall not constitute a waiver by SUBLESSOR of the breach or default of any covenant, term, or condition unless otherwise expressly agreed to by SUBLESSOR in writing.

17.2 ATTORNEY'S FEES AND COSTS: If either Party hereto shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Sublease, including any suit by SUBLESSOR for the recovery of rent or possession of the Premises, the prevailing Party shall be entitled to have and recover from the other Party the prevailing Party's reasonable fees and costs (including attorneys' fees), which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to a judgment.

- 17.3 NO JOINT VENTURE: Neither SUBLESSOR nor any of its officers or employees shall have any control over the manner, mode or means by which SUBLESSEE, its agents or employees, use the Premises or Facilities described herein, except as otherwise set forth herein. SUBLESSOR shall have no voice in the selection, discharge, supervision or control of SUBLESSEE's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. SUBLESSEE shall perform all covenants herein as a tenant of SUBLESSOR and shall remain at all times as to SUBLESSOR a tenant with only such obligations as are consistent with that role. SUBLESSEE shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of SUBLESSOR. SUBLESSOR shall not in any way or for any purpose become or be deemed to be a partner of SUBLESSEE in its business or otherwise or a joint venturer or a member of any joint enterprise with SUBLESSEE.
- 17.4 INTERPRETATION: The Parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words imparting such covenants and conditions were used in each separate section hereof. The captions of the sections and subsections of this Sublease are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or construction.
- 17.5 INTEGRATION AND GOVERNING LAW: This Sublease represents the entire understanding of SUBLESSOR and SUBLESSEE as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Sublease. This Sublease shall be governed by the laws of the State of California and construed as if drafted by both SUBLESSOR and SUBLESSEE. Any action, arbitration, mediation, hearing or other proceeding related to this Sublease shall be conducted only in the County of Orange.
- 17.6 SUBLEASE BINDING ON HEIRS AND ASSIGNS: Each of the terms, covenants, and conditions of this Sublease shall extend to, be binding upon, and inure to the benefit of not only SUBLESSOR and SUBLESSEE, but each of their respective heirs, representatives, administrators and assigns. Whenever in this Sublease reference is made to either SUBLESSOR or SUBLESSEE, the reference shall be deemed to include, whenever applicable, the heirs, legal representatives, and assigns of each of the Parties, the same as if in every case expressed.
- 17.7 CORPORATE AUTHORITY: Each party executing this Sublease on behalf of a corporation represents and warrants that he or she is duly authorized to execute and deliver this Sublease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation and that this Sublease is binding upon said corporation in accordance with its terms.

17.8 NOTICES: Any written notices required pursuant to this Sublease shall be made by certified or registered mail, return receipt requested, or reliable overnight courier and delivered to the following address:

To SUBLESSOR: City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Clerk

To SUBLESSEE: Palm Springs Unified School District
150 District Center Drive
Palm Springs, CA 92262
Attn: Maintenance and Operations Director

17.9 AMENDMENTS: This Sublease may not be modified, altered, or amended except in writing signed by both SUBLESSOR and SUBLESSEE. The CITY assigns to the City Manager signature authority to execute future Sublease Amendments and extensions for periods not more than two (2) years each and provided that the City Manager shall not have the authority to approve a decrease in the rental rate without the prior approval of the City Council.

[Signatures on the following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Sublease to be executed by their duly authorized officers.

SUBLESSOR

SUBLESSEE

CITY OF PALM SPRINGS

PALM SPRINGS UNIFIED SCHOOL DISTRICT

By: _____

Name: David H. Ready
Title: City Manager, Palm Springs

Date: _____

By: _____

Name: Christine J Anderson
Title: Superintendent, Palm Springs Unified School District

Date: _____

ATTEST

APPROVED AS TO FORM:

James Thompson, City Clerk

_____, Attorney

APPROVED AS TO FORM:

Douglas C. Holland, City Attorney

EXHIBIT A

DESCRIPTION OF THE PROPERTY

That portion of Section 35, Township 3 South, Range 5 East, San Bernardino Base and Meridian, in the County of Riverside, State of California, described as follows:

Commencing at Northeast corner of said Section 35;
thence South $56^{\circ}00'25''$ West, a distance of 2174.58 feet;
thence South $76^{\circ}09'19''$ West, a distance of 550.00 feet;
thence South $13^{\circ}50'45''$ East, a distance of 500.00 feet;
thence South $52^{\circ}34'42''$ West, a distance of 1316.78 feet;
thence West, a distance 250.00 feet; thence South, a
distance of 250 feet; thence East, a distance of
354.12 feet; thence North $10^{\circ}22'39''$ West, a distance of
278.00 feet; thence South $42^{\circ}42'06''$ West, a distance of
4.00 feet; thence North $47^{\circ}17'54''$ West, a distance of
3.50 feet to the TRUE POINT OF BEGINNING; thence North
 $42^{\circ}42'06''$ East, a distance of 15.00 feet; thence North
 $47^{\circ}17'54''$ West, a distance of 35.00 feet; thence South
 $42^{\circ}42'06''$ West, a distance of 45.00 feet; thence South
 $47^{\circ}17'54''$ East, a distance of 20.00 feet; thence North
 $42^{\circ}42'06''$ East, a distance of 30.00 feet; thence South
 $47^{\circ}17'54''$ East, a distance of 15.00 feet to the TRUE POINT of BEGINNING

EXHIBIT B

DESCRIPTION OF THE LEASED PREMISES

A portion of the Property for an area assigned by the Sublessor to the Sublessee for the (1) installation and maintenance of a rack for communications equipment and (2) an antenna/repeater of a size approved by the Sublessor on Sublessor's tower.

EXHIBIT C

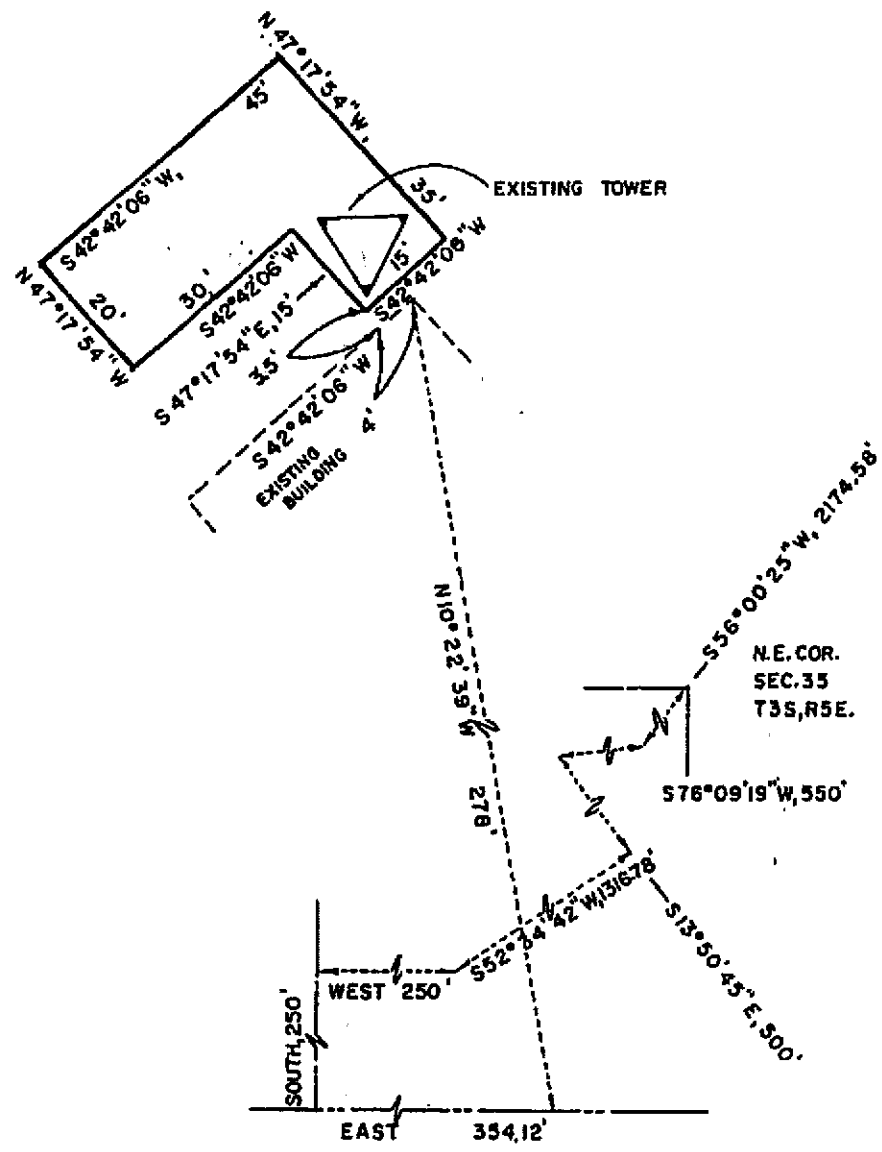
DESCRIPTION OF THE FACILITIES

PROJECT DRAWINGS

(See Attached)

1. Edom Hill Site Plan
2. Palm Springs Unified School District Radios/Rack

15A8



CITY OF PALM SPRINGS

DEPARTMENT OF COMMUNITY DEVELOPMENT

ENGINEERING DIVISION

LEASE PLAT

10 of 3

EDOM HILL TRANSMITTER LEASE SITE
SECTION 35, T. 3 S., R. 5 E., S. B. B. & M.

DESIGN BY: F. O. M.	SCALE: NO SCALE	FILE NO: R / W
CHECKED BY:	DWG. NO.:	SHEET NO 1 OF 1

