

**COUNTY OF SAN MATEO****County Manager's Office**

**DATE:** February 21, 2001  
**Agenda Date:** March 6, 2001

**TO:** Honorable Board of Supervisors

**FROM:** Paul T Scannell, Assistant County Manager



**SUBJECT:** Tower Lease Agreement with United Cable Television Corporation  
for a Public Safety Communication Site, Foster City (Lease No 1235-1)

Recommendation

Adopt a Resolution authorizing the President of the Board of Supervisors to execute a Tower Lease Agreement with United Cable Television Corporation for the operation of a communication facility.

Background and Discussion

The Emergency Services Council Joint Powers Authority (ESC/JPA) has twenty-one members representing the County and each City in the County. In 1973 the JPA established a radio and microwave system to support rapid and coordinated communications between all of the public safety agencies in the County.

In 1998 the ESC/JPA authorized and funded replacement of the system with a new, more comprehensive and expansive system. The new system includes a number of new microwave and radio broadcast sites as part of the improved design of the replacement system. One of the new sites is located on property on East Third Avenue in the City of Foster City. The City of Foster City owns the site and a lease with Foster City for use of this site was approved by your Board in November 2000. United Cable Television Corporation owns an existing tower on the property. The Lease Agreement presented for your approval is with United Cable Television for use of the tower.

The Tower Lease Agreement presented for your consideration is summarized as follows:

- 1 The term is for approximately 2 years, 8 months commencing upon execution by United Cable Television. The agreement expires upon expiration of the Ground Lease between Foster City and United Cable Television. Upon renewal of the Ground Lease the County will have the option to extend the term of the Tower Lease Agreement annually until the agreement is terminated by either party.

- 2 The County will be allowed to install two antennas and five microwave dishes on the tower. The lease fee for the equipment will be \$294 per month for the antennas and \$504 per month for the microwave dishes. Payment of the fee for the antennas will begin upon execution of the Lease Agreement and payment of the fee for the microwave dishes will commence when they are installed in January 2002. The monthly fee is subject to an annual increase of 4% each year. There is a one-time engineering documentation fee of \$150 payable by the County upon installation of the equipment.
- 3 The County will provide and pay for all utilities.
- 4 The County is required to obtain any permits that may be required to install its equipment.
- 5 There is a mutual hold harmless provision included in the agreement and the County is required to maintain Workers' Compensation and liability insurance under the Agreement.

County Counsel has reviewed and approved the agreement.

Fiscal Impact

In January 1999, the JPA approved funding for the project with each individual agency formally committing to their share at the June 1999 meeting. The Foster City site is included in the overall project cost.

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cc/enc D Penny Bennett, Deputy County Counsel  
cc Steven Boles, Assistant Director, Employee and Public Services  
Steve Dupre, Supervisor, Radio Services, Information Services Department  
Lynda Green, Manager, Real Property Services

RESOLUTION NO. \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

\* \* \* \* \*

RESOLUTION AUTHORIZING EXECUTION OF A TOWER LEASE AGREEMENT  
WITH UNITED CABLE TELEVISION CORPORATION FOR  
A PUBLIC SAFETY COMMUNICATION SITE  
(LEASE NO 1235-1)

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RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance a Tower Lease Agreement, reference to which is hereby made for further particulars, whereby UNITED CABLE TELEVISION CORPORATION grants permission to the COUNTY OF SAN MATEO to use its tower located on property on East Third Avenue in Foster City for communication equipment installation, under the terms and conditions contained in said Tower Lease Agreement, and

WHEREAS, this Board has been presented with a form of such Tower Lease Agreement and said Board has examined and approved same as to both form and content and desires to enter into same

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED

1 That the President of this Board of Supervisors be, and is hereby, authorized and directed to execute said Tower Lease Agreement for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest to the signature thereto

2. That the Assistant County Manager is hereby authorized to accept or execute on behalf of the County, any and all notices and documents in connection with this Tower Lease Agreement

\* \* \* \* \*

TOWER LEASE AGREEMENT

Name of Site: Foster City, CA

THIS TOWER LEASE AGREEMENT (the Agreement ) is made this 19th day of FEBRUARY 2001, by and between United Cable Television Corporation a Delaware corporation ( Lessor ) and County of San Mateo a political subdivision of the State of California ( Lessee )

In consideration of the mutual exchange of promises and covenants contained in this Agreement the parties agree as follows

1 GRANT OF LEASE

(A) Lessor hereby grants to Lessee a non-exclusive lease (the Lease ) to install maintain operate and repair the equipment described with specificity in **Exhibit A** attached to and incorporated in this Agreement by reference (the Equipment ) at Lessor's tower and building (if any) located at 3470 E 3<sup>rd</sup> Avenue, Foster City, CA, San Mateo County which is a portion of that certain real property known as Foster City tower at geographical coordinates Latitude 37°-34'-12 and Longitude 122°-16'-23 (the Premises ) upon the terms and conditions set forth in this Agreement Lessee's transmitting frequency is 488-491 MHz and its receiving frequency is 488-491 MHz Lessee shall not change its transmitting or receiving frequency without the prior written consent of Lessor

(B) Lessor is the lessee of the Premises under a Lease Agreement dated October 18 1993 by and between the Estero Municipal Improvement District a political subdivision of The State of California and United Cable Television Corporation and is entitled to possession of the Premises

(C) The grant of the Lease and all other terms of this Agreement including without limitation the term of the Agreement is expressly subject and subordinate to the terms and conditions of any land building or property lease (the Ground Lease ) encompassing all or any part of the Premises pursuant to which Lessor is the tenant which terms and conditions are incorporated herein by reference Lessee shall refrain from any conduct which creates a default on the part of Lessor under the Ground Lease In addition this Lease shall be subject and subordinate to any mortgage now or hereafter in effect affecting Lessor's rights with respect to the Premises

2 ACCESS

(A) To the extent Lessor may lawfully grant such access Lessor hereby grants to Lessee a non-exclusive right of ingress to and egress from the Premises and any access road to the Premises for the purposes of installing maintaining operating and repairing the Equipment Upon the execution of this Agreement Lessor shall deliver to Lessee all necessary keys and combinations to facilitate Lessee's ingress to and egress from the Premises The rights of Lessee under this Section shall be limited to authorized employees or contractors of Lessee Federal Communications Commission ( FCC ) inspectors or persons under their direct supervision

(B) Notwithstanding the above if Lessee has Equipment in a Lessor occupied building then Lessee's access to the building will be subject to and limited by any reasonable security procedures instituted by Lessor for the protection of its building and its equipment however Lessee shall never be unreasonably denied access to any building housing its Equipment

(C) Notwithstanding the above neither Lessee nor any employee contractor or agent of Lessee shall allow any person to enter upon or climb on any tower located on the Premises without ensuring that such person is using appropriate preventive fall protection In furtherance of and

not in limitation of the foregoing any employee contractor or agent of Lessee ascending or descending a tower shall be positively attached to the tower by means of an OSHA-approved device which device may include without limitation (i) a fixed cable (ii) a retractable device or (iii) a harness with two lanyards attached and such employee contractor or agent shall be trained in the proper use of such device Lessor makes no representation or warranty to Lessee as to the fitness of any such device for any particular use or purpose

(D) In an emergency (as determined by Lessor in its sole reasonable discretion) Lessor shall have the right to modify the Equipment for the purpose of eliminating or reducing or attempting to eliminate or reduce the emergency Upon execution of this Agreement and at any time during the term of this Agreement as requested by Lessor Lessee shall deliver to Lessor all keys combinations and/or cards necessary to allow Lessor access to the Equipment Lessor and Lessee agree that interference issues are governed by Paragraphs 6 and 7 of this Agreement and are not subject to the provisions of this Paragraph 2(D)

### 3 LEASE TERM

(A) The term of this Agreement shall be for a period of \_\_\_\_\_ years commencing on \_\_\_\_\_ date lease is signed by Lessor (the Commencement Date) and terminating on October 23, 2003 (the Initial Term)

(B) Following the Initial Term and if this Lease is renewed and Lessee elects to continue under the terms of any new lease this Agreement shall automatically be renewed for separate and successive periods of one (1) year each (each a Renewal Term) provided that either party may elect not to renew this Agreement by giving the other party not less than ninety (90) days advance written notice of such election prior to the end of the Initial Term or any Renewal Term

(C) Notwithstanding the foregoing and as set forth in Section 1(C) Lessee acknowledges that this Agreement is subject to the terms and conditions of any Ground Lease Should the Ground Lease be terminated for any reason this Agreement shall be immediately terminated and any unearned lease fee set forth in **Exhibit B** (the Lease Fee) shall be refunded to Lessee

(D) Notwithstanding the foregoing or any other provision of this Agreement Lessor shall have the right to terminate this Agreement at any time for its sole convenience upon one hundred eighty (180) days prior written notice to Lessee without any liability therefor

### 4 LEASE FEE

(A) Beginning on the Commencement Date Lessee shall pay to Lessor or to Lessor's authorized nominee if any as named in and at the address set forth in **Exhibit B** attached to and incorporated in this Agreement by reference (Lessor's Nominee) the monthly Lease Fee subject to adjustment as set forth in this Agreement The initial payment of the Lease Fee shall be made on the Commencement Date

(B) During the term of this Agreement the Lease Fee shall be due and payable in advance on the first day of each month The Lease Fee for any partial month during the term of this Agreement shall be prorated based upon the actual number of days in such month If the monthly Lease Fee is not paid when due then the amount due and unpaid shall bear interest at the rate of ten percent (10%) per annum from the date due until paid in full Nothing in this Subsection shall affect Lessor's right to terminate this Agreement pursuant to Section 18 if the Lease Fee is not paid when due

(C) During the term of this Agreement the Lease Fee shall be adjusted on each anniversary of the Commencement Date as set forth in **Exhibit B** Notwithstanding the foregoing twelve (12) months prior to the commencement of any Renewal Term Lessor and Lessee shall each have the right to request a review and renegotiation of the Lease Fee to be paid during the applicable Renewal

Term If the parties cannot agree on an appropriate Lease Fee for the applicable Renewal Term at least six (6) months prior to the commencement of the Renewal Term this Agreement shall terminate at the end of the then current term without action by either party

## 5 EQUIPMENT

(A) The Equipment shall be installed by Lessee on the Premises in the exact location and in accordance with the exact specifications set forth in **Exhibit A**. Lessee agrees that the Equipment and the installation, operation and maintenance thereof will not damage the Premises or any facility on the Premises (including without limitation any tower or building) or interfere with the maintenance of any facility or lighting system. Lessee shall maintain the Equipment in a satisfactory condition as to safety and appearance. Except as otherwise provided in this Agreement, the Equipment is and shall remain the sole property of Lessee and shall be removed from the Premises by Lessee at Lessee's sole expense upon the termination of this Agreement. Lessee agrees to install isolators, cavities and filters on the Equipment and to maintain and operate the Equipment in accordance with the highest engineering standards prevailing in the communications industry. Prior to installation of the Equipment, Lessee shall provide to Lessor a copy of its FCC License and any other required License authorizing it to operate each piece of the Equipment.

(B) Lessee shall clearly and conspicuously mark each piece of the Equipment with Lessee's name and frequency number(s).

(C) Lessee shall not install any equipment other than that set forth on **Exhibit A** on the Premises without Lessor's prior written consent. Lessee shall not install the Equipment in any location or manner other than that specifically described in **Exhibit A** without Lessor's prior written consent. Notwithstanding the provisions of Section 18 or any other provision of this Agreement, Lessor shall have the right to terminate the Agreement upon any violation by Lessee of this Subsection which is not cured by Lessee within 10 days of receipt of notice.

(D) Lessee agrees that Lessor may mount casters on the Equipment for any reasonable purpose including without limitation cleaning of the Premises and maintenance work.

(E) Upon installation of the Equipment, Lessee shall pay to Lessor the sum of one hundred fifty dollars (\$150.00) for the nonrecurring cost of engineering documentation.

Upon the termination of this Agreement for any reason, Lessee shall immediately (and in no event later than 48 hours after termination) remove from the Premises the Equipment and any other property placed on the Premises by Lessee or any of Lessee's Agents (as that term is defined in Section 14 (A)). Such removal shall be performed in such a manner as to not interfere with the continuing use of the Premises by Lessor and others. Lessee shall, at Lessee's sole expense, repair any damage to the Premises or any facilities or equipment on the Premises caused by such removal. Upon any failure of Lessee to remove the Equipment and any other possessions of Lessee pursuant to this Section, Lessor shall have the option, but not the obligation, to remove the Equipment from the Premises and store the Equipment all at Lessee's expense. Any damages to the Equipment occasioned by such removal and storage are expressly waived by Lessee. Any Equipment so removed will be returned to Lessee upon payment in full of all removal and storage costs and any past due Lease Fees, plus an administrative charge equal to ten percent (10%) of the total of said removal, storage, and past due Lease Fee costs. Notwithstanding the foregoing, any Equipment not retrieved by Lessee within one hundred eighty (180) days after removal from the Premises by Lessor shall be deemed abandoned by Lessee and shall become the property of Lessor without further action by either party. Such abandonment shall not relieve Lessee of liability for the costs of removal and storage of the Equipment.

## 6 FREQUENCY INTERFERENCE - LEASEE'S OBLIGATIONS

(A) Lessee represents and warrants that the Equipment will not cause interference to the equipment or operations of Lessor or any other Lessee or other user of the Premises with rights in time prior to those of Lessee. Lessee agrees that it will not modify the Equipment or change the frequency or frequencies within which the Equipment is operated without the prior written approval of Lessor.

(B) If Lessee becomes aware that the Equipment is causing interference with the equipment or operations of Lessor or any other user of the Premises with rights prior in time to those of Lessee, Lessee immediately shall notify Lessor in writing of the problem and take all steps necessary to correct or eliminate such interference. If such interference is not immediately corrected, Lessor, in its sole discretion, may require that Lessee cease operation of the Equipment until such interference is corrected or eliminated. If the interference is not corrected by Lessee within ten (10) days, Lessor may immediately terminate this Agreement (notwithstanding the provisions of Section 18).

## 7 FREQUENCY INTERFERENCE - LESSOR'S OBLIGATIONS

(A) Lessor agrees that subsequent to the date of this Agreement it will not knowingly lease or permit another person or entity to use the Premises if Lessee's then-in-use signal or frequency or the physical location of the Equipment would cause interference with such new Lessee so as to cause Lessee to be in breach of the terms of Section 6 (A) above.

(B) Lessor further agrees that subsequent to the date of this Agreement it will not knowingly lease or permit another person or entity to use the Premises if such person or entity will cause interference with Lessee's then-in-use frequency or signal or with the Equipment.

(C) In the event Lessee has reason to believe that Lessor or a subsequent Lessee is causing interference with Lessee's frequency or signal or with the Equipment, Lessee immediately shall notify Lessor in writing of such belief. Lessee shall in no way interfere with, tamper with or modify any equipment on the Premises belonging to Lessor or any other Lessee or user of the Premises. Notwithstanding the provisions of Section 18 or any other provision of this Agreement, Lessor shall have the immediate right to terminate the Agreement upon any violation by Lessee of this Subsection. Upon notice of interference, Lessor agrees to take reasonable steps to eliminate, in a timely manner and without cost to Lessee, any interference with the Equipment caused by Lessor's or any Lessee's subsequent installation of equipment or machinery on the Premises, which steps may include, without limitation, enforcing provisions in any lease or other agreement between Lessor and the person or entity causing such interference. If Lessor is unable to eliminate such interference with the Equipment within thirty (30) days after receiving notice of the interference, Lessee shall have the immediate right to terminate the Agreement and shall have no further recourse against Lessor.

## 8 ALTERATIONS

Lessee shall obtain the prior written consent of Lessor before making any addition to or alteration of the Premises. Any approved addition or alteration shall be made in a good and workmanlike manner at the sole expense of Lessee, free and clear of any mechanics or other liens or encumbrances. In no event shall Lessor be liable for any labor, materials or supplies furnished to Lessee in connection with such addition or alteration. In the event any mechanics or other lien is filed arising out of labor, materials or supplies furnished to or at the request of Lessee, Lessee shall immediately notify Lessor of such lien and shall cause such lien to be discharged by payment, bonding or otherwise within thirty (30) days after the date of such filing. In the event Lessor determines, in its sole discretion, that the installation of the Equipment on or about any tower located on the Premises necessitates additional structural support for the tower or any portion thereof, Lessee shall reimburse Lessor, upon demand, for any expenses incurred by Lessor in constructing such additional support, provided, however, if the parties cannot agree in advance as to the amount of such expenses, either party may elect, by notifying the other party of such election, to terminate this Agreement. Lessee understands and agrees that any addition or alteration to the Premises made by Lessee shall become the sole property of Lessor. Upon termination of the Agreement, Lessee may be required by Lessor, at Lessor's sole discretion, to remove any

alteration or addition and to restore the Premises to the same or as good condition as existed on the Commencement Date reasonable wear and tear and damage caused by acts out of Lessee's control excepted

#### **9 PERSONAL PROPERTY TAX**

Lessee shall be liable for and shall pay when due all taxes levied against the Equipment or any other personal property owned by it and located on or about the Premises and shall not suffer or permit such taxes to become delinquent. Upon demand, Lessee shall furnish to Lessor reasonable evidence of Lessee's compliance with this Section. To the extent that any Equipment or personal property shall be assessed together with real or personal property of Lessor, Lessee shall reimburse Lessor for any taxes paid by Lessor attributable to such assessment upon demand by Lessor, which demand shall be accompanied by reasonable documentation of such assessment.

#### **10 MAINTENANCE OF PREMISES**

Lessee shall neither maintain nor permit any nuisances on the Premises nor permit the Premises to be used for any purpose or use in violation of any of the laws, ordinances, rules or regulations of any public authority.

#### **11 COMPLIANCE WITH LAWS**

Lessee shall comply with all federal, state and local laws, rules and regulations applicable to the Equipment and Lessee's operations, including without limitation all applicable rules and regulations of the FCC, Federal Aviation Authority, and any other applicable electrical or other governmental laws, codes, rules or regulations. Lessee shall have sole responsibility for ensuring that its use of the Premises complies in all respects with the Americans with Disabilities Act. Lessee represents that prior to installation and operation of Lessee's equipment pursuant to this Agreement, Lessee has obtained all required permits and/or licenses pertaining to the installation, operation, maintenance and repair of the Equipment on the Premises, including but not limited to any required FCC licenses. Lessor shall have no responsibility for the licensing, installation, operation or maintenance of the Equipment. Lessee shall provide Lessor with copies of all applications for construction permits and licenses filed with governmental authorities, and any and all amendments or renewals thereof, at the time of filing. Lessee shall not make any filings (or amendments to filings) with the FAA relating to the Premises without Lessor's prior written approval, which approval shall not be unreasonably withheld.

#### **12 UTILITIES**

Lessee shall have the right to use and consume electrical power available to the Premises. The cost of such power consumption is to be included in the lease fee.

#### **13 TERMINATION IN THE EVENT OF CASUALTY OR CONDEMNATION**

(A) In the event of any damage to, destruction of or condemnation of all or any part of the Premises which renders the Premises unusable or inoperable, either party shall have the right, but not the obligation, to terminate this Agreement and all of its duties and obligations hereunder by giving written notice to the other party within thirty (30) days after such damage, destruction or condemnation.

(B) If neither party terminates this Agreement, (i) Lessor shall make any necessary repairs to the Premises caused by such damage or destruction and shall be entitled to use any and all insurance proceeds to pay for such repairs and (ii) until such repairs are completed, the Lease Fee shall be reduced or abated in proportion to the actual reduction or abatement of use by Lessee of the Premises. Lessee acknowledges that it has no property interest in the Premises and that Lessor alone shall be entitled to any condemnation proceeds paid as a result of any condemnation of the Premises.



14      **INDEMNIFICATION/LIMITATION OF LIABILITY**

(A) Lessee understands and agrees that Lessor its parents subsidiaries affiliates and partners representatives and agents and each of their shareholders directors officers employees ( Lessor s Agents ) make no representation or warranty of any kind with respect to the accuracy of any information or data relating to the Premises the condition of the Premises or any facilities (including without limitation towers and buildings) located on the Premises and that Lessee accepts the Lease granted pursuant to this Agreement solely on a **WHERE IS, AS IS** basis without warranty of any kind or nature It is the express intention of the parties that Lessor shall assume no additional risk liability obligation or exposure of any kind as the result of entering into this Agreement In furtherance of and not in limitation of the foregoing Lessee agrees to indemnify defend and hold harmless Lessor Lessor s Agents and the lessor under any Ground Lease ( Master Lessor ) from and against any and all liabilities damages losses costs expenses suits obligations claims demands or causes of action of any nature whatsoever (collectively claims ) including without limitation attorneys fees at trial and on appeal arising out of or in connection with (i) the Equipment (ii) Lessee s operations (iii) the use maintenance repair or replacement of materials or facilities on the Premises by Lessee or its partners directors officers employees independent contractors agents and representatives ( Lessee s Agents ) (iv) the use of or entrance upon the Premises by Lessee or Lessee s Agents (v) any work performed or required to be performed by Lessee or Lessee s Agents in connection with Lessee s use of the Premises (vi) the negligence acts or omissions of Lessee or any of Lessee s Agents (vii) the accuracy of any information relating to the Premises not contained herein which may have been communicated to Lessee prior to or contemporaneous with the execution of this Lease by Lessor or Lessor s Agents or (viii) the breach by Lessee of any provision of this Agreement including without limitation any representation or warranty contained in this Agreement Likewise Lessor agrees to indemnify defend and hold Lessee harmless from and against any and all injury loss damage or liability (or any claims in respect of the foregoing) costs or expenses (including reasonable attorneys fees and court costs) arising from any breach of this Agreement except to the extent attributable to the negligent or intentional act or omission of Lessee its employees agents or independent contractors It is further agreed that the Lessor shall defend hold harmless and indemnify the Lessee (County of San Mateo) its officers agents and/or employees from any and all claims for injuries to persons and/or damage to property which result from the negligent acts or omissions of the Lessor its officers agents and/or employees in the performance of the Agreement The provisions of this Section shall survive the termination of this Agreement

(B) In furtherance of and not in limitation of Subsection (A) above Lessee acknowledges that Lessor Lessor s Agents and/or Master Lessor shall have no liability to Lessee any of Lessee s Agents or any other person or entity claiming under or through Lessee or any of Lessee s Agents for any injury inconvenience loss cost expense liability or damage (i) caused by the failure interruption or malfunctioning of any equipment facilities utility or installation supplied by Lessor Lessor s Agents or Master Lessor unless caused by an intentional act or omission of Lessor or (ii) resulting from any alteration improvement or repair made to the Premises or Lessor s equipment located on the Premises provided that in the case of an alteration improvement or repair Lessor or Lessor s Agents have exercised reasonable care to avoid or minimize any such injury inconvenience loss or damage In no event shall Lessor Lessor s Agents or Master Lessor be liable to Lessee any of Lessee s Agents or any person or entity claiming under or through Lessee or any of Lessee s Agents for any consequential incidental or indirect damages

15      **INSURANCE**

(A) During the term of this Agreement Lessee at Lessee s sole cost and expense shall obtain and keep in force with a reputable insurance company or companies approved by Lessor (i) Workers Compensation (including Occupational Disease) and Employer s Liability Insurance in amounts and form complying with applicable law covering Lessee s employees in the state in which the Premises are located and (ii) standard Commercial General Liability ( CGL ) coverage Any exclusions not normal to a current Insurance Services Offices ( ISO ) CGL form must be indicated on the Certificate of Insurance required by Subsection (B) below In no event shall Products-Completed Operations coverage or XCU (Explosion Collapse Underground) hazards be excluded Lessee s performance of the

indemnity provisions contained in this Agreement must be covered. Limits of liability for such insurance shall be no less than \$1 000 000 per Occurrence for Bodily Injury, Property Damage and Personal and Advertising Injury, and no less than \$1 000 000 in the aggregate for the Products-Completed Operations hazard and the policy General Aggregate. Such insurance policy shall be endorsed to provide that (i) Lessor, Master Lessor and their employees and agents are included as Additional Insureds, (ii) irrespective of any insurance coverage carried by Lessor, Master Lessor or their employees or agents, Lessee's policy shall provide primary non-contributory protection to Lessor, Master Lessor and their employees and agents, (iii) Lessee's insurer waives any rights of subrogation it may have against Lessor, Master Lessor or their employees or agents, and (iv) the policy shall provide coverage on an occurrence basis -- a claims-made policy is not acceptable. A program of self-insurance may be substituted in place of the purchase of commercial insurance.

(B) Within five (5) business days after the execution of this Agreement by both parties and prior to the installation of any Equipment on the Premises, and as often thereafter as reasonably requested by Lessor, Lessee shall deliver to Lessor a standard ACORD certificate(s) of insurance as proof of the maintenance of all insurance required by this Section. The certificate(s) shall indicate that such insurance shall not be canceled or modified except upon delivery of thirty (30) days prior written notice to both Lessor and Master Lessor. The certificate(s) shall indicate coverage for the entire term of this Agreement, or Lessee shall provide (and shall continue to provide) subsequent certificates of insurance so as to confirm to Lessor continuous insurance coverage that satisfies the requirements of this Section throughout the term of the Agreement.

(C) Lessee shall reimburse Lessor upon demand for any increase in premiums for Lessor's property insurance covering the Premises, to the extent such increase is attributable to this Agreement.

#### 16 WAIVER OF SUBROGATION

Lessee hereby releases Lessor, Master Lessor and their parents, subsidiaries, affiliates, partners, shareholders, directors, officers, employees, representatives and agents from any claims for personal injury or property damage caused by or resulting from any risk insured against under any insurance policy carried by Lessee and in force in the time of any such personal injury or property damage. Lessee shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Lessor and/or Master Lessor in connection with any personal injury or property damage covered by such policy.

#### 17 HAZARDOUS SUBSTANCES

Lessee agrees that it will not use, generate, store or dispose of any hazardous material on, under, about or within the Premises. As used in this Section, hazardous material shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Premises is located to cause cancer and/or reproductive toxicity and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

#### 18 DEFAULT

(A) The following shall be deemed to be events of default under this Agreement:

1. Failure of Lessee to pay the Lease Fee when due or comply with any other monetary term of the Agreement, which failure is not cured within thirty (30) days after written notice thereof to Lessee.

2. Failure of either party to comply with any non-monetary term, warranty, condition, representation, provision or covenant contained in the Agreement, which failure is not cured within ten (10) days after written notice thereof from the other party or, if such default cannot reasonably

be cured within such ten (10) day period the defaulting party has not commenced to cure such default within the ten (10) day period with reasonable diligence and in good faith and does not cure such default within thirty (30) days after the date of such notice

3 The non-renewal or cancellation of any permit and/or license required for Lessee's operation on the Premises and

4 Any filing of a petition under any bankruptcy act by or against either party (which petition shall not have been dismissed within thirty (30) calendar days thereafter) execution by either party of an assignment for the benefit of creditors appointment of a receiver for the assets of either party or action by either party to take advantage of any applicable insolvency or any other like statute

5 Upon any such default the non-defaulting party shall have the option to immediately terminate this Agreement In lieu of terminating the Agreement Lessor (if Lessee is the defaulting party) may re-enter the Premises and dispossess Lessee and may (but shall not be obligated to) re-lease the Premises on Lessee's behalf upon such terms and conditions as Lessor deems appropriate in its sole discretion No such re-entry or re-licensing by Lessor shall be construed as an election by Lessor to terminate this Agreement unless Lessor notifies Lessee of such termination

## 19 LIENS

(A) Lessee shall keep the Site free from any liens arising from any work performed materials furnished or obligations incurred by or at the request of Lessee

(B) If any lien is filed against the Site as a result of the acts or omissions of Lessee or Lessee's employees agents or contractors Lessee must discharge the lien or bond the lien off in a manner reasonably satisfactory to Lessor within thirty (30) days after Lessee receives written notice from any party that the lien has been filed

(C) If Lessee fails to discharge or bond any lien within such period then in addition to any other right or remedy of Lessor Lessor may at Lessor's election discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding or by such other methods reasonably acceptable to Lessor and any of Lessor's lessors or mortgagees provided that such methods are specified in writing by Lessor to Lessee

(D) Lessee must pay on demand any amount paid by Lessor for the discharge or satisfaction of any lien and all reasonable attorneys' fees and other legal expenses of Lessor incurred in defending any such action or in obtaining the discharge of such lien together with all necessary disbursements in connection therewith

## 20 ASSIGNMENT

(A) Lessee shall not voluntarily or by operation of law assign transfer mortgage hypothecate sublet or otherwise transfer or encumber all or any part of Lessee's interest in this Agreement or in the Premises Any assignment transfer mortgage hypothecate encumbrance or subletting shall be void and shall constitute a breach of this Agreement Notwithstanding the foregoing upon prior written notice to Lessor Lessee may assign the Lease to its parent company or to any company acquiring at least fifty-one percent (51%) of the stock or assets of Lessee In addition notwithstanding anything to the contrary contained in this Agreement Lessee may assign mortgage pledge hypothecate or otherwise transfer its interest in this Agreement upon prior written notice to Lessor to any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof (ii) has obligations evidenced by bonds debentures notes or similar instruments or (iii) has obligations under or with respect to letters of credit bankers acceptances and similar facilities or in respect of guaranties thereof Upon any transfer of Lessor's interest in the Premises and the assumption by transferee of all of Lessor's obligations under this Agreement Lessor shall be released

from any further obligations hereunder Subject to the foregoing this Agreement shall be binding upon and shall inure to the benefit of the parties hereto their successors and assigns

(B) Lessor may assign transfer or sell this Lease on thirty (30) days prior notice to any party in whole or in part at any time and from time to time at its sole discretion and without any prior consent of Lessee or otherwise

## 21 NOTICES

Any notices pursuant to this Agreement shall be validly given or served only if in writing and sent by registered or certified mail postage prepaid to the following addresses

(A) If to Lessee

County of San Mateo  
County Manager's Office  
400 County Center  
Redwood City, CA 94063  
Attention Assistant County Manager

(B) If to Lessor

United Cable Television Corporation  
c/o AT& T Broadband  
1691 Bayport Avenue  
San Carlos CA 94070  
Attention Bruce Masker

(C) With a copy to

United Cable Television Corporation  
c/o AT& T Broadband  
P O Box 5147  
San Ramon CA 94583  
Attention Legal Department

And with a copy to Lessor's Nominee if any as set forth in **Exhibit B** or to such other addresses as either party may designate to the other in writing Delivery of any notice shall be deemed to be effective on the date set forth on the receipt of registered or certified mail

## 22 WAIVER

The waiver by either party of a breach or violation of or failure of either party to enforce any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation or relinquishment of any rights hereunder

## 23 INTEGRATION

This writing represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all previous oral or written agreements correspondence conversations or understandings of whatever nature between the parties with respect to the subject matter This Agreement may not be altered or amended except by an agreement in writing signed by both parties

## 24 GOVERNING LAW

This Agreement has been made in and its validity performance and effect shall be determined in accordance with the internal laws of the state in which the Premises are located

**25 PARTIAL INVALIDITY**

If any term provision covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid void or unenforceable the rest of this Agreement shall remain in full force and effect to the greatest extent permitted by law and shall in no other way be affected impaired or invalidated

**26 CAPTIONS, EXHIBITS**

The captions or headings of sections of this Agreement are provided for convenience only and shall not be of any force or effect in construing any provision of this Agreement All exhibits referred to in this Agreement shall be incorporated in and constitute a part of this Agreement

**27 RELATIONSHIP OF THE PARTIES**

Lessor and Lessee shall not be deemed to be joint venturers or partners of one another and neither party shall have any power to bind or obligate the other whatsoever

**28 TIME IS OF THE ESSENCE**

Time is of the essence with respect to each and every provision of this Agreement

**29 COUNTERPARTS**

This Agreement may be executed and delivered in counterparts all of which taken together shall constitute a single instrument

**30. SURVIVAL**

Lessor and Lessee hereby agree that termination or expiration of this Agreement including any amendments to this Agreement will not impair either party's then accrued rights obligations or remedies The terms and conditions of paragraphs 9 14 16 17 22 23 24 25 and 27 shall survive the termination or expiration of this Agreement

**31. AUTHORIZED REPRESENTATIVE OF LESSEE**

The Assistant County Manager shall be the only authorized agent of the County of San Mateo for purposes of giving any notices or exercising any rights options privileges or obligations of the County of San Mateo under this Lease This Lease shall not be valid unless executed by the President of the Board of Supervisors of the County of San Mateo pursuant to a resolution adopted in accordance with the California Government Code

**32. NON-DISCRIMINATION**

Lessor represents that it has not and shall not in leasing the Premises subject to this Lease deny any benefit to any prospective tenant or discriminate against any prospective tenant on the grounds of race color religion ancestry sex age (over 40) national origin medical condition (cancer) physical or mental disability sexual orientation pregnancy childbirth or related medical condition marital status or political affiliation

**LESSOR**  
**United Cable Television Corporation**

**LESSEE**  
**County of San Mateo**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_  
(Print or type)

Name Michael D. Nevin  
(Print or type)

Title \_\_\_\_\_

Title President, Board of Supervisors

Date \_\_\_\_\_

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

EXHIBIT A

THE EQUIPMENT

**LIST OF LESSEE'S EQUIPMENT** (include model and serial numbers)

Two (2) antennas

Five (5) microwave dishes

**EXACT SPECIFICATIONS OF HOW EQUIPMENT WILL BE INSTALLED AND WHERE EQUIPMENT WILL BE LOCATED ON THE PREMISES** (including without limitation the exact location of Equipment on any tower and any building)

*Installed on the tower*

One antenna at 80 ft Type DB420

One antenna at 67 ft Type PD458

500 gallon propane tank

12 x 24 ft shelter

To be installed within 12 months of execution of this contract

One microwave dish at 77 ft

One microwave dish at 70 ft

One microwave dish at 40 ft

One microwave dish at 35 ft

One microwave dish at 30 ft

SITE DRAWING ATTACHED AS EXHIBIT C

**EXHIBIT B**

**LEASE FEE**

**LEASE FEE DURING INITIAL TERM:**

One antenna at 80 ft @\$2 00 per foot = \$160 00  
One antenna at 67 ft @\$2 00 per foot = \$134 00  
One microwave dish at 77 ft @ \$2 00 per foot = \$154 00  
One microwave dish at 70 ft @ \$2 00 per foot = \$140 00  
One microwave dish at 40 ft @ \$2 00 per foot = \$ 80 00  
One microwave dish at 35 ft @ \$2 00 per foot = \$ 70 00  
One microwave dish at 30 ft @ \$2 00 per foot = \$ 60 00

**Total \$798.00**

**ADJUSTMENT OF LEASE FEE ON ANNIVERSARIES OF COMMENCEMENT DATE DURING INITIAL TERM:**

The Lease Fee shall be increased four percent (4%) per year over the Lease Fee for the immediately preceding year said adjustment to be made on each anniversary of the Commencement Date

**LEASE FEE DURING ANY RENEWAL TERMS**

Adjustments to the Lease Fee shall be annual as described above for Initial Term and any Renewal Terms thereof

<u>Year</u>	<u>Amount</u>
1	\$829 92
2	\$863 12
3	\$897 65
4	\$933 56
5	\$970 91

**NAME AND ADDRESS OF LESSOR'S PAYMENT SITE**

The Lease Fee shall be payable to the following address shown below

United Cable Television Corporation  
c/o AT& T Broadband  
P O Box 5156  
San Ramon CA 94583  
Attention Accounts Receivable

**PAYMENT (LEASE FEE) FOR MICROWAVE DISHES**

Payment of the fee for each microwave dish shall commence at the time the dishes are installed. Said fee for the microwave dishes shall be subject to the adjustment set forth above, one year from the date of installation of each dish.

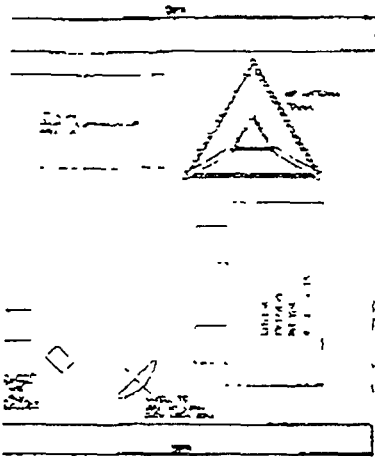


# EXHIBIT C

APPROVED:

DATE:

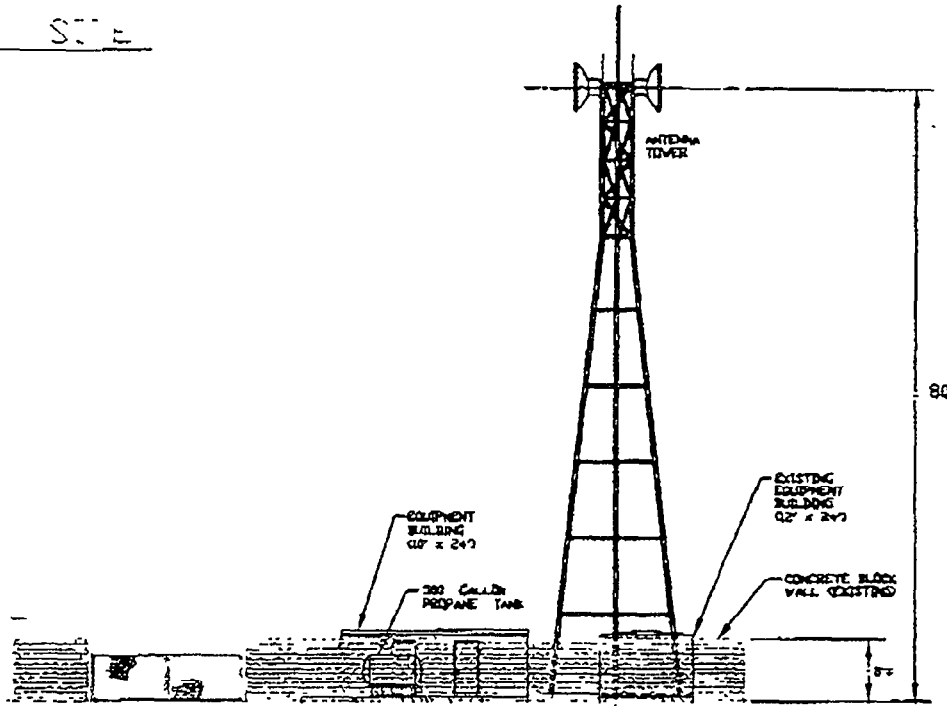
STEVE DUPRE, RADIO SERVICES SUPERVISOR



WIND

ANTENNA SITE

1" = 5'



NORTH ELEVATION

POSTER CITY ANTENNA INSTALLATION

REVIEWED DATE:	
GREG FOREST ENGINEERING CONSULTANT	
FRANK TRATHNER ASSOCIATES	
R. C. E. / C. P. R. S.	

DESIGNED BY: ATY	INFORMATION SERVICES DEPARTMENT POSTER CITY ANTENNA INSTALLATION PLAN AND DETAILS	SCALE NONE	
CHECKED BY: JLD		DATE: 08-14-2000	
DESIGN BY: RLM		FILE NO. 1	
REVISION	DATE	LUTHER FORBY, CHIEF INFORMATION OFFICER SAN MATEO COUNTY	400 COUNTY CENTER REDWOOD CITY CALIFORNIA
FOR REDUCED PLANS OPENING SCALE 1/8" = 1'-0"		SHEET 3 OF 3	