

AN ORDINANCE

93963

APPROVING A COMMUNICATIONS FACILITIES AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND CITY PUBLIC SERVICE BOARD FOR THE USE OF CPS TOWERS, APPROVAL OF TOWER LOCATIONS, AND THE EXTENSION, USE AND MAINTENANCE OF THE CPS FIBER OPTIC SYSTEM AS PART OF THE BACKBONE OF THE 800MHZ PUBLIC SAFETY RADIO SYSTEM FOR AN INITIAL PAYMENT OF \$789,779.00 AND ESTIMATED MONTHLY COSTS OF \$17,340.00; APPROPRIATING FUNDS AND AUTHORIZING PAYMENT.

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WHEREAS, City Council has authorized the purchase and installation of a new public safety radio system; and,

WHEREAS, the design of the system provides for the use of various tower locations throughout the County; and,

WHEREAS, several of the sites involved are under the control of the City Public Service Board of San Antonio (CPS); and,

WHEREAS, CPS has also installed various fiber optic links between its sites and has agreed to extend fiber optic links to certain additional sites to provide the necessary communications links between the various base and tower locations; and,

WHEREAS, representatives of CPS and the City have negotiated a proposed Communications Facilities License Agreement for the use of various CPS controlled facilities; and,

WHEREAS, the City Council finds the location of the towers at the sites set forth in the proposed agreement with CPS and the use of fiber connections to be in the best interest of the City of San Antonio and its citizens; and,

WHEREAS, the agreement provides a term of fifteen years with an option to extend the term for an additional five years; and,

WHEREAS, the City will make a one-time payment to CPS of \$789,779 and will pay various monthly charges which are estimated to be \$17,340 per month as more particularly set out in the agreement; and,

WHEREAS, the proposed agreement provides the City of San Antonio additional options to make additional Aid in Construction payments in exchange for more favorable offsets to future expenses and such options will be considered separately when and if conditions warrant; and

WHEREAS, the City Council of the City of San Antonio finds that the terms and conditions of the Communications Facilities License Agreement are in the best interests of the City of San Antonio and its citizens; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The proposed Communications Facilities License Agreement between the City of San Antonio and the City Public Service Board of San Antonio (CPS) is approved. City Council hereby authorizes city staff to implement the system configuration utilizing the sites covered by the agreement. A copy of the Communications Facilities License Agreement is attached hereto and incorporated herein for all purposes.

SECTION 2. The City Manager, or in her stead any Assistant City Manager or an Assistant to the City Manager, is hereby authorized to execute the agreement on behalf of the City of San Antonio.

SECTION 3. The amount of \$789,779.00 is appropriated in Fund 40-009001, Public Safety Radio System, in Index Code 658047, entitled Construction Contract-CPS, and is authorized to be encumbered and made payable to City Public Service.

SECTION 4. The term of the CPS Communications Facilities License Agreement is 15 years. Estimated monthly costs pertaining to this agreement are \$17,340.00. Eighty percent (80%) of these costs will be absorbed from the individual city department budgets and twenty percent (20%) will be absorbed by Bexar County as provided by separate ordinance.

SECTION 5. This ordinance shall be effective from and after the tenth day after its adoption.

PASSED AND APPROVED this 17th Day of May, 2001.


M A Y O R

ATTEST:


CITY CLERK

APPROVED AS TO FORM


City Attorney

COMMUNICATIONS FACILITIES LICENSE AGREEMENT

The City of San Antonio, a Texas Home Rule Municipality [City] and the City Public Service Board of San Antonio [CPS], a Texas municipal corporation which is a municipal utility wholly owned by the City of San Antonio, agree and act as follows:

The City Public Service Board of San Antonio owns and holds property in the name of the City of San Antonio. Such property is held in furtherance of its electric and gas utility services. It is in the best interest of the City of San Antonio and CPS to coordinate the use of municipally owned property that is under the control of the City Council and/or CPS. The parties intend that operation and control of the property necessary to the electric and gas generation of CPS is and will remain under the control of the CPS Board of Trustees. Nothing in this agreement does or is intended to affect the pledge of any assets of the City Public Service Board of San Antonio that secure any securities or bonds of any kind.

1. RECITATIONS.

The parties recite:

a. CPS Facilities. As part of its gas and electric system, CPS owns, in the name of the City of San Antonio, real property [CPS Sites] on which towers are located or will be constructed [Communications Towers] for the reception and transmission of information and communications by radio and other wireless means. CPS has constructed structures [Shelters] on certain CPS Sites to house CPS equipment used in such reception and transmission and may in the future construct additional Shelters. CPS also owns electric transmission structures [Electric Transmission Towers] on which antennae or similar facilities for reception and broadcast of wireless communications [Attachments] may be located and at the bases of which space may be available for location of small equipment shelters [Sheds]. CPS has also developed a communications system that uses a network of fiber optic links. In conjunction with the City of San Antonio's 800 MHz Trunked, Public Safety Radio System [Public Safety Radio System], the existing CPS fiber optic network will be improved and expanded in accordance with this Agreement and as more particularly detailed at Exhibit "B". CPS currently has and in the future may have surplus space and capacity available on the Communications Towers and on and at the base of Electric Transmission Towers and in the Shelters. It is in the public interest to coordinate the use of such surplus space and capacity with the City of San Antonio until required for CPS' purposes.

b. Purposes. City desires to obtain from CPS rights to locate various antennae on Communications Towers and/or Electric Transmission Towers, place its equipment in Shelters and/or Sheds, install related wiring and conduits, use the expanded CPS fiber optic network and network services and receive and transmit information and communications as part of the governmental functions of the City of San Antonio, Bexar County, and other eligible users of the Public Safety Radio System and to install certain flood-warning radio system antennae at certain of the CPS Sites which are mutually agreed to by the parties. Nothing herein shall constitute a grant of rights to use the sites in question for other than governmental purposes.

c. Process. City has submitted Applications for a list of CPS Sites which it desires to license for CPS' review and approval. CPS has approved the Applications for those CPS Sites designated in the Site License [Site License] for each licensed site [Licensed Site] attached to this Agreement as Exhibit "A," and The City has submitted all charges required to be paid as a prerequisite to CPS execution and granting of the Site Licenses included in Exhibit "A." This

Communications Facilities License Agreement establishes the commercial terms and conditions applicable to all such Site Licenses and all City Attachments authorized under this Agreement.

2. USE OF FACILITIES.

a. Agreed Uses

CPS Sites:

CPS grants a use [Site Use] to City as to each CPS Site represented by a Site License attached to this Agreement as Exhibit "A," for the following, non-commercial purposes:

- i. to install on each Communications Tower at a CPS Site listed Exhibit "A" antennae, of the type and quantity shown;
- ii. to install in each Shelter on a CPS Site as listed in a Site License electronic equipment and associated conduits, wiring and cables, of the type described in the Site License for the particular CPS Site;
- iii. to install on or in each CPS Site conduits, wiring and cables, generators and global positioning systems, necessary for the operation of City's receiving and transmitting facilities, of the types described in the Site License for such CPS Site;
- iv. to construct a communications tower at the CPS Site designated in one or more attached Site Licenses;
- v. to install private shelters and generators at the CPS Site designated in one or more attached Site Licenses;
- vi. to use the expanded CPS fiber optic network as set out at Exhibit "B"; and,
- vii. CPS will provide the fiber optic monitoring, alerting and other communications services as set out at Exhibit "B".

For each Electric Transmission Tower listed in a Site License included in Exhibit "A," the City may install antennae, of the type and quantity shown in on Exhibit "A," for the CPS Site in question, together with City's mounting structure for such antennae and the mounting structure support; to install certain equipment, of the type described in the Site License, to be housed in City's Shed; and to install a Shed at City's expense at the base of the Electric Transmission Tower, of a type and at a specific location to be selected by City, subject to CPS' approval, which will not be unreasonably withheld or delayed.

All such installations are subject to landowner consent as provided for below. All such antennae and equipment of City installed at a Licensed Site are referred to collectively in this Agreement as City Facilities.

Fiber Optic System:

CPS agrees to expand its fiber optic network to locations requested by the City as identified in Exhibit "C", and to provide certain services related to such use by the City of CPS' fiber optic network, including fiber-optic monitoring, alerting and other services as set forth in Exhibit "B", and City agrees to pay the fees therefor set forth in Exhibit "B" hereto, all on the terms more particularly set forth in Exhibit "B" hereto.

b. Antennae Location/Communications Towers. The height above the ground of the bottom of the vertical space on each Communications Tower and the number of feet of such vertical space to be occupied by City's antennae [Vertical Space] are designated for each CPS Site. The exact location, size, and type of City's antennae will be subject to CPS' approval, which will not be unreasonably withheld or delayed. City will place antennae no closer than 15 feet to the antennae of CPS or any other user unless a closer clearance is technically feasible and agreed to by the affected party. City may transmit in a 360-degree spectrum from each vertical Space. City may install two global positioning systems antennae on the roof of each Shelter in accordance with CPS' reasonable instructions or at a low height location on a Communications Tower, as reasonably approved by CPS.

c. Shelters/Substation Sites. If required by City and if adequate shelter space for City's equipment exists, CPS will provide City floor space in each waterproof, air conditioned and lockable Shelter at each CPS Site designated in each of the Site Licenses attached as Exhibit "A" which include Shelter space. The amount of floor space and of associated wall space for each CPS Site is designated in each Site License and the location of such spaces are depicted on the diagram for each Shelter made a part of each Site License. In the event that Shelter air-conditioning facilities require upgrading to a higher capacity during the Term (as defined below), the cost of any such upgrade will be prorated among all users having space in the Shelter in question, based on the calculated BTU loading of each set of City Facilities installed in the Shelter. City may place City's own shelter in a location approved by CPS, which will permit the City to utilize the CPS Site under the same conditions as if space were made available within CPS Shelters. Site-specific fees for non-CPS shelter placement will be detailed in the appropriate Site License, within the comments section.

d. Sheds/Electric Transmission Tower Sites. City will be required to coordinate antennae installation and maintenance on Electric Transmission Towers in such a manner as to minimize electrical transmission circuit outages, both in number and duration. City may request electric transmission circuit outages to access its antennae for any purpose, and such outages will be granted at a time designated by CPS, subject to priority of electric system requirements including reliability, and subject to City's payment of the charge provided for in Section 6. The design and proposed location of City's Shed for all Electric Transmission Tower sites shall be approved by CPS in advance of installation, and such approval shall not be unreasonably withheld or delayed.

e. Landowner Consents. If the property on which Electric Transmission Tower, Communications Tower, or Shelter is located is not owned in fee simple by CPS, City shall be responsible for (i) obtaining the agreement of the property owner including the State of Texas, on whose easement the Electric Transmission Tower, Communications Tower, or Shelter is located, and (ii) for payment of any fee or consideration required by the property owner as compensation for the location of the City Facilities and Shed on the easement. City shall provide CPS evidence of the property owner's written agreement at or prior to the use of any such CPS Site.

f. Conduits, Cable Trays, Electric and Telephone Service. CPS will provide City conduits and cable trays for installing City's wiring between City Facilities in each Shelter and City's antennae on each Communications Tower, if City is using both Shelter space and Communications Tower space, but CPS will not provide conduits or cable trays on Communications Towers. CPS will provide electrical service lines to serve City Facilities. City may connect telephone lines to the City Facilities in Shelters with CPS' approval which will not be unreasonably withheld or delayed. Prior to such connections, the telephone line provider of City's choice may be required to enter into

a CPS standard form of agreement for licensure of the conduit extending from the Shelter to the distribution pole or other point of connection with the telephone provider's system.

g. Access. For inspection, construction, maintenance, removal, repair and installation, reasonable access to each CPS Site, each Communications Tower, each Shelter, and each Electric Transmission Tower will be made available to City. After construction, access to each Shelter will be provided to City and its authorized agents and contractors through a separate entrance or by CPS escorts through CPS' entrance. After the City Facilities are installed, access to the Communications Tower or Electric Transmission Tower will be provided to City and its authorized agents and contractors by direct access or by CPS escorts. Notwithstanding the foregoing, CPS is not responsible for obtaining the right of ingress and egress to and from any site for City's benefit; City is solely responsible for obtaining such rights from fee owners or others and for paying any costs or charges in connection with obtaining such rights.

h. Replacements and Additions by City. City will have the right to replace or install additional City antennae on a Communications Tower or Electric Transmission Tower at a CPS Site on one month's prior written notice to CPS (1) if the total number of antennae authorized in this Agreement, or in the corresponding Site License, for attachment to such Communications Tower will not be exceeded by any such addition; (2) if no interference prohibited by this Agreement is produced; and (3) if no additional Vertical Space on the Communications Tower or Electric Transmission Tower in question is required; and (4) CPS approves the addition or replacement, which approval shall not be unreasonably withheld or delayed. The relevant Site License which is attached as Exhibit "A" shall be appropriately amended to reflect such replacement or addition. Any attachment by the City of any additional or replacement (other than an emergency replacement due to a communications outage) antenna or City Facilities without such prior written notice to CPS, whether or not within the total number of antennae authorized under this Agreement, is considered an unauthorized Attachment and shall result in the City being liable under this Agreement for Attachment fees applied retroactively to the date when the Attachment took place. Replacement of an antenna of similar make/features due to a communications outage is not considered an unauthorized Attachment and no such fee shall be due.

i. Approvals by CPS. All City Facilities and Sheds to be installed, modified or relocated at CPS Site will conform to CPS' reasonable standards for construction and will be subject to CPS' inspection and approval, which will not be unreasonably withheld or delayed.

j. Use by CPS and the City. CPS has previously exercised and will continue to have the right to make or license to other users any uses of the CPS Shelters, the Communications Towers, the Electric Transmission Towers, or the CPS Site, subject, however, to the provisions of this Agreement regarding interference. The parties acknowledge that antenna space on a given Electric Transmission Tower will be granted on a first-come/first-served basis.

3. ADDITIONAL SITES.

a. Availability. City will have the right from time to time to apply for the use of other CPS Sites which are not required exclusively for CPS purposes, which are made available for use by third parties by CPS after the date of this License, and which are not licensed exclusively to third parties. CPS will maintain a list of such CPS sites which will be available to the public, including City, upon request.

4. INTERFERENCE.

With respect to each CPS Site, City will operate the City Facilities in a manner which will not cause or create impermissible interference (i) with CPS' existing communications or electric transmission operations or the equipment of any other user sharing the CPS Site prior to City's use of the CPS Site or whose tenure at the CPS Site began prior to City's modification of its equipment, or (ii) between the existing equipment of CPS and that of any such other user. During the Term, City agrees to cooperate in any investigation, cost and resolution of any interference caused by or occurring between equipment of any parties operating at a CPS Site, including cooperation in compliance with the determination and recommendations of a third-party analysis to determine the cause of such interference. In the event CPS through the third party analysis, determines that the equipment or operation of City is so interfering with the equipment or operation of CPS or of the City, on notice by CPS, City will use its best efforts to immediately correct such interference even if it is operating in full compliance with FCC regulations. If City fails to use its best efforts to correct such interference with CPS or any such other prior user promptly, CPS may terminate the Site License as to the relevant CPS Site on 30 days' Notice and City will promptly remove the City Facilities and Shed (subject to Section 20f of this Agreement), if applicable, from the CPS Site.

CPS agrees that CPS and any other user sharing a CPS Site who installs, operates or subsequently modifies equipment at a CPS Site covered by a Site License will be permitted to operate only such equipment which does not cause impermissible interference to City's then pre-existing City Facilities. In the event that City is subject to any such interference, CPS shall take or cause such other user to take all steps necessary to correct and eliminate such impermissible interference. If such interference is not eliminated within 30 days after CPS' receipt of notice of such interference from City, CPS shall cease or cause such other user to cease operations if requested by City until such interference is eliminated.



5. TERM.

a. Effective Date. The effective date [Effective Date] of this Agreement will be the date the last party signs this Agreement. The term [Term] for a particular CPS Site will begin on the Site License effective date [Site License Effective Date] for such CPS Site determined as set forth below, and end at year-end of the fifteenth year after the latest Site License Effective Date set forth in the Site Licenses, or such other expiration date agreed to by the parties. The Site License Effective Date for a particular CPS Site shall be determined as follows:

(i) If a date is expressly specified as the Site License Effective Date in the Site License for such CPS Site, the Site License Effective Date for such CPS Site shall be such date so specified.

(ii) If no Site License Effective Date is expressly specified in the Site License for such CPS Site, the Site License Effective Date for such CPS Site shall be the date CPS specifies as the Site License Effective Date for such CPS Site in a written notice to the City giving the City notice that such CPS Site is available to the City and ready for use by the City, which date shall be no earlier than the date that such CPS Site is actually available to the City and ready for use by the City; or

(iii) If the Site License Effective Date for such CPS Site is not established pursuant to clauses (i) or (ii) immediately preceding, the Site License Effective Date for such CPS Site shall be the date such CPS Site is actually available to the City and ready for use by the City.

The term of this Agreement shall end when the Terms for all the CPS Sites have ended. The City has the option (the "Extension Option") to extend such Terms for an additional five (5) years by giving written notice to CPS of the exercise of such option within thirty (30) days after such Terms would otherwise expire.

b. Termination. Notwithstanding the foregoing, at any time during the term of this Agreement, City may terminate this Agreement as to any particular CPS Site upon ninety (90) days prior written notice to CPS.

6. CONSIDERATION.

During the term of this Agreement, the following payments will be made by City to CPS at its principal office, Accounts Receivable, P.O. Box 2678, San Antonio, Texas 78296-2678 and the following benefits will be provided by City to CPS:

a. Fees. The following are CPS' standard fees which are to be paid by the City.

i. Monthly Payments.

The City will pay to CPS, for each CPS Site consisting of a Communications Tower and/or Shelter, and/or an Electric Transmission Tower and related space, or for Shelter space independent of Communications Tower space, the amount[s] set out in the Site License for the CPS Site in question. The monthly payments [Monthly Payments] applicable to a given Site License throughout its Term shall be set forth in such Site License and shall be based in part on the "Facilities License Fees" set out in Attachment 1 to the information Manual promulgated by CPS and made available to City



[Information Manual] that are current as of the time of the Site License Effective Date, subject to the following escalation provisions: The Monthly Payments during the five years of the Term or portion of a Term on and after October 1, 2005 will be increased by the lesser of (i) the percentage increase in the Consumer Price Index for all Urban Consumers, U.S. City Average, as published by the Bureau of Labor Statistics, Department of Labor and Statistics, or a reasonable successor index [CPI Index] between → December 31, 2000, and October 1, 2005, or (ii) fifteen percent (15%) of the amount of the monthly payments in effect in the preceding period of the Term. The Monthly Payments during the five years of the Term or any portion of a Term on and after October 1, 2010 will be increased by the lesser of (i) the percentage increase in the CPI Index between October 1, 2005, and October 1, 2010, or (ii) fifteen percent (15%) of the amount of the monthly payments in effect in the preceding five (5) year period. The Monthly Payments during the five (5) years of the Term or any portion of a Term on and after October 1, 2015 will be increased by the lesser of (i) the percentage increase in the CPI Index between October 1, 2010, and October 1, 2015, or (ii) fifteen percent (15%) of the amount of the monthly payments in effect in the preceding five (5) year period. For any remaining portion of the Term thereafter (i.e. in the event the City exercises the Extension Option), the Monthly Payments during the five (5) years of the Term or any portion of a Term on and after October 1, 2020 will be increased by the lesser of (i) the percentage increase in the CPI Index between October 1, 2015, and October 1, 2020, or (ii) fifteen percent (15%) of the amount of the monthly payments in effect in the preceding five (5) year period. The Monthly Payments will be appropriately and equitably adjusted for additional antennae or floor space consistent with this Agreement or for modifications in the location of antennae on a Communications Tower. Monthly Payments may be increased by CPS in connection with any extension of the Term for a particular Licensed Site.

ii. Reimbursements

1) Make-Ready Charges.

In connection with CPS' review of a the City's Application for Attachments for a particular CPS Site, if CPS determines that the CPS Site in question is available consistent with CPS' discretion and with the City's request, CPS shall reasonably estimate the amount of any costs that will be incurred by it in modifying the CPS Site and related CPS facilities to accommodate the City's needs [Make-ready Charges]. Such costs may include costs of analyzing, modifying, reinforcing and/or increasing of the height of Communications Towers, or Electric Transmission Towers, as applicable, to accommodate the installation of the City's antennae, or any expansion in size or number of Shelters to accommodate the City Facilities. The amount of this estimate will be provided to the City on an Authorization for Make-ready Work (in the form attached to the Information Manual as Attachment 7). The City shall execute the Authorization for Make-ready Work and shall tender payment in full for the Make-ready charges to CPS as a prerequisite to CPS

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execution of the Site License for such CPS Site. In the event the Make-ready Charges incurred by CPS in good faith exceed the CPS estimate, CPS shall invoice the City for the additional amount and the City shall promptly pay such invoice. If the incurred charges are less than the CPS estimate, CPS shall promptly refund the excess amount to the City. Make-ready Charges will not include CPS costs and expenses attributable to the accommodation of facilities for activities of CPS or of other users which are not occasioned by requirements of the City.

2) Other Reimbursements.

Within one month after invoices are furnished by CPS to the City, the City will reimburse CPS for its out-of-pocket costs and reasonable expenses and overhead incurred by CPS in good faith in connection with any fee owner charges or relocation expenses incurred by CPS on the City's behalf.

3) Outage Charges.

Within one month after invoices are furnished by CPS to the City, the City will reimburse CPS for any outage charge necessitated when CPS circuits on an Electric Transmission Tower are taken out of service as necessary for the City's construction or maintenance purposes in connection with the City Facilities. The applicable outage charge, which is subject to review and revision by CPS during the Term, is the charge established in the most current edition of the Information Manual.

iii. Escort Fees.

During the Term, the City will pay CPS standard fees as set out in the Site License for the CPS Site in question, which fees are subject to review and revision by CPS, as published by CPS in the most current edition of the Information Manual, for CPS employees or contractors to escort the City employees or contractors to the City Facilities if direct access for the City has not been provided.

iv. Aid-in-Construction.

The City will make aid-in-construction payments [Aid-In-Construction Payments] to CPS for licensure of space on Communications Towers constructed on or after May 17, 1996, covered by a Site License on which The City is authorized under this Agreement to install three (3) or more antennae, as designated in the Site License for the CPS Site in question, in a total amount equal to \$28,000.00 per such Communications Tower as follows with respect to each such CPS Site: (i) within seven (7) days of the relevant Site License Effective Date, \$7000; (ii) the remaining \$21,000 on the first day of the month after the Communications Tower at such CPS Site is made available to the City for installation of the City Facilities. The Aid-In-Construction Payments are nonrefundable, except as otherwise specifically

provided in this Agreement. No Aid-in-Construction Payments are required for space on Communications Towers constructed prior to May 17, 1996, or on Communications Towers of whatever vintage on which the City is authorized under this Agreement to install less than three (3) antennae; provided, however, that if the City is authorized to attach three (3) or more antennae on a Communications Tower constructed prior to May 17, 1996, the City may elect to make Aid-in-Construction Payments with respect to such Communication Tower on the basis set out above, in which case the Monthly Payments for the affected CPS Site as set out in Subsection 6(a)(i) above will be appropriately reduced.

v. Fees for Additional Height, Antennae, Shelter Space.

During the Term of any Site License, if the City requests and CPS approves an increase in the height above ground on any Communications Tower of the space occupied by the City Facilities, an increase in the number of antennae above that authorized in this Agreement, or an increase in floor space in any Shelter, the additional fees set out in Attachment 1 to the then-current edition of the Information Manual shall be applicable, subject to the periodic CPI escalation set out in Section 6(a)(i), and the City shall be responsible for such additional fees as part of the City's Monthly Payments for the relevant CPS Site. No reductions in Monthly Payments will be made in the event of decrease in height, number of antennae, or in Shelter floor space occupied.

- b. Billing and Payment. CPS will invoice City for payments due under this Agreement at times consistent with the Agreement's provisions. Invoices for the Monthly Payments will be sent to City during the month prior to the month for which the payment is due. The bills are due and payable by City within thirty (30) days from the date of issuance of the invoice. Invoices shall be sent to the following address unless and until such address is changed by written notice from the City:

City of San Antonio
Information Services Department
Communications Services
PO Box 839966
San Antonio, Texas 78283-3966

7. UTILITIES, TAXES.

City will pay for all electricity, telephone and other utility services furnished to City at the City Facilities. Monthly charges for electricity used in connection with Communications Towers and Shelters will be based on the otherwise applicable utility rates charged to the City of San Antonio.

8. MAINTENANCE

CPS will maintain the Communications Towers and the Shelters and Electric Transmission Towers in a sound, clean and safe condition and in compliance with all applicable laws, subject to their primary function as electric and gas system facilities. City will maintain, repair and replace the City Facilities and any Sheds so they are at all times in a sound, clean, safe, and attractive condition reasonably approved by CPS and in compliance with all applicable laws.

9. INSURANCE REQUIREMENTS

City will keep in force during the term of this Agreement sufficient self-insurance to fully protect CPS from all damages, claims, penalties, fees, suits, and/or judgments caused or claimed to have been caused by, errors, omissions, or negligence or attributable to, City, its agents or contractors or their agents, or employees. CPS will keep in force during the term of this Agreement sufficient insurance or self-insurance to fully protect City from all damages, claims, penalties, fees, suits, and/or judgments caused or claimed to have been caused by, errors, omissions, or negligence or attributable to, CPS, its agents or contractors or their agents, or employees.

10. CONSTRUCTION

a. Preliminary Access. With respect to each CPS Site, City will have reasonable access for inspection and for any required structural analysis between the Effective Date and the Site License Effective Date applicable to such CPS Site.

b. Governmental Authorization. CPS will use its best efforts to obtain all permits and other governmental authorizations required for the construction and modification of Communications Towers, Shelters, Electric Transmission Towers and other improvements at the CPS Sites. City will use its best efforts to obtain all permits and other governmental authorizations required for the installation and operation of City Facilities and Sheds. If such authorizations are denied as to any CPS Sites and no suitable alternative CPS Site is made available to City within two (2) months, City may terminate the Site License as to the denied CPS Site and upon such termination the Monthly Payments and Aid-In-Construction Payments with respect to such CPS Site will terminate.

c. Restoration. Upon expiration or other termination of the Site License for a particular CPS Site, City will within a reasonable time remove the City Facilities from such CPS Site (subject to Section 20 f of this Agreement) and any Sheds, if applicable, and restore the site as nearly as reasonably possible to their original condition, reasonable wear and tear excepted, failing which CPS may remove the City Facilities after 30 days' prior written notice to City and restore the site at City's expense.

d. Electric Transmission Towers. City shall provide advance notice to CPS of construction or placement of any City Facilities at Electric Transmission Towers. An authorized CPS representative may stop such work of City or its contractor if, in the reasonable determination of such representative, the reliability and security of the electric system or safety of affected personnel is in question. City's modifications and installation designs for City Facilities located at Electric Transmission Towers must be approved by CPS prior to installation, which approval shall not be unreasonably withheld or delayed.

11. RECLAMATION BY CPS.

a. CPS Need. If CPS determines in its sole discretion that space on a Communications Tower, in a Shelter, Electric Transmission Tower, or elsewhere on a CPS Site covered by a Site License is needed by CPS for its gas and electric utility purposes, CPS may, by giving City one year's notice, reclaim the site, and City will remove at CPS' expense the City Facilities (subject to Section 20 f of this Agreement) and Shed/Shelter, if applicable, at such CPS Site on or before the first of the month after the expiration of the one year period. The parties will use their best efforts to locate another CPS Site with an existing Communications Tower or Electric Transmission Tower, as appropriate, which is suitable for City's purposes and relocate at CPS' expense such City Facilities and Shed/Shelter to such Communications Tower or Electric Transmission Tower. If a replacement CPS Site which is suitable to both City and CPS at an existing Communications Tower or Shelter, as applicable, is not located within the one (1) year period, CPS will terminate the Site License in question and the Monthly Payments and Aid-In-Construction Payments with respect to such CPS Site will terminate. The Monthly Payments attributable to a reclaimed CPS Site will not be due for the period between City's cessation of operations at the reclaimed CPS Site and the commencement of operations at the replacement CPS Site, if any. If CPS reclaims a CPS Site with respect to which the City has made an investment (for example, in the form of building a tower at such CPS Site, paying to have improvements made to an existing tower at such CPS Site, or paying to have fiber optics lines installed for such CPS Site), CPS must either (i) secure a replacement site for the City reasonably acceptable to the City with the same payment terms for the City's use of such site, and pay to relocate the City Facilities, Shed/Shelter and fiber optics facilities to such replacement site, or (ii) pay to the City the unamortized portion of such investment (based on a straight-line amortization of such investment over 15 years) to the extent such investment is documented by the City to CPS' reasonable satisfaction.

b. City Non-Use. In addition to reclamation for CPS utility purposes, CPS may reclaim a CPS Site in the event of non-use by a City as follows: if City has not installed at such CPS Site substantially all of the City Facilities set out in the Site License for such CPS Site on or before the date that is twenty four months after the later of the date CPS makes such CPS Site available to City for installation of the City Facilities and the Site License Effective Date for such Site License, subject to a reasonable extension in the event of force majeure or other extenuating circumstances made known to CPS by the City, such Site License shall terminate as to the CPS Site in question.

12. DEFAULT.

a. Defined. If the failure by either party to perform any of its obligations under this Agreement continues for more than one month (or such period as may reasonably be required to correct the default with exercise of due diligence) after written Notice to the defaulting party specifying the default for reasons other than force majeure as defined in this Agreement [Default], the other party may pursue remedies provided for in this section.

b. Remedies of CPS. Upon Default by City, in addition to its other remedies appropriate to the relationship of City and CPS, CPS may without liability to City terminate this Agreement and remove City Facilities (subject to Section 20 f of this Agreement) and Sheds from all CPS Sites; provided, however, that if such Default relates only to a particular CPS Site or particular CPS Sites, such remedy shall be limited to the termination of the Site License or Site

Licenses applicable to such CPS Site or CPS Sites and the removal of City Facilities (subject to Section 20 f of this Agreement) and Sheds from such CPS Site or CPS Sites.

c. Remedies of City. Upon Default by CPS, City's sole remedies will be to terminate this Agreement or the Site License to which such Default relates, or to enforce specific performance. Notwithstanding this limitation or any contrary provision in Section 13(a) below, CPS will be liable for the cost of restoration, repair or replacement of any City Facilities or Sheds located on the CPS Sites to the extent such facilities are damaged or destroyed as a result of the negligent or willful act or omission of CPS or its officers or employees, and City will be absolved of liability for Monthly Payments during periods when City is reasonably unable to operate at the CPS Site. City may operate out of a portable facility during restoration.

13. LIMITATION OF LIABILITY.

a. Consequential Damages. Notwithstanding any other provision of this Agreement, neither party hereto shall be liable to the other for consequential, special, incidental, or indirect damages or for any loss of use, revenue, or profit suffered by the other party hereto or its assigns, in connection with any obligation or breach of obligation under this Agreement, nor as a result of the unavailability of any facility or service to be provided by CPS under this Agreement, or under any other circumstance. CPS' total liability for any claims or damage arising out of or connected with this Agreement, regardless of the basis for such claims or damage, shall not exceed the amount of fees paid by City to CPS under this Agreement.

b. No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended to be for the benefit of CPS and City, except as otherwise expressly provided in this Agreement, and nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their permitted successors and assigns, any benefits, rights, or remedies under or by reason of this Agreement.

c. Survival. The provisions of this section shall survive termination or expiration of this Agreement with respect to any activities of City contemplated or arising under this Agreement.

14. ASSIGNMENT.

City will not assign nor sublicense all or part of its rights under this Agreement to any person or entity without the prior written approval of CPS, which will not be unreasonably withheld. City shall provide notice to CPS of any requested assignment or sublicense by certified mail; if CPS has not responded in writing within ten (10) business days after receipt of such notice by consenting, refusing to consent, or indicating what additional information it requires regarding the requested transfer, CPS' consent will be deemed to have been given. Provided, however, that City may sublicense any portion of its space to a telephone line provider which has signed any required CPS standard form of conduit license for the purpose of connecting telephone access lines to City Facilities housed in a Shelter. CPS has reviewed the intended uses of the Public Safety Radio System by various governmental entities. After such review, CPS finds that such intended uses do not constitute an assignment as defined in this section. Further, CPS finds that such intended uses are permissible under the terms of this Agreement.

15. ENVIRONMENTAL CONDITIONS.

If City learns that adverse environmental conditions exist at a CPS Site and CPS does not make an alternate CPS Site which is suitable to both City and CPS available within one month after

Notice from City, City may terminate the Site License as to such CPS Site and the Aid-in-Construction Payments, if any, and Monthly Payments due for the CPS Site will terminate.

16. FORCE MAJEURE

Force Majeure will include fire, flood, strike or other labor difficulty, accident, breakdown of machinery or facilities, violation of easements, shortages of material or equipment not the result of a party's negligence or willful misconduct, acts of God, lawful restraint of withholding of approvals by any governmental authority, including the city of San Antonio, war, insurrection or riot, or any other cause, except financial conditions, reasonably beyond the control of a party. A party's performance of any construction, installation, operation, or maintenance obligation will be excused as long as the reasonable effect of the Force Majeure continues, but the Force Majeure will not excuse or delay the performance of any financial obligation.

17. NO LIENS.

Neither party shall have the right to create or impose any extra-judicial liens or any other encumbrance on sites or any property owned by the other party.

18. NOTICES.

Every notice, objection, specification, designation, termination, approval or other communication [Notice] to a party under this Agreement will be in writing, addressed to the other party at the address of the other party set forth below or in a Notice, and will be deemed effective (i) when personally delivered by a party, (ii) whether actually received or not, two days after it is deposited in any post office or mail receptacle regularly maintained by the United States Government, certified or registered mail, return receipt requested, postage prepaid, or (iii) on the next delivery date after it is placed with a delivery service, such as Federal Express, which provides same-day or overnight service and requires a written receipt, or (iv) when received, if transmitted by electronic facsimile means on a business day to a party's fax number set forth below.

To CPS:

City Public Service
P.O. Box 1771
San Antonio, Texas 78296
Attn: General Manager
Fax: 210-978-3058

and a copy to:

City Public Service
P.O. Box 1771
San Antonio, Texas 78296
Attn: Director, Communications Services Department
Fax: 210-353-4272

To CITY:

City Clerk
2nd Floor, City Hall
100 So. Flores St.
PO Box 839966
San Antonio, Tx. 78283-3966
Fax: 210-207-7032

With a copy to:

Director, Information Services Department
City of San Antonio,
515 So. Frio St.
San Antonio, Tx. 78207
Fax: 210-207-4040

19. APPLICATIONS FOR ADDITIONAL SITES.

For any additional CPS Sites for which City wishes to obtain a Site License, City shall submit to CPS a completed Application for Licensed Sites, which shall be executed by an officer of City having the requisite authority to add licensed CPS Sites under this Agreement. CPS shall respond within twenty (20) working days, either rejecting or accepting the application by appropriate execution of the form, or indicating what additional investigation or approval may be necessary before the application can be acted upon. A Site License reflecting all relevant terms specific to the additional licensed CPS Sites, including the applicable Site License Effective Date and length of term for each Site License, shall be prepared by CPS based on an approved the City Application, shall be provided to The City for execution, and upon execution by City and CPS, shall be automatically deemed incorporated in this Agreement as a part of Exhibit "A." Each CPS Site approved by CPS execution of a Site License shall become a licensed CPS Site and will become subject to the terms of this Agreement as of the Site License Effective Date set forth in such Site License.

20. GENERAL PROVISIONS.

a. Compliance. The parties hereto will comply with all local, state and federal laws, regulations, ordinances, and orders. However, nothing in the foregoing provision shall constitute a waiver of any defenses, rights or privileges, including, but not limited to, governmental immunities, that may be available to either of the parties.

b. No Brokers. Each party represents that no broker was involved in this transaction or is entitled to a commission.

c. Quiet Enjoyment. If City performs all its obligations under this Agreement, it will peacefully enjoy the licensed CPS Sites.

d. Publicity. No press release or other publicity not required by law will be permitted without the approval of both parties.

e. Irrevocability. The Site Licenses are not revocable by either party except as expressly provided in this Agreement.

f. No Fixtures. City Facilities, Shelters and Sheds will remain the sole property of City whether or not attached to Communications Towers, Electric Transmission Towers, Shelters or CPS Sites; provided, however, that any structural modifications to Communications Towers or Electric Transmission Towers (including mounting platforms or supports, but excluding antennae) or to the CPS owned Shelters (including mounting racks) will become the property of CPS upon termination or final expiration of this Agreement and are to be left on the CPS Site upon vacation by City. Upon CPS request at termination or final expiration, City will transfer title to such structural modifications to CPS.

g. Bracketed Words. Capitalized words in brackets are terms which are defined in the sentences in which they appear. When those capitalized words are used elsewhere in this Agreement they have the same definition unless another meaning is clearly expressed.

h. Severability. If any part of any provision of this Agreement not constituting a major or indivisible part of the consideration to either party hereto is declared invalid or unenforceable under applicable law, that part will be ineffective only to the extent of such invalidity without affecting the remaining parts of the provision or the remaining provisions of this Agreement.

i. Applicable Law. This Agreement will be construed under Texas laws. The venue of any action brought under this Agreement will be in Bexar County, Texas.

j. Conflicts. In the event of any conflict between the terms of this Agreement and the terms of a particular Site License, the terms of the Site License shall supersede and control with respect to the CPS Site to which such Site License relates.

CITY OF SAN ANTONIO

By: *Travis M. Bishop*
Name: *Travis M. Bishop*
Title: *Assistant City Manager*
Date: *June 6, 2001*

CITY PUBLIC SERVICE

By: *Jamie A. Rochelle*
Name: Jamie A. Rochelle
Title: GM-CEO
Date: 5/14/01

[Handwritten mark]

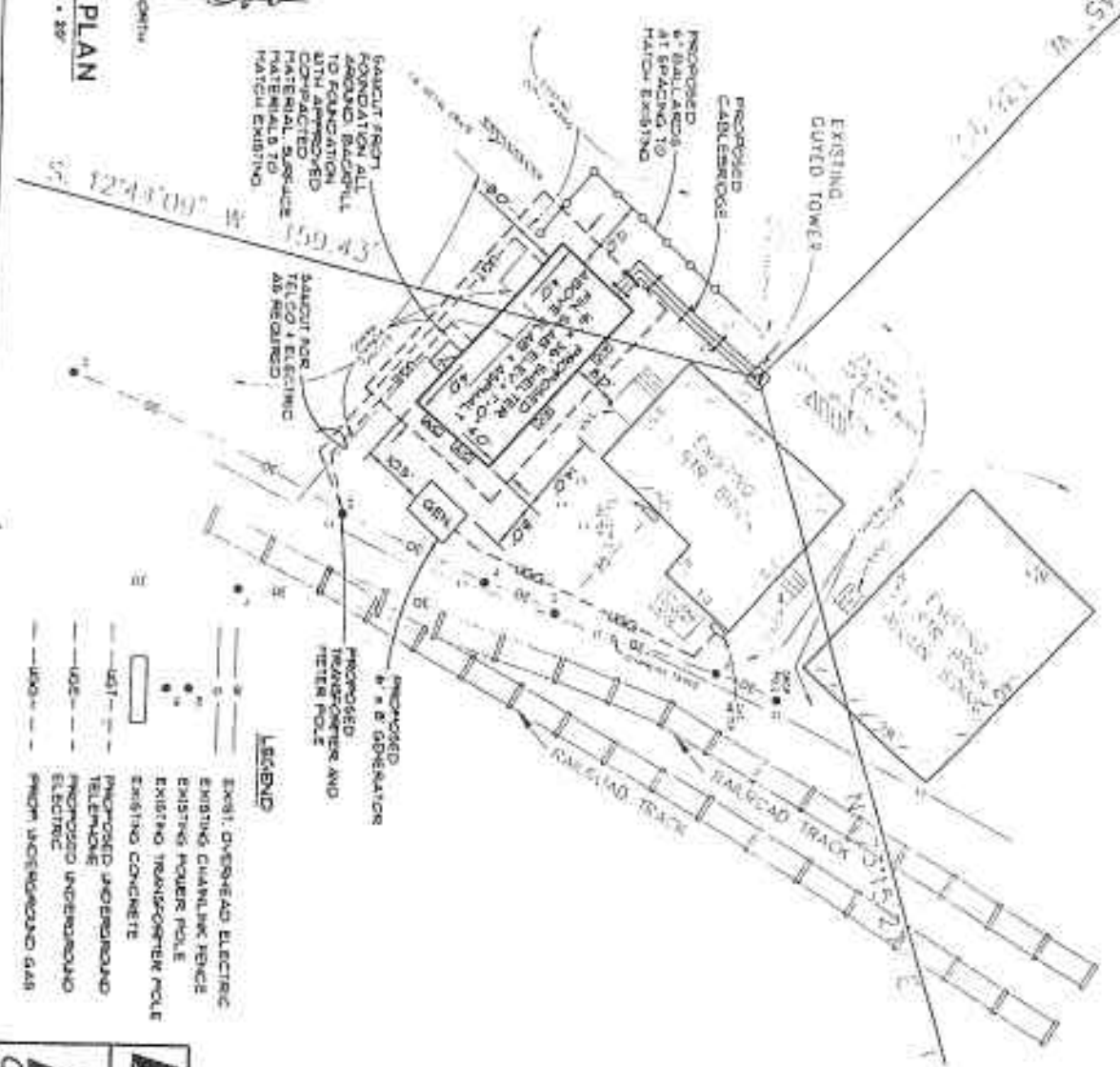
EXHIBIT "A"

Exhibit "A" initially consists of the following listed Site Licenses set forth in Exhibits "A-1", "A-2", etc., hereto as indicated below. The Site Licenses for any CPS Sites subsequently added and governed by this Agreement will be deemed to be attached to made a part of this Exhibit "A".

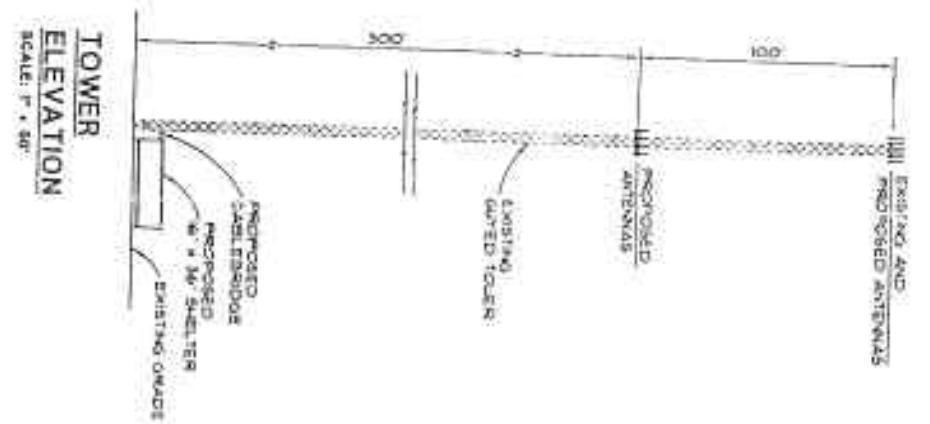
<u>CPS Site</u>	<u>Exhibit</u>
CPS Jones Avenue	A-1
CPS Grey Forest	A-2
CPS Hill Country	A-3
CPS Fratt (Toepperwein)	A-4
CPS Broadview	A-5

SITE PLAN
SCALE: 1" = 50'

TRUE NORTH



- LEGEND**
- (S)--- EXIST. OVERHEAD ELECTRIC
 - (C)--- EXISTING CHANNEL/PIPE FENCE
 - (P)--- EXISTING POWER POLE
 - (T)--- EXISTING TRANSFORMER POLE
 - (C)--- EXISTING CONCRETE
 - (S)--- PROPOSED UNDERGROUND TELEPHONE
 - (S)--- PROPOSED UNDERGROUND ELECTRIC
 - (S)--- PROPOSED UNDERGROUND GAS



Contemporary Constructors Inc.
COMMUNICATIONS FACILITIES SPECIALISTS

ComNet Ericsson
ESTABLISHED 1988

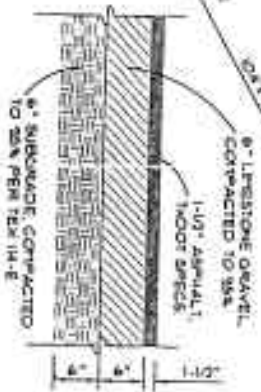
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DATE:	05/01/00
DRW:	MULLING
Sheet:	A-4

HARRY JEWETT ASSOCIATES
ARCHITECTS

**C.C.I./ ERICSSON
C.P.S. JONES SITE**
326 W. JONES AVENUE
SAN ANTONIO, TEXAS 78215
BEXAR COUNTY

SITE PLAN
SCALE 1" = 30'

ASPHALT PAVEMENT SECTION
NOT TO SCALE



Ericsson
CENTRAL TEXAS OFFICE

Contemporary Constructors Inc.
COMMUNICATIONS FACILITIES SPECIALISTS

- LEGEND**
- UE — FROM UNDERGROUND ELECTRIC
 - UT — FROM UNDERGROUND TELEPHONE
 - — — EXISTING CABLE
 - OE — EXIST OVERHEAD ELECTRIC
 - — — EXIST. EDGE OF PAVEMENT
 - — — EXISTING CHAINLINK FENCE
 - EXIST. CHAINLINK FENCE
 - EXISTING CONCRETE
 - ◆ EXISTING POWER POLE
 - EXISTING GUY WIRE
 - EXISTING FIRE HYDRANT
 - EXISTING GAS VALVE

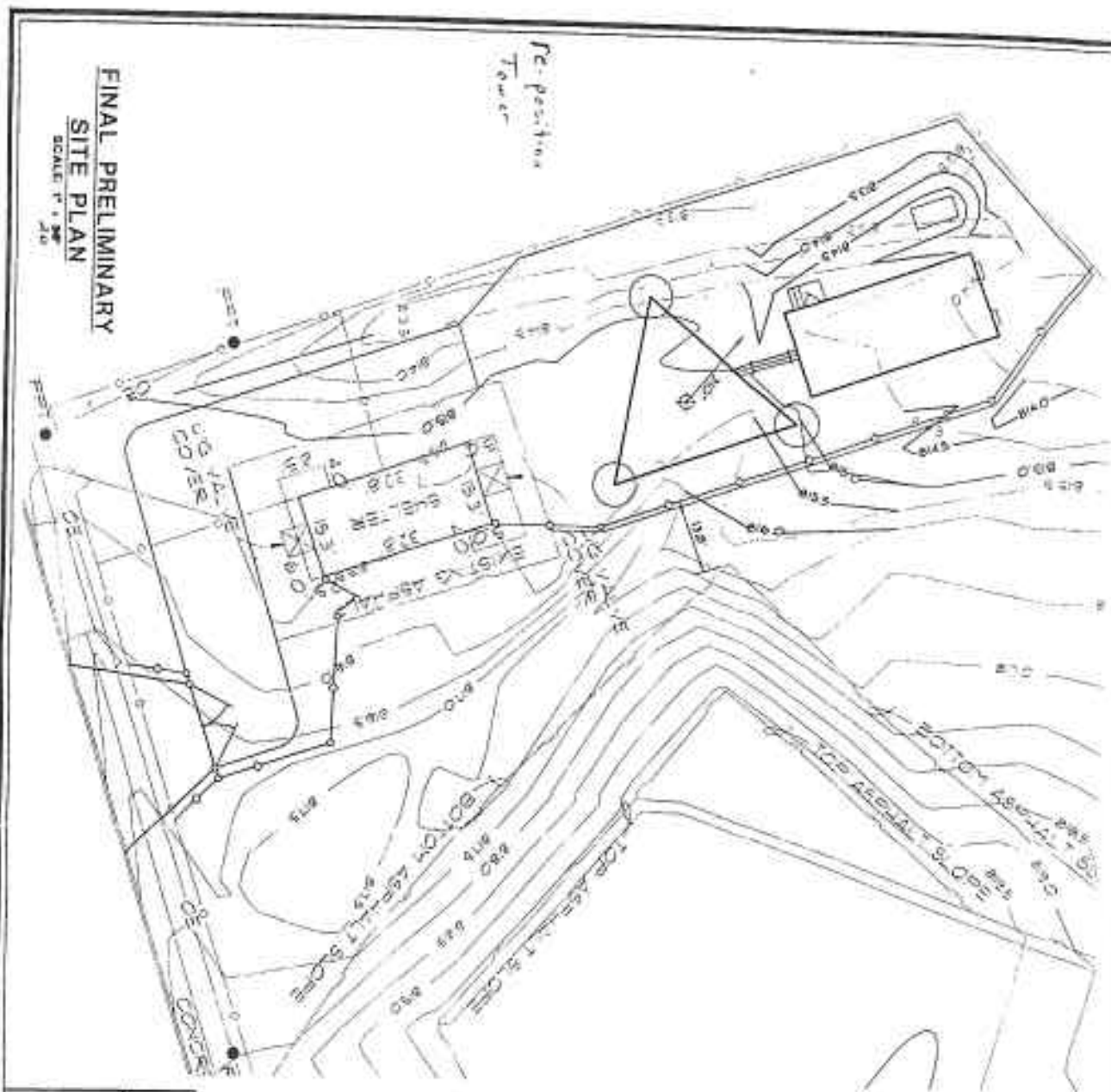


HARRY JEWETT ASSOCIATES

**C.C.I./ ERICSSON
C.P.S. TOEPPERWEIN SITE**

11890 TOEPPERWEIN ROAD
LIVE OAK, TEXAS 78233
BEXAR COUNTY

Job No. 99-04
SECTION
DATE: 10/20/00
DRAWN: J. ALBERTO
CHECKED:
A-3



FINAL PRELIMINARY
 SITE PLAN
 SCALE 1" = 30'

Re-position
 Tower

Ericsson
 ERICSSON COMMUNICATIONS

Contemporary Constructors Inc.
 COMMUNICATIONS FACILITIES SPECIALISTS

- EXISTING CHAIN LINK FENCE
- PROPOSED CHAIN LINK FENCE
- EXISTING OVERHEAD ELECTRIC
- PE EXISTING POWER POLE
- PE EXISTING POWER POLE WITH TRANSFORMER
- EXISTING CONTOUR
- EXISTING EDGE OF PAVEMENT



JOB No. 95100
 DATE 08/20/00
 DRN. LAYOUT DATE 08/20/00
 SHEET A-4PR
 OF ONE

HARRY JEWETT ASSOCIATES
 ENGINEERS ARCHITECTS INTERIORS

**C.C.I./ ERICSSON
 C.P.S. BROADVIEW SITE**
 5227 CALLAGHAN ROAD
 SAN ANTONIO, TEXAS 78238 BEXAR COUNTY

EXHIBIT "B"

This exhibit is attached to and made part of the Communications Facilities License Agreement between the City of San Antonio and the City Public Service Board of San Antonio, and terms used but not otherwise defined in this exhibit shall have the same meaning assigned to them therein. This exhibit sets forth the terms and conditions of the agreement between CPS and City regarding City's utilization of certain CPS-owned fiber optic infrastructure to establish communications to various sites associated with the Public Safety Radio System. The agreement set forth in this exhibit covers both the extension of diverse (dual path) routed fiber optic cabling, redundant-path microwave links, and the provisioning of multiple T1 (1.544Mb) links to each of the sites requested, providing a total of twenty-two (22) T1 links between the various sites. The costs associated with the build out of new fiber are shown separately for each site.

RECITALS REGARDING HISTORICAL DEVELOPMENT OF THE CPS FIBER OPTIC NETWORK

City Public Service of San Antonio is one of the largest municipal utilities in the country. CPS serves approximately 530,000 electric customers and 300,000 gas customers in a service area of approximately 1566 square miles. It is the mission of CPS to create value for CPS' customers and the city through leadership in the safe, reliable, cost-effective and environmentally responsible delivery of energy products and services.

Beginning in the early 1990's, City Public Service of San Antonio recognized a growing need for reliable, secure, and expandable communications to serve the growing needs of CPS and CPS' customers. Toward this end, CPS began construction of the fiber optic backbone network that is in place today. This system is built to mission critical standards because it supports many key CPS functions and services. As work progresses, more and more of these functions will be migrated from our older communications systems to this state of the art fiber optic network.

CPS has installed over 400 miles of fiber optic cables with fiber counts from 24 to 288 fibers. These fiber optic cables are a mixture of optical ground wire (OPGW), All Dielectric Self Supporting, All Dielectric Messenger Supported, and Underground cables installed on Transmission, Distribution, and in Underground Conduit Installations. CPS has used all single mode fiber and has installed only Corning Glass fiber for the maximum in system reliability and flexibility of service. These fiber facilities link together CPS' downtown offices, service centers, power plants, substations and switchyards, radio sites, and other offices and service areas. These links form multiple overlapping "rings" of communications, via a self-healing SONET architecture, providing up to 155 Mbps (OC-3) connectivity to any point on our network. This system provides multiple redundant pathways between all of our major electric substations.

Within each substation, CPS uses Nortel Lentricons "JungleMUX" transmission equipment which provides redundant transmitters and receivers such that no single point of failure can disable the CPS communications backbone. The "JungleMUX" product is ruggedized and hardened for use in an industrial/utility environment. Utilizing "JungleMUX", CPS can provide a broad range of functions via the fiber optic network. These mission critical functions include, but are not limited to, Protective Relaying, telemetry, Distribution Automation, Automated Energy Services, Supervisory Control and Data Acquisition, Telephone, Video, Security, and Data Exchange.

As an added level of security for the communications systems, CPS has physically separated the communications functions within the substations from the electric and gas service functions. For

this purpose, CPS has installed over 58 communications buildings around the system to house the electronics and to provide secure space for third party wireless and cellular services. These buildings provide a bullet resistant concrete enclosure with environmental control, electrical service, a divided interior, battery backup system, wave guide entry ports, single point halo grounding, cable ladders, and fiber optic distribution frames. In addition to the concrete buildings, CPS has also installed several fiberglass buildings in secure locations where bullet resistance was not an issue, and refurbished a number of existing communications buildings to bring them up to the new standard.

DEVELOPMENT OF THE CITY RADIO WAN

CPS has developed a minimum cost/maximum reliability deployment philosophy to provide service to City for City's Public Safety Radio System. This system provides an optimum mix of physically and electronically redundant paths at the least possible cost, to serve all of the proposed sites in City's Public Safety Radio System. City will gain the advantages of being served at the same level of reliability that CPS requires of their own critical communications needs. The system utilized in providing the communications services to City contemplated hereby will have the system characteristics (e.g., reliability, equipment, configuration, etc.) described in this exhibit.

Design Highlights

- ① System equipment design uses Northern Telecom's (Nortel's) JungleMUX digital transport/access system. The JungleMUX system is an integrated SONET (Synchronous Optical Network) drop and insert multiplexer capable of operating up to OC-3 (155.52 Mb/s) rates.
- ① Effective bandwidth allocation to each radio site is T-1 (1.544 Mb/s), delivered by the JungleMUX system. The T-1 service demarcation point will be at the DB-9 bulkhead connector within City Public Service's communications cabinet.
- ① The JungleMUX system can be arranged in various configurations using standard building blocks. This permits easy and cost effective growth and migration between system configurations. The JungleMUX will support point-to-point, linear add/drop, self-healing bi-directional rings, unidirectional path switched ring (UPSR), multiple interconnected rings, and single or multiple rings plus spur network topologies.
- ① The open architecture of the JungleMUX system provides maximum flexibility for network modifications and growth. The system is modular in design to allow for simple capacity upgrades and the ability to interface new systems with existing in-service systems. All units will be installed in standard equipment cabinets. (See attached drawings.)
- ① Route diversity will be achieved in a ring configuration by assigning both a priority and back-up path. Ring topologies offer automatic path switching in case of fiber optic cable or common equipment failure, ensuring that data traffic is still maintained between the drop sites.
- ① CPS currently utilizes the Nortel JNCI Network monitoring and control system, providing visibility at every communications node, allowing remote provisioning of network circuits, and providing alarm logging and manual path switching via the network management software.
- ① The JungleMUX system has been designed to operate under harsh environments. This includes temperature extremes (-5 to +150 F) as well as Radio Frequency Interference (RFI) and ElectroMagnetic Interference (EMI). System reliability, in the configuration to be implemented, is calculated to be in excess of 99.99999 % availability, using 3-hour MTTR.

① Additional Design Notes:

- ① Nortel 's JungleMUX system can operate on 24, 48 and 130VDC. System design assumes that City or City's two-way radio system vendor will provide 24 VDC power in those locations where CPS locates CPS network electronics in City shelters.
- ② CPS will provide physical fiber optic path diversity for reliability of the ring. This diversity will prevent any single contingency outage of fiber optic equipment from disrupting communications between the sites. To accomplish this level of path diversity, CPS will need to perform several modifications to the existing facilities.
- ③ In order to ensure path diversity, CPS will modify the existing physical splices on the fiber optic network. Although the City fiber ring will physically be in the same sheath with CPS mission critical fiber, the City network will actually utilize separate fiber strands, and will bypass CPS nodes that are irrelevant to the operation of the City ring.
- ④ At the option of the City, and for an additional fee to be paid by the City as set forth below under the section heading "Fiber Extension Costs (upfront costs)", an OC-3 point-to-point microwave radio link will be installed by CPS between the Grey Forest and the American Tower South Breeze sites. The digital radio is being offered as an option, and the proposed design will function properly if the digital radio is not used. However, if the radio is not used, these two sites will be on a "collapsed ring". Without the radio, the Grey Forest site will have approximately 9 kilometers of fiber on a collapsed ring, and the American Tower South Breeze site will be on approximately 6 kilometers of collapsed fiber. Without the digital radio, in the event of a fiber optic cable failure on these portions of cable, the affected site would become an "island" and would not be able to communicate with other sites. Communications among the remaining sites would remain unaffected.
- ⑤ Depending upon Airport facilities construction schedules, the Airport Dispatch facility may be on a collapsed fiber ring until approximately June 2001. This site will use approximately 5 kilometers of collapsed fiber until an underground duct bank is completed, at which time an alternate fiber path will be installed. Until the alternate fiber path is installed, a cable failure would cause this site to become an "island" and would not be able to communicate with other sites. Communications among other sites would remain unaffected.

Maintenance Policy / Warranty

All T-1 services to be provided pursuant to this agreement include a complete system warranty and on-site maintenance throughout the term of the contract. The warranty covers full repair or replacement of failed equipment with installation and support provided at no additional charge. All maintenance and warranty issues will be coordinated through City Public Service. The maintenance policy under the service contract covers the following:

- ① 24 by 7 by 365, Systems Monitoring
- ① Routine System Maintenance
- ① Automatic Reporting of Network Trouble
- ① On-Site Support with Complete System Spares

Assignment of Warranty: To the extent that it may do so in accordance with the terms and conditions of any and all warranties obtained by CPS from any manufacturer, supplier or installer, CPS does hereby:

1. assign an undivided interest in each of the applicable warranties to the City to the extent of the City's utilization of the warranty, and,
2. if it may not assign such warranty in accordance with the terms of the warranty and this Agreement, then CPS agrees that it will take such reasonable actions in its own name as may be necessary to present and pursue warranty claims on behalf of City if events or conditions occur that are covered by the warranty or that would have been covered by the warranty if CPS could have assigned such warranty to City.

In no event will CPS be liable to City for damages if any manufacturer, supplier or installer fails to fulfill the manufacturer's, supplier's or installer's duty under such warranty; provided, however, that CPS shall in all events be obligated to provide the services agreed to be provided by CPS under this agreement on the terms set forth in this agreement regardless of whether third party warranty coverage applies and irregardless of whether any third party performs under its warranty obligations.

Local Support/Response Times

City Public Service will be responsible for all on-site support activity, systems monitoring and project management for the services and equipment to be provided by CPS to City under this agreement. All on-site support will be coordinated through City Public Service's network operation center (NOC), which will also be responsible for all systems monitoring. Additionally, local support will include 24 by 7 automatic reporting of network trouble, routine preventive maintenance, fiber optic cable restoration and a complete inventory of equipment spares that will be available for immediate resolution of problems associated with equipment failures.

The CPS NOC will at all times continuously monitor the status of all alarm points within the CPS network. Abnormal conditions within the network will result in an alarm notification to the CPS NOC. These alarms fall into two categories: major alarms, and minor alarms. Major alarms are defined as "service affecting" (i.e., alarms associated with an event or condition which materially affects the service being provided to the City pursuant to this Agreement), and will result in the notification of the alarm condition to an appropriate contact within the City, in addition to the dispatching of CPS repair technicians. Major alarms will be communicated to the City within fifteen (15) minutes of their occurrence. Minor alarms will also be handled by CPS technicians, but will not result in any notification to the City.

CPS will make arrangements for the provision of a telephone "hotline" that can be used by the City to notify CPS of problems with the services being provided by CPS to the City pursuant to this Agreement. A CPS employee will be immediately available to the City at all times for such purposes through the use of such "hotline."

The response time by CPS technicians to service affecting events and conditions will be within one-half hour of CPS being notified thereof (either by a system alarm, by the City or otherwise) during business hours and one hour during non-business hours. Response is defined as the time it takes a CPS technician to access either the CPS network management system or the physical network components, evaluate the status of the network, and initiate a corrective action. For instances where on-site repairs are required, the on-site response time will be within a two-hour period from CPS being notified thereof (either by a system alarm, by the City or otherwise). For purposes of this paragraph, "business hours" shall mean 8:00 a.m. to 5:30 p.m. on weekdays other than City of San Antonio designated holidays and "non-business hours" shall mean all other hours. This is provided that the relevant location is accessible within that time frame. In order to provide

quality on-site support, CPS technicians will need to have direct access to CPS communications equipment. If the relevant location is closed or non-accessible, the on-site support will commence within the first hour from when the facility is made accessible to CPS.

System Monitoring

The nature of the utility business is to provide reliable service to all customers. City Public Service has fully staffed monitoring and control systems in place to provide continuous systems monitoring on a 24 by 7 by 365 basis. As an added measure, some devices are monitored with active electronic systems that are capable of detecting immediate problems, and are relentless in the notification of appropriate personnel, until someone responds. CPS' monitoring systems are capable of paging, e-mailing, faxing and dialing phone numbers to notify technicians of network failures or anomalies. CPS technicians have the capability to remotely access network management systems, to both diagnose and reconfigure network parameters. The Nortel JungleMUX system comes equipped with a Network Management System (NMS) to allow the network to be managed from one central location. The NMS allows remote monitoring, testing, and reconfiguration of any communications node, providing maintenance personnel with real-time information of the network for testing and troubleshooting. This flexibility allows the network to be dynamically reconfigured due to trouble situations (network restoration), traffic variations, or customer needs. Other benefits include faster installation of circuits, reduced need to dispatch personnel for circuit provisioning, and ease of reconfiguration.

Additional remote monitoring capabilities are obtained through a fault alarm system, which is installed as part of the system. The fault alarm system is equipped with custom software that is programmed to notify CPS technicians in the event of a problem or change in network status. Once there is a notification of a problem, an alarm will signal the CPS fault alarm system. During alarm notification the on call technician will also be paged by the fault alarm system. If the problem can't be solved remotely, the service technician will immediately travel to the location of the problem.

PROJECT COSTS

CPS will implement the fiber build out to coincide with the various installation phases of the Ericsson radio system, thereby minimizing actual incurred expenses until the fiber facilities are required for radio system tests and operations. With respect to each segment of build out work to be performed by CPS pursuant to this agreement (such segments being set forth below), CPS will commence such work as soon as is reasonably possible after CPS receives notice from City to commence such work, and shall diligently and continuously (subject to force majeure) pursue such work to completion. The up-front costs fee (as set forth below) for fiber extension and other up-front work for the segment of work relating to each of the sites will be due CPS approximately thirty days after CPS begins the construction of such segment of work. It should be noted that CPS was able to significantly reduce site entrance costs by proposing to place both fiber cables for each site into a single underground concrete-encased duct bank, once a transition from overhead to underground is made within the property line boundary. Additionally, to ensure the performance and reliability of the Public Safety Radio System are not compromised, CPS has designed a completely independent fiber optic radio WAN, using separate fiber paths from those now used for internal CPS communications. This design completely eliminates any sections of the fiber path that would be vulnerable to a single point of failure,¹ and creates full path diversity in the fiber media. Similarly, this ring will be fully monitored and managed as a critical CPS communications link, and will be maintained to the highest degree of reliability and robustness, on a 7x24 basis.

¹ No single points of failure will exist if the Microwave Link Option is used between CPS Grey Forest and American Tower South Breeze sites. If the Microwave Link is omitted, collapsed fiber rings will serve both these sites, making them vulnerable to isolation, in the event of a fiber cut.

Natural Gas Service Extension Costs (upfront costs)

CPS estimates the following costs to the City to provide natural gas service to the following sites for powering City-owned backup generation facilities at these sites. With respect to each such site, CPS will commence the work necessary to provide such natural gas service to such site as soon as is reasonably possible after CPS receives notice from City to commence such work, and shall diligently and continuously (subject to force majeure) pursue such work to completion.

CPS Grey Forest	\$14,784.00
CPS Jones Ave.	\$ N/C
CPS Fratt	\$ N/C
American Tower South Breeze	\$12,570.00
Hi-Lyons	\$13,710.00
Fire Training	\$ N/C

Fiber Extension Costs (upfront costs)

Set forth below are the segments of fiber build out work to be performed by CPS pursuant to this agreement together with the up-front cost fees to be paid by City with respect to each such segment, as well as optional segments of work that will be performed by CPS at City's option:

S.A. International Airport--single route from Harmony Hills	\$ 89,436.00 ⁽¹⁾
American Tower South Breeze--single route from Encino Park	\$ 48,811.00 ^{(2) *}
Austin Hwy--dual separate routes from Terrell Hills	\$ 36,625.00 ⁽³⁾
Hi Lyons--dual route from Fair Ave. and Grandview	\$ 157,560.00 ^{(2) *}
BCSO(Courthouse Annex)--dual route from SAPD HQ and Laredo	\$ 25,775.00 ^{(2) *}
SAPD HQ--costs covered under BCSO and SAPD RF sites'	
SAPD RF Site--dual route from SAPD HQ and CPS Main Office	\$ 36,153.00
Transguide--dual route from Buckeye and Fredricksburg Rd.	\$ 16,748.00*
Cagnon--single extension to COSA communications building	\$ 12,819.00 ^{(2) *}
Fire Training--dual route from South San and Merida St.	\$ 163,772.00 ^{(2) *}
TOTAL Fiber Extension Costs	\$ 587,699.00

* Costs for connectivity to Transguide site were significantly reduced by intercepting the CPS fiber at the closest splice point. Includes installation of new manhole, and use of existing CPS concrete-encased electrical ductbank.

Optional Segments:

⁽¹⁾ Secondary route from S.A. International Airport To Chulie	\$ 77,640.00
⁽²⁾ Microwave Radio Link--Grey Forest to American Tower South Breeze	\$ 192,935.00
⁽³⁾ Austin Highway Site-- dual route from Terrell Hills and Austin Highway	\$158,327.00

Due to the remote locations of Grey Forest and American Tower South Breeze (which sites would not have diverse routing without the optional segment of work identified as optional segment (2) above being performed), and the prohibitively high costs to establish dual fiber optic paths to these locations, CPS explored the most cost-effective option to establish redundant communications paths that would allow these sites to continue radio communications in the event of a primary path failure. CPS recommends a microwave radio solution, using a fully redundant radio platform, as detailed in the table below, which will be implemented by CPS as an optional segment of work at City's option for the up-front cost fee for such segment set forth in optional segment (2) above.

City Project Microwave Equipment & Services Price Summary		
Item	Description	Cost
1	MEGASTAR 155 SONET DIGITAL RADIO (6 GHz Incl. Spares)	\$113,466
2	ANTENNA SYSTEMS (ANDREW, 6.425-7.125 GHz)	\$4,888
3	TRANSMISSION SYSTEMS (ANDREW, 6.425-7.125 GHz)	\$4,247
4	WAVEGUIDE EQUIPMENT (Andrew)	\$966
5	DEHYDRATOR SYSTEM	\$4,162
EQUIPMENT SUB TOTAL		\$127,729
6	RADIO & ANTENNA SYSTEM ENGINEERING & INSTALLATION	\$46,996
7	TRANSMISSION ENGINEERING	\$5,710
SERVICES SUB TOTAL		\$52,706
8	PRODUCT TRAINING	\$12,500
Microwave System TOTAL		\$192,935

The costs for the Grey Forest to American Tower South Breeze microwave link option may be paid by the City up-front within thirty days after CPS begins the construction of such segment of work, or these costs can be factored into the total of monthly charges due CPS on terms that would be mutually agreed to by City and CPS. CPS will retain ownership and maintenance responsibilities for all components of the fiber optic network.

Radio Network Fees

CPS has determined (i) the monthly fees (the "Monthly Network Fees") associated with providing a total of twenty-two (22) T1 circuits, and services associated therewith (i.e. maintenance, etc.) set forth in this agreement, to handle the anticipated radio traffic between all sites, (ii) the monthly fees associated with providing the optional microwave link service between Grey Forest and American Tower South Breeze, and (iii) the monthly fees associated with providing the microwave radio equipment for the optional microwave link between Grey Forest and American Tower South Breeze (which would be applicable if City exercised the option for such link and decided to have such costs included in the monthly charges to be paid by City rather than paying for such costs up-front), all of which fees are set forth below. The T1 circuits would be provisioned as follows; two each to CPS Jones Ave., SAPD RF Site, CPS Broadview, AustinHwy, Fire Training, Hi Lyons, and one each to CPS Grey Forest, CPS Hill Country, CPS Cagnon, CPS Fratt, American Tower South Breeze, Transguide, and Airport Dispatch (via the Airport Maintenance Bldg.) Connectivity between SAPD HQ and BCSO will utilize three T1 circuits, using new CPS fiber, placed within existing city-owned conduit between these two facilities.

Payment of Monthly Network Fees will commence once (i) CPS has fully installed and successfully tested the fiber extension facilities to each of the Sites, (ii) CPS has installed and successfully tested the network transport electronics at each of the Sites, and (iii) City has performed successful radio system inter-operational testing to validate system functionality. In no event shall fees for networking services commence later than sixty (60) days after the successful completion of (i) and (ii) above.

The amount of the Monthly Network Fees will depend on whether the City elects to make an Aid-in-Construction payment (the "Capital Assets AIC Payment") in the amount set forth below, which would be used by CPS to offset the costs of certain capital assets required to establish the services to the initial locations identified in the attached network drawing. If such election is made by written notice to CPS given prior to the time that payment of Monthly Network Fees is to commence as provided above, then Monthly Network Fees shall be in accordance with the table below under the heading "MONTHLY NETWORK FEES IF THE CITY MAKES THE CAPITAL ASSETS AIC PAYMENT BEFORE MONTHLY NETWORK FEES ARE TO COMMENCE". If such election is made by written notice to CPS given after the time that payment of Monthly Network Fees is to commence as provided above, then Monthly Network Fees shall be determined fairly and equitably by the City and CPS through good faith negotiations between the City and CPS. Upon electing to make the Capital Assets AIC Payment, the City shall promptly make such payment to CPS.

MONTHLY NETWORK FEES IF THE CITY DOES NOT MAKE THE CAPITAL ASSETS AIC PAYMENT:

If the City does not elect to make the Capital Assets AIC Payment, then the following fee structure shall apply:

<u>Quantity of T1 circuits</u>	<u>Monthly Network Fee</u>
22-25	\$552.90 per T1 circuit
26-35	\$442.32 per T1 circuit
36-45	\$387.03 per T1 circuit
46-60	\$331.74 per T1 circuit

If the number of T1 circuits is 22 or fewer, the total Monthly Network Fee will be \$12,163.80

(The Monthly Network Fees set forth in the table above and in the table below already include the 14% "pass-through" payment to the City.)

The City may increase or decrease the number of T1 circuits. In this regard, there will a one-time circuit provisioning fee of \$4,950 for each T1 circuit over 25 T1 circuits. Also, if the City requires service to a Site which is not then currently on the CPS fiber optic network, the City will promptly pay CPS for its actual cost to extend the CPS fiber optic network to such Site.

MONTHLY NETWORK FEES IF THE CITY MAKES THE CAPITAL ASSETS AIC PAYMENT BEFORE MONTHLY NETWORK FEES ARE TO COMMENCE:

If the City elects to make (and actually makes) the Capital Assets AIC Payment prior to the time that payment of Monthly Network Fees is to commence as provided above, then the following fee structure shall apply:

<u>Quantity of T1 circuits</u>	<u>Monthly Network Fee</u>
22-25	\$331.74 per T1 circuit
26-35	\$265.39 per T1 circuit
36-45	\$232.22 per T1 circuit
46-60	\$199.04 per T1 circuit

If the number of T1 circuits is 22 or fewer, the total Monthly Network Fee will be \$7,298.28

CAPITAL ASSETS AIC PAYMENT AMOUNT

The total capital costs eligible for "Aid-in-Construction" contribution status is \$508,000.00, which is the amount of the Capital Assets AIC Payment. These costs are related to the purchase and installation of SONET network transport and interfacing equipment, and the allocated costs of portions of the existing CPS fiber backbone.

Options: Microwave Radio Link-Grey Forest to American Tower South Breeze

Monthly Fee for Microwave Radio *Maintenance* \$ 1,282.50

Monthly Fee for Microwave Radio *Equipment* (if microwave system equipment costs are NOT prepaid) \$ 4,138.20

TYPICAL EQUIPMENT LAYOUT & SPACE REQUIREMENTS

To facilitate the maximum communications efficiency and equipment protection, CPS is recommending the location of CPS' JungleMux network electronics within the same shelters as City's radio electronics, where possible; receiving 24vdc power from City's battery plant. The following equipment list and layout diagram show typical space requirements (space requirements to be satisfied by City) for CPS' equipment.

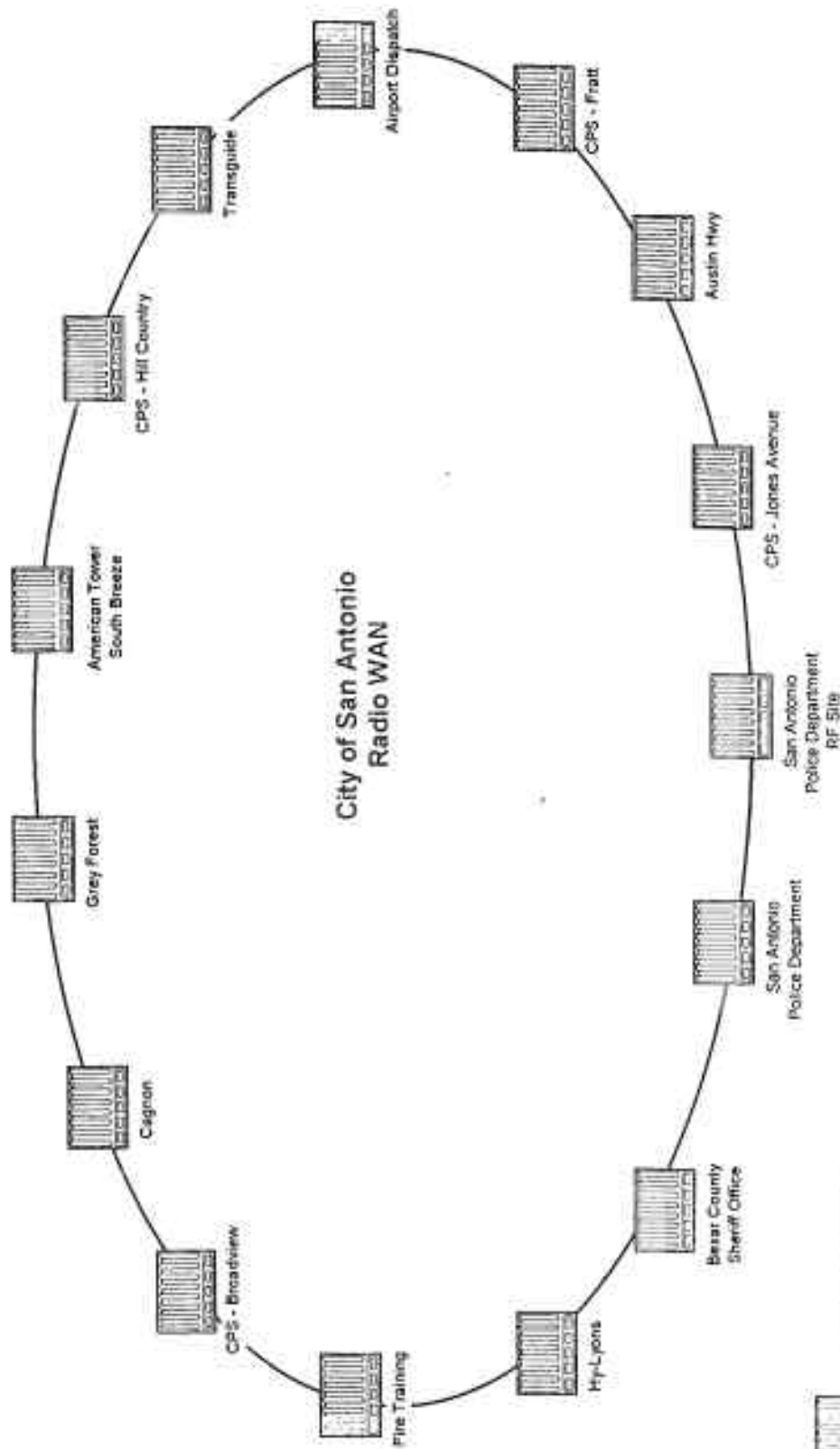
Typical Site Equipment List

A. Nortel JungleMux System

1. JMUX Equipment Shelf
2. Common Channel Shelf
3. Spacer Panel
4. Power Supply/Converter
5. Power Unit Paddle Board
6. Service Unit
7. Service Unit Paddle Board
8. Orderwire Unit
9. Orderwire Paddle Board
10. Party Line 4 Wire Voice Frequency
11. Party Line 4 Wire Voice Frequency Paddle Board
12. OC-3 JMUX, 1300 Nanometer Laser
13. JIF Share Unit
14. JIF Share Paddle Board
15. JIF DS-1 Unit
16. JIF DS-1 Paddle Board
17. SPE-JIF Unit

B. Ancillary Equipment

1. Schroff Equipment Cabinet
2. La Marche Total Power Module(If necessary)
3. La Marche Total Power Mounting Cage(If necessary)
4. La Marche Total Power Distribution Center(If necessary)
5. 12 Volt Batteries(If necessary)
6. 12 Volt Battery Tray(If necessary)
7. ADC Fiber Distribution Panel
8. Fan Tray
9. Writing Shelf
10. Orderwire Phone
11. T1 Patch Panel
12. Badger Fault Alarm System Remote Terminal Unit



MICRTEL Juniper/MUX

Fiber Path

Digital Point to Point Radio


City of San Antonio
 Department of Information Technology

Drawn: Dan Mueller
 Date: 11/11/11
 Title: SAN ANTONIO
 Project: SAN ANTONIO
 Drawing No: 11-11-11-001

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CITY OF SAN ANTONIO
INFORMATION SERVICES DEPARTMENT
Interdepartmental Correspondence Sheet

TO: City Manager's Office

FROM:  Gary Moeller, Director of Information Services

COPIES TO: File

SUBJECT: PUBLIC SAFETY RADIO SYSTEM CONTRACTS WITH
ERICSSON, CITY PUBLIC SERVICE, AND BEXAR COUNTY

DATE: May 21, 2001

Contract Amendment:..... Ericsson, Inc.
Ordinance Authorizing Contract Amendment:.....93962
Date of Authorizing Ordinance:.....May 17, 2001

Contract: Communications License Agreement:..... City Public Service
Ordinance Authorizing Contract:.....93963
Date of Authorizing Ordinance:..... May 17, 2001

Contract: Interlocal Agreement:..... Bexar County
Ordinance Authorizing Contract:..... 93964
Date of Authorizing Ordinance:..... May 17, 2001

POLICY ANALYSIS

The above contracts are associated with the continual progress of the construction and implementation of the City of San Antonio and Bexar County Public Safety Radio System. A major component of this system deals with tower site acquisition and construction activities. We have completed approximately 80% of these tasks which include tower installations, replacements and reinforcements; the installations of the shelters to house the electronics; backup generator installations and fiber installations. Another major component is the infrastructure equipment assembly and staging which is now complete. The radio electronics associated with tower sites and dispatch facilities is installed at the Dailey Well staging facility in San Antonio. The equipment is set up and configured exactly as it will appear when the equipment is installed at the tower and dispatch sites. This process facilitates the efficient verification that all of the equipment is configured and tested prior to relocation to the sites. Our public safety teams have commenced testing at the staging facility to ensure that the configuration meets operational requirements.

Some of the remaining major milestones to be completed within the next six months are:

1. Completion of the tower site facilities
2. Installation of site and dispatch center electronics
3. System optimization and testing

We anticipate the system cutover will begin in January 2002

Council approved the following on May 17, 2001:

- A. A contract amendment to the Communications Systems Agreement between the City of San Antonio and Ericsson, Inc. to authorize a subcontract with Com-Net Ericsson and approving change orders 1-25 for an estimated reduction in the Ericsson contract of \$2M. The Ericsson private radio division was sold this past year to Com-Net Ericsson. Ericsson retained a 20% interest in the Com-Net Ericsson Company. A consent to subcontract amendment was developed and Ericsson remains our primary contractor. During the system design review, changes and enhancements were developed to optimize system performance. As part of this design review, change orders were developed to remove the microwave components and replace them with a fiber-optic based solution to link the eleven tower sites and five dispatch centers in a highly secured private network configuration with fiber path diversity to meet the high availability requirements. Other design enhancements were accomplished to optimize all site configurations to ensure maximum coverage. These design enhancements have allowed us to remove the costs associated with in-building coverage equipment from the Ericsson contract, setting aside a reserve fund to address this issue following coverage testing. This action has the potential to result in a cost savings.
- B. The CPS Communications Facilities License Agreement for the purpose of leasing space to locate antennas on CPS towers, approve tower locations, leasing ground space for the placement of equipment shelters and generators at Jones Avenue, Grey Forest, Hill Country, Frat and Broadview substations. This agreement also defines the requirements and costs associated with constructing, monitoring, and maintaining the fiber-optic based wide-area-network necessary to link the tower sites and dispatch centers. The term of this agreement is for 15 years with an extension option for an additional five years. This agreement authorizes a one-time payment of \$789,779 and an estimated monthly cost of \$17,340 with an option to apply an Aid-In-Construction fee to lower recurring monthly expenses.
- C. The Bexar County Interlocal Agreement for the purpose of establishing the terms and conditions for the joint management and operation of the Public Safety Radio System and the rights, duties and obligations of the parties. The term of this agreement will be for 20 years or the life of the system, whichever comes first. Each agency will own 100% of their radios and dispatch equipment and will share in the cost of ownership of the infrastructure components, with the City owning 80% and the County 20%. This same 80/20 split will apply for consultant fees, infrastructure maintenance, and

operational costs such as equipment, software, CPS ground space lease, tower space lease, fiber network access fees, American Tower lease fees and tower site utilities. The agreement also establishes a five member Joint Operations Committee (JOC) defining the City's representation from the Police, Fire, and Information Services departments, and the Bexar County Sheriff's and Infrastructure Services departments. It also defines the JOC's duties and responsibilities to manage the system while preserving the integrity and security of the system. The Bexar County Commissioner's Court approved this agreement on April 24, 2001.

Approval of these contracts will be a continuation of Council policy to construct a Public Safety Radio System previously approved by Council through ordinance 90318, dated August 19, 1999.

FINANCIAL IMPACT

Original Contract: \$ 45,967,596.00
Change Order reduction:..... \$ 1,981,491.10
Revised Contract Amount:..... \$ 43,986,104.90

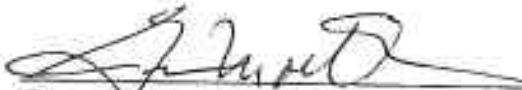
CPS one-time Construction amount .. \$ 789,779.00

MANAGEMENT OF CONTRACT

The Director of Information Services Department provides contract management on this project.

COORDINATION

This contract language has been coordinated with the following departments and is consistent with City Council policy as denoted by the signatures below:
Information Services, Police, Fire and City Attorney.



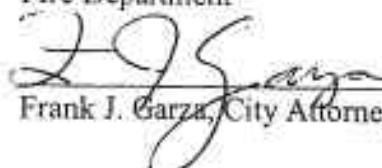
Gary Mueller, Director
Information Services Department



Al. A. Philippus, Chief
Police Department



Robert Ojeda, Chief
Fire Department



Frank J. Garza, City Attorney



City Public Service
of
San Antonio, Texas

January 14, 2002

Mr. Gary Moeller
Director, Information Services Department
City of San Antonio
515 So. Frio St.
San Antonio, Texas 78207

RE: Communications Facilities License Agreement Effective Dates

Dear Mr. Moeller:

In accordance with terms and conditions on page 8 of Exhibit "B" of the Communications Facilities License Agreement between City of San Antonio (City) and City Public Service Board (CPS), CPS is prepared to commence invoicing of Monthly Network Fees effective February 1, 2002. According to agreement, *prior to the above date*, City may elect to pay a Capital Assets "Aid In Construction" contribution of \$508,000 that reduces the monthly Network Fee. Please advise whether City wishes to exercise this option, prior to February 1, 2002.

If you have questions or wish to discuss this further, please call me at 353-3562.

Sincerely yours,

Arthur E. Wilson
Facilities Lease Coordinator

Copy: Steve Mandry



CITY OF SAN ANTONIO

PO BOX 14800
SAN ANTONIO, TEXAS 78283-1480

August 23, 2001

City Public Service
Steve Mandry
P.O. Box 2921
San Antonio, TX 78299-2921

Dear Steve,

This letter shall provide *Notice to Proceed* with reinforcements to the CPS Jones Avenue tower, per Ransor's Inc. quote of \$62,327.00 to make the modifications recommended by Paul J. Ford and Company.

This *Notice to Proceed* is given with the understanding that:

- 1) CPS will pay for the \$630.00 quoted to cut and remove 400' of dead 3/4" lighting conduit from the tower, and
- 2) Ransor's quote includes all necessary provisions to remove and install the sector mounts at 85' and 125', so that there will be no additional expense to the City or County associated with those tow platforms or tenants.

Thank you,

Jose A. Medina, Jr
Information Services Manager
City of San Antonio
(210) 207-7031