

RESOLUTION NO. 2684

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE EXECUTION OF A LEASE BETWEEN THE
CITY AND COMMUNICATION SYSTEMS DEVELOPMENT,
INC., FOR A 4,500 SQUARE FOOT SITE LOCATED
AT THE WASTEWATER TREATMENT PLANT
FOR THE PURPOSE OF A COMMUNICATION
TOWER AND RELATED GROUND
MOUNTED EQUIPMENT**

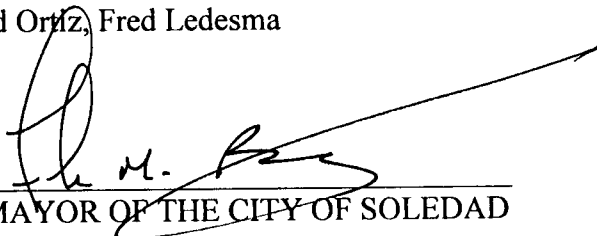
BE IT RESOLVED, by the City Council of the City of Soledad that the City Manager is hereby authorized and directed for and in behalf of the City Council to execute and deliver a Lease with Communication Systems Development, Inc., in the form of the document hereunto attached, marked "Exhibit A".

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Soledad duly held on the 5th day of August, 1998 by the following vote:

AYES, and in favor thereof, Councilmembers: Ben Jimenez, Jr., Mayor Pro Tem Gary Gerbrandt, Mayor Fabian Barrera

NOES, Councilmembers: None

ABSENT, Councilmembers: Richard Ortiz, Fred Ledesma


MAYOR OF THE CITY OF SOLEDAD

ATTEST:


CITY CLERK OF THE CITY OF SOLEDAD

Site #CSD/ATS-002
 Site Name: Soledad
 County: Monterey

LICENSE AGREEMENT

1. **Property and Use.** Owner ("Lessor") is the owner of the real property and improvements described in Exhibit 1 ("Property") and hereby Licenses to Communication Systems Development, Inc. a California Corporation (CSD) ("Lessee"): Real property consisting of approximately 4,500 square feet of land, in the location(s) on the Property more particularly described on Exhibit 2 ("Site") together with a non-exclusive easement over property owned by the LESSOR for reasonable access thereto and to the appropriate, in the discretion of LESSEE, source of electric and telephone facilities. The Site will be used by LESSEE for the purpose of installing, removing, replacing, maintaining and operating, at its expense, including without limitation, related antenna equipment, structures associated therewith and fixtures.

Owner agrees to permit LESSEE free ingress and egress to the Site for the period of one year after lease commencement to conduct such surveys, structural strength analysis, subsurface boring tests and any other tests, analysis and/or other activities of a similar nature as LESSEE may deem necessary at the sole cost of LESSEE.

2. **Initial Term.** The initial License Term shall be one hundred twenty (120) months, commencing on the issuance of a local building permit to the LESSEE to construct a communications facility on the Premises. This License Agreement shall be subject to a condition precedent that LESSEE complete construction of the communications facility.

3. **Option Term.** LESSOR hereby grants to LESSEE the option to renew this License for three (3) consecutive additional periods of sixty (60) months each (each a separate option term) upon the expiration of the initial License Term. LESSEE shall exercise each such option by written notice delivered to LESSOR not later than sixty (60) days prior to the expiration of the initial Term or first option term then in effect. Any renewal of this License shall be upon each and all of the terms, covenants and conditions of this License then existing.

4. **Rent.** LESSEE shall pay to LESSOR \$500.00 per month in base Minimum Annual Rent to be paid by the first day of each month. Should the rental period commence on a day of the month other than the first day of such month, then the rental for the first fractional month shall be computed on a daily basis for the period from the date of commencement to the end of the calendar month and an amount equal to one-three-hundred-sixtieth (1/360) of the said Minimal Annual Rent for each such day.

Standard cost of living adjustments (cola) based upon the San Francisco-Oakland-San Jose Consumer Price Index (CPI) will occur annually upon each anniversary date. See exhibit 3.

Owners Initials: B/ve

CSD Initials: mw



Communication Facility Site Agreement

Revised 9/13/96

Page 1

Site #CSD/ATS-002
 Site Name: Soledad
 County: Monterey

5. **Title and Quiet Possession.** LESSOR represents and agrees (a) that it is the Owner of the Site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) that LESSEE is entitled to access to the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Option Term so long as LESSEE is not in default beyond the expiration of any cure period; and (e) that LESSOR/Owner shall not have unsupervised access to the Site or the Communication equipment unless previously authorized in writing or orally by a CSD representative.
6. **Notices.** All notices must be in writing and are effective when deposited in the US. Mail, certified and postage prepaid, to the address set forth below or as otherwise provided by law.
7. **Improvements.** LESSEE may, at its expense, make such improvements on the Site as it deems necessary from time to time for the operation of a Communication site for wireless voice and data communications. LESSOR will maintain the leased site to be free of weeds, paper, and litter for the term of the lease. LESSOR agrees to cooperate with LESSEE with respect to obtaining any required zoning approvals, or other governmental approvals or permits for the site and such improvements. However, costs related to said approvals shall be the responsibility of LESSEE. Improvements required by LESSOR as conditions of the Zoning Approval shall be constructed and maintained at LESSEE's expense. Upon termination or expiration of this Agreement, LESSEE shall have 60 days to remove its equipment and improvements and will restore the Site to the condition existing on the Commencement Date, except for ordinary wear and tear.
8. **Compliance with Laws.** LESSOR represents that the Premises (including the Site), and all improvements located thereon, are and shall remain in compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. LESSEE will comply with all applicable laws directly relating to LESSEE's operation of the Communication equipment and the improvements constructed by LESSEE at the Site, its possession and use of the Site.
9. **Interference.** LESSOR will not permit the Installation of any future equipment on the same parcel as the lease space described in Exhibit 1 to this Agreement, which results in technical interference problems with LESSEE's then existing equipment. LESSOR will notify LESSEE in writing prior to any new communication sites that may be constructed on said parcel.
10. **Utilities.** LESSEE shall be responsible directly to the serving entities required by LESSEE's use of the Premises, and for any taxes on such utility usage, and shall cause all charges for such utilities to be separately metered to LESSEE.

Owners Initials: Bhe

CSD Initials: mw



Communication Facility Site Agreement

Revised 9/13/96

Page 2

Site #CSD/ATS-002
 Site Name: Soledad
 County: Monterey

11. **Termination.** LESSEE may terminate this Agreement at any time by notice to Owner without further liability if LESSEE does not obtain all permits, consents, easements, non-disturbance agreements or other approvals (collectively, "approval") reasonably desired by LESSEE or required from any governmental authority or any third party related to or reasonably necessary to operate the Communication equipment or if any such approval is canceled, expires or is withdrawn or terminated, or if Owner fails to have property ownership of the Site or authority to enter into this Agreement, or if LESSEE, for any other reason, in its sole discretion, determines that it will be unable to use the site for its intended purpose. Upon termination, all prepaid rent shall be retained by LESSOR.

12. **Default.** If either party is in default under this Agreement for a period of (a) ten days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) thirty days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a thirty day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such thirty day period and proceeds with due diligence to fully cure the default.

13. **Hazardous Substances.** LESSOR/Owner represents that it has no knowledge after reasonable inquiry, of any substance, chemical or waste (collectively, "substance") on or under the Site or Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. LESSEE shall not introduce or use any such substance on the Site in violation of any applicable law. Owner shall indemnify and hold LESSEE harmless from and against all claims, actions, damages, fines, liabilities, costs and expenses (including attorneys and expert fees) arising, directly or indirectly, from the presence of any substance on, under or around the Property or the Site (including any migration) unless and until Owner lawfully proves said substance was actually brought onto the Property or Site by LESSEE's affirmative acts (as opposed to failure to act). This obligation to indemnify LESSEE shall include damages, costs and expenses incurred in connection with any investigation, cleanup, remedied, monitoring, removal or restoration related to the presence of any substance. This indemnity shall survive the expiration or termination of this License.

14. **Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement; (b) This Agreement is governed by the laws of the State in which the Site is located; (c) If requested by LESSEE, Owner agrees promptly to execute and deliver to LESSEE a recordable Memorandum of this Agreement in the form of Exhibit 3; (d) This Agreement (including the Exhibits) constitutes the entire Agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understanding between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (e) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and

Owners Initials: Bue

CSD Initials: mw



Site #CSD/ATS-002
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each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (f) The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys fees and other reasonable enforcement costs and expenses from the non-prevailing party.

15. **Indemnity/Insurance.** LESSEE shall hold LESSOR and LESSOR'S agents and officers, harmless from all damages, losses, and expenses, including attorney's fees, expert and other witness fees, and costs arising out of any damage to any person or property occurring in, on, or about the premises resulting from the negligent acts, omissions, or willful misconduct of LESSEE, their employees, authorized representatives, or any other person or entity on the premises at the direction or with the consent of LESSEE. LESSEE, at their own cost, shall maintain public liability and property damage insurance with a single combined liability limit of \$1,000,000.00 and property damage limits of not less than \$500,000.00, insuring against all liability of LESSEE, their employees, and their authorized representatives arising out of and in connection with LESSEE'S use and occupancy of the premises.

16. **Subletting of Leased Property.** LESSEE will inform Owner as to any subletting of lease property. Subletting of Leased property shall be limited to the use of the site as a communication facility.

The following Exhibits are attached to and made part of this Agreement: Exhibits 1, 2, 3, 4, & 5

Signed By: Belinda Espinosa
Belinda Espinosa, City Manager
City of Soledad
248 Main Street
Soledad, California 93960

Signed By: [Signature]
Michael Wingo, C.E.O.
Communication Systems Development, Inc.
1755 W. Hammer Lane, Ste 12
Stockton, California 95209

Tax ID or SS# 94-6000432

Date: 11-13-98

Date: 10-14-98

Owners Initials: Bue

CSD Initials: mw



Site #CSD/ATS-002
Site Name: Soledad
County: Monterey

EXHIBIT 1 TO LEASE AGREEMENT
LEGAL PROPERTY DESCRIPTION

Legal Description of Property:
(enter legal description from title.)

TO BE REPLACED BY TITLE REPORT OR DEED

Owners Initials: Blue

CSD Initials: mw



Site #CSD/ATS-002
Site Name: Soledad
County: Monterey

EXHIBIT 2 TO LEASE AGREEMENT

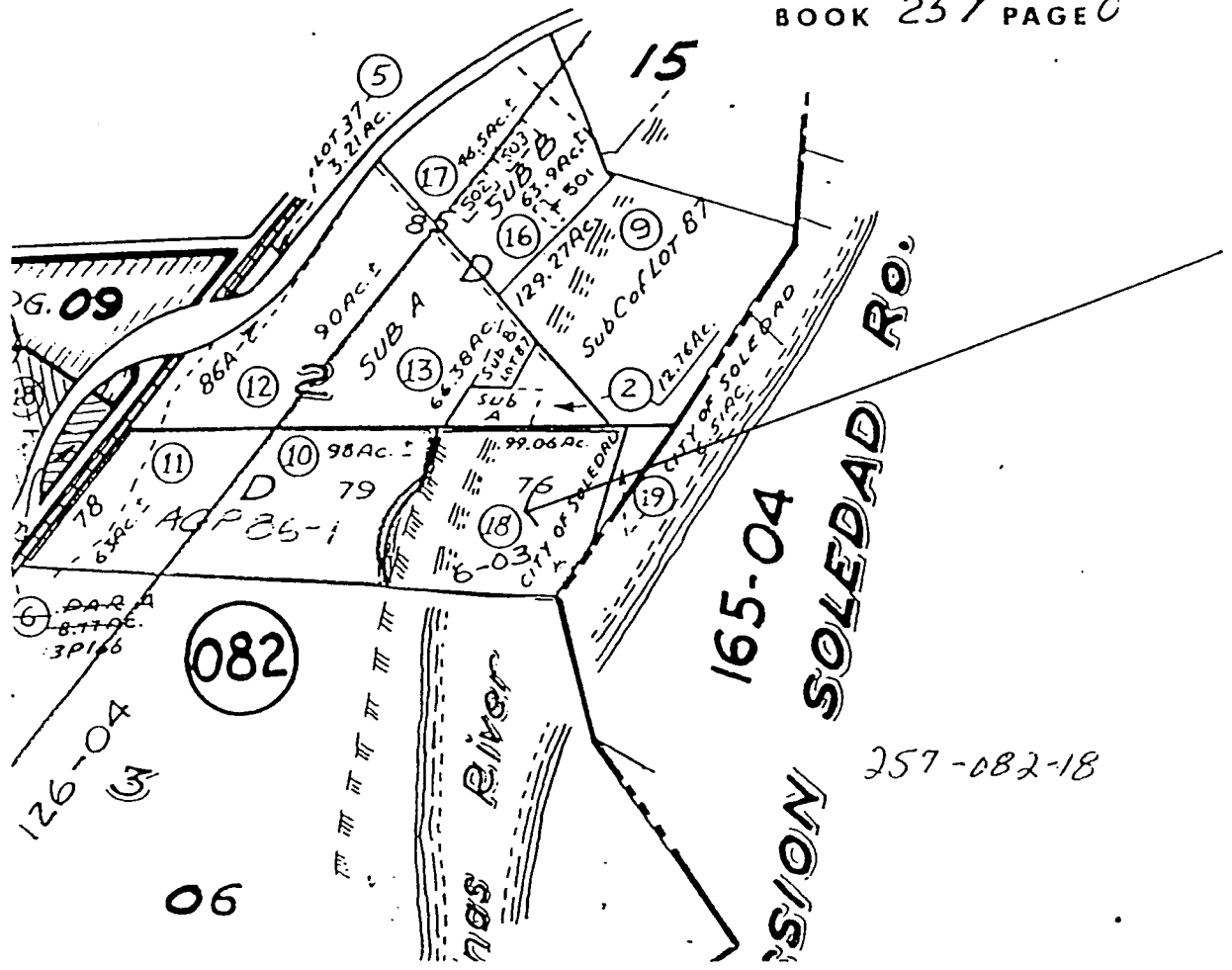
Site Description: One 100 x 80 lease area at City of Soledad Water Treatment Plant described as APN: 257-082-18.

Sketch of Site:

TO BE REPLACED BY SITE PLAN APPROVED BY LESSOR AND LESSEE

TAX CODE AREA

COUNTY OF MONTEREY
ASSESSOR'S MAP
BOOK 257 PAGE 0



Owners Initials: Bue
CSD Initials: mw

Site #CSD/ATS-002
 Site Name: Soledad
 County: Monterey

EXHIBIT 3 TO LEASE AGREEMENT

Taxes

Lessor shall pay for all real property taxes and assessments against the property, including the premises; provided, however, that Lessee shall pay to Lessor any increases in the taxes and assessments against the property during the term attributable to the value of the building and any other improvements constructed by Lessee on the premise, including any assessed possessory fee or tax. In addition, Lessee shall pay all personal property taxes on its personal property, fixtures, and equipment located on the premises.

Annual CPI

The amount of the monthly installment of rent payable during the preceding five-year term will be increased by an amount equal to the change in the CPI during such term. "CPI" means the Consumer Price Index-U.S. City Averages for Urban Wage Earners and Clerical Workers (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics (or a reasonably equivalent index if such index is discontinued). In no event will the amount of the monthly installment (as applicable) of rent due under the foregoing Agreement following such adjustment be less than or exceed 15% of the amount of such installment during the preceding 5 year lease term.

Additional Rents

Lessee agrees to pay Lessor additional rent from gross revenues derived from the 5th subtenant and thereafter in the amount of 25%. The additional rent shall exclude all gross revenues derived from subtenants 1, 2, 3, and 4, and shall apply only to gross revenue from the 5th subtenant thereon. Net Income shall be defined as gross rental receipts less the pro rata share of tower operating and maintenance costs. The additional rent shall be calculated and paid to Lessee annually in accordance with Lessee's GAAP accounting procedures.

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Site #CSD/ATS-002
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EXHIBIT 4 TO LEASE AGREEMENT

Tenant's Indemnity Obligations

Lessee and Lessor understand and agree that Lessee's use of the Premises during the term shall in no event increase Lessor's direct operation cost of the property or result in any liability by Lessor to any other parties. Accordingly Lessee agrees and covenants that Lessor shall not at any time or to any extent be liable, responsible, or in any way accountable for any loss, injury, death, or damage to any person or property occurring in, on, or about the Premises caused by or in any way resulting from any act, omission, or negligence of Lessee or any agent, employee, or contractor of Lessee. Lessee shall indemnify Lessor against and hold Lessor harmless from any and all claims, liability, loss or damage, and from and against all costs and expenses, including, but not limited to, reasonable attorneys' fees, arising out of or in connection with any such loss, injury, death, or damage. The indemnity agreement shall not extend to loss, injury, death, or damage caused by the act, omission, or negligence of Lessor or any agent, employee, or contractor of Lessor.

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Communication Facility Site Agreement

Revised 9/13/96

Page 8

Site #CSD/ATS-002
Site Name: Soledad
County: Monterey

EXHIBIT 5 TO LEASE AGREEMENT

It is understood that the execution of this document by The City of Soledad as Lessor, shall not be construed as granting any certificates, approvals, permits, licenses, or other approvals which may be required by CSD.

Owners Initials: Bhe

CSD Initials: mw

