

**When Recorded Return to:**

Renee Fugiel  
Central Arizona Project  
Lands Administration  
P. O. Box 43020  
Phoenix, Arizona 85080-3020

102880

CAWCD # 01-074

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

**CENTRAL ARIZONA PROJECT**

**LAND USE LICENSE FOR  
COMMUNICATION FACILITIES**

The CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a multi-county water conservation district, created, organized, and existing under and by virtue of the laws of the State of Arizona, "District," who has assumed the responsibility for the care, operation, maintenance, and management of certain transferred works of the Central Arizona Project from the United States of America, who holds title to such works, and under the terms and conditions of those certain agreements between the United States and the District for the care, operation, maintenance, and management of the transferred works, hereby grants to CITY OF PHOENIX, a political subdivision, its agents, contractors, successors and assigns, "Grantee," the right of use for telecommunications facility on property acquired for the Central Arizona Project, the "License Area," as described in Article 1, and subject to the terms and conditions as set forth below:

1. The term of this License shall be for a period of five (5) years, from August 29, 2002 to August 29, 2007. This License will be renewed for three additional five year terms and one additional four year term, automatically, unless the Grantee notifies the District in writing at least sixty (60) days prior to each termination date. This license has been approved for an area of approximately .042 acres. The License Area is described in Exhibit A and shown on map Exhibit B, both attached and made a part of this License.

2. The Grantee shall have the right, at its expense, to construct, maintain and reconstruct in the License Area, its "Communication Facilities," including radio and other communication transmitting and receiving antennas, support mounts, cables, equipment, equipment storage structures and other improvements relating thereto, as shown in Exhibit

B, attached and by reference made a part of this License. The Grantee shall have the right to modify, supplement, replace, upgrade or relocate the Communication Facilities in the License Area at any time during the life of the License so long as said relocation, replacement or upgrade is made for the purpose of improving the operation of its Communication Facilities, and the Grantee has received the prior written consent of the District.

3. The Grantee shall have the right, at its expense, to install or improve utilities in the License Area. The Grantee shall pay any incremental additional utility charges including all administrative costs associated with the License Area incurred as a result of the Grantee's licensed use.

4. a. The Grantee agrees to pay all administrative costs (including overhead and federal appraisal or federally-contracted appraisal costs) associated with this project which are incurred by the District, its agents, contractors, successors and assigns. Payment is due within thirty (30) days of the date of invoice, and subject to late payment charges as described in Article 4.d.

b. The Grantee shall pay to the District an annual use fee in the amount of \$ 22,500. based on the appraised fair market value of this telecommunications use. The license fee shall be payable to the District in advance upon execution of this license. The annual use fee is subject to late payment charges as described in Article 4.d.

c. The annual use fee will be reviewed every five (5) years unless market conditions indicate that a reappraisal should be done at shorter intervals. If a reappraisal is indicated before the end of a five year period or the four year period, the Grantee will be notified in writing, not less than sixty (60) days prior to the end of the next annual use period. Redetermination of the fair market value by the District, if any, for each of the five year periods and the four year period will be based on an appraisal report, taking into consideration the then value of the telecommunications use and current land values, exclusive of improvements constructed by the Grantee.

d. The Grantee shall pay a late payment charge on charges that are received after the due date. The late payment charge percentage rate calculated by the United States Department of the Treasury and published quarterly in the Federal Register shall be used; provided that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

e. The Grantee shall pay any taxes assessed on, or attributable to, their facilities located in the License Area.

5. The Grantee agrees to contact the District, Mr. Abe Sahli at (623) 869-2126:

a. at least two weeks prior to beginning construction under this License, to make arrangements for inspection personnel and for access to the License Area, which includes execution of a "Hold Harmless Agreement" with the District's security department, and

b. at least two weeks prior to any digging in the License Area, to locate buried control and/or power cables.

6. The Grantee shall be entitled to reasonable access to the License Area twenty-four (24) hours a day, seven (7) days per week, and shall have all additional rights of access, ingress to, passage over and egress from the License Area. Except in the case of an emergency, the Grantee shall notify the District in advance of the Grantee's proposed maintenance or repair activities to be performed in the License Area in order to coordinate said activities with the District's operations. Security of District-managed lands shall be maintained at all times.

7. There is reserved to the United States and the District, their successors and assigns, the prior right to use any of the property herein described to construct, operate, and maintain all structures and facilities, including but not limited to, canals, waste ways, laterals, ditches, roadways, electrical transmission lines, communication structures, substations, switch yards, power plants, and any other facilities without any payment made by the United States or the District or their successors for such rights.

8. There is also reserved to the United States and the District the right of their officers, agents, employees, licensees and permittees, at all proper times and places, freely to have ingress to, passage over, and egress from all of said lands for the purpose of exercising, enforcing and protecting the rights reserved herein.

9. The United States and the District reserve the right to inspect all operations of the Grantee or its assigns under the terms of this License.

10. The Grantee shall indemnify and hold harmless the United States, the District, and their officers, directors, employees, agents and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the Grantee's activities under this License, including liability arising under Article 19e. Grantee shall procure and maintain during the term of this License and any extensions thereof, work insurance purchased from an "A" rated or better insurer with the following specified limits:

a. Workers Compensation insurance as required by Arizona law, and Worker's Compensation Employer's Liability in the amount of One Million Dollars (\$1,000,000).

b. Commercial General Liability insurance including contractual liability with the following limit: Bodily Injury and Property Damage Liability Insurance with limits of One Million Dollars (\$1,000,000) per occurrence.

c. Business Automobile Liability Insurance with a limit of One Million Dollars (\$1,000,000) per occurrence.

d. Umbrella Excess Liability Insurance with a limit of One Million Dollars (\$1,000,000).

Grantee shall name the United States and the District as additional insured on the specified insurance and provide the District with a valid Certificate of Insurance prior to execution of this License.

11. The Grantee shall assume responsibility and/or liability for any and all damages to the Central Arizona Project structures and facilities and to any other property of the United States or the District, or any property under the control or custody of the United States or the District, their agents and assigns, that may be caused by the operation and maintenance of the Grantee's facilities or the Grantee's uses under this License.

12. The Grantee shall review and comply with the safety regulations of the United States Bureau of Reclamation's 1993 publication, "Reclamation Safety and Health Standards," while working within the License Area. Contact the District, Renee Fugiel at (623) 869-2430 for a copy of this publication. The Grantee shall also follow District safety programs if requested to do so.

13. The Grantee shall appoint a Safety Representative for any work performed pursuant to this License. This Safety Representative shall be competent, experienced, and knowledgeable in supervision of the safety aspects for any work performed pursuant to this License. Mr. Keith Cody, 2441 South 22<sup>nd</sup> Avenue, Phoenix, Arizona, 85003, phone (602) 534-7394 is Grantee's appointed Safety Representative pursuant to this Article. Grantee shall subsequently notify the District in writing if a different Safety Representative is appointed or if there are changes in the address or phone number of the Safety Representative.

14. The District reserves the right to stop any construction work of the Grantee within the License Area if, after inspection, the District determines:

a. that unsafe conditions exist which may jeopardize the safety of the District, the Grantee, or the public, or that proceeding with construction work is likely to physically damage structures or property managed or controlled by the District.

15. The Grantee is responsible for determining that the engineering plans and specifications for their construction on the License Area meet legal, engineering and construction industry standards. The fact that the District reviews the Grantee's plans does not relieve the Grantee of the requirements of this Article. The Grantee agrees to deliver to the District "As-Built" drawings of a quality meeting accepted industry standards within ninety (90) days after completion of Grantee's construction project under this License.

16. The Grantee at its expense shall be solely responsible to resolve any issues or disputes with interested persons, including neighborhood associations, concerning location, zoning, compatibility with existing or planned uses of adjoining lands, aesthetics or any other issues or disputes relating to Grantee's use of the License Area.

17. The Grantee shall use said premises for the purposes stated herein and Grantee agrees that in the use of said premises it shall maintain its facilities in a good and worker like manner, and shall insure compliance with all laws, regulations, and orders of the United States affecting such operations, and with the laws of the State of Arizona, and with the laws and regulations of any other applicable governmental body along with directives of the District affecting such operations.

18. Upon termination of this License, the Grantee shall, at its sole expense, remove structures and equipment and restore the site to the satisfaction of the District. All removal of equipment and restoration shall be completed within ninety (90) days after the termination or expiration of this License.

19. The Grantee shall comply with all applicable Federal, State, and local laws and regulations, and United States Bureau of Reclamation's policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, waters or facilities owned by the United States or managed by the District.

a. "Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq., and the regulations promulgated pursuant to that Act.

b. The Grantee shall not allow contamination of lands, waters or facilities owned by the United States or administered and managed by the District by hazardous materials, thermal pollution, solid waste, refuse, garbage, sewage effluent, industrial waste (including, but not limited to product containers, surface preparation abrasives and residues, and coatings, paints and primers), petroleum products, mine tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide containers or any other pollutants.

c. The Grantee shall report to the District immediately any event which may or does result in pollution or contamination adversely affecting lands, water or facilities owned by the United States or managed by the District. If the occurrence involves water pollution or contamination, the District's Water Control Center must be contacted immediately at (623) 869-2530; if the occurrence involves land pollution or contamination, the District's Environmental Compliance Program Administrator, Mr. Tom Curry, must be contacted immediately at (623) 869-2353.

d. The Grantee shall appoint an Environmental Representative for any work performed or land uses pursuant to this License. This Environmental Representative shall be competent, experienced, and knowledgeable in supervision of the environmental aspects, including environmental hazard aspects, for any work performed or land uses pursuant to this License. Mr. Bill Phillips, 149 N. 4<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Phoenix, Arizona, 85003, phone (602) 261-8285 is Grantee's appointed Environmental Representative pursuant to this Article. Grantee shall subsequently notify the District in writing if a different Environmental Representative is appointed or if there are changes in the address or phone number of the Environmental Representative.

e. Violation of any of the provisions of Article 19 shall constitute grounds for immediate termination of this License and shall make the Grantee liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected lands, water or facilities owned by the United States or managed by the District.

20. The Grantee agrees to include the provisions contained in Article 19 of this License in any subcontract or third-party contract it may enter into pursuant to this License. The District agrees to provide information necessary for the Grantee, using reasonable diligence, to comply with the provisions of Article 19.

21. This License is subject to the provisions of Executive Order No. 11246 of September 24, 1965, as amended, which sets forth the Equal Opportunity and Affirmative Action clauses. A copy of this order may be obtained from the United States Bureau of Reclamation, Lower Colorado Region, Regional Director, P.O. Box 61470, Boulder City, Nevada 89006-1470.

22. The Grantee may assign this License, in whole, including its right to renew, to any person or business entity which is licensed by the Federal Communications Commission, upon the District's written consent, which shall not be unreasonably withheld. The Grantee may allow collocation on its monopole by other users only if said other users are licensed by the District.

23. In the event the District elects to permit another communications user the right to use any of the License Area, the District agrees to notify the Grantee thirty (30) days prior to the issuance of such authority for the purpose of determining whether the third-party communications user will interfere with the Grantee's use or intended use of the License

Area. Should the Grantee notify the District in writing that the third-party communications user will interfere with the Grantee's operations, the District agrees not to permit the third-party communications user the right to use the License Area. The Grantee's consent shall not be unreasonably withheld.

24. This License shall terminate at or upon:

- a. The discretion of the United States or the District.
- b. Expiration of the term as provided in Article 1.
- c. Violation of the covenants set out herein.
- d. Official abandonment of the License Area by the Grantee or its successors or assigns.
- e. Failure of the Grantee to use this License for the purpose granted herein, or for nonuse of this License for any continuous two (2) year period.

25. In the event Grantee holds over any lands, tenements or other real property after termination of the time for which such lands, tenements or other real property were licensed to Grantee, and after demand in writing for the possession thereof by the District, Grantee shall be deemed to be guilty of forcible detainer as defined in A.R.S. Section 12-1171 et seq. In addition to such other remedies as the District may have under law or this License, the District may bring an action for possession of the licensed property under A.R.S. Section 12-1171 et seq. Solely for the purpose of any such action by the District, the Grantee shall be considered a tenant as that term is used in A.R.S. Section 12-1171 et seq. The Grantee hereby accepts jurisdiction of the court acting under A.R.S. Section 12-1171 et seq. for purposes of determining possession of the property.

26. Any claim, controversy or dispute arising out of this License shall be settled by arbitration in accordance with the applicable rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in Maricopa County. There shall be no discovery other than the exchange of information which is provided to the arbitrator by the parties. The arbitrator shall have the authority only to award compensatory damages and shall not have authority to award punitive damages or other noncompensatory damages; the parties hereby waive all rights to and claims for monetary awards other than compensatory damages.

27. Notwithstanding Article 26, should any litigation, including any forcible detainer action brought under article 25, be commenced between the parties concerning any provisions contained in this License, or rights and duties of any person in relation thereto, the prevailing party in any such court or proceedings shall be entitled, in addition to such other

relief as may be granted, to a reasonable sum and for its attorneys' fees in such litigation as determined by the court.

28. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License, which shall continue in full force and effect.

29. By executing this License, the parties are not establishing any joint undertaking, joint venture or partnership. Each party shall be deemed an independent contractor and shall act solely for its own account.

30. This License shall constitute the entire agreement and understanding of the parties with respect to the License Area that is the subject matter thereof and supersedes all offers, negotiations and other agreements with respect thereto. There are no representations or understanding of any kind not set forth herein. Any amendments to this License shall be in writing and executed by both parties.

31. All notices required or permitted to be given hereunder shall be in writing and may be given in person, by facsimile transmission, or by United States mail postage prepaid, and shall become effective at the earliest of actual receipt by the Party to whom notice is given, delivered to the designated address of the Party, or if mailed, forty-eight (48) hours after deposit in the United States mail addressed as shown below or to such other address as such Party may from time to time designate in writing.

If to the District:	Central Arizona Water Conservation District PO Box 43020 Phoenix, Arizona 85080-3020 Attention: Sharon Hood, Land Administrator
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If to the Grantee:	City of Phoenix 251 West Washington Street, 8 <sup>th</sup> Floor Phoenix, Arizona 85003 Attention: Roger Whitlock
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32. This License shall be interpreted, construed and governed by the laws of the State of Arizona.

33. Prior to execution the Grantee shall provide the District with certified copies of the signature authorities setting forth the persons authorized to execute this License on behalf of the Grantee.



IN WITNESS WHEREOF, the District has caused this License to be executed this 2nd day of Dec, 2003.

Central Arizona Water Conservation District, "District"

By: David S. "Sid" Wilson, Jr.  
David S. "Sid" Wilson, Jr.  
Its: General Manager

City of Phoenix,  
a political subdivision, "Grantee"

By: Roger Whitlock  
Roger Whitlock  
Its: Acting Real Estate Administrator

ATTEST

Vicky Miel  
CITY CLERK

Approved as to form  
Margaret Wilson  
ACTING City Attorney

12/02/03 09:26 AM  
CITY CLERK

State of Arizona )  
 )ss.  
County of Maricopa )

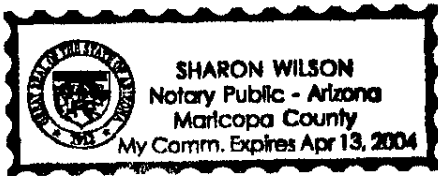
On this 25<sup>th</sup> day of November, 2002, before me appeared Roger Whitlock, Acting Real Estate Admin to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed.

Beverly Berkson  
Notary Public in and for the County of  
Maricopa, State of Arizona

My Commission Expires

State of Arizona )  
 )ss.  
County of Maricopa )

On this 2<sup>nd</sup> day of December, 2002, before me appeared David S. "Sid" Wilson, Jr., General Manager, Central Arizona Water Conservation District, to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed.



Sharon Wilson  
Notary Public in and for the County of  
Maricopa, State of Arizona

4/13/04  
My Commission Expires

EXHIBIT A

CAWCD No. 01-074

CITY OF PHOENIX

TELECOMMUNICATION EMERGENCY TRUNKED RADIO SYSTEM

DESCRIPTION OF REAL PROPERTY IN  
MARICOPA COUNTY, STATE OF ARIZONA

All that portion of the Southeast quarter of Section Twenty (20), Township Six (6) North, Range One (1) East, Gila and Salt River Baseline & Meridian, Maricopa County, Arizona, and being more particularly described as follows:

**COMMENCING** from the Southeast corner of said section 20:

Thence North 84° 29' 36" West, a distance of 635.10 feet;

Thence North 00° 01' 03" East, a distance of 2024.52 feet;

Thence North 88° 33' 05" East, a distance of 384.97 feet to a US Department of Interior Brass Cap stamped C-Ret 3+58.14;

Thence South 65° 15' 10" West, a distance of 160.59 feet **TO THE POINT OF BEGINNING;**

Thence South 00°00' 00" West, a distance of 49.44 feet;

Thence North 00°00' 00" East, a distance of 37.17 feet;

Thence North 90°00' 00" East, a distance of 49.44 feet;

Thence South 00° 00' 00" East, a distance of 37.17 feet **TO THE POINT OF BEGINNING.**

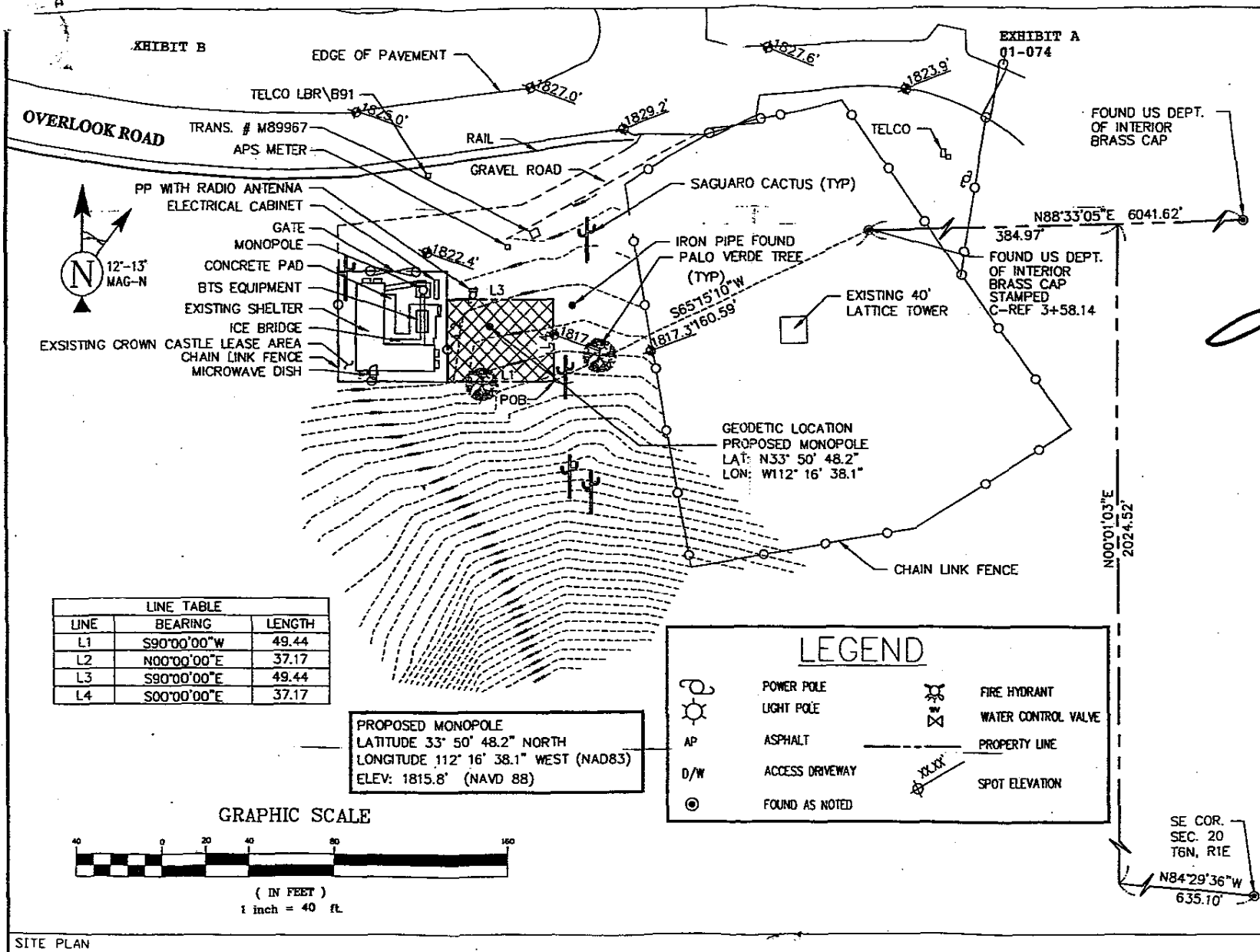
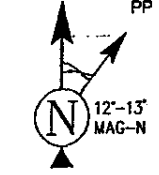


EXHIBIT B

EXHIBIT A  
01-074



LINE TABLE		
LINE	BEARING	LENGTH
L1	S90°00'00"W	49.44
L2	N00°00'00"E	37.17
L3	S90°00'00"E	49.44
L4	S00°00'00"E	37.17

PROPOSED MONOPOLE  
 LATITUDE 33° 50' 48.2" NORTH  
 LONGITUDE 112° 16' 38.1" WEST (NAD83)  
 ELEV: 1815.8' (NAVD 88)

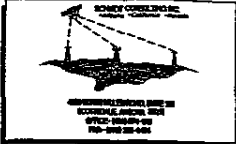


( IN FEET )  
 1 inch = 40 ft.

**LEGEND**

	POWER POLE		FIRE HYDRANT
	LIGHT POLE		WATER CONTROL VALVE
	ASPHALT		PROPERTY LINE
	ACCESS DRIVEWAY		SPOT ELEVATION
	FOUND AS NOTED		

SE COR.  
 SEC. 20  
 T6N, R1E  
 N84°29'36"W  
 635.10'



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DWG. DATE: 05/30/02

NO.	DATE	COMMENTS
1	03-28-01	SUBMITTAL
2	04-19-01	REVISED LEASE AREA
3	5/30/02	MOVED LEASE AREA
4		
5		
6		

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DRAWN BY: R.R.  
 CHECKED BY: ES

SITE NAME  
 LAKE PLEASANT

BUSINESS UNIT / PROJECT /  
 N/A / N/A

SITE ADDRESS  
 41835 N. CASTLE HOT  
 SPRINGS ROAD  
 PEORIA, ARIZONA  
 MARICOPA COUNTY

SHEET TITLE  
 SITE PLAN

SHEET NUMBER  
 C-1

JOB # SC498

SITE PLAN