

RESOLUTION NO. 96-19

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF EL PASO DE ROBLES APPROVING A LEASE  
AGREEMENT WITH SONIC CABLE LEASING CORPORATION  
FOR THE USE OF CITY OWNED PROPERTY TO LOCATE  
TRANSMISSION AND RECEPTION FACILITIES AND AUTHORIZES  
THE CITY MANAGER TO EXECUTE SAID LEASE AGREEMENT

WHEREAS, the City of El Paso de Robles does own real property located at westside water reservoir site off of 21st Street; and

WHEREAS, the real property is sufficient in size to accomodate multiple uses; and

WHEREAS, Sonic Cable Television has utilized a small portion of said site since at least 1964 to locate transmission and reception facilities for the specific purpose of providing cable television services to the Paso Robles community; and

WHEREAS, the City has no immediate need or use is contemplated by the City for the entire site; and

WHEREAS, the City is amicable to continuing to provide said site for use by Sonic Cable Television; and

WHEREAS, Sonic Cable Television is desirous of continuing to use said site at the terms and conditions as contained in the lease agreement.

NOW, THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the lease agreement attached herewith as Exhibit "A" is approved and the City Manager is authorized to executive said agreement.

APPROVED AND ADOPTED by the City Council of the City of El Paso de Robles this 20th day of February, 1996 by the following vote:

AYES: Iversen, Martin, Picanco, and Macklin

NOES: None

ABSENT: Heggarty

ABSTAIN: None

  
Walt Macklin, Mayor

Attest:



Richard J. Ramirez, City Clerk

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County where the Property is located. Upon the expiration or earlier termination of this Agreement, Tenant agrees to record a quitclaim deed to evidence the termination of Tenant's interest in the Property.

f. If Landlord agrees to waive any of the terms and conditions of this Lease, such waiver will not be construed as a waiver of any succeeding breach of the same term or condition, or as a waiver of any other term or condition. A waiver by the Landlord as to any term or condition will not be construed as a course of performance.

g. Addendum to or modification of this Lease must be in writing and signed by the respective authorized representative of both Landlord and Tenant and when so executed shall become a part of this Lease.

h. Landlord and Tenant agree that if any legal action is taken to interpret or enforce the terms and conditions of this Lease, such actions shall be filed with the proper court in the County of San Luis Obispo.

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

DATED as of the date first set forth above.

LANDLORD:

City of Paso Robles

\_\_\_\_\_  
By: Richard J. Ramirez  
Its: City Manager  
Tax ID/SSN:

TENANT:

Sonic Cable Leasing Corporation

\_\_\_\_\_  
By: Jeffrey A. Smith  
Its: General Manager  
Tax ID/SSN:

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**SITE LEASE AGREEMENT**

THIS SITE LEASE AGREEMENT ("Agreement") is entered into this 20th day of February, 1996 between The City of Paso Robles ("Landlord") and Sonic Cable Leasing Corporation as successor-in-interest to Central California Communications Corporation ("Tenant").

1. Premises. Subject to the following terms and conditions, Landlord grants to Tenant a Lease for the use of real property located at Paso Robles, CA 93446 ("Property") described in Exhibit A attached hereto and incorporated herein by this reference.

2. Lease Term. The term of this Lease ("Lease") shall be initially established at one year beginning April 1, 1996. At such time as a franchising agreement is executed by both parties, the term of this lease shall run concurrently with the term of said franchise agreement.

3. Use.

a. The premises shall be used by the Tenant for the transmission and reception of signals in any and all authorized or approved frequencies for the purpose of providing cable television services to the Paso Robles community.

b. Tenant shall procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the services to be provided by Tenants use of the premises.

c. Tenant shall not violate any law or ordinance, or commit waste or nuisance upon or about the Premises.

4. Rent and Utilities.

a. Base Rent. Upon the effective date, April 1, 1996, Tenant shall pay Landlord, as rent, the sum of Six Hundred Dollars (\$600.00) per month ("Rent"). Rent shall be payable on the first day of each month in advance to the City of Paso Robles at Landlord's address specified in Paragraph 16 below. If the Lease is commenced other than on the first day of a month, the Rent shall be prorated for that first month for the number of days from the Commencement Date to the end of the month.

b. Base Rent Adjustment. There shall be no Base Rent Adjustment during the first year, or prorated portion thereof, as the case may be. Thereafter, the amount payable hereunder shall be adjusted annually. Accordingly, starting April 1, 1997, and on each anniversary date therefrom, rent shall increase by the percentage increase in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose, California region as published by the U.S. Department of Labor, Bureau of Vital Statistics for the

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month of January of each year. In no event shall said increase exceed 8% for any given year. In the event the CPI decreases to a point of reflecting a negative percentage increase for that year, the rent amount shall remain constant. Should the foregoing index at any time no longer be available, then a comparable economic factor shall be used.

c. Proration. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than nonpayment of Rent or any other monetary obligation under this Lease, all prepaid Rent shall be refunded to Tenant.

d. Utilities. Tenant shall make all arrangements and pay for all water, gas, heat, light, power, telephone and other utility services supplied to the Premises together with any taxes thereon and for all connection charges.

5. Interference. Neither party shall use, or permit its employees, tenants, licensees, invitees or agents to use any portion of the property in any way which materially interferes with the operations of the other party. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to the other party, and therefore the other party shall have the right, in addition to any other rights that it may have at law or in equity, to elect to terminate this Lease, upon notice to the other party. Notwithstanding the foregoing or any other provisions of this paragraph, Tenant recognizes that the primary purpose of the property of which the premises is a part is used as a city water storage facility; accordingly, Tenant agrees to continue its activities so as not to interfere with landlords use.

6. Improvements; Utilities; Access.

a. Tenant shall have the right, at its own expense, to erect and maintain on the Premises improvements, personal property and facilities (collectively the "Facilities") that are necessary and required for the use referenced in paragraph 5a. The Facilities shall remain the exclusive property of Tenant, and Tenant shall have the right to remove all or any portion of the Facilities during the term and following any termination of this Lease.

b. Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of emergency power generators). Tenant shall have the right to permanently place utilities on (or to bring utilities across) the Property in order to service the Premises and the Facilities. Landlord shall execute an easement evidencing this right upon Tenant's request. All installations and maintenance of utilities, shall be at Tenant's sole expense.

c. Landlord shall provide Tenant ingress, egress, and access from an open and improved public road to the Premises adequate to

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service Premises and the Facilities at all times during the term of this Lease or any renewal thereof at no additional charge to Tenant. Landlord shall execute an easement evidencing this right upon Tenant's request.

d. All Facilities and utility placements authorized by the Lease shall be in accordance with plans and specifications filed with and pre-approved by Landlord. All improvements shall be at the sole expense of Tenant. Tenants costs shall not be construed as rent.

e. Tenant shall keep the Premises free and clear from any and all liens, claims, and demands for work performed and shall post the appropriate Notice of Nonresponsibility for any alteration or improvement work authorized by this paragraph. However, Tenant may, in good faith and at Tenant's own expense, contest the validity of any such asserted lien, claim or demand; provided the Tenant has furnished the bond required by section 3143 et seq. of the California Civil Code (or any comparable statute thereafter enacted for providing a bond freeing the Premises from the effect of such lien, claim or demand).

f. During the term of this Lease, Tenant shall defend and indemnify Landlord against all liability and loss of any type arising out of works of improvement performed on the leased premises by Tenant or Tenant's instigation, together with reasonable attorneys' fees and all costs and expenses incurred by protecting against such claims.

7. Termination.

a. Thirty Day Notice. Except as otherwise provided herein, this Lease may be terminated without penalty or further liability, on thirty (30) days written notice as follows: (a) by either party upon a default of any covenant or term hereof by the other party, other than a failure to pay money, which is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof); (b) by Tenant if it is unable to obtain or maintain any license, permit or other Governmental Approval necessary to the construction and/or operation of the Facilities or Tenant's business; or (c) by Tenant if the Premises are or become unacceptable under Tenant's design or engineering specifications for its Facilities or the communications system to which the Facilities belong.

b. Three Days Notice. Landlord may terminate this Lease on Three (3) Days Notice only after the following condition has been met: In the event Tenant has not paid the Rent or any other monetary obligation within ten (10) days of the date that such sums are due, and with written notification from Landlord to Tenant that said monetary obligations are due, Landlord may notify Tenant that it has three (3) days to make the necessary payment or vacate the premises.

c. Restoration. Upon termination, Tenant will return the premises to its original condition, normal wear and tear and casualty

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excepted. However, Tenant will not be responsible for the replacement of any trees, vegetation and/or shrubs or for the reduction of any foundation to a depth greater than one foot below grade.

8. Taxes. Tenant shall pay any personal Property taxes assessed on, or any portion of such taxes attributable to, the Facilities. Landlord shall pay when due all property taxes and all other fees and assessments attributable to the Property. However, Tenant shall pay, as additional Rent, any increase in real property taxes levied against the Premises which is directly attributable to Tenant's use of the Premises, and Landlord agrees to furnish proof of such increase to Tenant. Because Landlord is a public entity, Landlord anticipates that the premises will be exempt from real property tax assessment. However, Tenant's leasehold interest may be subject to property valuation, and Tenant may be subject to the payment of property taxes levied on such possessory interest. Tenant shall pay all such possessory interest taxes, if applicable.

9. Indemnity and Insurance.

a. This Lease is made upon the express condition that Landlord is to be free from all liability and claims for the consequences of Tenant's operation and/or use of the Premises, including:

1. Injury to any person or persons including Tenant, its employees, guests and invitees, and

2. Damage to any property to whomsoever belonging including to Tenant and its employees, guests and invitees.

b. Tenant agrees to and shall indemnify and hold Landlord, its officers, employees, councilmembers and agents free and harmless from all claims, actions, damages and liabilities of whatsoever kind and nature arising from death, personal injury, property damage or other cause asserted or, based on the condition of the Premises, Tenant's occupation of the Premises, this Lease, or any negligent act or omission of Landlord, its employees, agents, invitees, relating to or in any way connected with the Premises or this Lease, regardless of the existence or degree of fault or negligence on the part of Landlord, its officers, employees, directors or agents. As part hereto of the foregoing indemnity, Tenant agrees to protect and to defend at its own expense, including attorney's fees, Tenant, its officers, employees, councilmembers and agents from any and all legal action based upon any acts, conditions or omissions, as stated hereinabove, by any person or persons.

c. During the Term of this Lease and any renewals, Tenant, at its own expense, shall maintain in force and effect and shall provide to Landlord a certificate that there is in effect:

1. A policy of public liability insurance insuring against liability or loss for bodily injury and damage to property

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arising on or in said Premises in policy limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for injury to one or more persons. Said policy shall designate Landlord as an additional insured.

2. A policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements to the full replacement value of all personal property, Tenant's improvements, and alterations in or about the Premises. The proceeds from any such policy shall be used by Tenant for replacement of the personal property of the restoration of Tenants Facilities or alterations.

3. A policy of fire insurance insuring the buildings, improvements, Facilities and other structures on said Premises as well as any additions thereto, for their full insurable value against loss or destruction by fire and perils commonly covered policies. Any loss payable under such insurance shall be payable to Tenant and Landlord. The proceeds of such insurance shall be applied towards the cost of repairing and restoring the damaged or destroyed buildings or Facilities.

d. The Tenant will have the Landlord's standard Certificate of Insurance completed and filed with the Landlord within ten (10) days of the execution of this Lease. Said policies shall provide that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of this Lease without thirty (30) days' written notice to the Landlord prior to the effective date of such cancellation or change in coverage.

e. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve Tenant from liability under this indemnification and hold harmless clause. The obligations of this indemnity article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

10. Damage or Destruction of Property.

a. Insured Loss: Subject to the provisions of paragraph 9, if any time during the terms of this Lease there is damage which is an Insured Loss, then Tenant shall, as soon as possible and to the extent the required materials and labor are readily available through usual channels, repair such damage to the same condition existing prior to the time of the damage, and this lease shall continue in full force and effect.

b. If at any time during the term of this Lease there is damage which is not an Insured Loss, then Tenant may at Tenant's option either (i) repair such damage as soon as reasonably possible at Tenant's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Landlord within thirty (30) days

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after the date of the occurrence of such damage of Tenant's intention to cancel and terminate this Lease as of the date of the occurrence of such damage, in which event this Lease shall terminate as of the date of the occurrence of such damage. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant.

11. Condemnation. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's determination to render the Premises unsuitable for the use which Tenant was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authority. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power, shall be treated as a taking by condemnation.

12. Equal Rights.

a. Tenant agrees that is shall not make any distinction, or restriction on account of sex, color, race, religion, handicap, ancestry, sexual orientation or national origin contrary to the provisions of Section 51 of the Civil Code of the State of California which is incorporated herein by reference as if set forth hereat in full. Upon a final determination by a court of competent jurisdiction that the Tenant has violated said section, this Lease may, at Landlord's option, be deemed forfeited.

b. All provisions of Part 2.8 of Division 3, of Title 2 (sections 12900 through 12996) of the California Government code incorporated herein by reference as if set forth thereat in full. Upon a final determination by a court of competent jurisdiction that the Tenant has violated any of said statutory provisions in the performance of this Lease, this Lease may, at Landlord's option, be deemed terminated if Tenant does not reasonably act to correct any such violation.

13. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Landlord, to:

City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93446  
Attn: Michael J. Compton,  
Director of Administrative Services

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If to Tenant, to:

Sonic Cable Leasing Corporation  
P.O. Box 1205  
San Luis Obispo, CA 93406  
Attn: Jeffrey Smith, General Manager

14. Title and Quiet Enjoyment.

a. Landlord warrants that it (i) has the full right, power and authority to execute this Agreement and (ii) has good and unencumbered title to the Property free and clear of any liens or mortgages, except as set forth in Exhibit C attached hereto. Landlord further warrants that Tenant shall have the quiet enjoyment of the Premises during the term of this Lease or any renewal thereof.

b. Tenant has the right to obtain a title report or commitment for a Leasehold title policy from a title insurance company of its choice. If, in the opinion of Tenant, such title report shows any defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises or Tenant's ability to obtain Leasehold financing, Tenant shall have the right to cancel this Lease immediately upon written notice to Landlord.

c. Tenant shall also have the right to have the Property surveyed, and, in the event that any defects are shown by the survey which, in the opinion of Tenant, may adversely affect Tenant's use of the Premises or Tenant's ability to obtain leasehold financing, Tenant shall have the right to terminate this Lease immediately upon written notice to Landlord.

d. "Hazardous substance" shall be interpreted to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local environmental law, regulation or rule presently in effect or promulgated in the future as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Landlord shall hold Tenant harmless from and indemnify Tenant against and from any damage, loss, expense or liability, including reasonable attorney's fees and costs incurred, resulting from the generation, storage, disposal or release of any hazardous substance prior to the commencement of this Lease or caused by any act or omission of Landlord during the term of this Lease. Tenant shall hold Landlord harmless from and indemnify Landlord from any damage, loss, expense or liability, including reasonable attorney's fees and costs incurred resulting from the generation, storage, disposal or release of any hazardous substance caused by any act or omission of Tenant during the term of this Lease.

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15. Assignment. Tenant shall not assign, transfer, lease or in any manner dispose of this Lease without the prior written consent of the Landlord. The consent of Landlord to any assignment of Tenant's interest in this lease or the subletting by Tenant of the leased premises, or parts of the premises, shall not be unreasonable withheld.

16. Successors and Assigns. This Lease shall run with the Property described in Exhibit A. This Lease shall be binding upon and insure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Facilities or any portion thereof which shall be deemed personal property for the purposes of this Lease, regardless of whether or not same is deemed real or personal property under applicable laws, and Landlord gives Tenant the right to remove all or any portion of same from time to time in Tenant's sole discretion and without Landlord's consent.

18. Miscellaneous.

a. The substantially prevailing party in any litigation or other proceeding arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any. Any such attorney's fee incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorney's fees obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

b. Each party agrees to furnish to the other such truthful estoppel information as the other may reasonably request.

c. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

d. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

e. Landlord agrees to cooperate with Tenant in executing any documents (including by not limited to a Site Lease Agreement and Nondisturbance and Attornment Agreement) necessary to protect Tenant's rights hereunder or Tenant's use of the Premises. Landlord acknowledges that the Agreement will be recorded in the Official Records of the

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