

CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT

This CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into between The City of San Diego, a California municipal corporation ("CITY"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("PERMITTEE"), hereinafter collectively referred to as the "Parties," to be effective on December 1, 2010 ("Effective Date"), provided this Permit is signed by the Parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS.

As used in this Permit, the following terms shall be defined as follows:

- 1.1. **"Hazardous Substances"** – those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances.
- 1.2. **"Temporary Facility"** – a temporary, wireless communication facility owned and operated by PERMITTEE (specifically, telecommunication antennas and associated equipment).
- 1.3. **"Permit Area"** – a fenced enclosure located on the northwest side of the building on a portion of that certain CITY-owned real property commonly known as Womble Park at 2590 Womble Road in the City of San Diego, State of California ("Park"), more particularly described in Exhibit A and both the Park and the Permit Area thereon being more particularly depicted/described in Exhibit B.
- 1.4. **"Permit Use"** – the non-exclusive use of the Permit Area for the purposes of operating, maintaining, and removing the Temporary Facility to provide telecommunication services to persons in the area of the Park.
- 1.5. **"PERMITTEE'S Operations"** – PERMITTEE'S development, occupancy, use, maintenance, and/or restoration of the Permit Area.

2. RIGHT TO ENTER.

Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, and contractors to enter upon the Permit Area.

- 2.1. License Only. This Permit is a non-exclusive license to use CITY-owned property. It is not a lease.

3. USE OF PERMIT AREA.

PERMITTEE may use the Permit Area on a non-exclusive basis for the sole purpose of the Permit Use, and for no other purpose whatsoever without CITY'S prior written consent in each instance.

- 3.1. Time of Use. PERMITTEE may keep the Temporary Facility within the Permit Area twenty-four (24) hours a day, seven (7) days a week.
- 3.2. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which, in CITY'S opinion, creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in the surrounding area.

4. TERM.

The Term of this Permit ("Term") shall be one (1) year, commencing on the Effective Date.

5. PERMIT PROCESSING FEE.

Upon execution of this Permit by PERMITTEE, PERMITTEE shall pay CITY a one-time, non-refundable permit processing fee in the amount of \$600 (Six Hundred Dollars). PERMITTEE shall deliver this fee to the Real Estate Assets Department (together with this Permit) located at the Civic Center Plaza Building, 1200 Third Avenue, Suite 1700, San Diego, CA 92101. The payment should be made payable to the City Treasurer.

6. RENT.

PERMITTEE shall pay to CITY rent in the amount of \$3,000 (Three Thousand Dollars) per month.

- 6.1. Time and Place of Payment. Rent is due monthly, in advance, on or before the first day of each month during the Term. Monthly rent checks shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, located at the Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, CA 92101, or mailed with an invoice to:

THE CITY OF SAN DIEGO
Office of the City Treasurer
P.O. Box 122289
San Diego, CA 92112-4165

- 6.2. Delinquent Rent. If PERMITTEE fails to pay monthly rent when due, PERMITTEE shall pay, in addition to the unpaid monthly rent, five percent (5%) of the delinquent monthly rent. If the monthly rent is still unpaid fifteen (15) calendar days after the first day of the month, PERMITTEE shall pay an additional five percent (5%), for a total of ten percent (10%) of the delinquent monthly rent, which is agreed by the

parties to be appropriate to compensate CITY for loss resulting from fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of monthly rent be less than \$150 (One Hundred Fifty Dollars). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

7. INSURANCE.

7.1. Prerequisites to PERMITTEE'S Operations. Prior to PERMITTEE'S Operations, PERMITTEE shall complete each of the following:

- 7.1.1. PERMITTEE shall obtain a Commercial General Liability insurance policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least \$2,000,000 (Two Million Dollars) per occurrence, subject to an annual aggregate of \$4,000,000 (Four Million Dollars), and deliver to CITY'S Real Estate Assets Department ("READ") a certificate of such insurance currently in effect;
- 7.1.2. PERMITTEE shall obtain a Causes of Loss - Special Form Property Insurance policy on all of PERMITTEE'S insurable property within the Permit Area in an amount to cover one hundred percent (100%) of the replacement cost, and deliver to READ a certificate of such insurance currently in effect;
- 7.1.3. PERMITTEE shall obtain an Automobile Liability Insurance policy, providing coverage for all bodily injury and property damage, with a limit of at least \$1,000,000 (One Million Dollars) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated within the Permit Area. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage. PERMITTEE shall deliver to READ a certificate of such insurance currently in effect;
- 7.1.4. PERMITTEE shall obtain a Workers' Compensation Insurance policy, as required by the laws of the State of California, for all of PERMITTEE'S employees who perform any work associated with this Permit, with Employers' Liability coverage with a limit of at least \$1,000,000 (One Million Dollars). PERMITTEE shall deliver to READ a certificate of such insurance currently in effect;
- 7.1.5. PERMITTEE shall obtain a separate endorsement(s) [CG2010 (11/85) or equivalent form], naming "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additional insureds in each of PERMITTEE's liability policies, and deliver to READ a copy of

such endorsement(s); and

- 7.1.6. Each of the insurance policies described above shall be endorsed so that the coverage is primary and noncontributory to any coverage carried or maintained by CITY.
- 7.2. Qualified Insurer(s). All insurance required under this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. CITY may accept non-admitted surplus lines insurers, provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 7.3. Deductibles and Retentions. All deductibles and self-insured retentions on any insurance policy required under this Permit shall be the sole responsibility of PERMITTEE, and shall be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 7.4. Continuity of Coverage. Each insurance policy required under this Permit shall be in effect prior to PERMITTEE'S Operations, except that "course of construction fire insurance" shall be in force upon commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. PERMITTEE shall keep in force each of the insurance policies required under this Permit throughout the Term and any extended use, without lapse. At least thirty (30) calendar days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 7.5. Modification. To assure protection from and against the kind and extent of risk existing within the Permit Area, CITY, in its sole discretion, may require the revision of amounts and coverage, at any time during the Term, by giving PERMITTEE thirty (30) calendar day's prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to PERMITTEE'S use of the Permit Area.
- 7.6. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons within the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 7.7. Failure to Comply. If PERMITTEE fails or refuses to obtain or maintain any of the insurance required under this Permit, or fails to provide CITY proof of such insurance, CITY may obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect

in California. CITY shall notify PERMITTEE of such payment of premiums, stating the amount paid, the name of each insurer, and the rate of interest. PERMITTEE shall pay such reimbursement and interest on the first day of the month following CITY'S notice. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain any of the insurance required under this Permit, or fails to provide proof of such insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its property from the Permit Area.

8. PERMITTEE'S RISK.

PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S Operations and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

9. ACCEPTANCE OF PERMIT AREA.

By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that PERMITTEE is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations, and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations CITY may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to the Effective Date. PERMITTEE shall not hold CITY responsible for any defects within the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including, without limitation, PERMITTEE'S employees, from any defects within the Permit Area, and shall be solely responsible therefor.

10. IMPROVEMENTS AND ALTERATIONS.

PERMITTEE shall not construct any improvements, structures, or installations within the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.

11. COMPLIANCE WITH LAWS AND POLICIES.

- 11.1. General. PERMITTEE shall, at its sole cost and expense, comply with the requirements of all rules, regulations, ordinances, laws, and directives of governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S Operations.
- 11.2. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S Operations, including, without limitation, the provision of goods, services, facilities, privileges, advantages, and accommodations, and the hiring of employees and contractors.
- 11.3. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and for bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 11.4. Drug-free Workplace. PERMITTEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - 11.4.1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited within the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition;
 - 11.4.2. Establish a drug-free awareness program to inform employees about all of the following:
 - a) The dangers of drug abuse in the workplace;
 - b) PERMITTEE'S policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations.
 - 11.4.3. PERMITTEE shall include, in each of its sublicenses and contracts related to this Permit, language obligating each sub-licensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. PERMITTEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

- 11.5. Disabled Access. PERMITTEE shall comply with each of the following: the 1990 Americans with Disabilities Act; Title 24 of the California Code of Regulations (i.e., the California Building Standards Code); and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

12. TELECOMMUNICATIONS PROVISIONS.

- 12.1. Radio Frequency Radiation. PERMITTEE shall maintain any radio frequency ("RF") radiation associated with the Temporary Facility within the levels allowed by federal regulations set forth in Section 1.1310 of CFR 47 and OET Bulletin 65. Any area within one thousand (1,000) feet of any RF transmitting antenna on the Temporary Facility, casually accessible by the general public or by any worker at ground level, shall be maintained below limits stated for General Population/Uncontrolled Exposure. PERMITTEE shall report to CITY any areas discovered by PERMITTEE to exceed such federally mandated limits. PERMITTEE shall not hold CITY responsible for its radiation levels found to exceed such limits. Hazardous RF radiation levels may be encountered when climbing on antenna structures (refer to FCC OET Bulletin 65). Protection of employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is of primary concern. Any areas in which such employees may be subjected to radiation levels that exceed the General Population/Uncontrolled Exposure limits must be clearly identified as required by CAL-OSHA.
- 12.2. Radio Frequency Interference. PERMITTEE shall comply with all requirements set forth in Exhibit C, which may be updated from time to time in CITY'S sole discretion. PERMITTEE warrants that PERMITTEE'S Operations shall not result in degraded performance or RF interference with any CITY-authorized uses at the Park.
- 12.2.1. In the event the Temporary Facility causes an obstruction in the line of sight to and from the antennas located on the utility building next to the Permit Area, PERMITTEE shall, under the supervision of CITY, raise the height of the antennas on the utility building to a height necessary to restore the line of sight to and from such antennas.
- 12.2.2. PERMITTEE shall consult with the San Diego Chargers to secure available frequencies to ensure that PERMITTEE'S Operations do not interfere with game day operations of the San Diego Chargers' equipment and communications systems.
- 12.3. Industry Standards. PERMITTEE shall perform PERMITTEE'S Operations in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© Manual, or any succeeding regulations or standards. In addition to the requirements of the Motorola R56© publication, PERMITTEE shall comply with the following supplemental requirements:

- 12.3.1. PERMITTEE shall remove all trash and debris from the Permit Area;
 - 12.3.2. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements;
 - 12.3.3. All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to other users at the Park; and
 - 12.3.4. PERMITTEE shall comply with the requirements set forth in Exhibit D with respect to PERMITTEE'S Operations. City may, in its sole discretion, update Exhibit D from time to time.
- 12.4. Other Facilities. PERMITTEE shall not access any other wireless communication facility or CITY-owned communications equipment (including any towers) at the Park without CITY'S prior consent.
- 12.5. Interference with CITY Operations or Public Use. PERMITTEE'S Operations shall not interfere with CITY operations or public use of CITY-owned property.

13. WASTE, DAMAGE, OR DESTRUCTION.

PERMITTEE shall immediately give notice to CITY of any fire or any other damage that occurs within the Permit Area. PERMITTEE shall not commit, or allow to be committed, any waste or injury, or any public or private nuisance, in connection with PERMITTEE'S Operations. If the Permit Area is damaged by any cause that puts the Permit Area into a condition which is not decent, safe, healthy, and/or sanitary, PERMITTEE shall make, or cause to be made, full repair of the damage and restore the Permit Area to the condition which existed prior to the damage; or, at CITY'S option, PERMITTEE shall clear and remove from the Permit Area all debris resulting from the damage and restore the Permit Area in accordance with plans and specifications previously submitted to and approved by CITY, in writing, in order to replace in kind and scope the operation which existed prior to the damage. PERMITTEE shall commence preliminary steps toward performing repairs and/or restoration of the Permit Area as soon as practicable, but no later than thirty (30) calendar days after the occurrence of the fire or damage, and shall complete the required repairs and/or restoration of the Permit Area within one hundred eighty (180) calendar days after such occurrence.

14. HAZARDOUS SUBSTANCES.

PERMITTEE shall not allow the installation or release of Hazardous Substances within or from the Permit Area by PERMITTEE, its officers, employees, invitees, guests, agents, or contractors. PERMITTEE and all such parties shall not store, utilize, or sell any Hazardous Substance within the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of Hazardous Substances. A copy of the presently effective EPA

and State lists of Hazardous Substances is on file in the Office of the City Clerk as Document 769704, and by this reference is incorporated into this Permit.

- 14.1. Remediation. If any release of a Hazardous Substance occurs as a result of PERMITTEE'S Operations, PERMITTEE shall pay all costs of remediation and removal of the Hazardous Substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 14.2. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S Operations, including, without limitation, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 14.3. Notice of Release. If PERMITTEE knows, or has reasonable cause to believe, that any Hazardous Substance has been released within or from the Permit Area, PERMITTEE shall give written notice to CITY within three (3) calendar days after receipt of such knowledge or cause for belief. If PERMITTEE knows, or has reasonable cause to believe, that such substance is an imminent and substantial danger to public health and/or safety, PERMITTEE shall notify CITY by the most immediate means available, and immediately upon receipt of such knowledge or belief, shall take all actions necessary to minimize the danger. PERMITTEE shall notify CITY immediately of any notice of violation received, environmental actions initiated, or private lawsuits filed related to the Permit Area.
- 14.4. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S Operations resulted in a Hazardous Substance being released within or from the Permit Area, CITY may cause an environmental assessment of the Permit Area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE'S Operations and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, and/or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws, statutes, ordinances, and/or regulations and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor. If the environmental assessment conclusively establishes that PERMITTEE'S Operations did not result in a Hazardous Substance being released within or from the Permit Area, CITY shall reimburse PERMITTEE for the cost of

the assessment.

15. SIGNS.

PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found within the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost and expense.

15.1. Company Logos. PERMITTEE shall not display any company logo or advertising of any kind on the Temporary Facility.

16. MAINTENANCE OF THE PERMIT AREA.

PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in good order and repair, and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the use of the Permit Area. At no time during the Term shall CITY be required to make any improvements or repairs to the Permit Area. PERMITTEE shall, at all times, keep the Permit Area free and clear of rubbish, debris, and litter.

16.1. Emergency Maintenance Procedures. The Parties shall comply with the emergency maintenance procedures set forth in Exhibit E, including the requirement to notify the other party, in writing, of any changes to its emergency contacts and telephone numbers.

17. ENTRY AND INSPECTION.

CITY may, at all times, enter and inspect the Permit Area.

18. UTILITIES.

PERMITTEE shall order, obtain, and pay for all utilities, including installation and service charges, in connection with its use of the Permit Area.

19. TAXES.

PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE'S Operations, including any licenses or permits. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest.

PERMITTEE shall pay all such possessory interest taxes. PERMITTEE'S payment for such taxes, assessments, and/or fees shall not reduce any payment due CITY.

20. SUPERIOR INTERESTS.

This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits, licenses, easements, and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow PERMITTEE'S use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

21. ENCUMBRANCES.

PERMITTEE shall keep the Permit Area, and any CITY-owned property of which the Permit Area is a part, free from all encumbrances and liens of any nature which arise out of, or are in any manner directly or indirectly connected with, this Permit or PERMITTEE'S Operations. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost, or expense, including, without limitation, all attorney fees and costs, relating to or charged against the Permit Area, including, without limitation, PERMITTEE'S failure, or the failure of any contractor or subcontractor hired by PERMITTEE, to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

22. ASSIGNMENT AND SUBLICENSE.

PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent, which may be withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

23. INDEMNIFICATION.

PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of, or are in any manner directly or indirectly connected with, this Permit or PERMITTEE'S Operations, and all expenses of investigating and defending against same, including, without limitation, attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY

and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including, without limitation, reasonable attorney fees and costs.

24. OTHER GOVERNMENTAL ACTIONS.

By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S Operations. Discretionary action includes, without limitation, re-zonings, variances, environmental clearances, and all other required governmental approvals.

25. CITY'S RESERVATION OF RIGHTS.

25.1. Resources. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water within the Permit Area.

25.2. Use. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Permit Area for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion, for the public good.

25.3. Entry. CITY may enter the Permit Area to develop and/or make repairs to municipal resources and services. CITY shall not unreasonably interfere with PERMITTEE'S use of the Permit Area and shall reimburse PERMITTEE for physical damages, if any, to the permanent improvements located within the Permit Area or to PERMITTEE'S communications equipment resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage, as reasonably determined by CITY. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

26. REVOCATION AND TERMINATION.

26.1. Revocation or Termination by CITY. This Permit may be revoked or terminated at any time, at will, by CITY, in CITY'S sole discretion. Upon CITY'S revocation or termination of this Permit, PERMITTEE shall immediately cease all operations within the Permit Area, and as soon as practicable thereafter, restore the Permit Area to the condition it was on the Effective Date, normal wear and tear excepted, and vacate the Permit Area. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation or termination

of this Permit.

- 26.2. Revocation or Termination by PERMITTEE. This Permit may be revoked or terminated at any time by PERMITTEE. Upon PERMITTEE'S revocation or termination of this Permit, PERMITTEE shall immediately cease all operations within the Permit Area, and as soon as practicable thereafter, restore the Permit Area to the condition it was on the Effective Date, normal wear and tear excepted, and vacate the Permit Area. Revocation or termination of this Permit by PERMITTEE shall not release PERMITTEE from any obligation or liability incurred/accrued, excepting monthly rent payments for time periods after which PERMITTEE has removed itself from, and restored, the Permit Area.
- 26.3. Cumulative Remedies. CITY'S rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY'S rights or remedies at law or in equity.
- 26.4. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instances, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in writing and executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may, at any and all times, require the cure of the default.

27. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY.

- 27.1. Personal Property. PERMITTEE shall remove PERMITTEE-owned machines, appliances, equipment, and other items of personal property upon the expiration of this Permit, or as soon as practicable after termination, but in no event later than ten (10) calendar days after the expiration or earlier termination of this Permit. If any removal of such personal property by PERMITTEE results in damage to the Permit Area, PERMITTEE shall repair all such damage at PERMITTEE'S sole cost and expense. If PERMITTEE fails to remove any such items more than ten (10) calendar days after the expiration or earlier termination of this Permit, CITY may, at its option, remove such items at PERMITTEE'S sole cost and expense.
- 27.2. Late Removal. PERMITTEE shall pay rent to CITY, calculated on a per diem basis, at a rate three (3) times the rental rate in effect immediately prior to the expiration or

earlier termination of this Permit for any period of time needed to remove any improvements or personal property from the Permit Area, whether by CITY or PERMITTEE, after the expiration or earlier termination of this Permit.

28. NOTICES.

Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE'S Address for Notices, and to CITY as follows:

If to PERMITTEE:

New Cingular Wireless PCS, LLC
Attention: Network Real Estate Lease Administration
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

With a copy to PERMITTEE'S Legal Department:

- If sent via certified or registered mail to:

New Cingular Wireless PCS, LLC
Attention: Legal Department
P.O. Box 97061
Redmond, WA 98073-9761

- If sent via nationally recognized overnight courier service to:

New Cingular Wireless PCS, LLC
Attention: Legal Department
16631 NE 72nd Way
Redmond, WA 98052-7827

If to CITY:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155

29. MISCELLANEOUS PROVISIONS.

29.1. Governing Law. This Permit shall be governed, construed, and enforced in accordance with the laws of the State of California.

29.2. Entire Understanding. This Permit constitutes the entire understanding between the

Parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Permit and PERMITTEE'S Operations.

- 29.3. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between the Parties, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
- 29.4. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
- 29.5. CITY'S Consent or Approval. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided.
- 29.6. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit (and all subsequent amendments to this Permit) shall be deemed to refer to the "Mayor or his designee" for the duration CITY operates under the mayor-council (commonly referred to as the "strong mayor") form of governance, pursuant to Article XV of The City Charter.
- 29.7. Permit Modifications. Any modification, alteration, or amendment of this Permit shall be in writing and signed by the Parties.
- 29.8. Survival. Any obligation under this Permit that requires a party's performance of that obligation after the expiration or earlier termination of this Permit shall survive such expiration or termination.
- 29.9. Legal Proceedings. If one party brings an action or proceeding against the other party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including, without limitation, reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay all of CITY'S costs and expenses thereof, including, without limitation, reasonable attorney fees and costs.
- 29.10. Number and Gender. In this Permit, words in the singular number shall include the plural, and *vice versa*, as appropriate to the context. Words of either gender shall

include the other gender.

- 29.11. Authority to Execute and Deliver Permit. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he or she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association, in good standing in its home state, and that such entity is qualified to do business in the State of California.

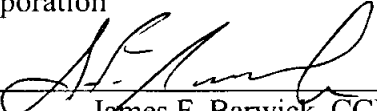
[The remainder of this page intentionally left blank.]

29.12. Exhibits Incorporated. All exhibits referenced in this Permit are incorporated into the Permit by this reference.

IN WITNESS WHEREOF, this Permit is executed by CITY and PERMITTEE, to be effective as of the Effective Date.

Date: 12/9/10

THE CITY OF SAN DIEGO, a California municipal corporation

By 
James F. Barwick, CCIM
Director, Real Estate Assets

Date: 12/8/10

PERMITTEE: NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company

By 

(Print Name) KEVIN MCGEE

(Title) AREA MANAGER, SD-LU-H1

ENVIRONMENTAL ANALYSIS SECTION:

Date: 12.9.2010

By 

(Print Name) Anna L. McPherson

(Title) Senior Planner

APPROVED AS TO FORM AND LEGALITY:

Date: 12/9/2010

JAN I. GOLDSMITH, City Attorney

By 
David L. Herman
Deputy City Attorney

Exhibit A: CITY Site Codes for CITY-Owned Real Property

R301-6 R.O.S. Map 16556 PCLS 1, 2, 5 & 6

Exhibit B: Approved Drawings and Photosims

EXISTING

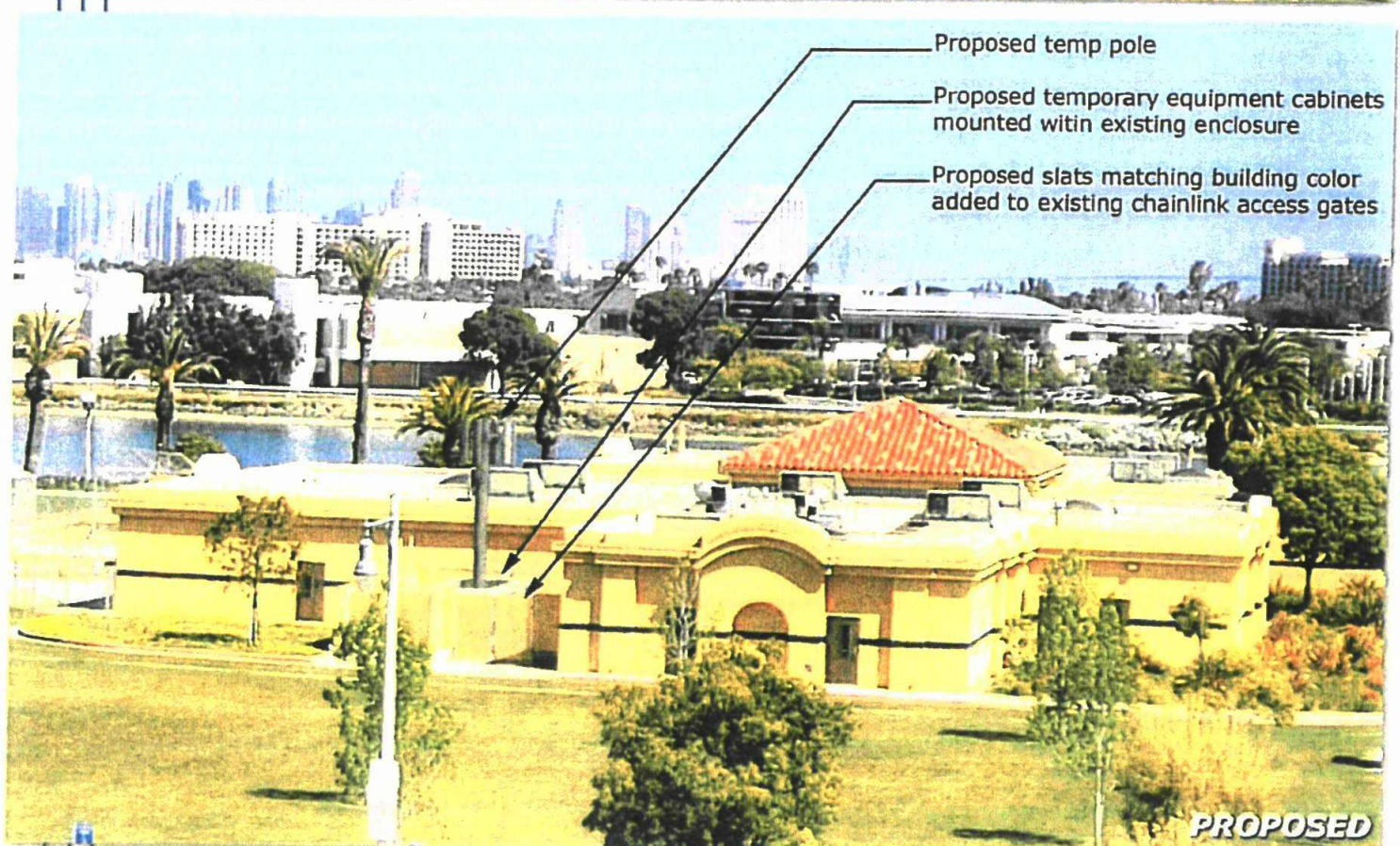
Exhibit "A"

Approved 10/18/10
(date)

Permit No. 743874/PTS 222845



SD0391
Point Loma Temp
2590 Womble Rd.
San Diego, CA 92106



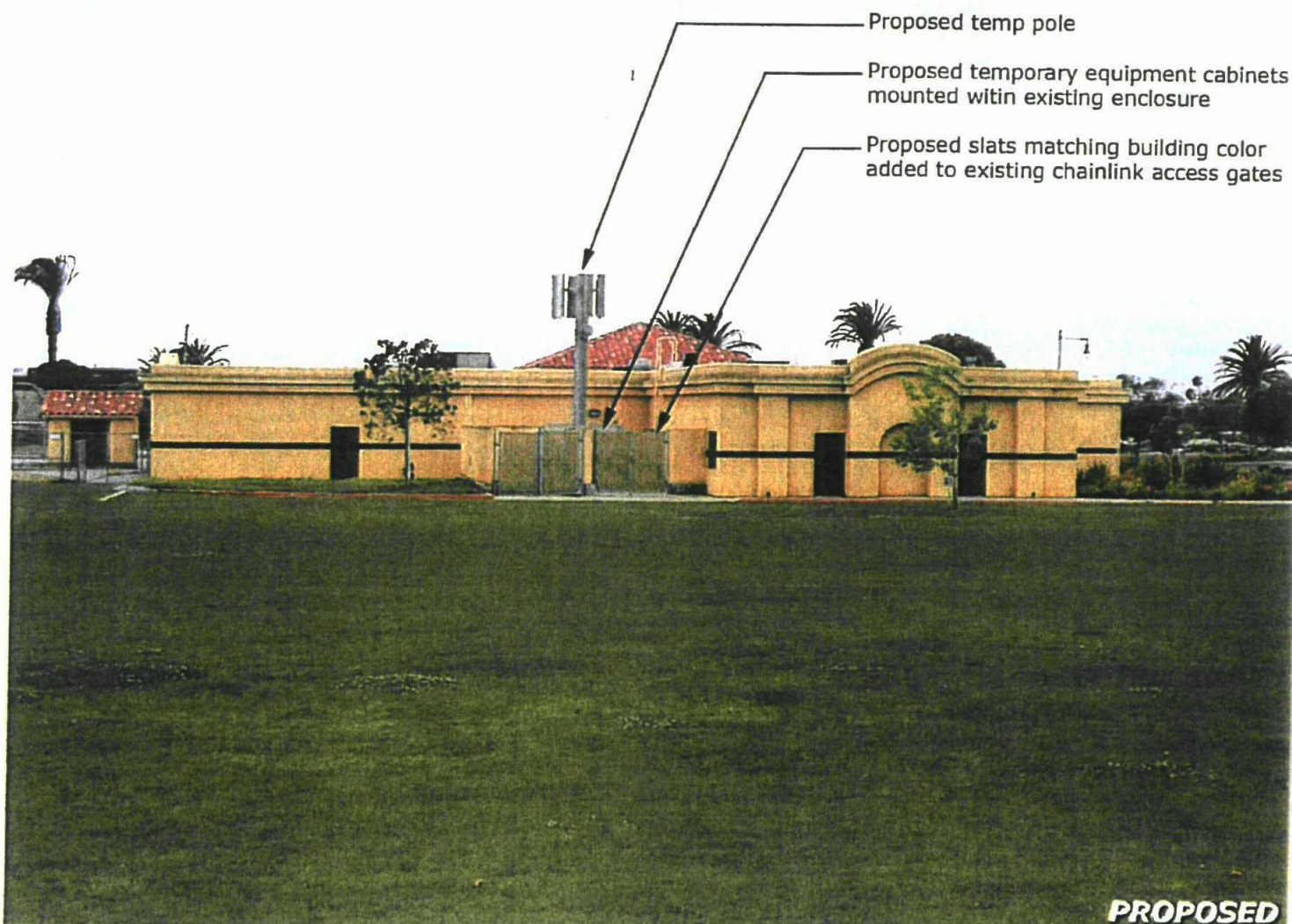
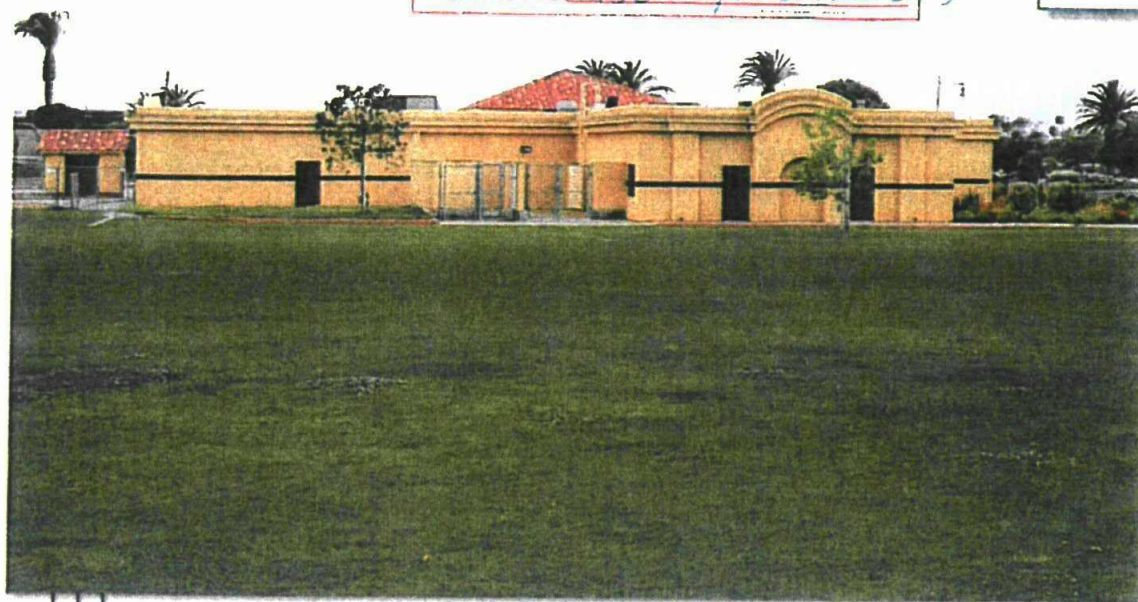
PROPOSED

Photosimulation of proposed telecommunications site

111
EXISTING

Exhibit "A"
Approved 10/18/10
(date)
Permit No. 713874/PTG 222845


SD0391
Point Loma Temp
2590 Womble Rd.
San Diego, CA 92106



PROPOSED
Photosimulation of proposed telecommunications site

Exhibit C: Interference Protection Requirements

- a. Interference. Prior to the Effective Date or at anytime during the Term of this Lease, PERMITTEE may be required to provide an intermodulation report ("Report") to CITY. This Report shall include the calculation parameters used to compile the Report, all intermodulation "hits," a brief description of the results of the intermodulation calculations; a list of possible interference situations that may result from PERMITTEE'S Operations; transmission frequencies that are currently being operated at the Park, and similar or other relevant data from other permittees/lessees/users operating on-site. The information required to compile the Report, including intermodulation parameters and currently known transmission frequencies at the Park may be obtained from CITY'S General Services Department, Communications Division CITY is not responsible for any omitted data provided for the purpose of creating the Report. The Report shall be provided to CITY'S General Services Department, Communications Division ("GSDCD"), Attention: Senior Communications Engineer.
- b. City of San Diego Land Radio/Electronic Use "ON THE AIR" Test Instructions and Procedures. For the purpose of confirming interference situations calculated by the Report and for the discovery of any other actual interference situations, on-premises, pre-installation or pre-use tests may be required. The tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses at the Park.

Pre-installation or pre-use Testing

- (1) PERMITTEE shall notify all permittees/lessees/users at the Park of the tests and details of the tests, at least fourteen (14) calendar days in advance of the test. A listing of all permittees/lessees/users operating at the Park may be obtained from CITY and used to compile a notification list.
 - (a) The notification shall be in the form of a letter to each listed permittee/lessee/user giving a technical data summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the permittees/lessees/users to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the permittee/lessee/user. Technical Data Summary and Test Results Certification sheets are included below.
 - (b) A copy of these instructions, "City of San Diego Radio/Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be noted in the notification letter.
 - (c) Notification to permittees/lessees/users shall be sent via U.S. Mail, pre-paid First-Class postage, certified return receipt requested or hand delivered.

- (d) The notification letter to the GSDCD Senior Communications Engineer shall include a list of all permittees/lessees/users notified.
- (2) Following the completion of the tests, PERMITTEE shall provide a letter to the GSDCD Senior Communications Engineer stating the test results obtained from each permittee/lessee/user participating in the test and a list of those permittees/lessees/users who did not respond.
- (3) If a notified permittee/lessee/user fails to send a qualified representative to observe and participate in the tests, it will be assumed by CITY that the permittee/lessee/user has assured itself that their operations will not be affected.
- (4) It shall be the responsibility of PERMITTEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the PERMITTEE under the following technical conditions:

- (1) The PERMITTEE'S transmitting and/or receiving equipment shall be of the type planned for final use in the area.
 - (a) The transmitted RF power shall be the maximum to be used and authorized at the Park.
 - (b) On-the-air transmitter tests shall include the use of full allowable modulation.
 - (c) Antenna height(s), location(s) and type(s) shall be the same or comparable to the final installation plan.
- (2) Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the PERMITTEE'S electronic equipment.
- (3) All tests shall include testing with all frequencies planned for use by the PERMITTEE in the area.

d. Radio Frequency Interference to City Radio Equipment

The radio equipment use proposed by PERMITTEE shall not directly or indirectly result in degraded technical performance of the CITY'S existing radio equipment installed at

the Permit Area or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to:

- (1) Detectable or measurable received intermodulation;
- (2) Audio distortion or noise; and
- (3) Receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test.

e. Modifications to Equipment

PERMITTEE shall notify CITY prior to modifications to transmitting equipment that will change effective radiated power, transmitter frequency, transmitter modulation, or transmitter spurious and harmonic emissions. These modifications may require retest using this "ON THE AIR" testing procedure and the newly proposed equipment.

f. Resulting Interference

Should an interference problem occur at the Permit Area or in the nearby surrounding area as a result of PERMITTEE'S Operations, PERMITTEE shall initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. CITY may recognize the right of prior authorized permittees/lessees/users and withhold approval or disallow use of a new, retuned, or modified installation pending settlement of the interference problems between PERMITTEE and other authorized users. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of CITY withholding approval and PERMITTEE waives any claim for expense or loss which PERMITTEE might incur as a result of CITY withholding approval.

TECHNICAL DATA SUMMARY

One form to be completed per transmitter and supplied to all permittees/lessees/users operating at the facility.

DATE _____

LOCATION _____ APPLICANT _____

CALL SIGN _____ CONTACT NAME _____ PHONE _____

TRANSMITTER

RECEIVER

Manufacturer _____ Manufacturer _____

Model _____ Model _____

Emission _____

Radiated ERP _____ Watts

Transmit Frequency _____

Receiver Frequency _____

CTCSS or DCS

1. _____

1. _____

1. _____

2. _____

2. _____

2. _____

3. _____

3. _____

3. _____

4. _____

4. _____

4. _____

ANTENNA TRANSMIT CAVITY FILTER ISOLATOR

Make _____ Make _____ Make _____

Model/Type _____

Gain _____ dBd

Azimuth _____

REMARKS:

TEST RESULTS CERTIFICATION

Top section is to be completed and supplied to all permittees/lessees/users operating at the Permit Area. Bottom section is to be completed by each existing Permit Area permittee/lessee/user after testing is finished.

SUBJECT: "ON THE AIR" interference testing

SITE LOCATION _____

FREQUENCY _____

DATE OF TEST _____

TIME OF TEST _____

PROPOSED TRANSMITTER OWNED BY _____

TEST PERFORMED BY _____

Permittee/Lessee/User:

"On-the-air" interference testing has been completed at the above-stated site location. A qualified representative was present for the test to observe for possible interference problems.

With regard to the above test, this is to certify that objectionable radio frequency interference did ☐ did not ☐ result during this test.

Details of interference: (if applicable)

Proposed technical resolution: (if applicable)

(Tenant)

(Tenant's Representative)

(Date)

Exhibit D: Installation Standards

- a. All waveguide and coaxial cable runs shall be installed and supported on the tower, cable ladder, and ice bridges using equivalent hardware and methods to those currently used on site.
- b. All waveguide and coaxial cable shall be installed in a neat manner with sweeping bends and straight runs on the tower cable ladder and ice bridges.
- c. Three ground kits shall be installed as follows: Near the antenna, where the coax transitions to horizontal at the junction between the cable ladder and ice bridge, and where the cable enters the building. Grounds shall be installed to shunt any lightning directly to earth ground.
- d. All antenna mounts and hardware utilized on towers and structures shall be hot-dip galvanized or stainless steel and of standard manufacture.
- e. All drawings submitted for installation approval shall clearly show the following items:
 - (1) A plot plan of the site to include the building and tower location with the proposed equipment shown in its proposed location.
 - (2) A tower drawing clearly showing the location of the proposed antenna and the routing of the waveguide or coax cable specifying grounding locations.
 - (3) If equipment is to be located inside the building, a drawing shall be provided showing the rack location of the equipment, an elevation drawing of the rack, and a plot plan of the equipment installed in the rack.
 - (4) A list of all equipment to be installed shall be provided. This list shall include the type and manufacturer of equipment, RF frequency, RF power, modulation type, RF filtering, antenna type, antenna model, antenna gain and azimuth, waveguide and/or coax cable length and AC power requirement including any HVAC.
- f. All transmitters shall have necessary protection to eliminate any RF degradation of the receive signal to any other user on the site, such as filtering and isolators.
- g. To minimize the number of antennas and waveguide or coax cables to be mounted on the tower, transmitter combining will be required whenever possible.
- h. All cabinets and racks shall be grounded to the site grounding system.
- i. Should CITY determine that a tower loading analysis is required, the requesting user shall have the tower analysis done at its expense and provide CITY with information on how the additional load to the tower will affect tower structural integrity.

- j. Tower Climbing: All tower climbing shall be done in compliance with all CAL-OSHA requirements.
- k. RF Radiation: Hazardous RF radiation levels may be encountered when climbing on existing antenna structures. Refer to FCC OET Bulletin 65. When it is necessary to climb on the antenna structure for installation or maintenance, contact the CITY'S General Services Department, Communications Division ("GSDCD") Fixed Maintenance Supervisor at (619) 525-8650 for shutdown scheduling and procedures. Any equipment installed at the Permit Area may at times require shutdown to allow maintenance personnel to access the antenna structure.
- l. PERMITTEES shall provide CITY with shutdown procedures and 24-hour contact names and telephone numbers. In addition, should changes be made to the contact names and telephone numbers, the CITY shall be notified at least ten (10) calendar days before the change.
- m. Access: For access to the site, contact the GSDCD Fixed Maintenance Supervisor at (619) 525-8650. Keys will be issued as required. **DO NOT DUPLICATE KEYS.**
- n. Security: All sites are alarmed with silent alarms and monitored twenty-four (24) hours per day by the Public Service Dispatch Center. When entering or leaving a building, call (619) 527-7660 or use the order wire dial #13 and identify yourself. Police respond to all unanswered alarms.
- o. Cleanup: All trash and debris shall be removed from the site at the end of each work day and upon completion of the project.
- p. A detailed construction schedule shall be provided to GSDCD prior to any installation work.

Exhibit E: Emergency Maintenance Procedures

If PERMITTEE discovers that any of the antennas or related equipment on the Temporary Facility are damaged, PERMITTEE shall immediately notify **CITY'S Station 38 at (619) 527-7660**.

If CITY discovers that any of the antennas or related equipment on the Temporary Facility are damaged, CITY shall immediately notify **PERMITTEE'S Network Operation Call Center at 888-662-4662**.

If PERMITTEE'S Operations cause any interference to CITY'S telecommunication equipment and/or system, CITY may require the Temporary Facility to be moved to another location at the Park.

PERMITTEE shall not unreasonably interfere with pedestrian or vehicle traffic in conducting PERMITTEE'S Operations.

If a party changes its emergency contact telephone information, that party shall immediately notify the other party of the new contact information at the telephone number provided above, and, within ten (10) calendar days, provide the other party with written notice of the new contact information, in accordance with this Permit.