

CITY OF SAN DIEGO
TELECOM MASTER LEASE AGREEMENT

between

THE CITY OF SAN DIEGO

and

OMNIPOINT COMMUNICATIONS INC.

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CITY OF SAN DIEGO
TELECOM MASTER LEASE AGREEMENT

THIS CITY OF SAN DIEGO TELECOM MASTER LEASE AGREEMENT ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and OMNIPOINT COMMUNICATIONS INC., a Delaware corporation ("LESSEE") (collectively, the "Parties"),to be effective upon execution by CITY (the "Effective Date") and approval by the City Attorney, as follows:

RECITAL

This Lease is a master lease between CITY and LESSEE, intended to govern the rights and obligations of the Parties related to multiple parcels of CITY-owned real property, identified herein as "Sites." In addition, this Lease is intended to also apply to those portions of the Sites leased to LESSEE by CITY (referred to herein as "Premises") as if a separate lease agreement were written for each Premises.

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

SECTION 1: PREMISES

1.1 Leased Premises.

Under the terms and conditions of this Lease, CITY leases to LESSEE, and LESSEE leases from CITY a portion ("Premises") of certain CITY-owned real property ("Site") located in San Diego County, California. Each Site and Premises shall be particularly described in an "Addendum to City of San Diego Telecom Master Lease Agreement" ("Addendum"), a form of which is attached hereto as EXHIBIT A: Form of Addendum. Unless otherwise provided, LESSEE, its agents, employees, contractors, guests, and invitees may enter each Site on a 24-hour, non-exclusive basis to access the Premises using such access points as shown or described in the applicable Addendum.

1.2 Easements and Reservations.

1.2.1 CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.

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

1.2.3 CITY may enter the Premises to develop and/or repair municipal resources and services.

1.2.4 CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and shall reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises or to LESSEE'S communications equipment ("Communications Equipment," including without limitation antenna equipment, cable wiring, utility lines, transmission lines, air conditioned equipment shelters, backup power sources that may include, with proper permits obtained, backup power generators with connected fuel storage tanks for emergency backup power, related fixtures and, if applicable to the Premises, an antenna structure or structures, as listed in the applicable Addendum 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.

1.3 Eminent Domain.

If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE, or its beneficiary or mortgagee, shall be as follows:

1.3.1 Full Taking. If the entire Premises is taken, this Lease shall terminate as to that Premises on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

1.3.2 Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate as to that Premises on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

1.3.3 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, but only to the extent that LESSEE'S operations are reduced or impaired.

1.3.4 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or

damages to, LESSEE'S then-remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

1.3.5 Transfer. CITY may transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If such a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.

1.3.6 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

1.4 Related Council Actions.

By entering into this Lease, neither CITY nor the San Diego City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development or operation of the Premises. Discretionary action includes, but is not limited to any rezoning, variance, environmental clearance, or any other governmental approval which may be required for the development and operation of the Premises. LESSEE shall diligently seek all entitlements and actions, from both CITY and other governmental agencies with jurisdiction over the Premises, as are necessary to develop and operate the Premises as contemplated by this Lease, all at LESSEE'S sole cost and expense.

1.5 Quiet Possession.

LESSEE, paying the rent and performing its obligations under this Lease, shall at all times during the term of this Lease ("Term") peaceably and quietly have, hold, and enjoy the Premises. If during the Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, this Lease shall not be voided thereby, and CITY shall not be liable to LESSEE for any loss or resulting damage, but there shall be determined and stated in writing by CITY a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of any Premises.

1.6 Reassignment of Space.

At any time during the Term, but only once during the initial term of this Lease, CITY, in its sole discretion, may reassign LESSEE an amount of space within a Site substantially equivalent to the Premises being reassigned. CITY shall exercise its reassignment right by delivering written notice (the "Reassignment

Notice") to LESSEE that proposes one or more alternate locations within the Site to which LESSEE may relocate its Communications Equipment. LESSEE shall have ninety (90) days from the date it receives the Reassignment Notice to evaluate CITY'S proposed relocation space, during which period LESSEE may conduct tests to determine the technological feasibility of the proposed relocation space. Any relocation space which CITY and LESSEE agree upon in writing is hereinafter referred to as the "Relocation Space."

1.6.1 LESSEE shall relocate its Communications Equipment to the Relocation Space either within ninety (90) days after the execution of a written agreement between the Parties concerning the location and dimensions of the Relocation Space, or otherwise as soon as possible after receipt of all necessary permits and approvals required for any CITY construction or redevelopment project which requires such relocation, and receipt of all permits and approvals required for LESSEE'S use of the Relocation Space. LESSEE shall cooperate fully with CITY and its contractors during any reassignment, and shall pay all expenses associated with the reassignment. The relocation shall be at LESSEE'S expense unless CITY'S relocation requirement results from CITY'S desire to lease space to non-governmental third-party users. In that case, CITY will promptly reimburse LESSEE for the reasonable relocation costs of LESSEE. Relocation shall not result in a lessening of LESSEE'S ability to use the Site for its intended purpose or the quality of such use.

1.6.2 The physical relocation of all or any part of LESSEE'S Communications Equipment shall only be done by LESSEE or LESSEE'S contractors.

1.6.3 CITY shall use its best efforts to ensure continuous, uninterrupted broadcast/receiving capability during any conversion, including the installation and operation by LESSEE of a CITY-approved temporary wireless communication facility on the Site.

1.6.4 If CITY and LESSEE are unable to agree on a mutually acceptable relocation space, then LESSEE may terminate this Lease as to the Premises to be relocated upon thirty (30) days prior written notice to CITY, without further obligation thereto.

1.6.5 After a reassignment and relocation as provided in this section, the affected Premises shall be redefined to be the Relocation Space. CITY and LESSEE agree that "as built" drawings of the Relocation Space, including any access and utility easement, may be prepared by a licensed architect at LESSEE'S sole cost, and such drawings shall then replace the relevant portions of the Addendum describing the Premises. Except as expressly provided in this section, any such reassignment and relocation shall not alter, modify or otherwise change any of the terms and conditions of this Lease.

SECTION 2: TERM

2.1 Term.

The Term of this Lease shall be ten (10) years. If the Effective Date is not the first day of a calendar month, the Term shall include the partial calendar month from and including the Effective Date through the last month of the full Term, so that the Term shall expire on the last day of a calendar month. "Lease Year" as used in this Lease shall mean each full twelve-month period during the Term; however, the first Lease Year shall include any partial month in which the Effective Date falls.

2.2 Holdover.

LESSEE may not continue in possession of any Premises past the expiration or earlier termination of this Lease. Any extension of the Term shall require approval by the City Council pursuant to City Council Policy 700-10: Disposition of City-Owned Real Property.

2.3 Surrender and Quitclaim of LESSEE'S Interest.

2.3.1 Surrender and Restoration of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to CITY in a decent, safe, and sanitary condition, and free and clear of all liens and encumbrances, except those liens and encumbrances which: (1) existed on the Effective Date, and (2) exist after the Effective Date and are not the result of LESSEE'S use of the Premises. LESSEE shall surrender the Premises in the same condition as existed when first included in this Lease, normal wear and tear excepted.

2.3.2 Quitclaim Deed. At termination of this Lease, in whole or in part, for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written demand, a valid and recordable quitclaim deed covering all of the Premises affected by the termination. If LESSEE fails or refuses to deliver such a quitclaim deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice shall be conclusive evidence of the termination of this Lease, in whole or in part, and all LESSEE'S rights to the affected Premises.

2.4 Memorandum of Lease.

If requested by LESSEE, CITY shall execute and deliver to LESSEE, a memorandum in the form attached hereto as EXHIBIT B: Memorandum of Lease Form. CITY acknowledges that LESSEE will record such a memorandum with the San Diego County Recorder.

SECTION 3: USES

3.1 Sole Permitted Uses.

LESSEE shall use the Premises solely and exclusively for the purposes of installing, constructing, modifying, maintaining, operating, and removing, at its sole expense, a wireless communication facility on the Premises, including without limitation LESSEE'S Communications Equipment. LESSEE'S use of the Premises for any unauthorized, illegal, or non-permitted purpose shall be a default of this Lease as provided in Section 6 of this Lease.

3.2 Co-location.

Where a Site is a shared site, LESSEE shall not access any other wireless communication facility or CITY-owned communications equipment, including any towers, without CITY'S prior consent.

3.3 Competent Management.

Throughout the Term, LESSEE shall provide competent management of the Premises for the permitted uses to CITY'S reasonable satisfaction. For purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a wireless communication facility and related activities in a fiscally responsible manner and in accordance with industry standards.

SECTION 4: RENT

4.1 Rent Amount.

LESSEE shall pay to CITY rent in the amount of Thirty Thousand Dollars ($30,000) per Premises per Lease Year, prorated for any partial Lease Year, in advance, subject to annual adjustments as of the first day of the second Lease Year and each Lease Year thereafter, as follows:

Lease Year Two	$30,900 per Premises, per year
Lease Year Three	$31,827 per Premises, per year
Lease Year Four	$32,782 per Premises, per year
Lease Year Five	$33,765 per Premises, per year
Lease Years Six – Ten	Market Rent Adjustments by Appraisal

The above rent schedule reflects an annual rent escalation equal to three percent (3%) over the annual rent for each preceding Lease Year. For the sixth through the tenth Lease Years, the rent may be adjusted upward pursuant to the "Market Rent Adjustments by Appraisal" section, below.

4.2 Market Rent Adjustments by Appraisal.

At the end of the fifth Lease Year, the rent for the remaining five (5) Lease Years of the Term shall be determined by an appraisal, to be effective as of the first day of the sixth Lease Year (the "Adjustment Date"). Such appraisal shall be performed by a staff appraiser of CITY'S Real Estate Assets Department ("READ") or by a California State Certified General Real Estate Appraiser who is confirmed by READ as being competent in determining market rent for telecommunications sites/properties/leases ("Qualified Appraiser") and shall be in conformance with Uniform Standards of Professional Appraisal Practice. In establishing the market rent for the portfolio of Premises, the Qualified Appraiser shall base the valuation on an appraisal not more than six months old, as of the Adjustment Date, prepared by surveying comparable market rents for similar leased facilities in Southern California or other comparable market areas. If the appraisal is not completed prior to the Adjustment Date, LESSEE shall continue to pay rent in accordance with the then-existing Lease rates, and the adjustment, when determined, shall be retroactive to the Adjustment Date. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. In no event shall the adjusted rent be less than the rent in effect immediately prior to the Adjustment Date. CITY may determine that no market value adjustment is necessary and waive the requirement for an appraisal, in which case, the percentage increases set forth in this Lease for the second through fifth Lease Years shall continue for the remainder of the Term.

4.3 Time and Place of Payment.

Rent is due annually in advance on or before the first day of each Lease Year. If the Effective Date is not the first day of a calendar month, then the accrued rent for the partial month at the beginning of the Term shall be prorated on a per diem basis, and paid in conjunction with the rent for the first Lease Year. All rents required by this Lease shall be made payable to the City Treasurer and mailed to:

The City of San Diego
Office of the City Treasurer
P.O. Box 122289
San Diego, California 92112-4165

or hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

4.4.1 LESSEE shall include CITY'S customer account number for LESSEE on the rent payment so CITY can apply the rent to the appropriate account.

4.4.2 The place of payment may be changed at any time by CITY upon thirty (30) days prior written notice to LESSEE.

4.4.3 Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

4.4 Delinquent Rent.

If LESSEE fails to pay rent when due, LESSEE shall pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days past due, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is agreed by the Parties to be appropriate to compensate CITY for loss resulting from rental 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 rent be less than Two Hundred Fifty Dollars ($250). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

4.5 Inspection of Records.

LESSEE shall maintain, in accordance with generally accepted accounting practices, complete and accurate financial records showing all sublease or other rental income and receipts from its use of the Premises. LESSEE shall make any and all of its records and accounts relating to its use of the Premises available to CITY for inspection at a reasonable location and at all reasonable times so that CITY can determine LESSEE'S compliance with this Lease. LESSEE'S failure to keep and maintain records and make them available for inspection by CITY shall be a default of this Lease, in whole or in part. LESSEE shall maintain all records and accounts for a minimum period of five (5) years past the expiration or earlier termination of this Lease, in whole or in part. This section shall survive the expiration or earlier termination of this Lease, in whole or in part.

SECTION 5: ASSIGNMENT

5.1 Assignment and Subletting.

LESSEE shall not assign this Lease, in whole or in part, or any interest in this Lease, and shall not sublet the Premises, or any part of the Premises, or any right or appurtenant privilege to the Premises, or permit any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises, without CITY'S prior written consent in each instance, which consent may not be unreasonably withheld.

5.1.1 Consent to an assignment, subletting, occupation, or use by any other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without CITY'S consent shall be void and shall be a default of this Lease, in whole or in part.

5.1.2 This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE, by operation of law, without the CITY'S written consent. For the purpose of this section, "assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE'S general partners, principals, or controlling shareholders.

5.1.3 CITY'S approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations assigned or subleased and that the assignee or sublessee will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired.

5.1.4 As a condition to CITY'S approval of any sublease or other rental agreement or assignment as allowed under this Lease, LESSEE shall pay to CITY fifty percent (50%) of the gross revenues received by LESSEE under any such sublease or other rental agreement, and CITY may further require that this Lease or the requested sublease otherwise be revised to comply with then-current CITY lease requirements. Pursuant to City Charter Section 225, incorporated herein, the City Manager must review and approve every person or entity which will have any direct or indirect interest in this Lease as a sublessee or assignee, which approval may not be unreasonably withheld.

5.2 Encumbrance.

Only with CITY'S prior written consent in each instance and upon the condition that LESSEE apply the loan proceeds exclusively to its installation of wireless communication facilities on the Premises, LESSEE may pledge its leasehold estate hereunder to secure its performance under the subject debt instrument.

5.2.1 A reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction of LESSEE'S wireless communication facilities, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorney fees and other normal expenses incidental to such construction.

5.2.2 After the Premises are fully developed as contemplated by this Lease and to CITY'S satisfaction, if LESSEE proposes a subsequent encumbrance on its leasehold estate hereunder, then CITY'S consent thereto may be subject, in CITY'S sole discretion and without limitation, to increasing the rent to then-current market rates. LESSEE may use the proceeds from any such subsequent encumbrance for any purpose approved by CITY.

5.2.3 Upon a foreclosure or transfer in lieu of foreclosure of a CITY-approved encumbrance, CITY shall accept the approved mortgagee or beneficiary as the "LESSEE" under this Lease, with all rights and obligations thereof granted and imposed herein. Such mortgagee or beneficiary may assign its interest in this Lease to its nominee if CITY deems, in its sole discretion, such nominee to be a reputable, qualified, and financially responsible person.

5.2.4 Any CITY-approved encumbrance shall be subject and subordinate to all of the terms, covenants, and conditions of this Lease, and shall not be deemed to amend or alter any such term, covenant, or condition. LESSEE acknowledges that pursuant to City Charter Section 225, each person having an interest in this Lease shall be subject to CITY'S review and approval, which may not be unreasonably withheld, provided such person is of good character and reputation in the community.

SECTION 6: DEFAULT AND REMEDIES

6.1 Defaults.

Each of the following shall constitute an event of default under this Lease:

6.1.1 LESSEE'S failure to make any payment required under this Lease when due if the failure continues for five (5) days following written notice of the failure by CITY;

6.1.2 LESSEE'S breach of any of its obligations under this Lease, other than those requiring payment to CITY, and LESSEE either: (i) fails to cure the breach within thirty (30) days following written notice from CITY; or, (ii) if such breach is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;

6.1.3 LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law;

6.1.4 LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) days of filing;

6.1.5 LESSEE is adjudicated a bankrupt;

6.1.6 LESSEE makes a general assignment for the benefit of creditors; and

6.1.7 LESSEE uses the Premises for any unauthorized purpose.

6.2 Remedies.

Upon LESSEE'S default under this Lease, CITY may pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY, in law or equity. Such remedies shall be cumulative and not exclusive.

6.2.1 For Default Based Upon Nonpayment. Upon LESSEE'S default for nonpayment under Section 6.1.1 of this Lease, CITY may, at its option, give LESSEE, or any person claiming legal rights through LESSEE, a written Five-Day Notice to Pay or Quit or CITY may terminate this Lease, in whole or in part, and all rights of LESSEE and of all persons claiming legal rights through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises and may recover the amount set forth below.

6.2.2 For Any Other Default. Upon LESSEE'S default based upon Sections 6.1.2 through 6.1.7 of this Lease, CITY may, at its option, terminate this Lease, in whole or in part, and all applicable rights of LESSEE and of all persons claiming rights through LESSEE to the applicable Premises or possession of the applicable Premises, and CITY may enter and take

possession of the applicable Premises and may recover from LESSEE the amount set forth below. If any default described in Sections 6.1.2 through 6.1.7 of this Lease is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.

6.3 CITY'S Recovery.

Upon termination of the Lease due to LESSEE'S default, CITY may recover the sum of:

6.3.1 The worth at the time of award of any unpaid rent that had been due at the time of termination; plus

6.3.2 The worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award minus (ii) the amount of the rent lost, if any, that LESSEE affirmatively proved could have been reasonably avoided; plus

6.3.3 The worth at the time of award of the amount by which (i) the unpaid rent for the balance of the Term after the time of the award minus (ii) the amount of rent lost, if any, as LESSEE affirmatively proves could be reasonably avoided; plus

6.3.4 Any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; plus

6.3.5 All other amounts in addition to or in lieu of those previously stated as may be permitted by California law.

6.3.6 As used in Sections 6.3.1 and 6.3.2, above, the "worth at time of award" shall be computed by allowing interest at the rate of ten percent (10%) per annum. As used in Section 6.3.3, above, the "worth at the time of award" shall be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the terms "rent" shall include base rent, percentage rent and any and all other amounts that LESSEE is required to pay to CITY under this Lease.

6.4 Default if the Leasehold Interest is Encumbered.

If LESSEE is in default under this Lease and the leasehold is pledged as security for a CITY-authorized encumbrance, CITY shall notify the mortgagee or

beneficiary thereof of LESSEE'S default. CITY shall allow such mortgagee or beneficiary thirty (30) days to cure the default or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may, in its sole discretion, extend such time to cure the default if CITY deems that the mortgagee or beneficiary is pursuing the cure with reasonable diligence.

6.4.1 If the mortgagee or beneficiary is required to exercise its right to cure a default through litigation or foreclosure, then CITY may take the following actions to expeditiously cure the default:

6.4.1.1 CITY may correct the default and charge the costs incurred to LESSEE'S account, which charge shall be due and payable on the date that the rent is next due after CITY'S statement of such costs is delivered to LESSEE and mortgagee or beneficiary;

6.4.1.2 CITY may correct the default and may recover the costs incurred from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the cost of correction performed by or at the direction of CITY; or

6.4.1.3 CITY may terminate this Lease, in whole or in part, as to the rights of LESSEE by assuming or causing the assumption of liability for any CITY-authorized encumbrance on the leasehold. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of CITY'S early payoff of the related obligations. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in entering into a new lease with the same terms and conditions as this Lease with the new tenant shall be the responsibility of the terminated LESSEE, and LESSEE shall reimburse CITY for all such costs.

6.4.2 If the default is not curable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee are approved by CITY, may substitute itself in the place of LESSEE by assuming all of LESSEE'S rights and obligations under this Lease. If such a lender notifies CITY of its intention to substitute itself in LESSEE'S place in writing within thirty (30) days after receipt of CITY'S notice of default, and the default is cured by the lender, then this Lease will not terminate pursuant to the default. Subject to such a cure and

LESSEE'S assignment to the lender of LESSEE'S rights and obligations under this Lease, CITY shall consent to the assignment.

6.5 Remedies for CITY'S Default.

Upon CITY'S default, LESSEE shall have such rights and remedies against CITY as may be available at law or in equity. LESSEE'S pursuit of any particular remedy for breach or default shall not, in and of itself, constitute a waiver or relinquishment of any other available claim or remedy of LESSEE against CITY.

6.6 Abandonment by LESSEE.

If LESSEE breaches this Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.

6.7 Waiver.

CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default shall be in a writing executed by CITY in order to constitute a valid and binding waiver. CITY'S delay or failure to exercise its rights shall not be a waiver of that or any other right under this Lease. The use of one remedy for a default shall not waive the use of any other remedy for the same or any other default. CITY'S acceptance of any rent shall not be a waiver of any default preceding the rent payment. The property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego. CITY'S failure to discover a beach or default or take prompt action to require the cure of any breach or default shall not result in an equitable estoppel; CITY may at all times require the cure of any default regardless of when it is discovered.

SECTION 7: INDEMNIFICATION

7.1 LESSEE'S Indemnity Obligation.

LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE'S occupancy, development, use, operation, or maintenance of the Premises, and all costs and expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any asserted claims or liability to the extent they arise from the established active negligence, sole negligence or sole willful misconduct of CITY, its elected officials, officers,

representatives, agents, and employees. 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, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs, but shall not include attorney fees or any other services or expenses that are unreasonably duplicative of services provided to CITY by LESSEE.

7.2 CITY'S Indemnity Obligation.

CITY shall protect, defend, indemnify, and hold LESSEE, its officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with CITY'S occupancy, development, use, operation or maintenance of the Premises, and all costs and expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that CITY'S duty to indemnify and hold harmless shall not include any asserted claims or liability to the extent they arise from the established active negligence, sole negligence or sole willful misconduct of LESSEE, its officers, representatives, agents, and employees.

SECTION 8: INSURANCE

Prior to LESSEE'S occupation of the Premises, LESSEE shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars ($2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars ($4,000,000); such limit may be satisfied by a combination of primary and umbrella policies. LESSEE may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance LESSEE may maintain.

8.1 All-Risk Property Insurance.

LESSEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on LESSEE'S property on the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

8.2 Additional Insureds.

Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and

agents" shall be named as additional insureds in the commercial general liability policy.

8.3 Primary and Non-Contributory.

Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY for claims arising from the negligence or willful misconduct of LESSEE. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.

8.4 Qualified Insurer(s).

All insurance required by the terms of this Lease shall 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.

8.5 Deductibles/Retentions.

All deductibles and self-insured retentions on any insurance policy shall be commercially reasonable and the sole responsibility of LESSEE.

8.6 Continuity of Coverage.

All insurance policies shall be in effect prior to LESSEE'S occupation of the Premises, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. LESSEE shall maintain all insurance required by this Lease throughout the Term and any extended use, without lapse. When a new insurance policy is obtained, LESSEE shall deliver to CITY, within ten (10) days thereafter, a certificate(s) showing that a new policy has been obtained which meets the requirements of this Lease.

8.7 Modification.

To assure protection from and against the kind and extent of risk existing on the Premises, CITY may require the reasonable revision of amounts and coverage at any time during the Term by giving LESSEE sixty (60) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.

8.8 Accident Reports.

LESSEE shall report to CITY any accident causing property damage or injury to persons on the Site. 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.

8.9 Failure to Comply.

If LESSEE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. LESSEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify LESSEE of such payment of premiums stating the amount paid, the name of each insurer, and the rate of interest. LESSEE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Lease, if LESSEE fails or refuses to obtain or maintain insurance as required by this Lease, or fails to provide proof of insurance, CITY may terminate this Lease, in whole or in part, immediately upon such breach. Upon such termination, LESSEE shall immediately cease its use of the Premises and commence and diligently pursue the removal of its property from the Sites.**

8.10 Waste, Damage or Destruction.

LESSEE shall immediately give notice to CITY of any fire or other damage that occurs on the Premises. LESSEE shall not commit or allow to be committed any waste or injury or any public or private nuisance on or about the Premises. LESSEE shall keep the Premises clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises is damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make or cause to be made full repair of the damage and restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage. LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days after the fire or damage, and shall complete the required repairs, restoration, or replacement of the Premises within one hundred eighty (180) days.

SECTION 9: IMPROVEMENTS/ALTERATIONS/REPAIRS

9.1 Acceptance of Premises.

LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on its independent inspections, tests, investigations, and observations in entering into this Lease. LESSEE acknowledges that the Premises are in the condition called for herein, that CITY has performed all work with respect to the Premises, and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises. LESSEE has been given the opportunity to investigate the Premises for the presence of any "hazardous substances," as defined below, including without limitation the opportunity to perform soil borings and other tests. LESSEE shall notify CITY if LESSEE'S investigations indicate the presence of any hazardous substances on the Premises. LESSEE waives any claims against CITY, as of the Effective Date, which may result from the presence of hazardous substances on the Premises.

9.2 Entry and Inspection.

CITY may at any time, without any obligation to do so, enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. If CITY'S entry or inspection discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, after ten (10) days written notice to LESSEE, have any necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition, all at LESSEE'S sole cost and expense, and LESSEE shall promptly pay any and all costs incurred by CITY in having the necessary maintenance work done. If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in CITY'S opinion, to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligation on CITY or increase CITY'S obligations elsewhere in this Lease.

9.3 Maintenance.

LESSEE shall, at its sole cost and expense, continuously operate and maintain the Premises throughout the Term. LESSEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the applicable Addendum, and with all applicable laws. All applicable codes and standards of

CITY, state and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

9.4 Improvements and Alterations.

LESSEE shall not construct any improvements, structures, or installations on the Premises, or make any alterations to the Premises without CITY'S prior written approval. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY'S prior written approval, which may not be unreasonably withheld.

9.4.1 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be necessary or reasonably advisable to validate its use of the Premises, relative to any such superior interest. If LESSEE'S use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE 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.

9.4.2 Projects. LESSEE shall notify CITY of all improvement projects on the Premises and shall inform permitting authorities that the Premises are CITY-owned property.

9.4.3 Repair and Restoration. These provisions shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy and sanitary condition, including without limitation structural repair and restoration of damaged or worn improvements.

9.4.4 Entire Installation. LESSEE represents and warrants that the Communications Equipment listed in the Addendum constitutes the entire installation, which LESSEE shall update from time to time upon CITY'S request.

9.5 Utilities.

LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its development and operation of the Premises. All utilities shall be installed underground.

9.6 Liens.

LESSEE shall at all times protect, defend indemnify and hold CITY harmless from and against any and all claims for labor or materials in connection with LESSEE'S use, improvement, alteration, maintenance, or repair of the Premises, and all costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE'S use, improvement, alteration, maintenance, or repair of the Premises results in a lien or notice of lien being filed against the Premises or Site LESSEE shall, within ten (10) days after receipt of notice of such filing, either: (a) take all actions necessary to record a valid release of the lien; or (b) deliver to CITY a bond, cash, or other security acceptable to CITY in an amount sufficient to pay in full all claims of all persons seeking relief under the lien.

9.7 Taxes.

LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE, or levied by reason of LESSEE'S business or other LESSEE activities related to the Premises, including without limitation any licenses or permits. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes therefor. LESSEE shall pay all such possessory interest taxes. LESSEE'S payment of taxes, fees and assessments shall not reduce any rent due CITY.

9.8 Signs.

LESSEE shall only post signs required by federal, state, or local regulations, including without limitation safety signs required by OSHA, FAA or FCC. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises without CITY'S prior written consent. If any unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after CITY'S demand therefor, or CITY may then enter the Premises and remove the item at LESSEE'S cost. LESSEE shall post a clearly marked sign at the Premises indicating LESSEE'S name and emergency telephone number.

9.9 Ownership of Improvements and Personal Property.

At the expiration or earlier termination of this Lease by LESSEE then, at CITY'S option, any and all improvements, trade fixtures, structures, and installations or additions to the Premises existing on the Effective Date or constructed on the Premises by LESSEE during the Term shall be deemed to be part of the Premises

and shall become CITY'S property free of all liens and claims, except as otherwise provided in this Lease.

9.9.1 If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall notify LESSEE at least one hundred eighty (180) days prior to the expiration of this Lease, or upon the earlier termination of this Lease, and LESSEE shall remove the improvements, trade fixtures, structures, and installations as directed by CITY, all at LESSEE'S sole cost and expense. If LESSEE fails to remove any improvements, structures, and installations as directed, CITY may cause their removal, and LESSEE shall reimburse CITY on demand for the full cost thereof.

9.9.2 On or before Lease expiration, or as CITY may direct upon Lease termination, LESSEE shall remove from the Premises its Communications Equipment and any other LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other personal property. If LESSEE fails to remove any of its personal property as required herein, then either: (a) the property shall be considered abandoned and become CITY'S property free of all claims and liens; or (b) CITY may cause the property's removal, and LESSEE shall reimburse CITY on demand for the full cost thereof.

9.9.3 LESSEE shall repair, at its sole cost and expense, all damage to the Premises resulting from the removal of LESSEE'S improvements, trade fixtures, structures, installations, and the Communications Equipment, machines, appliances, equipment, and other personal property.

9.9.4 If the removal of any of LESSEE'S property by either LESSEE or CITY takes place after Lease expiration or beyond CITY'S direction upon Lease termination, LESSEE shall pay rent to CITY at the rate in effect immediately prior to the expiration or earlier termination of this Lease, until all of LESSEE'S property has been removed from the Premises.

9.9.5 If LESSEE wants to dispose of any of its personal property used in the operation of its wireless communication facilities on the Premises, then CITY shall have the first right to acquire or purchase such property.

9.9.6 Notwithstanding anything to the contrary in this Lease, if CITY terminates this Lease prior to its expiration, LESSEE'S Communication Equipment shall remain the property of LESSEE so long as it is removed as required by this Lease.

9.10 Unavoidable Delay.

If the performance of any Lease obligation is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the obligation, the obligated party shall be excused from that performance during the period of such prevention or delay. This provision shall not apply to obligations to pay rent. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.

9.11 Site Plans/Locations.

LESSEE shall develop the Premises in accordance with plans approved by CITY'S Development Services Department and included in the applicable Addendum. CITY may, in its sole discretion, authorize changes to such plans, provided the principal components thereof are not modified, and a document evidencing approved changes is filed with CITY'S Real Estate Assets Department. LESSEE'S failure to comply with the approved plans shall be a default of this Lease.

9.12 Hazardous Substances.

LESSEE shall not allow the installation or release of hazardous substances in, on, under, or from the Premises or the Sites. LESSEE and LESSEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Premises or the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean 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. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and is incorporated into this Lease.

9.12.1 Remediation. If LESSEE'S occupancy, use, development, or maintenance of the Premises results in a release of a hazardous substance, LESSEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.

9.12.2 Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S occupancy, use,

development, or maintenance of the Premises, 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. Notwithstanding the foregoing, LESSEE shall only be responsible for any hazardous substances it brings onto the Sites and not for pre-existing hazardous substances at the Sites or any hazardous substances brought onto the Sites by CITY or any other party not controlled by LESSEE.

9.12.3 Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Premises or the Sites, LESSEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief. If LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE take all actions necessary to alleviate the danger. LESSEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Premises or the Sites.

9.12.4 Environmental Assessment. Upon reasonable cause to believe that LESSEE'S occupancy, use, development, or maintenance of the Premises or the Sites ("LESSEE'S Operations"), resulted in any hazardous substance being released on or beneath a Premises or a Site, CITY may cause an environmental assessment of that Premises or Site 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 LESSEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE'S Operations on, in, or under the Premises or the Site, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, 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 or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE 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 LESSEE shall pay all costs and expenses therefor.

9.13 Radio-Frequency Radiation.

LESSEE shall maintain radio-frequency radiation within the levels allowed by Federal Regulations stated in Section 1.1310 of CFR 47 and OET Bulletin 65. Any area casually accessible by the general public or by any worker at ground level shall be maintained below limits stated for General Population/Uncontrolled Exposure. LESSEE shall report to CITY any areas discovered by LESSEE to exceed such federally mandated limits. LESSEE shall not hold CITY responsible for 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]. Any equipment installed on a Site may at times require shutdown to allow maintenance on antenna structures. LESSEE shall allow shutdown periods when required for such maintenance, provided CITY uses reasonable efforts to ensure that the shutdowns do not occur during peak hours of operation. 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 limits must be clearly identified as required by CAL-OSHA. LESSEE shall provide CITY with written shutdown procedures, contact names, and telephone numbers. LESSEE shall notify CITY in writing of any changes to the shutdown procedures, contact names or telephone numbers at least ten (10) days before the change.

9.14 Radio-Frequency Interference.

LESSEE shall comply with all requirements in EXHIBIT C: Interference Protection Requirements, attached hereto and as may be updated from time to time in CITY'S sole discretion. LESSEE warrants that all Communications Equipment installations, modifications, and maintenance will not result in degraded performance or radio frequency interference of any CITY-authorized uses of the Sites.

9.15 Industry Standards.

LESSEE shall perform all Communications Equipment installations, modifications, and maintenance in adherence to industry standards set by the "RBS 2106 Installation and Integration Manual" Ericsson Document No. 001 53-EN/LZT 720 0025 and "Installation Instructions RBS 3106" Ericsson Document No. 1/1531-COH 109 2074 Uen N 2006-11-06 or any succeeding regulations or standards.

9.15.1 LESSEE shall remove all trash and debris from the Premises at the end of each workday and upon completion of a project.

9.15.2 Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements.

9.15.3 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 on the Sites.

9.15.4 LESSEE'S installation or modification of equipment at sites used by CITY'S Office of the CIO, Communications Division ("CIO") shall follow the additional requirements described in EXHIBIT D: Installation Standards, attached hereto and as may be updated from time to time in CITY'S sole discretion.

9.16 Site Access and Security.

LESSEE shall comply with the procedures described in EXHIBIT E: Water Department Site Security Procedures, attached hereto and as may be updated from time to time in CITY'S sole discretion. LESSEE'S failure to comply with such procedures shall be a default of this Lease.

9.17 CITY Water Tanks.

If LESSEE'S Communications Equipment is attached to CITY water tanks, upon CITY'S request, LESSEE shall immediately repair the water tanks at the attachment location, re-attach loose Communications Equipment, or otherwise change the attachment method as CITY may reasonably direct. LESSEE shall temporarily remove its Communications Equipment from CITY water tanks during periods of water tank maintenance and painting.

SECTION 10: CITY POLICY IMPLEMENTATION PROVISIONS

10.1 CITY'S Consent, Discretion.

Whenever required under this Lease, CITY'S consent or approval shall mean the written consent or approval of the CITY'S City Manager, or designee ("City Manager"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided.

10.2 Nondiscrimination.

LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use, development, and maintenance of the Premises, including but not limited to the

providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

10.3 Compliance with CITY'S Equal Opportunity Contracting Program.

LESSEE shall comply with San Diego Municipal Code ("SDMC") Sections 22.2701 through 22.2708, as amended, Equal Employment Opportunity Outreach Program ("EEOOP"), a copy of which is on file in the Office of the City Clerk and incorporated herein. LESSEE shall comply with the EEOOP, and shall require each of its sublessees and contractors to comply with the EEOOP. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Effective Date, LESSEE shall submit a current Work Force Report and a current Equal Employment Opportunity Plan ("EEO Plan") as may be required by SDMC Section 22.2705, which sets forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities. LESSEE shall insert the provisions of this section in all contracts and subleases related to this Lease to ensure that such provisions will be binding upon each such contractor and sublessee. LESSEE acknowledges that CITY'S Equal Opportunity Contracting Program staff will monitor and review LESSEE'S EEO Plan. LESSEE'S failure to comply with its EEO Plan or submitting false information related to this section shall be a default of this Lease, and may result in debarment from participating in CITY leases and contracts for a period of not less than one (1) year.

10.4 Local Business and Employment.

LESSEE acknowledges that CITY promotes employment and business opportunities for local residents and firms in all CITY leases and contracts. To the extent legally possible, LESSEE shall solicit local residents and firms for employment applications, and contract bids and proposals related to this Lease. LESSEE shall hire qualified local residents and firms whenever feasible.

10.5 CITY Employee Participation Policy.

If LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment, did in their capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council regarding the selection of LESSEE, CITY may unilaterally and immediately terminate this Lease, in its entirety. These provisions shall not apply to City Council Members.

10.6 Drug-Free Workplace Program.

LESSEE shall comply with 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:

10.6.1 Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and the Sites and specifying the actions that will be taken against employees for violations of the prohibition.

10.6.2 Establish a drug-free awareness program to inform employees about all of the following:

10.6.2.1 The dangers of drug abuse in the workplace.

10.6.2.2 LESSEE'S policy of maintaining a drug-free workplace.

10.6.2.3 Any available drug counseling, rehabilitation, and employee assistance programs.

10.6.2.4 The penalties that may be imposed upon employees for drug abuse violations.

10.6.3 LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.

10.7 Disabled Access Compliance.

LESSEE shall at all times in the occupancy, use, development, and maintenance of the Premises and the Sites comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

10.8 Water Quality Assurances.

LESSEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control ("Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Within the first

ninety (90) days after including a Premises in this Lease, LESSEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants," as defined by the Code, and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within ninety (90) days after written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to CITY'S satisfaction. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. LESSEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith.

SECTION 11: GENERAL PROVISIONS

11.1 Compliance with Law.

LESSEE shall at all times in the occupancy, development, use, operation, or maintenance of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole expense. LESSEE shall comply with all notices issued by CITY under the authority of all current or future laws, statutes, ordinances, or regulations.

11.2 Notices.

11.2.1 Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or sent by United States mail, postage prepaid, or by reliable overnight courier, addressed to any mortgagee, trustee, or beneficiary as shall be designated in writing by such person, but to the Parties as follows:

If to LESSEE:

Omnipoint Communications Inc.
Attention: Lease Administration Manager
10180 Telesis Court, Suite 333
San Diego, CA 92121

With a copy to:

T-Mobile USA, Inc.
Attention: PCS Lease Administrator
12920 SE 38th Street
Bellevue, WA 98006

and

T-Mobile USA, Inc.
Attention: Legal Department
12920 SE 38th Street
Bellevue, WA 98006

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

If to CITY'S Information, Technology and Communications Department:

City of San Diego
Information, Technology and Communications Department
Attention: Communications Division
Central Operations
1220 Caminito Centro
San Diego, CA 92102

If to CITY'S Water Department for site access in accordance with EXHIBIT E: Water Department Site Security Procedures:

City of San Diego
Water Department
Attention: Program Manager
2797 Caminito Chollas
San Diego, CA 92105
619-527-3156

11.2.2 Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.

11.2.3 Notice shall be effective upon personal service or five (5) days after deposit in the United States mail.

11.3 Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

11.4 Legal Fees.

If there is any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including without limitation court costs and attorney fees.

11.5 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

11.6 Captions.

The section headings and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Lease.

11.7 Entire Understanding.

This Lease contains the entire understanding of the Parties. CITY and LESSEE agree that there is no other written or oral understanding between them with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each party to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.

11.8 Lease Modifications.

This Lease shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all Parties to this Lease.

11.9 Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants, and conditions of this Lease. Except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective Parties, jointly and individually.

11.10 Survival.

Any obligation which accrues under this Lease prior to its expiration or earlier termination shall survive such expiration or earlier termination.

11.11 Standard of Conduct.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

11.12 Supersedure.

As of the Effective Date, this Lease shall supersede and annul all prior leases, right-of-entry permits, or other agreements concerning LESSEE'S occupancy, use, development, and maintenance of the subject Sites and Premises by and between CITY and LESSEE, and each such agreement shall be void and of no effect except as to any rentals and fees that may have accrued, or any rights and remedies accrued or granted to CITY under those agreements.

11.13 Cost Recovery.

CITY maintains a schedule of fees to be paid by LESSEE as an offset to administrative costs incurred for CITY staff services that are of benefit to LESSEE. CITY shall process LESSEE'S service requests upon receipt of LESSEE'S payment of an applicable fee. The fee schedule, which is maintained by the City Clerk's Office, may be updated from time to time in CITY'S sole discretion.

11.14 Governing Law.

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.

11.15 Counterparts.

This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.16 Joint and Several Liability.

If LESSEE 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 LESSEE under this Lease.

11.17 Consents.

Except as otherwise expressly provided, consent to be given by either party shall not be unreasonably withheld or delayed.

11.18 San Diego's Strong Mayor Form of Governance.

All references to "City Manager" in this Lease and all subsequent amendments to this Lease shall be deemed to refer to "Mayor or his or her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of CITY'S City Charter.

11.19 Authority.

Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease 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 California.

SECTION 12: TERMINATION

LESSEE may terminate this Lease solely as it relates to a specific Site that has been rendered unusable by industry standards as a communications facility under this Lease provided that: (i) new construction near the Site prevents the required distribution of radio frequency; (ii) written notice is delivered to CITY by certified mail no less than one hundred fifty(150) days prior to the scheduled termination date; and (iii) the remaining rent under the terms of this Lease is paid to CITY at its PRESENT VALUE calculated with a six percent (6%) interest rate for the remaining Term. For example, if LESSEE were to terminate this Lease with two (2) years remaining on the Term, the termination fee shall be equal to the present value on the remaining rent payable under this Lease using an interest factor of six percent (6%). Notwithstanding the above, LESSEE may not terminate this Lease under any circumstances during the first five (5) years of the Term.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

Date: 6/1/09

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Date: 3-26-09

LESSEE: OMNIPOINT COMMUNICATIONS INC., a Delaware corporation

By: _____
Name: _____
Title: _____

Date: 6/2/09

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

By: _____
Name: ALLISON SHERWOOD
Title: Senior Planner

Date: 6/3/09

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

By: _____
Name: Brock Ladewig
Title: Deputy City Attorney

EXHIBIT A: Form of Addendum
EXHIBIT B: Memorandum of Lease Form
EXHIBIT C: Interference Protection Requirements
EXHIBIT D: Installation Standards
EXHIBIT E: Water Department Site Security Procedures

I:\Young\T-Mobile\Lease-Telecom Master-TMO-7
11/6/08

EXHIBIT A: Form of Addendum

ADDENDUM TO
CITY OF SAN DIEGO TELECOM MASTER LEASE AGREEMENT

This ADDENDUM TO CITY OF SAN DIEGO TELECOM MASTER LEASE AGREEMENT ("Addendum") is made to that certain CITY OF SAN DIEGO TELECOM MASTER LEASE AGREEMENT dated _____, 200_ ("Master Lease"), by and between the CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and _____, a _____ corporation ("LESSEE"), to be effective as of the date of execution by CITY (the "Addendum Effective Date") when signed by the parties and approved by the San Diego City Attorney. The terms used in this Addendum shall have the same meaning as such terms have in the Master Lease.

CITY hereby agrees to lease portions of the property described in Exhibit "I" – Legal Description, attached to this Addendum and by this reference made part of the Master Lease, which shall be referred to as the "Site." LESSEE leases from CITY that portion of the Site described in Exhibit "II" – Site Plan/Location, attached to this Addendum and by this reference made part of the Master Lease, which portion shall be referred to as the "Premises," all upon the terms and conditions set forth in the Master Lease.

Site Location:

Site Name:

Lessee Site No.:

City ID No.:

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, this Addendum is executed to be effective as of the Addendum Effective Date.

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____
Name: _____
Title: _____

Date: _____

LESSEE: OMNIPOINT COMMUNICATIONS INC., a Delaware corporation

By: _____
Name: _____
Title: _____

Date: _____

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

By: _____
Name: _____
Title: _____

APPROVED as to form and legality:

Date: _____

JAN I. GOLDSMITH, City Attorney

By: _____
Name: _____
Title: _____

EXHIBIT I – Legal Description.

EXHIBIT II – Site Plan/Location.

EXHIBIT B: Memorandum of Lease Form.

Recording Requested By and
When Recorded Return To:

APN#
Site #

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is effective as of _____, 20____ (the Effective Date").

1. THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), with an office at 1200 Third Avenue, M.S. 51A, San Diego, CA 92101-4155, and _____ *[LESSEE'S name and state of incorporation]* ("LESSEE"), with an office at _____, entered into that certain CITY OF SAN DIEGO TELECOM MASTER LEASE AGREEMENT ("Lease") dated _____, 20____, for the purpose of installing, operating, and maintaining a wireless communication facility and other improvements as set forth in the Lease.

2. The term of the Lease is _____ (___) years and commenced on _____, 20__.

3. The land which is the subject of the Lease is described in attached Exhibit "A." The portion of the land being leased to LESSEE is set forth in the Lease.

IN WITNESS WHEREOF, this Memorandum of Lease is executed to be effective as of the Effective Date:

CITY:

THE CITY OF SAN DIEGO, a
California municipal corporation

BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:
JAN I. GOLDSMITH, CITY ATTORNEY

By: _____
Name: _____
Title: _____

LESSEE:

BY: _____
Name: Jon Zumsteg
Title: Area Director S. CA Eng. & OP's

T-Mobile Legal Approval By:

Al England 3/19/05

EXHIBIT C: Interference Protection Requirements - Information, Technology, and Communications Division Sites.

a. Interference. Prior to the Effective Date or at anytime during the Term of this Lease, LESSEE 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 the proposed Communications Equipment; transmission frequencies that are currently being operated at the Site, 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 Site may be obtained from CITY'S Office of the CIO, Communications Division (CIO). CITY is not responsible for any omitted data provided for the purpose of creating the Report. The Report shall be provided to CIO, 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 Site.

Pre-installation or pre-use Testing

(1) LESSEE shall notify all permittees/lessees/users at the Site of the tests and details of the tests, at least fourteen (14) days in advance of the test. A listing of all permittees/lessees/users operating at the Site 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 CIO Senior Communications Engineer shall include a list of all permittees/lessees/users notified.

(2) Following the completion of the tests, LESSEE shall provide a letter to the CIO 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 LESSEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. <u>On-The-Air Tests - Technical Details</u>

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

(1) The LESSEE'S transmitting and/or receiving equipment shall be of the type planned for final use at the Site.

(a) The transmitted RF power shall be the maximum to be used and authorized at the Site.

(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 LESSEE'S electronic equipment.

(3) All tests shall include testing with all frequencies planned for use by the LESSEE at the Site.

d. Radio Frequency Interference to City Radio Equipment

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

LESSEE 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 Site or in the nearby surrounding area as a result of LESSEE'S newly installed, retuned, or modified Communications Equipment, LESSEE 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 LESSEE and other authorized users. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of CITY withholding approval and LESSEE waives any claim for expense or loss which LESSEE 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

Manufacturer_____

Model_____

Emission_____

Radiated ERP_____Watts

RECEIVER

Manufacturer_____

Model_____

Transmit Frequency	Receiver Frequency	CTCSS or DCS
1. _____		1._____ 1._____
2. _____		2._____ 2._____
3. _____	3._____	3._____
4. _____	4._____	4._____

ANTENNA

Make_____

Model/Type_____

Gain_____dBd

Azimuth_____

TRANSMIT CAVITY FILTER ISOLATOR

Make_____

REMARKS:

TEST RESULTS CERTIFICATION

Top section is to be completed and supplied to all permittees/lessees/users operating at the Site. Bottom section is to be completed by each existing Site 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 for Information, Technology and Communications Division Sites

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 CIO Fixed Maintenance Supervisor at (619) 525-8650 for shutdown scheduling and procedures. Any equipment installed on the Site may at times require shutdown to allow maintenance personnel to access the antenna structure.

l. Lessees 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) days before the change.

m. Access: For access to the site, contact CITY'S CIO 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 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 CIO prior to any installation work.

EXHIBIT E: Water Department Site Security Procedures.

1. PURPOSE

To establish procedures that will be used to provide access to Water Department facilities for all telecommunication service providers.

2. AUTHORITY

2.1 Deputy Director, Water Operations Division

2.2 Real Estate Asset Department Lease Agreement for each specific property

3. DEFINITION

Access: the right, possibility, or means to entering or approach a place.

SCADA: Supervisory Control and Data Acquisition of the water distribution system through the use of sensors, telemetry, a staffed command center, and records storage.

SWIM: Sewer-Water-Infrastructure-Management; a computerized maintenance management system.

4. POLICY

Procedures listed below will be used to provide access to Water Department facilities for all telecommunication service providers.

Specific contract lease agreements with the telecommunication service providers may contain different requirements and restrictions regarding access to Water Department facilities. If the requirements within an existing agreement conflicts with the requirements herein, then the requirements within the lease agreement shall take precedence.

Non-emergency and emergency procedures are listed below and will be used.

5. RESPONSIBILITIES

5.1 System Operations, Water Operations Division

a. The Operations District Manager is responsible to provide direction and instruction to SCADA operators in order to ensure performance of the access procedure written below.

b. The Reservoir/Plant/Pump Maintenance District Manager is responsible to provide direction and instruction to the Planner/Scheduler, and to field crews, in order to ensure performance of the access procedure written below.

5.2 Water Operations Division employees

a. Employees of the water operations division shall forward requests for access to SCADA, according to the procedure below.

5.3 Real Estate Asset Department

a. Employees of the Real Estate Asset Department shall forward requests for access to SCADA, according to the procedure below.

6. PROCEDURE

6.1 Non-Emergency Access Procedure

a. Telecommunication service providers will be required to call the SCADA Operator, at (619) 668-2025 at least two days in advance to schedule their required access. At the time of the request, the provider will give the SCADA Operator the following: 1) Location for access; 2) Date and start time; 3) Expected duration of access; 4) List of names of those employees who will be working at the site; and 5) Contact name and phone number to confirm information or reschedule access. The information given by the provider should be logged onto the Telecom Service Provider Access Form (see attached).

b. The SCADA Operator will route the Telecom Service Provider Access Form via e-mail or fax, to the System Operations Planner/Scheduler. For after hours access the SCADA Operator will schedule the stand-by crew using the procedures #6.2a and #6.2b below.

c. The Planner/Scheduler will issue a SWIM service request (SR) to assign a crew to escort and supervise the access. The Planner/Scheduler will provide the crew with the Telecom Service Provider Access Form authorizing visitor entry into the facility. The Planner/Scheduler has the discretion to verify the access request and refuse entry (Please note that access should only be denied if access request is not verified by contact).

d. The dispatched crew shall verify all visitors against the Telecom Service Provider Access Form by checking for valid ID and company issued ID card. Only those employees listed on the Form should be allowed to access the facility.

e. The dispatched crew shall complete the Telecom Service Provider Access Form and return it to the Planner/Scheduler following the completion of the access.

6.2 Emergency Access Procedure:

a. Telecommunication service providers will be required to call the SCADA Operator, at (619) 668-2025, to request emergency access. At the time of the request, the provider will give the SCADA Operator the information as

required in #6.1a above. The information given by the provider should be logged onto the Telecom Service Provider Access Form (see attached). The SCADA Operator has the discretion to verify the access request and refuse entry (Please note that access should only be denied if access request is not verified by contact).

b. The SCADA Operator will contact the Planner/Scheduler during normal working hours or dispatch a stand-by crew during non-normal working hours. During non-normal hours, the SCADA Operator will issue a SWIM service request (SR) to assign the stand-by crew to allow entry and to supervise the visitors. The SCADA Operator will provide the crew with the Telecom Service Provider Access Form authorizing visitor entry into the facility.

c. The dispatched crew shall verify all visitors against the Telecom Service Provider Access Form by checking for valid ID and company issued ID card. Only those employees listed on the Form should be allowed to access the facility.

d. The dispatched crew shall complete the Telecom Service Provider Access Form and return it to the Planner/Scheduler following the completion of the access.

Telecom Service Provider Access Form

Telecom Service Provider:	Date:	
Access Location:	Access Date:	Access Time:
Contact Name:	Expected Duration:	
Contact Phone Number:	Was Contact Verified: yes / no	Initials:

Employee Name:	Company:	ID Verified:

Telecom Service Provider Access Form

To Be Completed By Attending Crew

Access Date:	Start Time:	End Time:
Comments:		

ADDENDUM TO

CITY OF SAN DIEGO TELECOM MASTER LEASE AGREEMENT

This ADDENDUM TO CITY OF SAN DIEGO TELECOM MASTER LEASE AGREEMENT ("Addendum") is made to that certain CITY OF SAN DIEGO TELECOM MASTER LEASE AGREEMENT dated June 1, 2009 ("Master Lease"), by and between the CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and OMNIPOINT COMMUNICATIONS INC., a Delaware corporation ("LESSEE"), to be effective as of the date of execution by CITY (the "Addendum Effective Date") when signed by the parties and approved by the San Diego City Attorney. The terms used in this Addendum shall have the same meaning as such terms have in the Master Lease.

CITY hereby agrees to lease portions of the property described in Exhibit "I" – Legal Description, attached to this Addendum and by this reference made part of the Master Lease, which shall be referred to as the "Site." LESSEE leases from CITY that portion of the Site described in Exhibit "II" – Site Plan/Location, attached to this Addendum and by this reference made part of the Master Lease, which portion shall be referred to as the "Premises," all upon the terms and conditions set forth in the Master Lease.

Site Location: 3434 Ocean View Boulevard

Site Name: Fire Station 19

Lessee Site No.: SD06496A

City ID No.: S587FS/001/A01

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, this Addendum is executed to be effective as of the Addendum Effective Date.

Date: 6/1/09

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____

Name: James F. Barwick, CCIM
Director, Real Estate Assets

Title: _____

Date: 3.26.09

LESSEE:
OMNIPOINT COMMUNICATIONS INC., a Delaware corporation

By: _____

Name: Jon Zumsteg
Area Director S. CA Eng. & OP's

Title: _____

T-Mobile Legal Approval By:

Al Engelland 3/19/09

Date: 6/2/09

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

By: Allison Sherwood

Name: ALLISON SHERWOOD

Title: Senior Planner

APPROVED as to form and legality:

Date: 6/3/09

JAN I. GOLDSMITH, City Attorney

By: _____

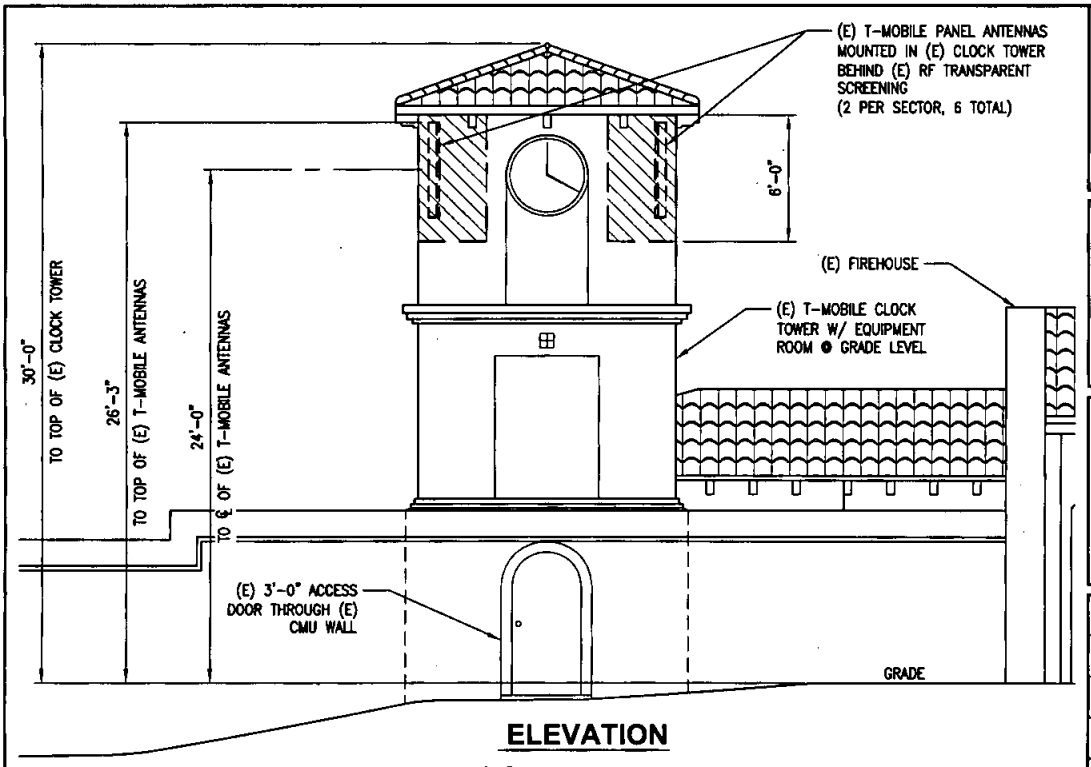
Name: Brock Ladewig
Deputy City Attorney

Title: _____

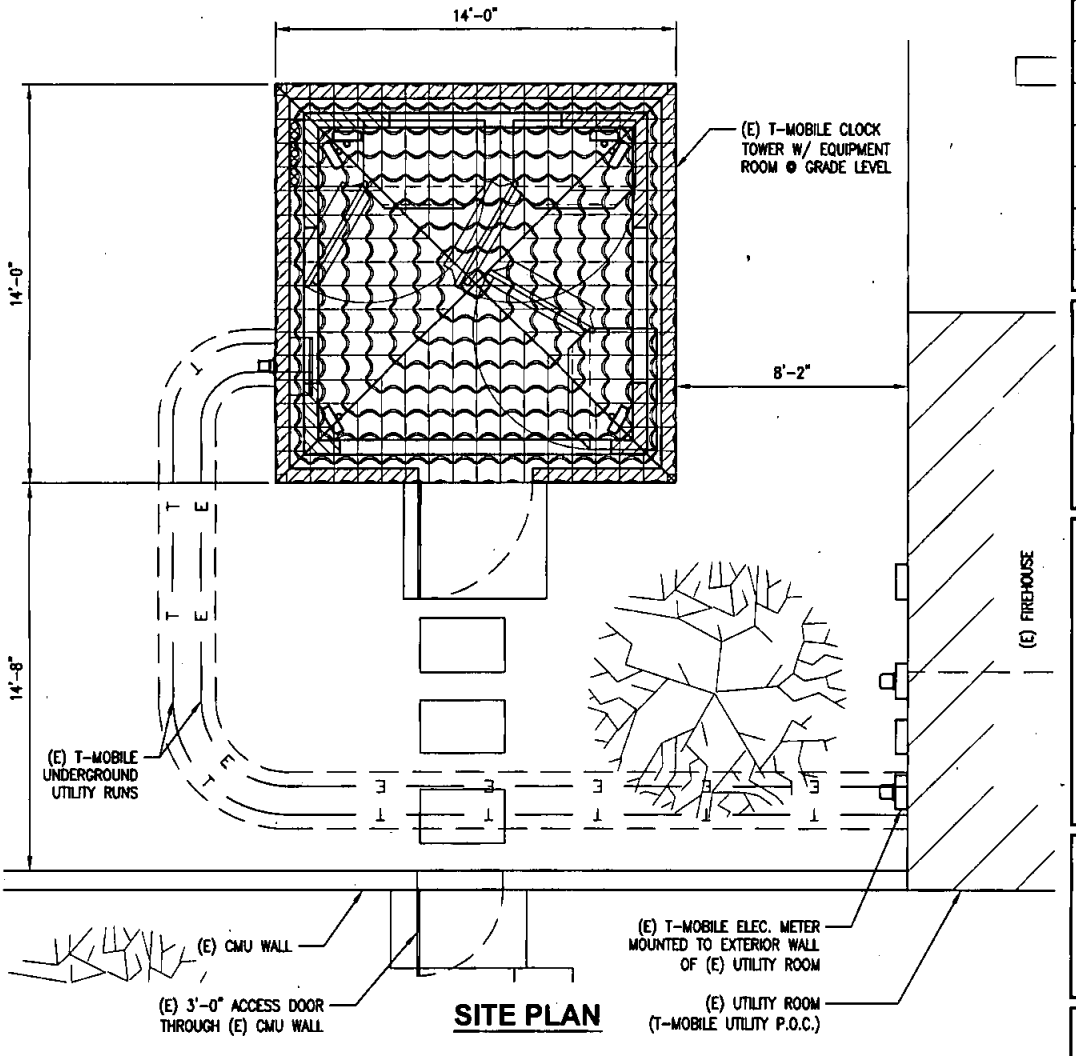
EXHIBIT I – Legal Description.

See EXHIBIT II Site Plan

EXHIBIT II – Site Plan/Location.



ELEVATION



SITE PLAN

LEASE EXHIBIT

SCALE: NTS

1

T-Mobile
Get more from life
10180 TELESIS COURT, SUITE 333
SAN DIEGO, CA 92121-2741

PLANS PREPARED BY:
CDG
CONNELL DESIGN GROUP, LLC
CONSULTING CIVIL ENGINEERS
4685 MACARTHUR COURT, SUITE 480, NEWPORT BEACH CA 92660
(949) 753-9807 OFFICE - (949) 753-8833 FAX
CDG#: 09-5007

CONSULTING GROUP:
PARSONS
110 WEST "A" STREET, SUITE 1050
SAN DIEGO, CA 92101

NO.	DATE:	DESCRIPTION:	BY:
1	02/09/09	EXHIBIT	EJN

SITE INFORMATION:

FIRE STATION 19

SD06496A

3434 #A OCEAN VIEW BOULEVARD
SAN DIEGO, CA 92113
COUNTY OF SAN DIEGO

STAMP:

SHEET TITLE:

LEASE EXHIBIT

SHEET NUMBER:

B-1

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SITE NUMBER:	**SD06496A**	**CITY:**	**SAN DIEGO**
SITE NAME:	**FIRE STATION 19**	**COUNTY:**	**SAN DIEGO**
SITE TYPE:	**TOWER**	**JURISDICTION:**	**CITY OF SAN DIEGO**

PROJECT SUMMARY:

SITE ADDRESS:
3434 #A OCEAN VIEW BOULEVARD
SAN DIEGO, CA 92113

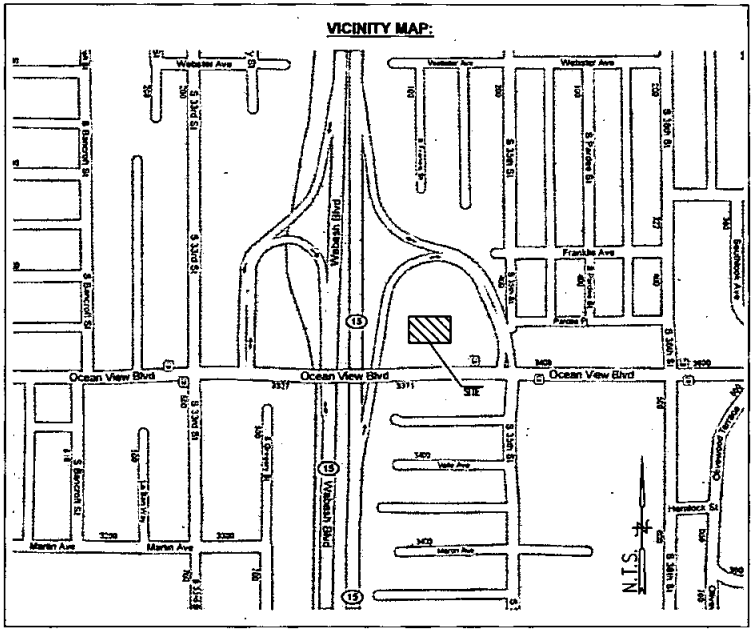
PROPERTY OWNER:
CITY OF SAN DIEGO
REAL ESTATE ASSET DEPARTMENT
1200 THIRD AVENUE, SUITE 1700
SAN DIEGO, CA 92101
PHONE: (619) 236-6081

APPLICANT:
T-MOBILE USA
10180 TELESIS COURT, SUITE 333
SAN DIEGO, CA 92121-2741

SHEET INDEX:

SHEET NUMBER:	DESCRIPTION:
T-1	TITLE SHEET
A-1	SITE PLAN
A-2	ENLARGED SITE PLAN, ANTENNA LAYOUT, & EQUIPMENT LAYOUT
A-3	ARCHITECTURAL ELEVATIONS
A-4	ARCHITECTURAL ELEVATIONS

VICINITY MAP:



SAC/ZONING/PERMITTING:
GLOTEL INC.
10180 TELESIS COURT, SUITE 333
SAN DIEGO, CA 92121-2741
CONTACT: KEVIN BECKER
PROJECT MANAGER, SAN DIEGO/LAS VEGAS
T-MOBILE CONSULTANT
PHONE: (858) 334-6121

ARCHITECTURAL & ENGINEERING:
CDG-CONNELL DESIGN GROUP, L.L.C.
4685 MACARTHUR COURT., STE 480
NEWPORT BEACH, CA 92660
CONTACT: FRANK CARTER
PHONE: (949) 310-8233

APPROVALS:

THE FOLLOWING PARTIES HEREBY APPROVE AND ACCEPT THESE DOCUMENTS AND AUTHORIZE THE CONTRACTOR TO PROCEED WITH THE CONSTRUCTION DESCRIBED HEREIN. ALL CONSTRUCTION DOCUMENTS ARE SUBJECT TO REVIEW BY THE LOCAL BUILDING DEPARTMENT AND ANY CHANGES AND MODIFICATIONS THEY MAY IMPOSE.

	PRINT NAME	SIGNATURE	DATE
LANDLORD			
PRECON. MGR			
DEVELOP. MGR			
CONST. MGR			
A&E MGR			
ZONING MGR			
RF ENGINEER			
OPERATIONS			
SAC REP.			
UTILITIES			

DIRECTIONS TO SITE

1. FROM SAN DIEGO, TAKE THE I-5 S.
2. TAKE EXIT 13A FOR STATE HWY. 15 N. TOWARD RIVERSIDE.
3. MERGE ONTO CA-15 N.
4. TAKE THE OCEAN VIEW BLVD. EXIT.
5. TURN LEFT AT OCEAN VIEW BLVD., SITE LOCATION WILL BE ON THE LEFT HAND SIDE.

THOMAS GUIDE 2005
REGION: SAN DIEGO
PAGE: 1289
GRID #: F5

APPLICABLE CODES

BUILDING CODE: CALIFORNIA BUILDING CODE 2007
ALL WORK IS TO COMPLY WITH THE 2007 CALIFORNIA BUILDING CODE (CBC).
TIA/EIA-222-1996-F LIFE SAFETY CODE NFPA-101, 807 COMMERCIAL BUILDING GROUNDING AND BONDING REQUIREMENTS FOR TELECOMMUNICATIONS
AISC - CONSTRUCTION MANUAL, 9TH EDITION OR LATER.

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PLANS PREPARED BY:
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4685 MACARTHUR COURT, SUITE 480, NEWPORT BEACH CA 92660
(949) 733-8887 OFFICE - (949) 733-8613 FAX
CDG#: 09-5007

CONSULTING GROUP:
PARSONS
110 WEST "A" STREET, SUITE 1050
SAN DIEGO, CA 92101

NO.	DATE:	DESCRIPTION:	BY:
1	02/09/09	PRELIMINARY	EJN
2	02/11/09	FINAL	FXC

SITE INFORMATION:
FIRE STATION 19
SD06496A
3434 #A OCEAN VIEW BOULEVARD
SAN DIEGO, CA 92113

SEAL:

SHEET TITLE:
TITLE SHEET

SHEET NUMBER:
T-1

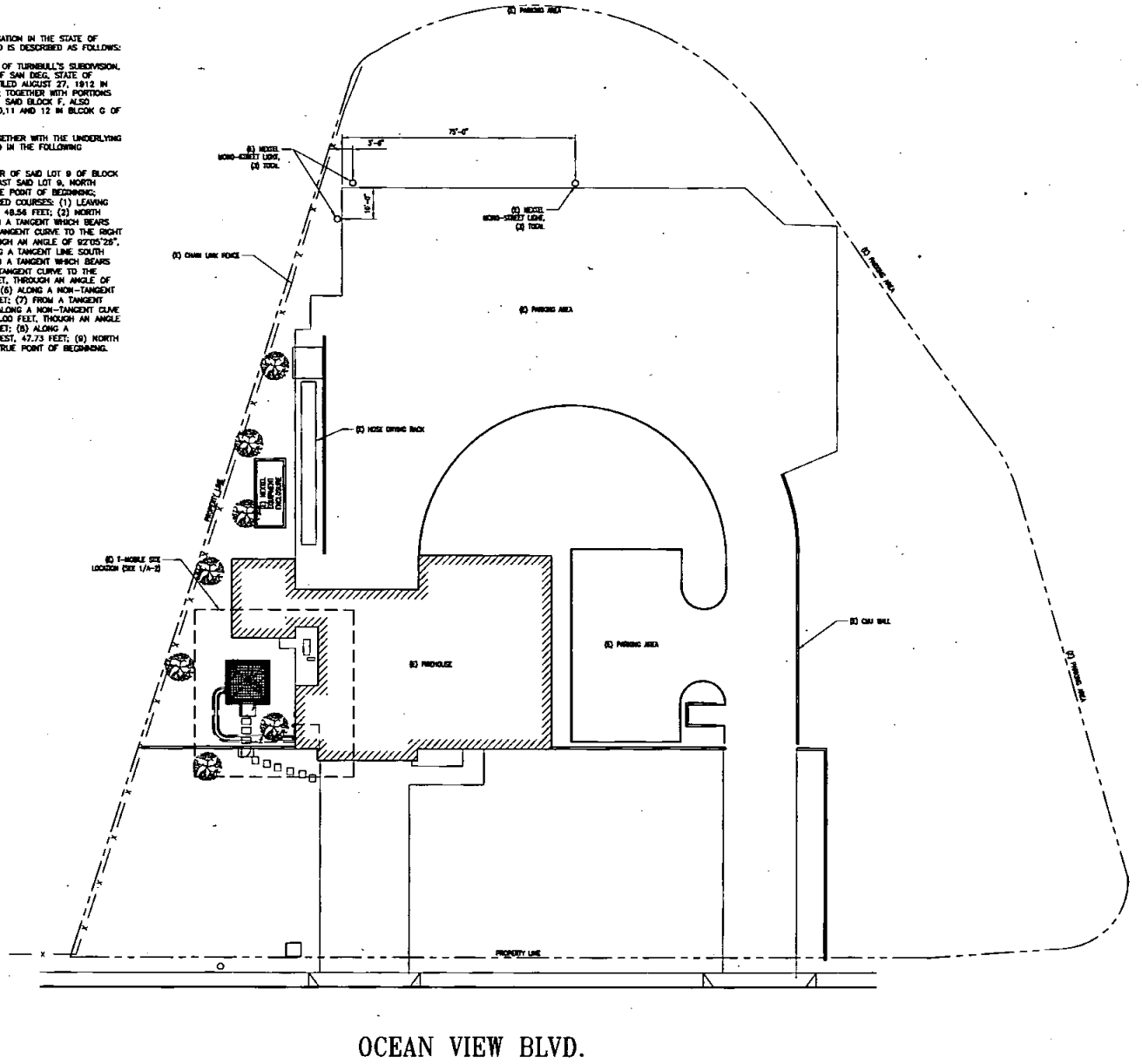
LEGAL DESCRIPTION:

THE LAND REFERRED TO HEREIN IS SITUATION IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

ALL OF LOTS 4,5,6 AND 7 IN BLOCK F OF TURNBULL'S SUBDIVISION, IN THE CITY OF SAMID DIEGO, COUNTY OF SAN DIEG, STATE OF CALIFORNIA, ACCORDING TO MAP 1471 FILED AUGUST 27, 1912 IN THE OFFICE OF THE COUNTY RECORDER; TOGETHER WITH PORTIONS OF LOTS 2,3,8,9,10,11,12,13 AND 14 IN SAID BLOCK F, ALSO TOGETHER WITH PORTIONS OF LOTS 8,10,11 AND 12 IN BLCOK G OF SAID TURNBULL'S SUBDIVISION.

SAID LOTS AND PORTIONS THEREOF, TOGETHER WITH THE UNDERLYING FEE IN THE PUBLIC WAYS ARE INCLUDED IN THE FOLLOWING DESCRIPTION:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 9 OF BLOCK G; THENCE ALONG THE EAST LINE OF LAST SAID LOT 9, NORTH 00°05'30" EAST, 8.58 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG THE FOLLOWING NUMBERED COURSES: (1) LEAVING SAID EAST LINE NORTH 89°55'04" WEST, 48.56 FEET; (2) NORTH 16°52'08" EAST, 309.77 FEET; (3) FROM A TANGENT WHICH BEARS NORTH 53°08'23" EAST ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 96.98 FEET THROUGH AN ANGLE OF 92°05'28", A DISTANCE OF 155.87 FEET; (4) ALONG A TANGENT LINE SOUTH 34°48'11" EAST, 120.63 FEET; (5) FROM A TANGENT WHICH BEARS SOUTH 34°31'57" EAST, ALONG A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET, THROUGH AN ANGLE OF 19°17'41", A DISTANCE OF 33.68 FEET; (6) ALONG A NON-TANGENT LINE SOUTH 15°28'37" EAST, 128.20 FEET; (7) FROM A TANGENT WHICH BEARS SOUTH 03°29'52" WEST, ALONG A NON-TANGENT CUVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, THOUGH AN ANGLE OF 83°30'27", A DISTANCE OF 29.86 FEET; (8) ALONG A NON-TANGENT LINE SOUGH 86°32'10" WEST, 47.73 FEET; (9) NORTH 89°55'04" WEST, 228.96 FEET TO THE TRUE POINT OF BEGINNING.



SITE PLAN

SCALE: 1/16"=1'-0" | 0 8' 16' | 1

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10180 TELESIS COURT, SUITE 333
SAN DIEGO, CA 92121-2741

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(949) 733-0600 OFFICE - (949) 733-0613 FAX
CDG#: 09-5007

CONSULTING GROUP:

PARSONS
110 WEST "A" STREET, SUITE 1000
SAN DIEGO, CA 92101

NO.	DATE:	DESCRIPTION:	BY:
1	02/09/09	PRELIMINARY	EJN
2	02/11/09	FINAL	FXC

SITE INFORMATION:

FIRE STATION 19
SD06496A
3434 #A OCEAN VIEW BOULEVARD
SAN DIEGO, CA 92113

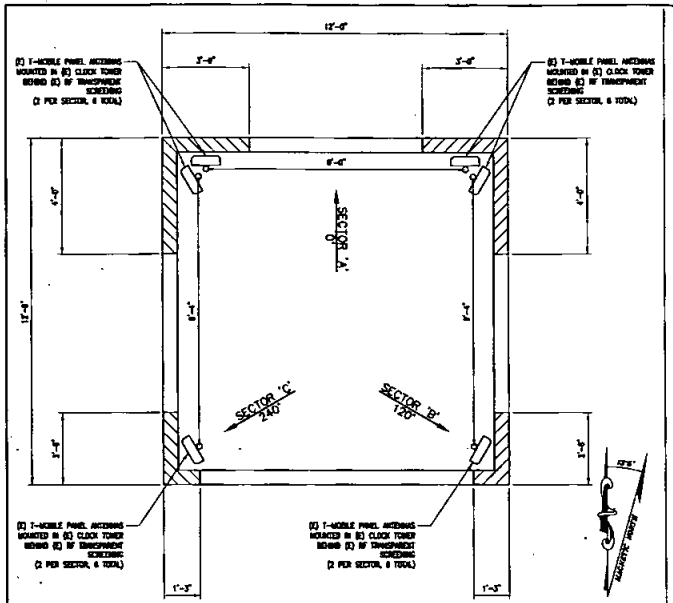
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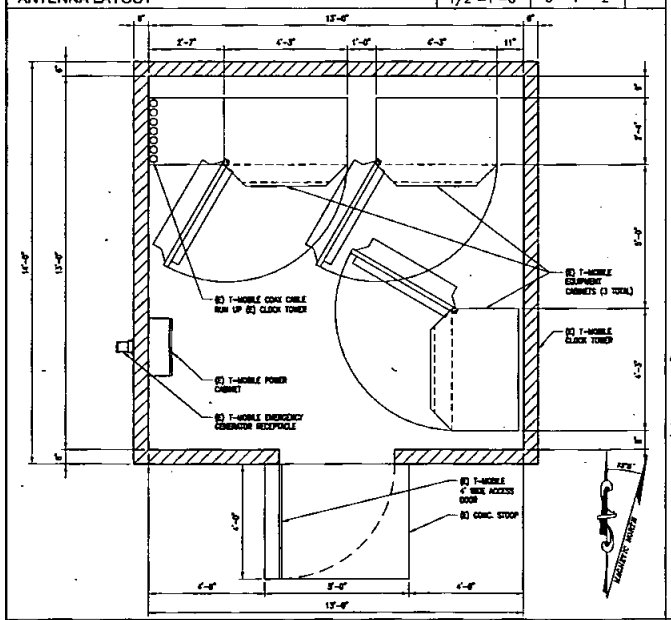
SITE PLAN

SHEET NUMBER:

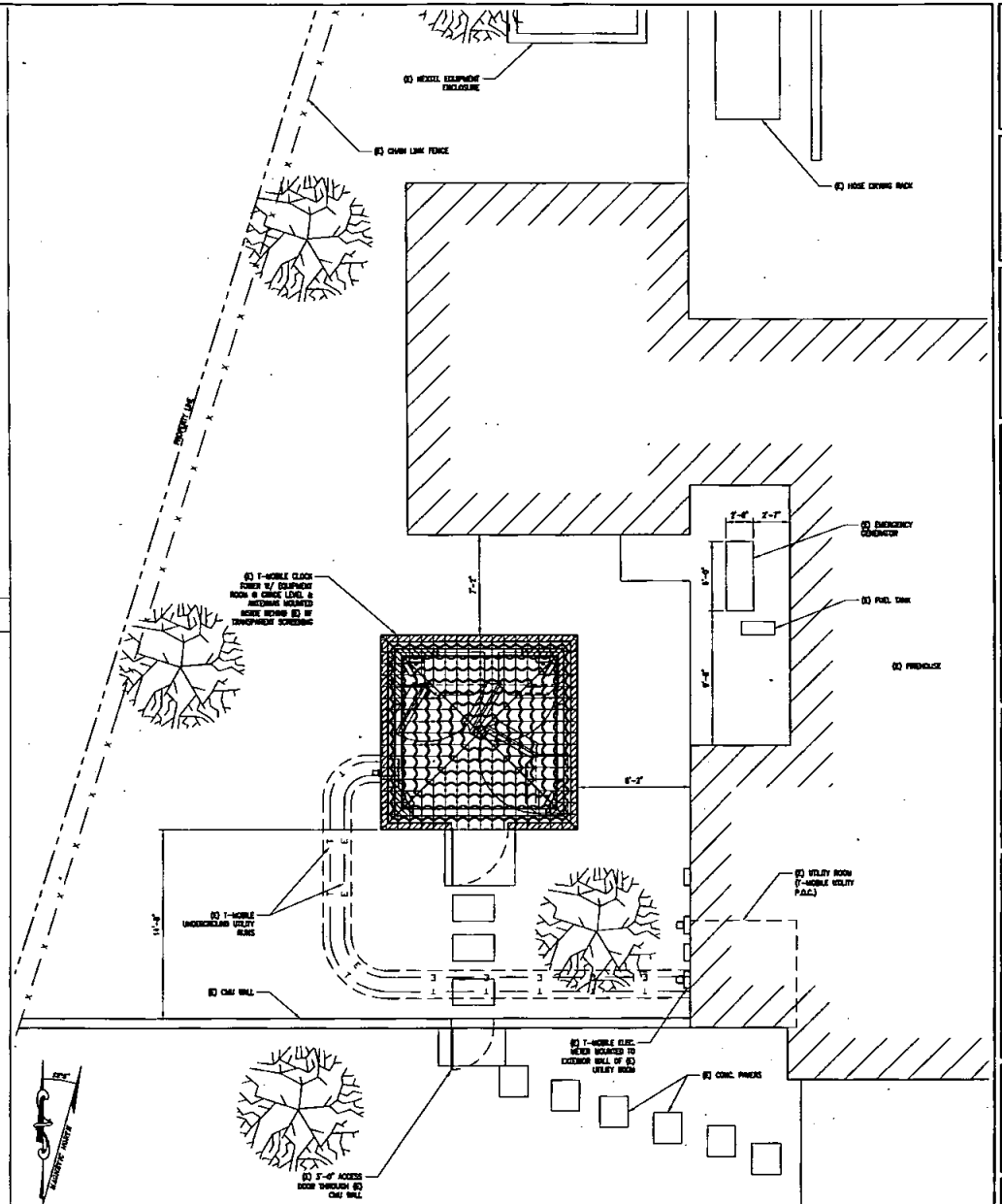
A-1



ANTENNA LAYOUT | SCALE: 1/2"=1'-0" | 0 1' 2' | 2



EQUIPMENT LAYOUT | SCALE: 1/2"=1'-0" | 0 1' 2' | 3



ENLARGED SITE PLAN | SCALE: 1/4"=1'-0" | 0 2' 4' | 1

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(949) 752-4007 OFFICE - (949) 752-4613 FAX
CDG#: 09-5007

CONSULTING GROUP:

PARSONS
110 WEST "A" STREET, SUITE 1000
SAN DIEGO, CA 92101

NO.	DATE:	DESCRIPTION:	BY:
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2	02/11/09	FINAL	FXC

SITE INFORMATION:

FIRE STATION 19
SD06496A
3434 #A OCEAN VIEW BOULEVARD
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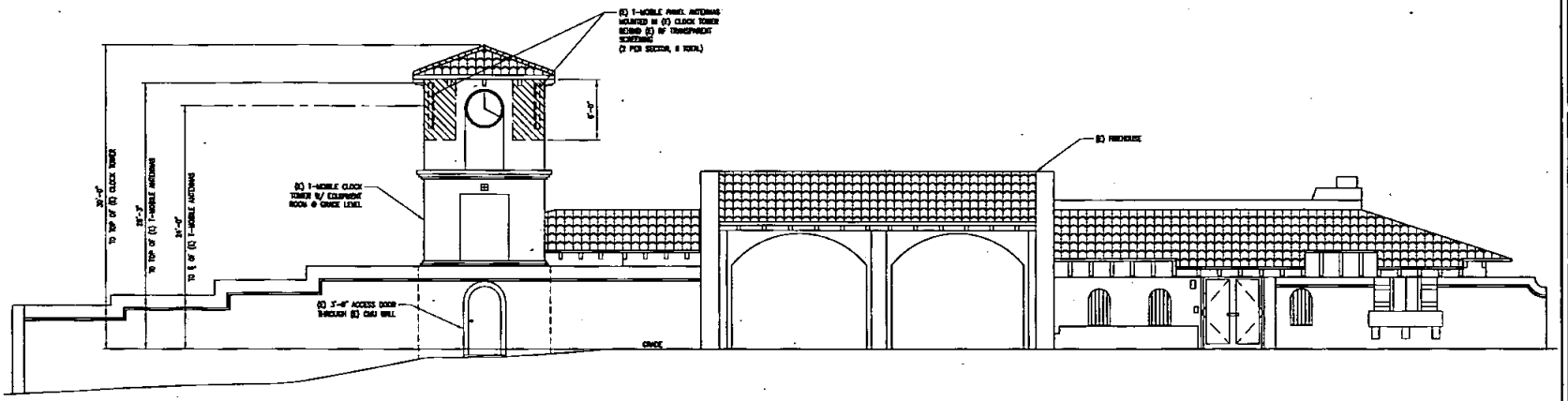
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SHEET TITLE:

ENLARGED SITE PLAN, ANTENNA LAYOUT, & EQUIPMENT LAYOUT

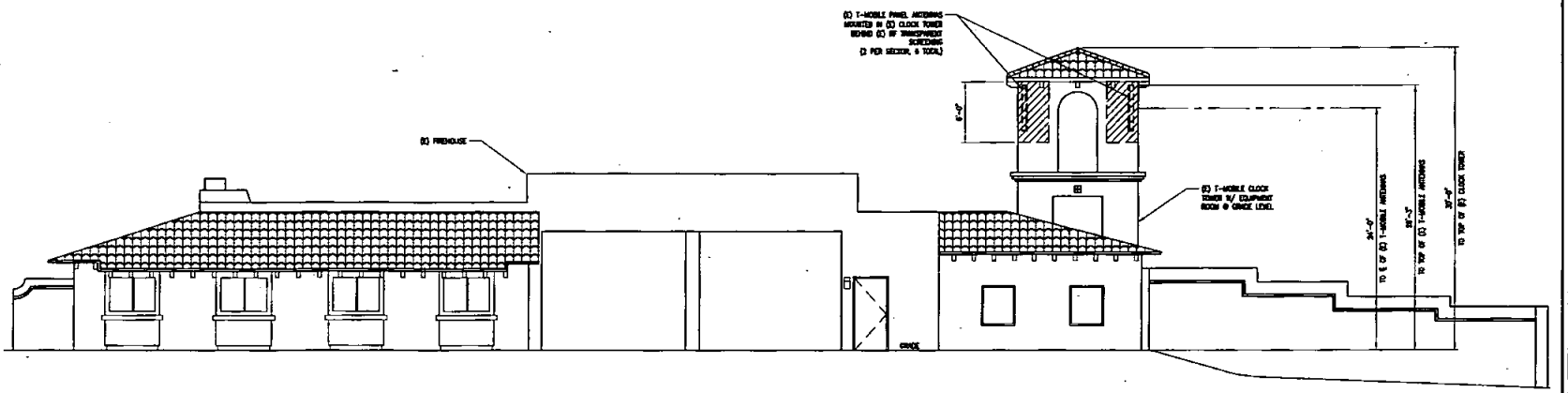
SHEET NUMBER:

A-2



SOUTH ELEVATION

SCALE: 3/16"=1'-0" 0 2' 4' 6' — 1



NORTH ELEVATION

SCALE: 3/16"=1'-0" 0 2' 4' 6' — 2

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4665 MACARTHUR COURT, SUITE 430, NEWPORT BEACH CA 92660
(949) 715-8484 OFFICE - (949) 715-8433 FAX
CDG#: 09-5007

CONSULTING GROUP:

PARSONS
110 WEST "A" STREET, SUITE 1000
SAN DIEGO, CA 92101

NO.	DATE:	DESCRIPTION:	BY:
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SITE INFORMATION:

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3434 #A OCEAN VIEW BOULEVARD
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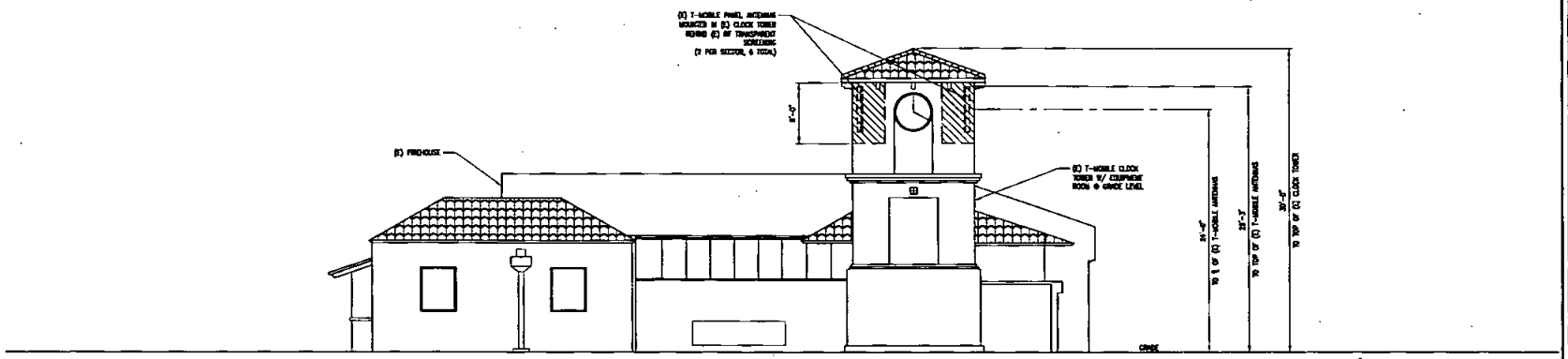
SEAL:

SHEET TITLE:

ARCHITECTURAL ELEVATIONS

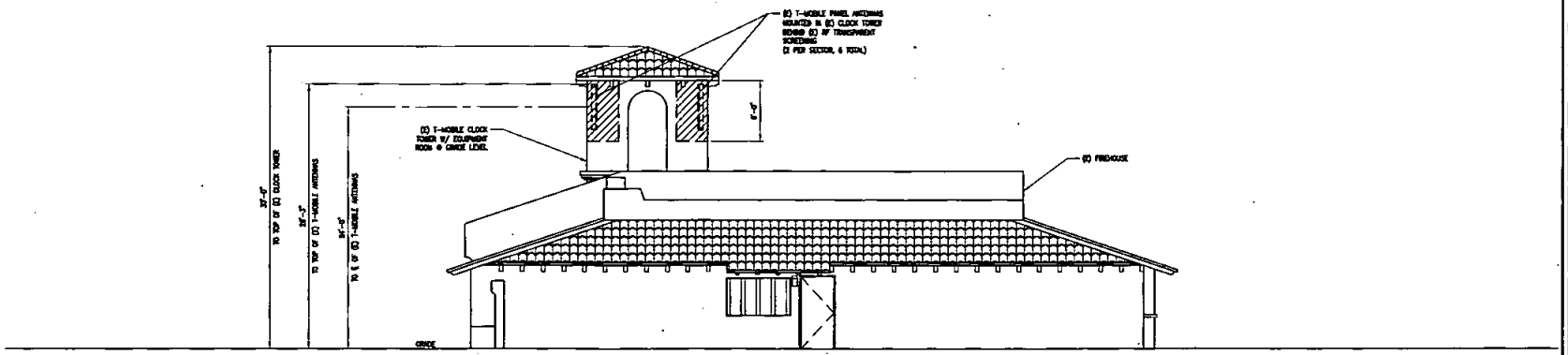
SHEET NUMBER:

A-3



WEST ELEVATION

SCALE: 3/16"=1'-0" | 0 2 4 6' | 1



EAST ELEVATION

SCALE: 3/16"=1'-0" | 0 2 4 6' | 2

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(949) 733 3600 OFFICE - (949) 733 3633 FAX
CDG#: 09-5007

CONSULTING GROUP:

PARSONS
110 WEST "A" STREET, SUITE 1088
SAN DIEGO, CA 92101

NO.	DATE:	DESCRIPTION:	BY:
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2	02/11/09	FINAL	FXC

SITE INFORMATION:

FIRE STATION 19
SD06496A
3434 #A OCEAN VIEW BOULEVARD
SAN DIEGO, CA 92113

SEAL:

SHEET TITLE:

ARCHITECTURAL ELEVATIONS

SHEET NUMBER:

A-4