



**CITY OF SAN DIEGO
TELECOMMUNICATIONS LEASE**

between

THE CITY OF SAN DIEGO

and

T-MOBILE WEST CORPORATION

at

**Encanto Standpipe
6780 Aviation Drive**

CITY OF SAN DIEGO TELECOMMUNICATIONS LEASE

This CITY OF SAN DIEGO TELECOMMUNICATIONS LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and T-MOBILE WEST CORPORATION, a Delaware corporation, ("LESSEE"), hereinafter collectively referred to as the "Parties," to be effective on the first day of the first month following the date of execution by CITY ("Effective Date"), once the Lease is approved by the San Diego City Attorney.

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

1. DEFINITIONS.

For the purposes of this Lease, the terms listed below are defined as follows:

- 1.1. "Approved Light Pole" – a CITY-approved light pole installed by LESSEE on the "Premises" (defined below) and approved by CITY for LESSEE'S use as provided herein.
- 1.2. "Communications Equipment" – includes, but is not limited to, antenna structures, antenna equipment, cable wiring, utility lines, transmission lines, air-conditioned equipment shelters, back-up power sources (that may include back-up power generators with connected fuel storage tanks for emergency power), and related fixtures, more particularly described in Exhibit C.
- 1.3. "Hazardous Substances" – those hazardous substances listed by the Environmental Protection Agency ("EPA") in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances.
- 1.4. "LESSEE'S Operations" – LESSEE'S development, occupancy, use, and/or maintenance of the "Premises" (defined below).
- 1.5. "Premises" – that certain portion of the "Site" (defined below) used by LESSEE, more particularly described in Exhibit A.
- 1.6. "Site" – that certain parcel of City-owned real property located in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit A.

2. LEASED PROPERTY.

- 2.1. Lease of Premises. Under the terms and conditions of this Lease, CITY leases to LESSEE and LESSEE leases from CITY, the Premises.

- 2.2. Access to Site. Unless otherwise provided, LESSEE, its agents, employees, contractors, guests, and invitees may enter the Site on a 24-hour, non-exclusive basis to access the Premises using such access points as shown or described in Exhibit A.
- 2.3. Memorandum of Lease. Upon LESSEE'S request, CITY shall execute and deliver to LESSEE a "Memorandum of Lease," substantially in the form attached hereto as Exhibit D, which LESSEE may record in the Office of the San Diego County Recorder.

3. USES.

LESSEE shall use the Premises solely and exclusively for the purposes, with proper permits and approvals obtained, of installing, constructing, modifying, maintaining, operating, and removing, all at LESSEE'S sole cost and expense, a wireless communication facility on the Premises, including, without limitation, LESSEE'S Communications Equipment.

- 3.1. Continuous Use. LESSEE shall continuously occupy and use the Premises throughout the "Term" (defined below) of this Lease.
- 3.2. Unauthorized Use. The use of the Premises or Site for any unauthorized, illegal, or non-permitted purpose shall constitute a default of this Lease.

4. TERM.

The term of this Lease ("Term") shall be ten (10) years, commencing on the Effective Date. "Lease Year" shall mean each twelve (12) month period during the Term, commencing on the month and day of the Effective Date and continuing to the same month and day of the following year, minus one (1) calendar day.

- 4.1. Holdover. LESSEE may not continue in possession of the 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").
- 4.2. Surrender. 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 caused by or resulting from LESSEE'S Operations, 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 Operations. LESSEE shall surrender the Premises in the same condition as it was on the Effective Date, normal wear and tear excepted.

5. RENT.

LESSEE shall pay to CITY rent in the amount of \$30,000 (thirty thousand dollars) per 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
----------------	----------

Lease Year Three	\$31,827
Lease Year Four	\$32,782
Lease Year Five	\$33,765
Lease Years Six – Ten	Market Rent Adjustments by Appraisal

The above rent schedule reflects an annual rent escalation equal to three percent (3%) above 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.

- 5.1. 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 (“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, and leases (“Qualified Appraiser”) and shall be in conformance with Uniform Standards of Professional Appraisal Practice. In establishing the market rent for the Premises, the Qualified Appraiser shall base the valuation on an appraisal not more than six (6) 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) calendar 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 rent for the remaining five (5) Lease Years shall be set at three percent (3%) above the annual rent for each preceding Lease Year.
- 5.2. Time and Place of Payment. Rent is due annually in advance on or before the first day of each 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

LESSEE shall include CITY'S customer account number for LESSEE on the rent payment so CITY can apply the rent to the appropriate account. The place of payment may be changed at any time by CITY upon thirty (30) calendar days prior written notice to LESSEE. 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.

- 5.3. Delinquent Rent. If LESSEE fails to pay rent when due, LESSEE shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) calendar days past due, LESSEE shall pay an additional five percent (5%), for 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 \$250 (two hundred fifty dollars). 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.
- 5.4. Financial Records. LESSEE shall keep and maintain all records and receipts associated with LESSEE'S use of the premises. LESSEE shall make any and all of its records and receipts relating to its use of the Premises available to CITY for inspection at a reasonable location and time so that CITY can determine LESSEE'S compliance with this Lease. LESSEE'S failure to keep and maintain records and receipts and make them available for inspection by CITY shall be a default of this Lease. LESSEE shall maintain all records and receipts for a minimum period of five (5) years past the expiration or earlier termination of this Lease. This section shall survive the expiration or earlier termination of this Lease.

6. QUIET POSSESSION.

LESSEE, paying the rent and performing its obligations under this Lease, shall, at all times during the 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 by CITY, in writing, 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 the Premises.

7. INSURANCE.

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

7.1.1. LESSEE shall obtain a Commercial General Liability insurance policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least \$2,000,000 (two million dollars) per occurrence, subject to an annual aggregate of \$4,000,000 (four million dollars), and deliver to READ a current certificate of such insurance currently in effect. The aforementioned limits may be satisfied by a combination of primary and umbrella policies.

7.1.2. LESSEE shall obtain an All-Risk Property insurance policy providing coverage on LESSEE'S property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost, and deliver to READ a current certificate of such insurance currently in effect;

7.1.3. LESSEE shall obtain a separate endorsement(s) [CG2010 (11/85) or equivalent form], naming "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additional insureds in the Commercial General Liability insurance policy (described above), and deliver to READ a copy of such endorsement(s); and

7.1.4. Each of the insurance policies described above shall be endorsed so that the coverage is primary and noncontributory to any coverage carried or maintained by CITY for claims arising from the negligence or willful misconduct of LESSEE.

7.2. Qualified Insurer(s). All insurance required under 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.

7.3. Deductibles and Retentions. All deductibles and self-insured retentions on any insurance policy required under this Lease shall be commercially reasonable and the sole responsibility of LESSEE.

7.4. Continuity of Coverage. Each insurance policy required under this Lease shall be in effect prior to LESSEE'S Operations, except that "course of construction fire insurance" shall be in force upon commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. LESSEE shall keep in force each of the insurance policies required under this Lease throughout the Term and any extended use, without lapse. When a new insurance policy is obtained, or when an insurance policy is renewed or extended, LESSEE shall deliver to CITY, within fifteen (15) calendar days thereafter,

a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease.

- 7.5. Modification. To assure protection from and against the kind and extent of risk existing on the Premises, CITY, in its sole discretion, may require the reasonable revision of amounts and coverage, at any time during the Term, by giving LESSEE sixty (60) calendar days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for any new improvements on the Premises, in order to meet the requirements of this Lease.
- 7.6. 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.
- 7.7. Failure to Comply. If LESSEE fails or refuses to obtain or maintain any of the insurance required under this Lease, or fails to provide proof of such insurance, 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 day of the month following CITY'S notice. **Notwithstanding any other provision of this Lease, if LESSEE fails or refuses to obtain or maintain any of the insurance required under this Lease, or fails to provide proof of such insurance, CITY may terminate this Lease 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 Site.**

8. ACCEPTANCE OF PREMISES.

LESSEE represents and warrants that LESSEE has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees that LESSEE 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, 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 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. SITE PLANS.

LESSEE shall develop the Premises in accordance with plans approved by CITY'S Development Services Department and attached as Exhibit B. 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 READ. LESSEE'S failure to comply with the approved plans shall be a default of this Lease.

10. IMPROVEMENTS AND ALTERATIONS.

LESSEE shall not construct any improvements, structures, or installations on the Premises, or make any alterations to the Premises (with the exception of necessary maintenance and/or repairs) without CITY'S prior written consent. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY'S prior written consent.

- 10.1. Replacement of Existing Light Pole. LESSEE may replace any existing light pole on the Premises with an Approved Light Pole, in conformance with the description of the Site and Premises set forth in Exhibit A, the approved site plans set forth in Exhibit B, and in compliance with all applicable codes and standards of CITY, state, and federal agencies.
- 10.2. Landscaping. If required in the approved site plans set forth in Exhibit B, LESSEE shall install landscaping and irrigation (collectively, "Landscaping") on the Premises in conformance with the description of the Site and Premises set forth in Exhibit A and the approved site plans set forth in Exhibit B. The installation of irrigation shall include connection to CITY'S existing irrigation system at the Site. LESSEE shall maintain the Landscaping installed on the Premises to the satisfaction of CITY'S Park and Recreation Department for a period of two (2) years from the date the Landscaping is installed on the Premises in conformance with the approved site plans set forth in Exhibit B (i.e., the date the installation of the Landscaping passes final inspection by CITY). After the two-year period, CITY will maintain the Landscaping installed on the Premises for the remainder of the Term.
- 10.3. Upgrading. If changes in technology occur during the Term that require LESSEE to upgrade the Communications Equipment, LESSEE may perform such upgrading, provided that: (1) LESSEE obtains CITY'S prior written consent; (2) the upgrading does not damage or interfere with any adjacent improvements on the Site; and (3) the upgrading complies with the requirements set forth in Exhibit E.
- 10.4. Information to Permitting Authorities. In obtaining any required permits for improvements, structures, installations, and/or alterations on the Premises, LESSEE shall inform permitting authorities, in writing, that the Premises are CITY-owned property.
- 10.5. 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.

11. COMPETENT MANAGEMENT.

Throughout the Term, LESSEE shall provide competent management of the Premises for the permitted uses to the reasonable satisfaction of CITY. 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.

12. COMPLIANCE WITH LAWS AND POLICIES.

12.1. General. LESSEE’S Operations shall, at all times, comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE’S sole cost and expense. LESSEE shall comply with all notices issued by CITY under the authority of all current or future laws, statutes, ordinances, or regulations.

12.2. 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 Operations, including, but not limited to, the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

12.3. 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 by this reference. LESSEE shall comply, and require each of its contractors to comply, with the EEOOP. LESSEE shall comply with each of the following: 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 set 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 related to this Lease to ensure that such provisions will be binding upon each such contractor.

12.3.1. CITY Monitoring. 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 and/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/or contracts for a period of not less than one (1) year.

- 12.4. 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, contract bids, and proposals related to this Lease. LESSEE shall hire qualified local residents and firms whenever feasible.
- 12.5. 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. These provisions shall not apply to City Council Members.
- 12.6. Drug-Free Workplace. 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:
 - 12.6.1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Site and specifying the actions that will be taken against employees for violations of the prohibition;
 - 12.6.2. Establish a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. LESSEE'S policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs;
 - d. The penalties that may be imposed upon employees for drug abuse violations; and
 - 12.6.3. LESSEE shall include in each of its contracts related to this Lease language obligating each contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its contractors, shall be individually responsible for their own drug-free workplace program.
- 12.7. Disabled Access. LESSEE shall, at all times during LESSEE'S Operations, comply with each of the following: the 1990 Americans with Disabilities Act; Title 24 of the California Code of Regulations (i.e., the California Building Standards Code); and

any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

- 12.8. Water Quality Assurances. LESSEE shall comply with CITY'S Storm Water Management and Discharge Control Ordinance ("Ordinance"), codified in San Diego Municipal Code sections 43.0301 et seq., and employ "Best Management Practices," including a "Storm Water Pollution Prevention Plan" (as those terms are defined in the Ordinance), hereinafter collectively referred to as the "Prevention Plan," as approved by CITY under its Stormwater Management Program. Within ninety (90) calendar days after the Effective Date, LESSEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants" (as defined in the Ordinance) and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within ninety (90) calendar days after written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan satisfactory to CITY. LESSEE shall implement all changes to the Prevention Plan as required by CITY, 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.

13. TELECOMMUNICATIONS PROVISIONS.

- 13.1. Entire Installation. LESSEE represents and warrants that the Communications Equipment listed in Exhibit C constitutes the entire installation, which LESSEE shall update from time to time upon CITY'S request.
- 13.2. Radio Frequency Radiation. LESSEE shall maintain any radio frequency ("RF") radiation associated with the Communications Equipment within the levels allowed by federal regulations set forth in Section 1.1310 of CFR 47 and OET Bulletin 65. Any area within one thousand (1,000) feet of any RF transmitting antenna on the Premises, 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 its radiation levels found to exceed such limits. Hazardous RF radiation levels may be encountered when climbing on antenna structures (refer to FCC OET Bulletin 65). Any equipment installed on the 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 Exposure 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) calendar days before the change.

- 13.3. Radio Frequency Interference. LESSEE shall comply with all requirements set forth in Exhibit E, which 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 of, or RF interference with, any CITY-authorized uses of the Site.
- 13.4. Industry Standards. LESSEE shall perform all Communications Equipment installations, modifications, and maintenance in adherence to industry standards set forth in applicable manufacturer installation instructions, or any succeeding regulations or standards. In addition to the regulations and standards noted above, installations on CITY property shall comply with the following supplemental requirements:
- 13.4.1. LESSEE shall remove all trash and debris from the Premises at the end of each workday and upon completion of a project;
 - 13.4.2. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements;
 - 13.4.3. 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 Site; and
 - 13.4.4. LESSEE shall comply with the requirements set forth in Exhibit F with respect to any Communications Equipment installation or modification. CITY may update Exhibit F from time to time, as reasonably required.
- 13.5. Collocation. If the Site is a shared site, LESSEE shall not access any other wireless communication facility or CITY-owned communications equipment (including any towers) on the Site without CITY'S prior written consent.
- 13.6. Interference with CITY Operations or Public Use. LESSEE'S Operations shall not interfere with CITY operations or public use of CITY-owned property.
- 13.7. Site Access and Security. If the Site is located on Water Department property, LESSEE shall comply with the procedures described in Exhibit H, which 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.
- 13.8. CITY Water Tanks. If any 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.

14. WASTE, DAMAGE, OR DESTRUCTION.

LESSEE shall immediately give notice to CITY of any fire or any 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 in connection with LESSEE'S Operations. 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 are damaged by any cause that 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 restore the Premises in accordance with plans and specifications previously submitted to and approved by CITY, in writing, in order to replace in kind and scope the operation which existed prior to the damage. LESSEE shall commence preliminary steps toward performing repairs and/or restoration of the Premises as soon as practicable, but no later than thirty (30) calendar days after the occurrence of the fire or damage, and shall complete the required repairs and/or restoration of the Premises within one hundred eighty (180) calendar days after such occurrence.

15. HAZARDOUS SUBSTANCES.

LESSEE shall not allow the installation or release of Hazardous Substances in, on, under, or from the Premises or Site. LESSEE and LESSEE'S agents and contractors shall not store, utilize, or sell any Hazardous Substance on the Premises or Site without CITY'S prior written consent. For the purpose of this section, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of Hazardous Substances. A copy of the current EPA and State of California lists is on file in the Office of the City Clerk as Document No. 769704 and, by this reference, is incorporated into this Lease.

- 15.1. Remediation. If LESSEE'S Operations result 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.
- 15.2. Indemnification. 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 Operations, including, without limitation, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies. Notwithstanding the foregoing, LESSEE shall only be responsible for those Hazardous Substances LESSEE brings onto the Site, and not for pre-existing Hazardous Substances at the Site or any Hazardous Substances brought onto the Site by CITY or any other party not controlled by LESSEE.
- 15.3. 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 Site, LESSEE

shall immediately notify CITY and deliver a written report thereof to CITY within three (3) calendar 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/or safety, LESSEE may take all actions necessary to alleviate the danger. LESSEE shall notify CITY immediately of any notice of violation received, environmental action initiated, or private suit filed that is related to the Premises or Site.

- 15.4. Environmental Assessment. Upon reasonable cause to believe that LESSEE'S Operations resulted in any Hazardous Substance being released on or beneath the Premises or Site, CITY may cause an environmental assessment of the 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 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.

16. SIGNS.

LESSEE shall only post signs required by federal, state, or local regulations, including, without limitation, safety signs required by OSHA, FAA, and/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, which consent shall be in CITY'S sole discretion. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at LESSEE'S sole cost and 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 and expense. LESSEE shall post a clearly marked sign at the Premises indicating LESSEE'S name and emergency telephone number.

17. MAINTENANCE.

Except as provided in Section 17.3 below, LESSEE shall, at its sole cost and expense, continuously maintain the Premises throughout the Term. In doing so, LESSEE shall, at its sole cost and expense, make all repairs, restoration, and replacements (including structural repairs and restoration of damaged or worn improvements) necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition. All such maintenance, repairs, restoration, and replacements shall be completed to the satisfaction of CITY, in conformance with the description of the Site and Premises set forth in Exhibit A,

the approved site plans set forth in Exhibit B, and in compliance with all applicable codes and standards of CITY, state, and federal agencies.

17.1. CITY Maintenance. CITY reserves the right to perform any needed maintenance on the Premises at any time. If CITY performs such maintenance, CITY shall provide LESSEE with at least forty-eight (48) hours notice prior to commencing the work (except in the event of an emergency, in which case, no notice shall be required), and LESSEE shall comply with all applicable safety requirements issued by CITY to ensure the safety of CITY personnel performing such maintenance on the Premises.

17.2. Non-Water Department Property. If the Site is located on non-Water Department property, the Parties shall comply with the emergency maintenance procedures set forth in Exhibit G, including the requirement to notify the other party, in writing, of any changes to its emergency contacts and telephone numbers.

17.3. Approved Light Poles.

17.3.1. If an Approved Light Pole is installed on the Premises, CITY will maintain and repair the Approved Light Pole for any wear and tear or damage not related to LESSEE'S Operations (e.g., replacement of light bulbs and electrical wiring used for lighting), and LESSEE shall maintain and repair the Approved Light Pole for wear and tear or damage related to LESSEE'S Operations.

17.3.2. In the event that an Approved Light Pole must be replaced due to damage or destruction to the pole caused by LESSEE (or its officers, representatives, agents, or employees) or resulting from LESSEE'S Operations, LESSEE shall pay the entire cost of replacing the Approved Light Pole (with an antenna structure sufficient for LESSEE'S Operations).

17.3.3. In the event that an Approved Light Pole must be replaced due to damage or destruction to the pole not caused by LESSEE (or its officers, representatives, agents, or employees) or not resulting from LESSEE'S Operations, CITY will pay for that portion of the replacement costs equal to the cost of replacing a light pole suitable for non-communication purposes, and LESSEE shall pay for that portion of the replacement costs necessary to replace the Approved Light Pole (with an antenna structure sufficient for LESSEE'S Operations) less CITY'S portion of the replacement costs.

17.3.4. All such maintenance, repairs, and replacements by LESSEE shall be completed to the satisfaction of CITY, in conformance with the description of the Site and Premises set forth in Exhibit A, the approved site plans set forth in Exhibit B, and in compliance with all applicable codes and standards of CITY, state, and federal agencies.

18. 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 CITY'S interest 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) calendar 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.

19. UTILITIES.

LESSEE shall order, obtain, and pay for all utilities, including installation and service charges, in connection with LESSEE'S Operations. All utilities on the Premises shall be installed underground and shall be used for LESSEE'S Operations only.

20. 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 levied on the leasehold interests. LESSEE shall pay all such possessory interest taxes. LESSEE'S payment of taxes, fees, and assessments shall not reduce any rent due CITY.

21. SUPERIOR INTERESTS.

This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, 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 or may become necessary or reasonably advisable to allow LESSEE'S Operations, relative to any such superior interest. If LESSEE'S Operations are or become 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.

22. ENCUMBRANCES.

Only with CITY'S prior written consent in each instance, which consent shall be in CITY'S sole discretion, and upon the condition that LESSEE apply any Premises-related 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.

22.1. Use of Loan Proceeds. A reasonable portion of such loan proceeds may be disbursed for payment of incidental costs of installing LESSEE'S wireless communication facilities on the Premises, 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 installation.

22.2. Subsequent Encumbrances. 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.

22.3. Acceptance of Approved Mortgagee or Beneficiary. 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.

22.4. Encumbrance Approved by CITY. 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.

22.5. 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) calendar 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.

23. ASSIGNMENT AND SUBLETTING.

23.1. Assignment.

- 23.1.1. For the purposes of this section, "Assignment" shall include, without limitation, the transfer of any interest in this Lease by LESSEE or by any partners, principals, or controlling shareholders of LESSEE, 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.
- 23.1.2. LESSEE shall not assign this Lease, or any interest in this Lease, without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. LESSEE shall not assign this Lease, or any interest in this Lease, to any person or entity engaged in the design, development, construction, operation, sale, and/or leasing of telecommunication towers or poles.
- 23.1.3. CITY'S consent to any Assignment pursuant to Section 23.1.2 shall be conditioned upon the assignee agreeing, in writing, that it will assume the rights and obligations assigned, and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired.
- 23.1.4. LESSEE shall not permit any person (other than the employees, agents, contractors, and/or guests of LESSEE) to use or occupy the Premises, or any part of the Premises.
- 23.1.5. Consent by CITY to any Assignment of this Lease pursuant to Section 23.1.2 shall not be deemed to be consent to any subsequent Assignment to the same or any other person.
- 23.1.6. Neither this Lease nor any interest herein shall be assignable as to LESSEE'S interest herein by operation of law, without CITY'S prior written consent.
- 23.1.7. Any Assignment of this Lease, or any use or occupancy of the Premises by any other person, in violation of the foregoing provisions (Sections 23.1.1 through 23.1.6) shall be void and a default of this Lease, and CITY may thereupon terminate this Lease.

- 23.2. Subletting. LESSEE shall not sublet, in whole or in part, the Premises, or any right or appurtenant privilege to the Premises.

23.2.1. Any subletting, in whole or in part, of the Premises shall be void and shall be a default of this Lease, and CITY may thereupon terminate this Lease.

23.3. Provisions Binding on Successors. 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.

24. INDEMNIFICATION.

24.1. 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 Operations, 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 by LESSEE to CITY.

24.2. 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, defend, 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.

25. OTHER GOVERNMENTAL 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, occupancy, use, or maintenance of the Premises. Discretionary action includes, but is not limited to any rezoning, variance, environmental clearance, or any other governmental approval that may be required for LESSEE'S Operations. LESSEE shall diligently seek and obtain, at its sole cost and

expense, all entitlements and actions from both CITY and other governmental agencies with jurisdiction over the Premises, as are necessary for LESSEE'S Operations.

26. CITY'S RESERVATION OF RIGHTS.

- 26.1. Resources. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- 26.2. Use. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion, for the public good.
- 26.3. Entry. CITY may enter the Premises to develop and/or make repairs to municipal resources and services. 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 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.

27. REASSIGNMENT OF SPACE.

At any time during the Term, but only once during the Term, CITY, in its sole discretion, may reassign LESSEE an amount of space within the Site substantially equivalent to the Premises. 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) calendar days from the date LESSEE 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."

- 27.1. Timing and Costs. LESSEE shall relocate its Communications Equipment to the Relocation Space either within ninety (90) calendar 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 relocation, and shall pay all expenses associated with the relocation. Any 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 such case, CITY will promptly reimburse LESSEE for the reasonable relocation costs of LESSEE. Any relocation shall not result in a lessening of LESSEE'S ability to use the Site for its intended purpose, or of the quality of such use.

- 27.2. Physical Relocation of Equipment. The physical relocation of all or any part of LESSEE'S Communications Equipment shall only be done by LESSEE or LESSEE'S contractors.
- 27.3. Broadcast and/or Receiving Capability. CITY shall use its best efforts to ensure continuous, uninterrupted broadcast, and/or receiving capability during any conversion, including the installation and operation by LESSEE of a CITY-approved temporary wireless communication facility on the Site.
- 27.4. No Agreement. If CITY and LESSEE are unable to agree on a mutually acceptable relocation space, then LESSEE may terminate this Lease upon thirty (30) calendar days prior written notice to CITY, without further obligation thereto.
- 27.5. Premises Redefined. After a reassignment and relocation as provided in this section, the 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 easements, may be prepared by a licensed architect at LESSEE'S sole cost and expense. In such event, Exhibits A and B of this Lease shall be amended (pursuant to Section 32.12 below) to include a full description of the Relocation Space and the new "as built" drawings. Except as expressly provided in this section, any such reassignment and relocation shall not alter, modify, or otherwise change any of the terms or conditions of this Lease.

28. EMINENT DOMAIN.

If all or part of the Premises are 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:

- 28.1. Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 28.2. 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 on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 28.3. 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 use of the Premises is reduced or impaired.

- 28.4. 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.
- 28.5. 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 LESSEE may have in the fair market value of any improvements placed by LESSEE on the Premises in accordance with this Lease.
- 28.6. No Inverse Condemnation. CITY'S exercise of any 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.

29. TERMINATION, DEFAULT, AND REMEDIES.

- 29.1. Termination. LESSEE may terminate this Lease if the Site has been rendered unusable by industry standards as a communications facility under this Lease provided that: (a) new construction near the Site prevents the required distribution of radio frequency; (b) written notice is delivered to CITY by certified mail no less than one hundred fifty (150) calendar days prior to the scheduled termination date; and (c) 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.
- 29.2. Default. Each of the following shall constitute an event of default under this Lease:
- 29.2.1. LESSEE'S failure to make any payment required under this Lease when due, if the failure continues for five (5) calendar days past due following written notice of the failure by CITY;
- 29.2.2. 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) calendar days following written notice from CITY; or, (ii) if such breach is not curable within thirty (30) calendar days, fails to commence to cure the breach within thirty (30) calendar days and to diligently pursue the cure to completion;

- 29.2.3. LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law;
- 29.2.4. 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) calendar days of filing;
- 29.2.5. LESSEE is adjudicated a bankrupt;
- 29.2.6. LESSEE makes a general assignment for the benefit of creditors; and
- 29.2.7. LESSEE uses the Premises for any unauthorized purpose.

29.3. Remedies.

- 29.3.1. General. 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.
- 29.3.2. For Monetary Default. Upon LESSEE'S default for nonpayment under Section 29.2.1 of this Lease, CITY may, in its sole discretion, either 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 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.
- 29.3.3. For Non-Monetary Default. Upon LESSEE'S default based upon Sections 29.2.2 through 29.2.7 of this Lease, CITY may, in its sole discretion, terminate this Lease, and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or possession of the Premises, and CITY may enter and take possession of the Premises and may recover from LESSEE the amount set forth below. If any default described in Sections 29.2.2 through 29.2.7 of this Lease is not curable within thirty (30) calendar 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.
- 29.3.4. CITY'S Recovery Upon Termination. Upon termination of the Lease due to LESSEE'S default, CITY may recover the sum of:
 - 29.3.4.1. The worth at the time of award of any unpaid rent that had been due at the time of termination; plus
 - 29.3.4.2. 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

- 29.3.4.3. 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
- 29.3.4.4. 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
- 29.3.4.5. All other amounts in addition to or in lieu of those previously stated as may be permitted by California law.
- 29.3.4.6. As used in Sections 29.3.4.1 and 29.3.4.2, 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 29.3.4.3, 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 term "rent" shall include base rent, percentage rent, and any and all other amounts that LESSEE is required to pay to CITY under this Lease.
- 29.3.4.7. The calculation of any sum under this section shall be based on a 30-day month and a 360-day year.

29.3.5. 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.

29.4. Leasehold Pledged as Security. 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) calendar days to cure the default or, if the default is not curable within thirty (30) calendar 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.

29.4.1. 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:

- 29.4.1.1. 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;
 - 29.4.1.2. 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
 - 29.4.1.3. CITY may terminate this Lease 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.
- 29.4.2. 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) calendar 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.
- 29.5. Quitclaim Deed. Upon termination of this Lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) calendar days after written demand, a valid and recordable quitclaim deed relinquishing LESSEE'S interest in the Premises. If LESSEE fails or refuses to deliver any such quitclaim deed, CITY may prepare and record a notice reciting LESSEE'S failure to perform such obligation, and such notice shall be conclusive evidence of the termination of this Lease and termination of LESSEE'S rights to the Premises.
- 29.6. 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, without limitation, the right to recover the rent as it becomes due, plus damages.

- 29.7. Waiver. CITY'S waiver of a default shall not constitute 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 a remedy or right shall not be a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default shall not waive the use of another remedy or right 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 breach or default or take prompt action to require the cure of any breach or default shall not result in an equitable estoppel, but CITY may, at all times, require the cure of any breach or default regardless of when discovered.

30. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY

Except as otherwise provided in this section, all improvements to the Premises (including, without limitation, all structures, trade fixtures, installations, and additions), constructed on the Site by LESSEE or by LESSEE'S contractors and/or subcontractors at any time during the Term (hereinafter referred to in this section as "LESSEE'S Improvements"), as well as all Communications Equipment, machines, appliances, equipment, and other personal property, brought to the Site by LESSEE or LESSEE'S contractors and/or subcontractors at any time during the Term (all or any portion thereof hereinafter referred to in this section as "LESSEE'S Personal Property"), shall be the property of LESSEE (hereinafter referred to in this section as "LESSEE'S Property"). At all times, any Approved Light Pole on the Premises shall be the property of CITY.

- 30.1. At the expiration or earlier termination of this Lease, and at CITY'S option, any and all of LESSEE'S Improvements 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, and unless this Lease is terminated early by CITY.
- 30.1.1. If CITY elects not to assume ownership of any of LESSEE'S Improvements, CITY shall notify LESSEE at least one hundred eighty (180) calendar days prior to the expiration of this Lease, or immediately upon earlier termination of this Lease, and LESSEE shall remove all such LESSEE'S Improvements as directed by CITY, all at LESSEE'S sole cost and expense. If LESSEE fails to remove any of LESSEE'S Improvements as directed, CITY may cause their removal, and LESSEE shall reimburse CITY on demand for the full cost thereof.
- 30.2. On or before the expiration of this Lease, or as CITY may direct upon earlier termination of this Lease, LESSEE shall remove from the Premises LESSEE'S Personal Property. If LESSEE fails to remove any of LESSEE'S Personal Property as required herein, then either: (i) such property shall be considered abandoned and become CITY'S property free of all claims and liens; or (ii) CITY may cause such

property's removal, and LESSEE shall reimburse CITY on demand for the full cost thereof.

30.2.1. If LESSEE desires to dispose of any of LESSEE'S Personal Property used in the operation of its wireless communication facilities on the Premises, CITY shall have the first right to acquire or purchase such property.

30.3. LESSEE shall repair, at its sole cost and expense, all damage to the Premises resulting from the removal of LESSEE'S Property from the Premises by LESSEE or LESSEE'S contractors and/or subcontractors.

30.3.1. If the removal of LESSEE'S Property by LESSEE (or LESSEE'S contractors and/or subcontractors) or by CITY takes place after expiration of this Lease, or beyond CITY'S direction upon earlier termination of this Lease, 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 Site.

31. NOTICES.

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

If to LESSEE:

T-Mobile West Corporation
Attention: Lease Administration Manager
10509 Vista Sorrento Parkway, Suite 206
San Diego, CA 92121

With a copy to each of the following:

T-Mobile West Corporation
Attention: PCS Lease Administrator
12920 SE 38th Street
Bellevue, WA 98006

T-Mobile West Corporation
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 General Services Department, Communications Division:

City of San Diego
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 H:

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

- 31.1. Address Changes. 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.
- 31.2. When Effective. Notice shall be effective upon personal service, or five (5) calendar days after deposit in the U. S. mail.

32. MISCELLANEOUS PROVISIONS.

- 32.1. Governing Law. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 32.2. 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 LESSEE'S Operations. 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 this 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.

- 32.3. 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 Operations (as defined in Section 1.4), 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.
- 32.4. 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.
- 32.5. Time of the Essence. Time is of the essence for each and every term, covenant, and condition of this Lease.
- 32.6. Standard of Conduct. LESSEE and its employees shall, at all times, conduct themselves and LESSEE'S Operations on the Premises in a creditable manner and in accordance with industry standards.
- 32.7. 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.
- 32.8. Unavoidable Delay. If the performance of any act required of CITY or LESSEE under this Lease 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 an act, that party shall be excused from performing that act for a period equal to the period of the prevention or delay. This provision shall not apply to LESSEE'S obligation to pay rent. If CITY or LESSEE claims the existence of such a delay, the party claiming the delay shall notify the other party, in writing, of the fact within ten (10) calendar days after the beginning of any such claimed delay.
- 32.9. CITY'S Consent or Approval. Whenever required under this Lease, CITY'S consent or approval shall mean the written consent or approval of CITY'S City Manager or his designee ("City Manager"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made at the City Manager's discretion, unless otherwise expressly provided.
- 32.10. 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 the "Mayor or his designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as the "strong mayor") form of governance, pursuant to Article XV of CITY'S City Charter.
- 32.11. Consent by Either Party. Except as otherwise expressly provided in this Lease, consent to be given by either party may not be unreasonably withheld or delayed.

- 32.12. Lease Modifications. This Lease shall not be modified, altered, or amended unless the modification, alteration, or amendment is in writing and signed by the Parties.
- 32.13. Cost Recovery. CITY collects various fees to offset the administrative costs incurred for CITY staff services. CITY shall process each of LESSEE'S service requests upon receipt of LESSEE'S payment of the applicable fee. The fee schedule, which is on file at the Office of the City Clerk, may be updated from time to time in CITY'S sole discretion.
- 32.14. Survival. Any obligation under this Lease that requires a party's performance of that obligation after the expiration or earlier termination of this Lease shall survive such expiration or termination.
- 32.15. 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.
- 32.16. Headings and Captions. The section headings and captions used in this Lease shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. If the page numbers and/or section numbers in this Lease are not in consecutive order, the lack of consecutive numbering shall have no effect on the enforceability of this Lease.
- 32.17. Number and Gender. In this Lease, words in the singular number shall include the plural, and *vice versa*, as appropriate to the context. Words of either gender shall include the other gender.
- 32.18. Authority to Execute and Deliver Lease. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that he or she is authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this 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 the State of California.
- 32.19. 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
- 32.20. Exhibits Incorporated. All exhibits referenced in this Lease are incorporated into the Lease by this reference.

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

Effective Date: 9/2/10

THE CITY OF SAN DIEGO, a California municipal corporation

By David Barwick for

(Print Name) James F. Barwick, CCIM

Director, Real Estate Assets

(Title) _____

Date: 8.31.10

LESSEE: T-MOBILE WEST CORPORATION, a Delaware corporation

By Chris Eldridge

(Print Name) Christopher Eldridge

(Title) Regional Development Director

APPROVED AS TO FORM AND LEGALITY:

Date: 9/2/10

Lois Duran
T-Mobile Legal Approval
Lois Duran

JAN L. GOLDSMITH, City Attorney

By Monica A. Tiana
Deputy City Attorney

Exhibit A

Description of Site and Premises

CITY Site No.: S712WM

LESSEE Site No.: SD02140 Encanto

Location: 6780 Aviation Drive, San Diego, CA 92114

Assessor's Parcel Number: 549-32-05

Legal Description:

All that certain real property situated in the County of San Diego, State of California, described as follows:

That portion of Lot 162, Encima De San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1546, filed in the Office of the County Recorder of San Diego County, March 18, 1913, lying Southerly from a line drawn parallel with a distant 60.00 feet Southerly from the Southerly line of Benson Avenue, formerly Boston Avenue as shown on said Map No. 1546, and Easterly from the following described line:

Commencing at the point of intersection of the Southerly line of said Benson Avenue with the Southwesterly line of Aviation Drive, formerly Lot 1, as shown on said Map No. 1546; thence along the Southerly line of said Benson Avenue North 89° 11' West a distance of 65.00 feet to a point; thence South 0° 49' West a distance of 60.00 feet to the true point of commencement; thence continuing South 0° 49' West 181 feet, more or less, to an intersection with the center line of said Aviation Drive.

Description of Premises:

10'x24' equipment enclosure with 4 cabinets and a 50 foot monopine with 12 antennas located on the northeast side of the compound.

Exhibit B

Site Plans

Exhibit D

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 TELECOMMUNICATIONS LEASE (“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:

LESSEE:

THE CITY OF SAN DIEGO, a
California municipal corporation

By _____

By _____

Name: _____

Name: _____

Title: _____

Title: _____

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

By _____

Name: _____

Title: _____

Exhibit E

Interference Protection Requirements

- a. Interference. Prior to the Effective Date or at any time 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 General Services Department, Communications Division. CITY is not responsible for any omitted data provided for the purpose of creating the Report. The Report shall be provided to CITY'S General Services Department, Communications Division ("GSDCD"), Attention: Senior Communications Engineer.
- b. City of San Diego Land Radio/Electronic Use "ON THE AIR" Test Instructions and Procedures. For the purpose of confirming interference situations calculated by the Report and for the discovery of any other actual interference situations, on-premises, pre-installation or pre-use tests may be required. The tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses at the 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) calendar 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 GSDCD 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 GSDCD Senior Communications Engineer stating the test results obtained from each permittee/lessee/user participating in the test and a list of those permittees/lessees/users who did not respond.
 - (3) If a notified permittee/lessee/user fails to send a qualified representative to observe and participate in the tests, it will be assumed by CITY that the permittee/lessee/user has assured itself that their operations will not be affected.
 - (4) It shall be the responsibility of LESSEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the 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, in CITY'S sole discretion, withhold consent 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 consent and LESSEE waives any claim for expense or loss which LESSEE might incur as a result of CITY withholding consent.

TECHNICAL DATA SUMMARY

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

DATE _____

LOCATION _____ APPLICANT _____

CALL SIGN _____ CONTACT NAME _____ PHONE _____

TRANSMITTER

RECEIVER

Manufacturer _____ Manufacturer _____

Model _____ Model _____

Emission _____

Radiated ERP _____ Watts

Transmit Frequency _____

Receiver Frequency _____

CTCSS or DCS

1. _____

1. _____

1. _____

2. _____

2. _____

2. _____

3. _____

3. _____

3. _____

4. _____

4. _____

4. _____

ANTENNA

TRANSMIT CAVITY FILTER ISOLATOR

Make _____

Make _____

Make _____

Model/Type _____

Gain _____ dBd

Azimuth _____

REMARKS:

TEST RESULTS CERTIFICATION

Top section is to be completed and supplied to all permittees/lessees/users operating at the 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 F

Installation Standards

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

additional load to the tower will affect tower structural integrity.

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

Exhibit G

Emergency Maintenance Procedures

If LESSEE discovers that any of the Communications Equipment is damaged, LESSEE shall immediately notify **CITY'S Station 38 at (619) 527-7660**.

If CITY discovers that any of the Communications Equipment is damaged, CITY shall immediately notify **LESSEE'S Network Operation Call Center at (888) 662-4662**.

CITY may require any replacement Communications Equipment to be relocated, as provided for in this Lease.

If LESSEE'S Communications Equipment causes any interference to CITY'S telecommunications equipment and/or system, CITY may require such Communications Equipment to be removed permanently and replaced at another location, as provided for in this Lease.

LESSEE shall not unreasonably interfere with pedestrian or vehicle traffic while installing or maintaining its Communications Equipment.

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

Exhibit H

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 for each specific property

3. DEFINITIONS

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 leases with the telecommunication service providers may contain different requirements and restrictions regarding access to Water Department facilities. If the requirements within this Lease conflict with the requirements set forth in this exhibit, then the requirements within this Lease 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) 527-7604 or (619) 527-7630 at least two (2) 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) 527-7604 or (619) 527-7630 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:

.....

To Be Completed By Attending Crew

Access Date:	Start Time:	End Time:
Comments:		

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON MAR 30, 2010
DOCUMENT NUMBER 2010-0155646
DAVID L. BUTLER, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 10:45 AM

JOB ORDER NUMBER: 43-2631

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Conditional Use Permit No. 675019
Planned Development Permit No. 675074
T-Mobile – Encanto
PROJECT NO. 191130
Planning Commission

This CUP No. 675019 and PDP No. 675074 is granted by the **Planning Commission** of the City of San Diego to City of San Diego, Owner, and T-MobileWest Corporation, Permittee, pursuant to San Diego Municipal Code [SDMC] section 141.0420. The .51 acre site is located at 6780 Aviation Drive in the RS-1-7 zone of the Skyline-Paradise Hills Community Planning area. The project site is legally described as that portion of Lot 162, Encina De San Diego, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 1546.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and/or Permittee for a wireless communication facility, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated December 17, 2009, on file in the Development Services Department.

The project shall include:

- a. A 50 foot high faux pine tree supporting 12 panel antennas. Associated equipment will be relocated into a 240 square foot shelter;
- b. A PDP for the height deviation, where 30 feet is permitted.
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s),

conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within nine (9) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. This permit and corresponding use of this site shall **expire on December 17, 2019**. Upon expiration of this Permit, the facilities and improvements described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit unless the applicant of record files a new application for a facility which will be subject to compliance with all regulations in effect at the time.
3. No later than ninety (90) days prior to the expiration of this permit, the Owner/Permittee may submit a new application to the City Manager for consideration with review and a decision by the appropriate decision maker at that time. Failure to submit prior to the deadline will be cause for compliance, which may include penalties and fines.
4. Under no circumstances, does approval of this permit authorize **the Owner/Permittee** or their tenants to utilize this site for wireless communication purposes beyond the permit expiration date. Implicit use of this permit beyond the effective date of this permit is prohibited.
5. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
6. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.
7. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
8. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

9. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

10. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

11. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

12. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

13. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENGINEERING REQUIREMENTS:

14. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans or specifications.

15. Prior to the issuance of any construction permits, the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

LANDSCAPE REQUIREMENTS:

16. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit 'A' Landscape Development Plan.

17. Prior to issuance of any construction permits for buildings complete landscape and irrigation construction documents consistent with the Land Development Manual: Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit 'A,' Landscape Development Plan, on file in the Office of the Development Services Department. Construction plans shall take into account a 40 square foot area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)5.

18. Prior to activation of WCF, it shall be the responsibility of the Permittee to install all required landscape and obtain all required landscape inspections.

19. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

20. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or activation of WCF or a Final Landscape Inspection.

21. Any required planting that dies within 3 years of installation shall be replaced within 30 calendar days of plant death with the same size and species of plant material shown on the approved plan. Required shrubs or trees that die 3 years or more after installation shall be replaced with 15 gallon size or 60-inch box size material, respectively. Development Services may authorize adjustment of the size and quantity of replacement material where material replacement would occur in inaccessible areas or where the existing plant being replaced is larger than a 15 gallon shrub or 60-inch box tree.

PLANNING/DESIGN REQUIREMENTS:

22. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the structure(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.
23. Prior to obtaining a Construction Permit the following items must be illustrated on the construction drawings; coax cable tray, meters, telco, A/C units, generator receptacles, cable runs, bridges, dog houses and external ports. These appurtenances must be minimized visually so as to avoid the effect of changing the outward appearance of the project from what was approved on the exhibits.
24. The applicant of record is responsible for notifying the city prior to the sale or takeover of this site to any other provider.
25. This wireless communication facility shall be removed or replaced if it is determined that the facility or components of the facility are obsolete.
26. Prior to issuance of construction permits for the Public Improvement Plans, the applicant shall pay the Long Term Monitoring Fee in accordance with the Development Services Department Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.
27. Prior to the issuance of a construction permit, the telecommunication provider shall provide a certified cumulative radio frequency model study demonstrating compliance with the Federal Communications Commission's Radio Frequency Guidelines. All significant contributors to the ambient RF environment should be considered in the radio frequency model study.
28. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.
29. Prior to building permit issuance, faux broad-leaf specifications shall be submitted for review and approval by the Development Services Department. The details shall include:
- a. Official manufacturer specifications and photos
 - b. Distance the branches extend from the antenna face – 24 inches required
 - c. Branch count
 - d. Overall branch density (minimum 2.5 per ft., measured from start of branches to top of tree)
 - e. Beginning branch height – 15 feet
 - f. Overall tree height and overall pole height
 - g. Materials
 - h. Cabling of the antenna (no overhead cabling)
 - i. Sock details
 - j. Color specifications
 - k. Leaf detail (proposed leaf should be similar to surrounding mature or proposed tree species)
 - l. Type of brackets

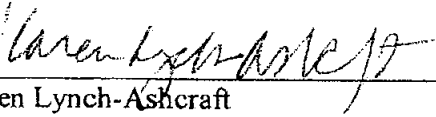
INFORMATION ONLY:

- Please note that an **Administrative Planning Hold** will be placed on the project prior to Final Clearance from the City's Building Inspector to ensure compliance with the approved plans and associated conditions. Prior to calling for your Final Inspection from your building inspection official, please contact the Project Manager listed below at (619) 630-9373 to schedule an inspection of the completed facility. Please schedule this administrative inspection at least five working days ahead of the requested Final Inspection date.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on December 17, 2009 by Resolution No. 4560-PC.

Permit Type/PTS Approval No.: 191130/CUP No. 675019/PDP No. 675074
Date of Approval: December 17, 2009

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

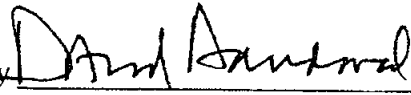


Karen Lynch-Ashcraft
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

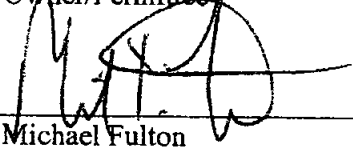
The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

City of San Diego
Owner/Permittee

By 

David Sandoval
Deputy Director

T-Mobile West Corporation
Owner/Permittee

By 

Michael Fulton
TITLE

Michael Fulton
General Manager
T-Mobile San Diego

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

Rev. 05/13/09 rh

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Diego

On 3-25-10

Date

before me,

Raquel Herrera, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Karen Lynch-Ashcraft

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Raquel Herrera

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

T-Mobile - Erranto Pts A1130

Document Date:

Dec. 17, 2009

Number of Pages:

7

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

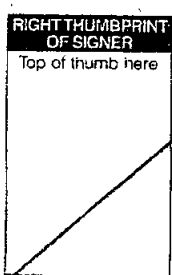
- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:



State of CALIFORNIA

County of SAN DIEGO

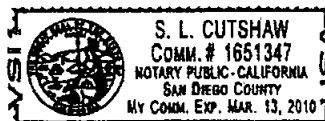
On 02-03-2010, before me, S.L. CUTSHAW, Notary Public,

personally appeared MICHAEL FULTON
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (seal



OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: CUP # 675019

Document Date: 12-17-2009 Number of Pages: 7

Signer's Name: MICHAEL FULTON

Capacity(ies) Claimed by Signer(s)

- ☐ Individual
- ☐ Corporate Officer
- ☒ Title(s): GEN. MANAGER
- ☐ Partner: ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

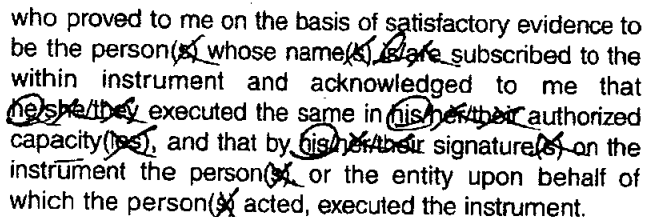
County of _____

County of San Diego

Here Insert Name and Title of the Office

David A. Sandoval
Name(s) of Signer(s)

Name(s) of Signer(s)



WITNESS my hand and official seal.

Signature _____

Signature of Notary Public

Place Notary Seal Above

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Title or Type of Document: CUP-675019 - T-Mobile-Encanto-6780 Aviation Dr.

Document Date: December 17, 2009 Number of Pages:

Signer(s) Other Than Named Above:

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name:

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

Top of thumb here

**RIGHT THUMBPRINT
OF SIGNER**

Top of thumb here

**PLANNING COMMISSION RESOLUTION NO. 4560-PC
CONDITIONAL USE PERMIT NO. 675019
PLANNED DEVELOPMENT PERMIT NO. 675074
T-MOBILE – ENCANTO
PROJECT NO. 191130**

WHEREAS, City of San Diego, Owner and T-Mobile West Corporation, Permittee, filed an application with the City of San Diego for a permit for a wireless communication facility (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No.'s 675019 and 675074 on portions of a .51 acre site;

WHEREAS, the project site is located at 6780 Aviation Drive in the RS-1-7 zone of the Skyline-Paradise Hills Community Planning area;

WHEREAS, the project site is legally described as that portion of Lot 162, Encina De San Diego, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 1546;

WHEREAS, on December 17, 2009, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 675019 and Planned Development Permit No. 675074 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on October 2, 2009, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15302; and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated December 17, 2009.

FINDINGS:

Conditional Use Permit - Section 126.0305

- 1. The proposed development will not adversely affect the applicable land use plan;**

The Skyline-Paradise Hills Community Plan does not address wireless communication facilities as a specific land use, however, the City of San Diego's General Plan (UD-15) requires that the visual impact of wireless facilities be minimized by concealing wireless facilities in existing structures or using screening techniques to hide or blend them into the surrounding area. The plan also calls for these facilities to be designed to be aesthetically pleasing and respectful of the neighborhood context. Furthermore, the plan states that equipment associated with wireless facilities be concealed from view. The antennas associated with this wireless facility are proposed to be mounted on a monopine located on a hilltop above the Skyline Paradise Hills community.

The addition of landscape material adjacent to the facility will serve to blend the project into the surroundings. Equipment associated with this facility will be located within an enclosure, constructed of concrete block topped by a trellis structure. The design of the enclosure will be consistent between the other carrier (Sprint) on site. Therefore, this facility will not adversely affect the applicable land use plan.

Pursuant to the San Diego Land Development Code, wireless communication facilities are permitted in all zones citywide with the appropriate permit process. Wireless communication facilities are separately regulated uses, which have limitations or require compliance with conditions in order to minimize potential impacts. The intent of the regulations is to camouflage facilities from public view. T-Mobile is proposing to construct a 50 foot high monopine that will support 12 panel antennas. All of the antennas will be covered with mesh pine needle socks to camouflage the antennas. The associated equipment is located within a concrete block enclosure that will be accented with a wood lattice cover. The addition of landscape materials adjacent to the communication facility will help to integrate and camouflage the installation. The overall project is designed to blend in with the existing and proposed landscaping. Additionally, the Communication Antenna regulations state that an antenna facility will be considered minor if the facility including the equipment is concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement, unique design solutions or accessory use structures. The project complies with the development regulations for the RS-1-7 zone and the Communication Antenna regulations. Therefore, the proposed development would not adversely affect the Skyline-Paradise Hills Community Plan nor the City of San Diego General Plan and Progress Guide.

2. The proposed development will not be detrimental to the public health, safety, and welfare;

The Telecommunication Act of 1996 preempts local governments from regulating the "placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the Federal Communication Commission's (FCC) standards for such emissions." The proposed project would be consistent with the FCC's regulations for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit to require T-Mobile to perform a cumulative RF study and submit the finding in a report to the City of San Diego within 30 days of approval of this permit. Therefore, based on the above, the project would not result in any significant health or safety risks to the surrounding area.

3. The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code; and

The project complies with all applicable development regulations including the RS-1-7 development regulations of the Land Development Code and the City of San Diego Communication Antenna Regulations (Land Development Code Section 141.0405). This section of the code requires architectural integration and/or enhancements with the existing buildings or landscape on the property. The monopine is proposed to be 50 feet high and could be a collocation facility for a future carrier. The addition of antenna socks as well as a landscape planting palette for the project site will minimize any potential visual impacts. The property is

managed by the Water Department. There are currently three wireless towers on site, the Sprint tower is anticipated to be removed and replaced with a faux tree, the American Tower Corporation tower was denied by the City Council and has been referred to Neighborhood Code Compliance and the City's Communication Division has a tower for emergency communication purposes. T-Mobile currently has antennas on the City's tower, which the City has asked them to remove, so for this reason, T-Mobile is requesting a permit to have their own facility. The request for a height deviation is necessary to provide the same coverage T-Mobile currently has now on the City tower. The allowed height in the RS-1-7 zone is 30 feet and the tree is proposed at 50 feet. There are no other deviations or variances requested with this application. Therefore, the project complies to the maximum extent possible with the applicable regulations of the Land Development Code, while continuing uninterrupted coverage and service to the Skyline Paradise Hills community.

4. The proposed use is appropriate at the proposed location.

Council Policy 600-43 provides a location preference framework for these types of facilities, encouraging providers to locate in non-residential areas. This property is zoned for residential. The original use of the site was for a City water tank, however, the tank was removed several years ago and it has since been used for wireless communications purposes. Because of the elevation, the site is visible to the surrounding community. The eventual removal of the towers and the replacement with faux trees and additional live landscaping will help to integrate the facilities into the hilltop setting and minimize the visibility to the surrounding community.

Planned Development Permit - Section 126.0604

A. Findings for all Planned Development Permits

1. The proposed development will not adversely affect the applicable land use plan;

The Skyline-Paradise Hills Community Plan does not address wireless communication facilities as a specific land use, however, the City of San Diego's General Plan (UD-15) requires that the visual impact of wireless facilities be minimized by concealing wireless facilities in existing structures or using screening techniques to hide or blend them into the surrounding area. The plan also calls for these facilities to be designed to be aesthetically pleasing and respectful of the neighborhood context. Furthermore, the plan states that equipment associated with wireless facilities be concealed from view. The antennas associated with this wireless facility are proposed to be mounted on a monopine located on a hilltop above the Skyline Paradise Hills community. The addition of landscape material adjacent to the facility will serve to blend the project into the surroundings. Equipment associated with this facility will be located within an enclosure, constructed of concrete block topped by a trellis structure. The design of the enclosure will be consistent between the other carrier (Sprint) on site. Therefore, this facility will not adversely affect the applicable land use plan.

Pursuant to the San Diego Land Development Code, wireless communication facilities are permitted in all zones citywide with the appropriate permit process. Wireless communication facilities are separately regulated uses, which have limitations or require compliance with

conditions in order to minimize potential impacts. The intent of the regulations is to camouflage facilities from public view. T-Mobile is proposing to construct a 50 foot high monopine that will support 12 panel antennas. All of the antennas will be covered with mesh pine needle socks to camouflage the antennas. The associated equipment is located within a concrete block enclosure that will be accented with a wood lattice cover. The addition of landscape materials adjacent to the communication facility will help to integrate and camouflage the installation. The overall project is designed to blend in with the existing and proposed landscaping. Additionally, the Communication Antenna regulations state that an antenna facility will be considered minor if the facility including the equipment is concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement, unique design solutions or accessory use structures. The project complies with the development regulations for the RS-1-7 zone and the Communication Antenna regulations. Therefore, the proposed development would not adversely affect the Skyline-Paradise Hills Community Plan nor the City of San Diego General Plan and Progress Guide.

2. The proposed development will not be detrimental to the public health, safety, and welfare;

The Telecommunication Act of 1996 preempts local governments from regulating the "placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the Federal Communication Commission's (FCC) standards for such emissions." The proposed project would be consistent with the FCC's regulations for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit to require T-Mobile to perform a cumulative RF study and submit the finding in a report to the City of San Diego within 30 days of approval of this permit. Therefore, based on the above, the project would not result in any significant health or safety risks to the surrounding area.

3. The proposed development will comply with the regulations of the Land Development Code;

The project complies with all applicable development regulations including the RS-1-7 development regulations of the Land Development Code and the City of San Diego Communication Antenna Regulations (Land Development Code Section 141.0405). This section of the code requires architectural integration and/or enhancements with the existing buildings or landscape on the property. The monopine is proposed to be 50 feet high and could be a collocation facility for a future carrier. The addition of antenna socks as well as a landscape planting palette for the project site will minimize any potential visual impacts. The property is managed by the Water Department. There are currently three wireless towers on site, the Sprint tower is anticipated to be removed and replaced with a faux tree, the American Tower Corporation tower was denied by the City Council and has been referred to Neighborhood Code Compliance and the City's Communication Division has a tower for emergency communication purposes. T-Mobile currently has antennas on the City's tower, which the City has asked them to remove, so for this reason, T-Mobile is requesting a permit to have their own facility. The request for a height deviation is necessary to provide the same coverage T-Mobile currently has now on the City tower. The allowed height in the RS-1-7 zone is 30 feet and the tree is proposed at 50 feet. There are no other deviations or variances requested with this application. Therefore, the

project complies to the maximum extent possible with the applicable regulations of the Land Development Code, while continuing uninterrupted coverage and service to the Skyline Paradise Hills community.

4. The proposed development, when considered as a whole, will be beneficial to the community; and

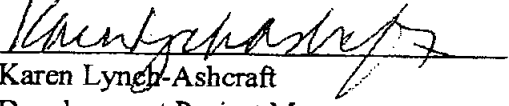
This project will be beneficial to the community. The facility provides wireless communication services, including e911 for users of cell phones and other devices. The facility provides these wireless services in a way that is integrated with the community. Therefore, this development will be beneficial to the community.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

The RS-1-7 zone allows a maximum height of 30 feet. The faux tree is proposed to be 50 feet high. The general vicinity is low scale single family homes with the exception of the immediate vicinity, which is the site of a former water tank, but now supports three communication towers. Two of the exiting towers, Sprint Nextel and American Tower Corporation, are due to be removed and only the City tower will remain. Sprint Nextel will replace their tower with a 50 foot high faux tree and between T-Mobile and Sprint Nextel; sufficient landscape will be planted to integrate the faux trees into the hilltop setting.

If the faux tree were reduced to 30 feet in height, the T-Mobile coverage foot print would be reduced significantly. As a result, additional facilities would have to be installed throughout the community to compensate for the loss in coverage. Overall, the location and design of the pole and the proposed mature landscaping make this project a well designed wireless communication facility.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 675019 and Planned Development Permit No. 675074 is hereby GRANTED by the Planning commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No.'s 675019 and 675074, a copy of which is attached hereto and made a part hereof.


Karen Lynch-Ashcraft
Development Project Manager
Development Services

Adopted on: December 17, 2009

Job Order No. 43-2631