



CITY OF SAN DIEGO
RIGHT-OF-WAY TELECOMMUNICATIONS LEASE

between

THE CITY OF SAN DIEGO

and

VERIZON WIRELESS (VAW) LLC
doing business as Verizon Wireless

Micro Heights

Corner of Del Mar Heights Road and Mar Scenic Drive

**CITY OF SAN DIEGO
RIGHT-OF-WAY TELECOMMUNICATIONS LEASE**

This CITY OF SAN DIEGO RIGHT-OF-WAY TELECOMMUNICATIONS LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company doing business as Verizon Wireless ("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.

RECITALS

A. This Lease is a lease between CITY and LESSEE, intended to govern the rights and obligations of the Parties related to the operation of "Communications Equipment" (defined below) on certain CITY-owned property, more particularly identified and defined herein.

B. Notwithstanding anything to the contrary contained in this Lease, no provision contained herein shall be construed to mean that LESSEE is leasing from CITY, or paying rent for, any ground space portion of the "City Right-of-Way" (defined below).

FOR VALUABLE CONSIDERATION, the sufficiency of which is 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 at the "Site" (defined below) within the "City Right-of-Way" (defined below) and approved by CITY for LESSEE'S use as provided herein.
- 1.2. "City Right-of-Way" – any of the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including, without limitation, any public utility easement and public service easement, as the same now or may hereafter exist under CITY'S jurisdiction, including, without limitation, all space in, upon, above, along, across, under, and over such things.
- 1.3. "Communications Equipment" – includes, but is not limited to, antenna structures, antenna equipment, cable wiring, utility lines, transmission lines, 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.
- 1.4. "Decorative Street Light Pole" – any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles and does not have a mast arm for electrolier support. The term Decorative Streetlight Pole includes any historically designated or architecturally significant light poles owned by CITY and located in a City Right-of-Way.

- 1.5. "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.
- 1.6. "LESSEE'S Operations" – LESSEE'S development, occupancy, use, and/or maintenance of the "Site" (defined below) and "Pole Attachment" (defined below).
- 1.7. "Pole Attachment" – that certain portion of the "Site" (defined below) used by LESSEE, and more particularly described in Exhibit A.
- 1.8. "Site" – an Approved Light Pole, "Street Light Pole" (defined below), or "Traffic Signal" (defined below) located within a portion of the City Right-of-Way, more particularly described in Exhibit A.
- 1.9. "Street Light Pole" – any concrete, fiberglass, metal, or wooden pole that has a mast arm for electrolier support.
- 1.10. "Traffic Signal" – any metal pole that has traffic-controlling lights on it.

2. LEASED PROPERTY.

- 2.1. Lease of Pole Attachment. Under the terms and conditions of this Lease, CITY leases to LESSEE and LESSEE leases from CITY the Pole Attachment.
- 2.2. Access to Site. LESSEE, its agents, employees, contractors, guests, and invitees may have access to the Site on a 24-hour, non-exclusive basis.
- 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 Pole Attachment 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, LESSEE'S Communications Equipment.

- 3.1. Other Uses. LESSEE shall not operate its Communications Equipment or use the Pole Attachment for other related or incidental activities of any kind without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. Communications Equipment installed on a Traffic Signal shall not interfere with the operation of the Traffic Signal, or cause visual impairment, distraction, or confusion to motorists. LESSEE shall not install any Communications Equipment on a Decorative Street Light Pole.
- 3.2. Continuous Use. LESSEE shall continuously occupy and use the Pole Attachment throughout the "Term" (defined below) of this Lease.

- 3.3. Unauthorized Use. The use of the Site or Pole Attachment for any unauthorized or illegal purpose shall constitute a default of this Lease. Notwithstanding any provision of this Lease to the contrary, upon such default, CITY may, in its sole discretion, terminate this Lease immediately upon written notice to LESSEE.

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 Pole Attachment 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 Pole Attachment to CITY free and clear of all liens and encumbrances caused by or resulting from LESSEE'S Operations. LESSEE shall surrender the Pole Attachment 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 \$9,300 (nine thousand three hundred 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	\$9,579
Lease Year Three	\$9,866
Lease Year Four	\$10,162
Lease Year Five	\$10,467
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 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 Pole Attachment, 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 rate, 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 existence 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
San Diego, California 92101

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 written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If a postmark is 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 mutually 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. Notwithstanding the foregoing, 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 a late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

- 5.4. Financial Records. LESSEE shall maintain, in accordance with generally accepted accounting practices, complete and accurate financial records showing all receipts from its use of the Pole Attachment. LESSEE shall make any and all of its records and accounts relating to its use of the Pole Attachment 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 make them available for inspection by CITY shall be a default of this Lease. LESSEE shall maintain all records and accounts 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 Pole Attachment. 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 Pole Attachment.

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 certificate of such insurance currently in effect;
 - 7.1.2. LESSEE shall obtain an All-Risk Property insurance policy providing coverage for all of LESSEE'S insurable property on the Pole Attachment in an amount to cover one hundred percent (100%) of the replacement cost, and deliver to READ a certificate of such insurance currently in effect;
 - 7.1.3. LESSEE shall obtain a separate endorsement(s) [CG2010 (11/85) or CG20 26 11 85], naming "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additional insureds in each of LESSEE'S liability policies, and deliver to READ a copy of such endorsement(s); and

- 7.1.4. Each of the insurance policies described above shall be primary and noncontributory to any coverage carried or maintained by CITY.
- 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 of LESSEE required under this Lease shall be 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/builders risk" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. LESSEE shall 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 Pole Attachment, CITY, in its sole discretion, may require the reasonable revision of amounts and coverage, at any time during the Term, by giving LESSEE thirty (30) calendar days written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements constructed by LESSEE, in order to meet the requirements of this Lease.
- 7.6. Accident Reports. LESSEE shall immediately 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 Pole Attachment and commence and diligently pursue the removal of its property from the Site.

8. ACCEPTANCE OF SITE AND POLE ATTACHMENT.

LESSEE represents and warrants that LESSEE has independently inspected the Site and Pole Attachment and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Site and Pole Attachment. LESSEE agrees that LESSEE is relying solely on its independent inspections, tests, investigations, and observations in entering into this Lease. LESSEE acknowledges that the Site and Pole Attachment are in the condition called for herein, that CITY has performed all work with respect to the Site and Pole Attachment, and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Site or Pole Attachment. LESSEE has been given the opportunity to investigate the Site and Pole Attachment 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 Hazardous Substances on the Site or Pole Attachment. LESSEE waives any claims against CITY which may result from the presence of Hazardous Substances on or within the Site and Pole Attachment.

9. SITE PLANS.

LESSEE shall develop the Pole Attachment in accordance with the site plans approved by CITY'S Development Services Department, attached hereto 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 Site, or make any alterations to the Pole Attachment (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 Pole Attachment without CITY'S prior written consent. CITY shall not be obligated by this Lease to make, or assume any expense for, any improvements or alterations.

10.1. Replacement of Existing Street Light Pole. LESSEE may replace any existing Street Light Pole on the Site with an Approved Light Pole, in conformance with the description of the Site and Pole Attachment 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 that portion of the CITY Right-of-Way where the Site is located, in conformance with the description

of the Site and Pole Attachment 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 and monitor the Landscaping installed on the CITY Right-of-Way in conformance with all applicable CITY permits and landscape agreements to the reasonable satisfaction of CITY for a period of three (3) years from the date the Landscaping is installed (i.e., from the date the installation of the Landscaping passes final inspection by CITY). After the three-year period, CITY will maintain the Landscaping on the CITY Right-of-Way 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 Pole Attachment, LESSEE shall inform permitting authorities, in writing, that the Pole Attachment is CITY-owned property.
- 10.5. Repair and Restoration. These provisions shall not relieve LESSEE of any obligation under this Lease to maintain the Pole Attachment in a decent, safe, healthy, and sanitary condition, as required in Section 17 of this Lease.

11. COMPETENT MANAGEMENT.

Throughout the Term, LESSEE shall provide competent management of the Pole Attachment for its intended uses to the reasonable satisfaction of CITY. For the 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 any and 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, without limitation, 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 City Council Ordinance No. 18173 (San Diego Municipal Code 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, and LESSEE'S contractors and subcontractors, shall be individually responsible to abide by 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, as well as 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" or a current Equal Employment Opportunity ("EEO") Plan, as required by Section 22.2705 of the San Diego Municipal Code, which set forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities. LESSEE shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Lease, so that the provisions will be binding upon each contractor and subcontractor.
- 12.3.1. CITY Monitoring. Compliance with EEO provisions will be implemented, monitored, and reviewed by CITY'S Equal Opportunity Contracting Program staff. LESSEE'S failure to comply with the above requirements and/or submittal of false information in response to such requirements may result in termination of this Lease and 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. CITY may, in its sole discretion, terminate this Lease immediately if LESSEE employs an individual who, within the twelve (12) months immediately preceding 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 in connection with the selection of LESSEE. These provisions shall not apply to members of the City Council.
- 12.6. Drug-Free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 12.6.1. Publish a statement notifying 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.

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 persons with disabilities.

13. TELECOMMUNICATIONS PROVISIONS.

13.1. Entire Installation. LESSEE warrants that the Communications Equipment listed in Exhibit C constitutes the entire installation for the Pole Attachment. LESSEE shall update Exhibit C from time to time as and when changes to the Communications Equipment are made, or within thirty (30) calendar days after CITY'S demand for such an update.

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 portion of the Site 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 portion of the Site discovered by LESSEE to exceed these federally mandated limits. LESSEE shall not hold CITY responsible for radiation levels found to exceed these 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 this maintenance, provided CITY shall use reasonable efforts to ensure that these 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 a primary concern. Any areas in which these 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 prior to such a change.

13.3. Radio Frequency Interference. LESSEE warrants that all Communications Equipment installations, modifications, and maintenance will not result in degraded performance or RF interference to any existing authorized uses of the Site by fulfilling the requirements of Exhibit E, which may be updated from time to time in CITY'S sole discretion.

13.4. Industry Standards. LESSEE shall perform all Communications Equipment installations, modifications, and maintenance in adherence to industry standards set by the "Standards and Guidelines for Communications Sites" Motorola R56© Manual, or any succeeding regulations or standards. In addition to the requirements of the Motorola R56© publication, installations on CITY property shall comply with the following supplemental requirements:

13.4.1. LESSEE shall remove all of its trash and debris from the Site at the end of each workday and on completion of each project;

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

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 any other user on the Site.

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 unreasonably interfere with CITY operations or public use of CITY-owned property.

14. WASTE, DAMAGE, OR DESTRUCTION.

LESSEE shall immediately give notice to CITY of any fire or any other damage that occurs on the Site. LESSEE shall not commit, or allow to be committed, any waste or injury or any public or private nuisance in connection with LESSEE'S uses of the Pole Attachment described in Section 3 of this Lease. LESSEE shall keep the Pole Attachment clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Pole Attachment is damaged by any cause that puts the Site 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 Site to the condition which existed prior to

the damage; or, at CITY'S option, LESSEE shall clear and remove from the Site all debris resulting from the damage and restore the Site 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 Site 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 Site 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 Site or Pole Attachment. LESSEE and LESSEE'S agents and contractors shall not store, utilize, or sell any Hazardous Substance on the Site or Pole Attachment 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.
- 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 Site or Pole Attachment, LESSEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) calendar days of 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 Pole Attachment 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 Site or Pole Attachment, CITY may cause an environmental assessment of the Site or Pole Attachment 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 Site or Pole Attachment, 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 Site without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. If any such unauthorized item is found on the Site, LESSEE shall remove the item, at LESSEE'S sole cost and expense, upon twenty-four (24) hours notice by CITY, or CITY may then enter the Site and remove the item at LESSEE'S sole cost and expense. LESSEE shall post a clearly marked sign at the Site 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 Pole Attachment 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 Pole Attachment 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 Pole Attachment 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 Site at any time, including, but not limited to, the replacement of light bulbs on an Approved Light Pole, Street Light Pole, and/or Traffic Signal. 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 prior notice shall be required, but CITY shall give LESSEE notice as soon as reasonably possible thereafter), and LESSEE shall comply with all applicable safety requirements issued by CITY to ensure the safety of CITY personnel performing such maintenance on the Site.

17.2. Emergency Maintenance Procedures. The Parties shall comply with the emergency maintenance procedures set forth in Exhibit F, 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, 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 Pole Attachment 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 Site and Pole Attachment for the purpose of viewing and ascertaining the condition of the Pole Attachment, or to protect CITY'S interest in the Pole Attachment, or to inspect the operations conducted on the Pole Attachment. If CITY'S entry or inspection discloses that the Pole Attachment is 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 Pole Attachment 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 Pole

Attachment is not in a decent, safe, healthy, and sanitary condition, CITY may, in its sole discretion, 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 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 Pole Attachment, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE, levied by reason of the business or other LESSEE activities related to the Pole Attachment, including, without limitation, any licenses or permits. LESSEE acknowledges that this Lease may create possessory interests subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on the leasehold interests. 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 Site and Pole Attachment, 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.

LESSEE shall not permit any encumbrance related to LESSEE'S Operations. CITY may, in its sole discretion, consent to such an encumbrance if exclusively related to LESSEE'S development of the Pole Attachment. If an encumbrance is placed on the Site, LESSEE shall diligently seek and obtain, at its sole cost and expense, the removal of the encumbrance as soon as possible upon completion of the development if the encumbrance was authorized by CITY, or, if unauthorized, immediately upon CITY'S demand.

- 22.1. 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 Pole Attachment, 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 Pole Attachment results in a lien or notice of lien being filed against the Pole Attachment, LESSEE shall, within five (5) calendar days after 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 Pole Attachment, or any part of the Pole Attachment.
- 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 Pole Attachment 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 Pole Attachment, or any right or appurtenant privilege to the Pole Attachment.

23.2.1. Any subletting, in whole or in part, of the Pole Attachment 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 claims or liability arising 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.

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 development, active use, or maintenance of the Site, 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 claims or liability arising from the established negligence or willful misconduct of LESSEE, its officers, representatives, agents, and employees.

25. OTHER GOVERNMENTAL ACTIONS.

By entering into this Lease, neither CITY nor the 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 Site and Pole Attachment. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required for LESSEE'S Operations. LESSEE shall diligently seek, at its sole cost and expense, all entitlements and actions from both CITY and other governmental agencies with jurisdiction over the Site and Pole Attachment, as may be 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 Site.
- 26.2. Use. CITY may grant and use easements or establish and use rights-of-way over, under, along, and across the Site for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion, for the public good.
- 26.3. Entry. CITY may enter the Site at any time to develop or make repairs to municipal resources and services. However, if CITY unreasonably or substantially interferes with LESSEE'S use of the Pole Attachment, CITY shall reimburse LESSEE for physical damages, if any, to Communications Equipment occasioned thereby. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage, as determined by CITY. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.

27. REASSIGNMENT OF SPACE.

If the Site is an aboveground site, CITY may reassign LESSEE to an equivalent amount of space in a different location within the Site or to a different aboveground Site, if and when reasonably necessary. This section shall not apply to underground vault sites. LESSEE shall cooperate with CITY and its contractors during any such relocation or any renovation, repair, or other alteration of the Pole Attachment or Site. CITY warrants that every effort will be made to ensure continuous, uninterrupted broadcast and/or receiving capability during any such activity. If any relocation is not satisfactory to LESSEE, then LESSEE may, in its sole discretion, terminate this Lease upon thirty (30) calendar days written notice to CITY, without further obligation therefor.

28. EMINENT DOMAIN.

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

- 28.1. Full Taking. If the entire Site is taken, this Lease shall terminate as of 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 Site occurs and, in the reasonable opinion of CITY, the remaining part of the Site is unsuitable for the Lease

operation, this Lease shall terminate as of 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 Site occurs and, in the reasonable opinion of CITY, the remaining part of the Site 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 Site taken, only to the extent that LESSEE'S use of the Pole Attachment is reduced or impaired.
- 28.4. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in a 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 and LESSEE'S installations or improvements. 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 Site 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 Site 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. If LESSEE cannot obtain all permits or other approvals of a governmental authority required to install and operate the Communications Equipment (collectively, "Approvals"), or if a governmental authority cancels or denies the renewal of any such Approvals, LESSEE may terminate this Lease upon thirty (30) calendar days written notice to CITY. If LESSEE, for any other reason, in its sole discretion, determines that LESSEE is unable to use the Pole Attachment, LESSEE may terminate this Lease upon sixty (60) calendar days written notice to CITY, provided LESSEE pays to CITY on or before such termination a termination fee equal to twelve (12) months rent at the then-current rental rate. Upon termination of this Lease, for any reason, CITY shall retain all prepaid rents, fees, and other payments made under this Lease.
- 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 breaches 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 of written notice from CITY, 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 within ninety (90) calendar days after filing;
- 29.2.5. LESSEE is adjudicated a bankrupt;
- 29.2.6. LESSEE makes a general assignment for the benefit of creditors; or
- 29.2.7. LESSEE uses the Site or Pole Attachment 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 at law or in equity. Such remedies shall be cumulative and not exclusive.
- 29.3.2. For Monetary Default. Upon a monetary default of this Lease by LESSEE, CITY may, in its sole discretion, either give LESSEE, or any person claiming 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 rights through LESSEE to all or some of the Pole Attachment, or to possession of all or some of the Pole Attachment, and CITY may enter and take possession of the Pole Attachment, and may recover the amount set forth below.
- 29.3.3. For Non-Monetary Default. Upon a non-monetary default of this Lease by LESSEE, CITY may, in its sole discretion, terminate this Lease and all right of LESSEE and of all persons claiming right through LESSEE to all or some of the Pole Attachment or possession of all or some of the Pole Attachment, and CITY may enter and take possession of the Pole Attachment, and may recover from LESSEE the amount set forth below. If any non-monetary default 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 this 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 was due at the time of termination; plus
 - 29.3.4.2. The worth at the time of award of the amount of the unpaid rent that would have been earned after termination until the time of award, minus the amount of rent lost, if any, as LESSEE affirmatively proves could have been reasonably avoided; plus
 - 29.3.4.3. The worth at the time of award of the amount of the unpaid rent for the balance of the Term after the time of the award, minus 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" is 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" is 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.
- 29.4. Deed of Trust or Mortgage. If there is a deed of trust or mortgage on the leasehold interest, and LESSEE has provided CITY with an address where notice can be sent to the respective mortgagee or beneficiary, CITY shall give the mortgagee or beneficiary written notice of a default, and the mortgagee or beneficiary shall have thirty (30) calendar days after receipt of the notice 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. The 30-day period may be extended upon written request by mortgagee or beneficiary if mortgagee or beneficiary is pursuing the cure with reasonable diligence. If the mortgagee or beneficiary is required to exercise its right to cure the default through litigation or through foreclosure, then CITY shall have the following options to expeditiously correct the default:
- 29.4.1. CITY may correct the default and charge the costs thereof to LESSEE'S account, which charge shall be due and payable within thirty (30) calendar

days following CITY'S delivery to LESSEE and mortgagee or beneficiary of a statement of such costs;

- 29.4.2. CITY may correct the default and recover the costs thereof 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 pay the cost of correction performed by or at the direction of CITY; or
- 29.4.3. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees, or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay all reasonable costs incurred by CITY in entering into a new lease with a new tenant under substantially the same terms and conditions as this Lease.
- 29.4.4. If a default is not curable by LESSEE, then any lender holding a beneficial interest in the subject leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself in place of LESSEE under this Lease and to commence performance of the Lease. If the mortgagee or beneficiary gives notice, in writing, of its election to so substitute itself within the thirty (30) day period after receiving written notice from CITY of the default, and the default is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease all the rights, privileges, and obligations of LESSEE, and LESSEE expressly agrees to assign all its interest in and to the subject leasehold estate to the mortgagee or beneficiary.
- 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 Pole Attachment. 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 right to possession of the Pole Attachment.
- 29.6. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Pole Attachment, 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 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 must be in writing and 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 rents shall not be a waiver of any default preceding the rent payment. The property constituting the Site is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego. Any failure by CITY 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 Pole Attachment (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 Site 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 Pole Attachment and shall become CITY'S property free of all liens and claims, except as otherwise provided in this Lease.

- 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 Pole Attachment 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 Pole Attachment, 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 Pole Attachment resulting from the removal of LESSEE'S Property from the Pole Attachment 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:

Verizon Wireless (VAW) LLC,
dba Verizon Wireless
180 Washington Valley Road
Bedminster, NJ 07921
Attention: Network Real Estate

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

- 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 Site, advice from its own attorneys, and the warranties, representations, and covenants within the Lease itself. Each party 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 Site, and obtain legal or other advice relevant to this transaction shall constitute 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 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 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. If CITY or LESSEE claims the existence of such a delay, the party claiming the delay shall notify the other party, in writing, of that 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 "strong mayor") form of governance, pursuant to Article XV of the San Diego City Charter.
- 32.11. Consent by Either Party. Unless 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 with 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 that 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: 8/24/10

THE CITY OF SAN DIEGO, a California municipal corporation

By 

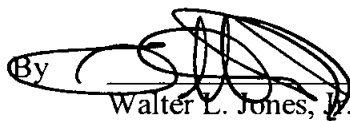
(Print Name) James F. Barwick, CCIM

Director, Real Estate Assets

(Title) _____

Date: _____

LESSEE: VERIZON WIRELESS (VAW) LLC, a
Delaware limited liability company doing business
as Verizon Wireless

By  8/1/10
Walter L. Jones, Jr.
Area Vice President Network

APPROVED AS TO FORM AND LEGALITY:

Date: 8.24.10

JAN I. GOLDSMITH, City Attorney

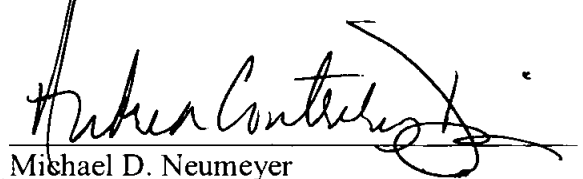
By 
for Michael D. Neumeyer
Deputy City Attorney

Exhibit A

Description of Site and Pole Attachment

CITY Site No.: _____

LESSEE Site No.: Micro Heights

Location: Corner of Del Mar Heights Road and Mar Scenic Drive
San Diego, CA 92130

Description of Site: One (1) replacement street light standard (approximately thirty (30) feet in height) located along Del Mar Heights Road; along with one (1) equipment cabinet (approximately three (3) feet x two (2) feet) located on a concrete slab along Del Mar Heights Road. All routes of related cables and utilities.

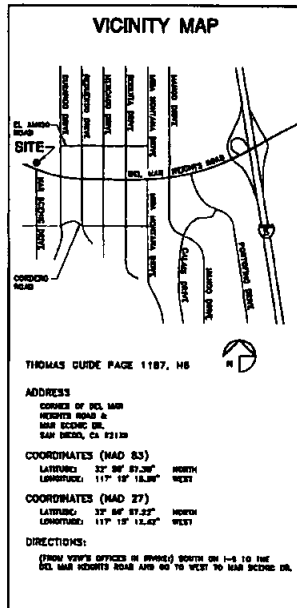
Description of Pole Attachment: Three (3) Verizon antennas attached above the light fixture arm on a new replacement street light standard (approximately thirty (30) feet in height).

Exhibit B

Site Plans



**MICRO HEIGHTS
CORNER OF DEL MAR HEIGHTS ROAD
AND MAR SCENIC DR.
SAN DIEGO, CA 92130**



CONSULTANT TEAM

ARCHITECT:
WILLIAM BOUTH & ROBERT SUAREZ
ARCHITECTURE & PLANNING
P.O. BOX 1881
CARLSBAD, CA 92018
(760) 434-8814
(760) 434-8888 (FAX)
CONTACT: WILLIAM BOUTH

LEASING/PLANNING:
PLANNING, INC.
1801 STATE PLACE
ESCONDIDO, CA 92029
(760) 533-0003

SURVEYOR:
BOYI PACE AND ASSOCIATES
LAND SURVEYING & MAPPING
3158 ARROYO AVENUE, SUITE #1
COSTA MESA, CA 92626
(714) 807-1887
(714) 807-1888 (FAX)

PERMITS REQUIRED
• CONDITIONAL USE PERMIT

SCALE

THE DRAWING SCALES SHOWN IN THIS SET REPRESENT THE
CORRECT SCALE ONLY WHEN THESE DRAWINGS ARE PRINTED IN A
8 1/2" x 11" FORMAT. IF THIS DRAWING SET IS NOT 8 1/2" x 11", THIS
SET IS NOT TO SCALE.

PROJECT SUMMARY

APPLICANT: VERIZON WIRELESS
16000 SAND CANYON AVENUE
IRVINE, CA 92719
CONTACT: BRIANT HOLMES
PHONE: (714) 433-0003

OWNER: CITY OF SAN DIEGO
1500 THIRD AVENUE, 17TH FLOOR
SAN DIEGO, CA 92101
CONTACT: CAROL REARD
(619) 538-8081

DEVELOPMENT SUMMARY:
• INSTALLATION OF VERIZON WIRELESS TELECOMMUNICATIONS
EQUIPMENT CABINET MOUNTED ON A CONCRETE PAD
• INSTALLATION OF (3) VERIZON WIRELESS ANTENNA SECTIONS, OF
(2) ANTENNAS EACH MOUNTED ON A NEW 30'-0" HIGH LIGHT
STANDARD (TOTAL OF 3 ANTENNAS)
• INSTALLATION OF A NEW TRICO SERVICE CONNECTION
• INSTALLATION OF NEW 800 AMP ELECTRICAL SERVICE WITH
UNDERGROUND ELECTRICAL CONDUIT FEED FROM EXISTING
TRANSFORMER.
• RETAIL UNDERGROUNDING CABLE IN CONDUIT TO NEW
LIGHT STANDARDS.
• INSTALLATION OF (2) GPS ANTENNAS ATTACHED TO LIGHT
STANDARDS
• LANDSCAPE & IRRIGATION IS PLANNED FOR THIS PROJECT

LEGAL DESCRIPTION: N/A
CITY OF SAN DIEGO STREET RIGHT-OF-WAY ON NORTH SIDE OF
DEL MAR HEIGHTS ROAD BETWEEN CREST WEST & MAR SCENIC DR.

PROJECT ADDRESS: CORNER OF DEL MAR
HEIGHTS ROAD &
MAR SCENIC DR.
SAN DIEGO, CA 92130

ASSESSORS PARCEL NUMBER: ADJACENT TO 300-291-09

EXISTING ZONING: RS-1-13
PUBLIC RIGHT OF WAY

TOTAL PROJECT AREA: 0.00 AC

TYPE OF CONSTRUCTION: N/A

PROPOSED OCCUPANCY: WIRELESS EQUIPMENT
CABINETS ONLY

NOTES:
THERE ARE NO EXISTING TELECOMMUNICATIONS FACILITIES ON
THE SITE.

SHEET SCHEDULE

T-1	TITLE SHEET & PROJECT DATA
A-0	SITE PLAN
A-0.1	ENLARGED AREA PLAN
A-1	PROJECT ELEVATIONS
A-2	LIGHT STANDARD ELEVATION & DETAILS
L-1	LANDSCAPE DEVELOPMENT PLAN
C-1	SITE SURVEY
C-2	SITE SURVEY

APPLICABLE CODES

ALL WORK SHALL COMPLY WITH THE FOLLOWING APPLICABLE CODES:
CALIFORNIA STATE BUILDING CODE, TITLE 24, 2007 EDITION
CALIFORNIA PLUMBING CODE, 2007 EDITION
CALIFORNIA MECHANICAL CODE, 2007 EDITION
CALIFORNIA ELECTRICAL CODE, 2007 EDITION
CALIFORNIA CHEMICAL CODE, 2007 EDITION, WHICH ADOPT THE
1997 IBC, 2000 UBC, 2000 UPC, 2000 NEC AND 2004 CEC
IN THE EVENT OF CONFLICT, THE MOST RESTRICTIVE CODE
SHALL PREVAIL.

ACCESSIBILITY DISCLAIMER

THIS PROJECT IS AN UNDERGROUND WIRELESS FOR
TELECOMMUNICATIONS FACILITY AND, ACCORDING TO SECTION
10130 OF THE CALIFORNIA GOVERNMENT CODE, THE ARCHITECT,
IS EXEMPT FROM DISABLED ACCESS REQUIREMENTS.

Booth & Suarez
ARCHITECTURE & PLANNING
16000 SAND CANYON AVENUE, SUITE 1700
IRVINE, CA 92719
(714) 433-0003

PREPARED FOR
verizon wireless

P.O. BOX 19707
IRVINE, CA 92613-9707
(949) 222-7000

APPROVALS

ABC	DATE
RE	DATE
BY	DATE
REV	DATE
TECH	DATE
OPS	DATE
CL/DM	DATE

PROJECT NAME
MICRO HEIGHTS

CORNER OF DEL MAR HEIGHTS ROAD
& MAR SCENIC DR.
SAN DIEGO, CA 92130
SAN DIEGO COUNTY

DRAWING DATES

12/03/09	PRELIM 2D REVIEW (1st)
01/27/10	PLANNING SUBMITTAL (04)
04/21/10	040 20% (04)
06/11/10	REVISED 040 20 (04)
06/24/10	REVISED 040 20 (04)
06/29/10	1-4 CERTIFICATION 040 20 (11)
07/08/10	REVISED 040 20 (04)
07/18/10	REVISED 040 20 (04)
08/11/10	REVISED 040 20 (04)
08/21/10	REVISED 040 20 (04)
09/21/10	REVISED 040 20 (04)
10/04/10	REVISED 040 20 (04)
10/12/10	REVISED 040 20 (04)

SHEET TITLE
**TITLE SHEET
&
PROJECT DATE**

PROJECT: verizon\050120\050120.dwg

T-1

APPROVED 12/1/2009

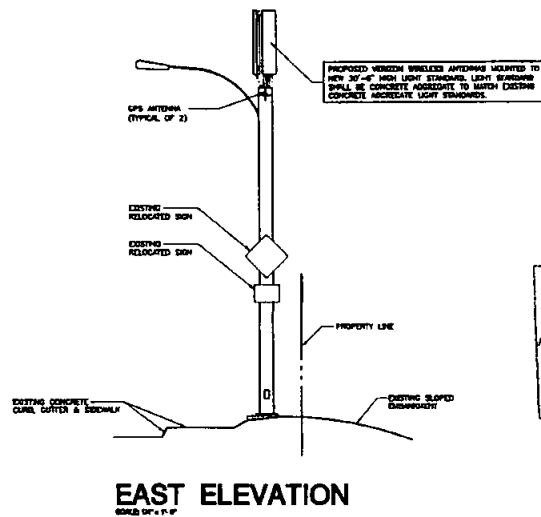
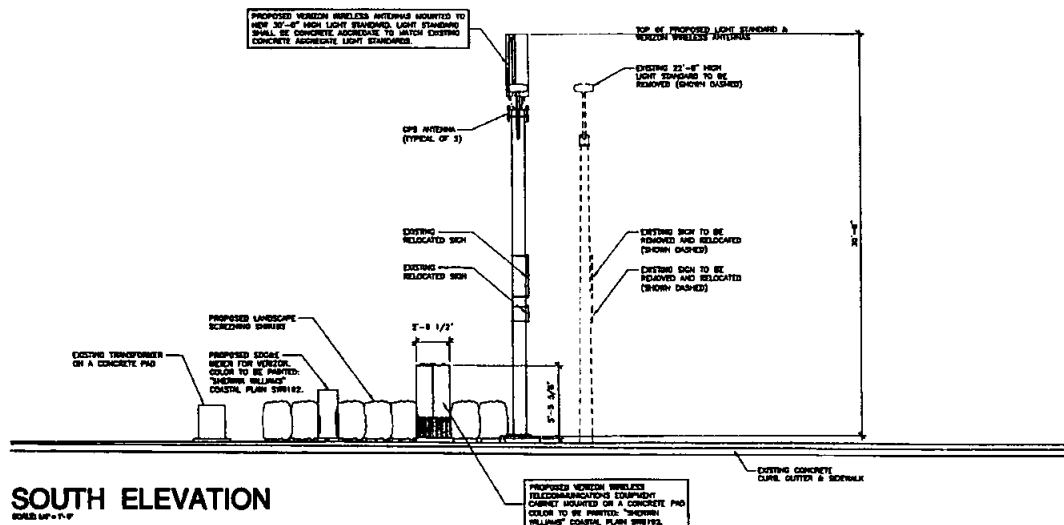
[illegible]

LEGEND

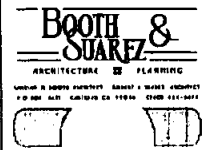
— E —	EXISTING ELECTRICAL LINE
— TC —	EXISTING TELCO LINE
— G —	EXISTING GAS LINE
- - -	PROPOSED ELECTRICAL LINE
- - - T - - -	PROPOSED TELCO LINE

PLS# 173182
 Exhibit "A" 
 Approved 12/9/2009 (date)
 Permit No. CUP # 623391

A-0.1



PCS # 173182
Exhibit "A"
 Approved 12/9/2009
 (date)
 Permit No. CUP # 623391



PREPARED FOR
verizon wireless
 P.O. BOX 18787
 IRVINE, CA 92623-9787
 (949) 222-7000

APPROVALS

ABC	DATE
BC	DATE
DE	DATE
FG	DATE
HI	DATE
JK	DATE
LM	DATE
OP	DATE
QR	DATE

PROJECT NAME
MICRO HEIGHTS
 CORNER OF DEL MAR HEIGHTS ROAD
 & MAR SCENIC DR.
 SAN DIEGO, CA 92130
 SAN DIEGO COUNTY

DRAWING DATES

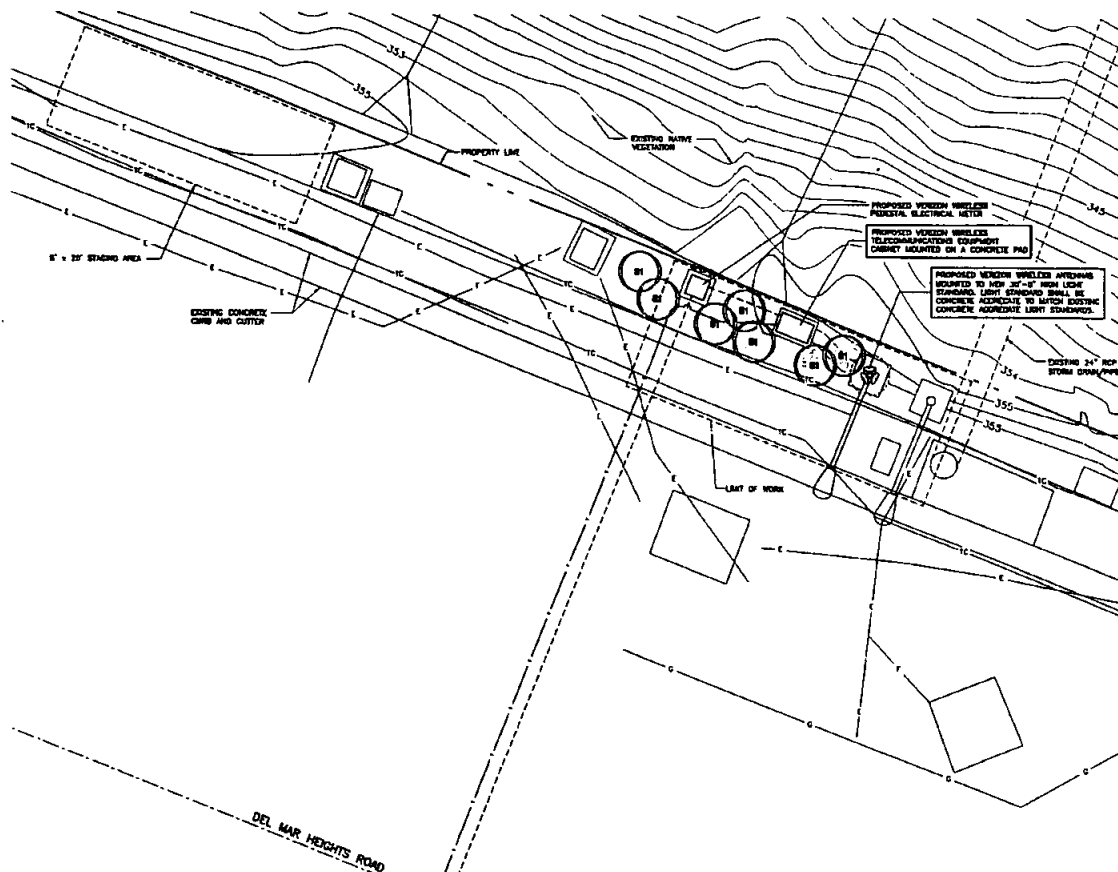
12/05/08	PROJECT REVIEW (v)
04/21/09	REV 001
06/17/09	REVISED WORK (v)
06/22/09	REVISED WORK (v)
06/25/09	1-4 CORRECTIONS MADE (v)
07/08/09	REVISED WORK (v)
07/14/09	REVISED WORK (v)
07/17/09	REVISED WORK (v)
08/21/09	REVISED WORK (v)
08/25/09	REVISED WORK (v)
10/08/09	REVISED WORK (v)
10/13/09	REVISED WORK (v)

SHEET TITLE

PROJECT ELEVATIONS

PROJECT: verizon\000282\000282.dwg

A-1



LANDSCAPE DEVELOPMENT PLAN

SCALE 1/8"=1'-0"

PLANTING LEGEND

SYMBOL	NOTATIONAL NAME	COMMON NAME	FORM / FUNCTION	PLANTING SIZE	QUANTITY	MATURE HEIGHT & SPREAD
⊙	SAVIA CLEVELAND	CLEVELAND SAGE OR PRICHAPE SAGE	ROUND, SEMI-WOODY SHRUB (SPREADING)	3 GALLON	7	3'-5' HT 2'-3' W.

PLANTING NOTES

1. DETERMINE THE LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO THE INSTALLATION OF ANY PILING. ALL WORK SHALL BE PERFORMED IN AN MANNER WHICH WILL AVOID POSSIBLE DAMAGE TO UTILITIES, AND EXISTENCE AS REQUIRED.
2. TREES SHALL BE LOCATED A MINIMUM OF FIVE FEET FROM ANY UTILITY FLOW LINE, SEWER LINE, WATER LINE, GAS LINE, OR ELECTRICAL CONDUIT.
3. ROOT BARRIERS SHALL BE INSTALLED ALONGSIDE TO ALL PILING SURFACES, WHERE A PILING SURFACE IS LOCATED WITHIN 5' OF A TREE TRUNK. ROOT BARRIERS SHALL EXTEND FOUR FEET IN EACH DIRECTION FROM THE EXISTING LINE OF THE TRUNK, FOR A TOTAL DISTANCE OF 8 FEET. INSTALLING ROOT BARRIERS AROUND THE ROOT BALL IS UNACCEPTABLE.
4. TREES WILL BE LOCATED A MINIMUM DISTANCE OF 5 FEET FROM ANY PILING SURFACE, CURB WALL, OR CONCRETE SIDEWALK.
5. ALL PLANTING AREAS SHALL RECEIVE A 3" LAYER OF MULCH.
6. PLANTING INSTALLATION CRITERIA:
ALL PROPOSED TREES SHALL BE SELF-SUPPORTING, HOODY PLANTS NOT AT LEAST ONE WELL DEFINED TRUNK AND SHALL NORMALLY ATTAIN A MATURE HEIGHT AND SPREAD OF AT LEAST 15 FEET.
7. PLANTING MAINTENANCE CRITERIA:
ALL LANDSCAPE INSTALLATION SHALL BE MAINTAINED IN ACCORDANCE WITH THE CITY OF SAN DIEGO LANDSCAPE STANDARDS.
8. MINIMUM TREE SPACING DISTANCE:
IMPROVEMENT/ADJACENT DISTANCE TO STREET TREE:
TREES SHALL BE SPACED 20' - 25' FEET
UNDERSTANDING (UTILITY LINES) - 8 FEET
INTERSECTIONS (UNDERSTANDING GROUND LINES OF TWO STREETS) - 25 FEET
9. IRRIGATION: AN IRRIGATION SYSTEM SHALL BE PROVIDED AS REQUIRED FOR PROPER IRRIGATION, DEVELOPMENT AND MAINTENANCE OF THE VEGETATION. THE DESIGN OF THE SYSTEM SHALL PROVIDE ADEQUATE SUPPORT FOR THE VEGETATION REDUCES.
10. CITY OF SAN DIEGO HAS A RESPONSIBILITY FOR THE LONG TERM MAINTENANCE OF PROJECT AREA. SEE NOTES 11 & 13 BELOW.
11. VERIZON WIRELESS SHALL BE RESPONSIBLE FOR A MAINTENANCE AND MONITORING PERIOD THAT INCLUDES PLANT LATERAL ESTABLISHMENT THROUGH SUPPLEMENTAL IRRIGATION FOR THE FIRST 23 MONTHS AND 10 SUPPLEMENTARY IRRIGATION FOR AN ADDITIONAL 11 MONTHS, FOR A TOTAL OF 34 MONTHS OF MAINTENANCE AND MONITORING.
12. PRIOR TO COMMENCEMENT OF CONSTRUCTION PROJECTS, VERIZON WIRELESS SHALL ENTER INTO A BONDED LANDSCAPE ESTABLISHMENT MAINTENANCE AGREEMENT FOR ALL LANDSCAPE IMPROVEMENTS.

WATER CONSERVATION NOTES

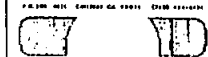
1. ALL LANDSCAPE AND IRRIGATION DESIGN, INSTALLATION AND MAINTENANCE SHALL CONFORM TO CITY OF SAN DIEGO LANDSCAPE REGULATIONS AND STANDARDS AND ALL OTHER APPLICABLE REGIONAL STANDARDS FOR LANDSCAPE INSTALLATION AND MAINTENANCE.
2. PLANT MATERIALS SELECTED FOR THIS PROJECT WILL BE OF A TYPE KNOWN TO BE SUCCESSFUL IN THE AREA ON A SIMILAR CLIMATE AND SOIL CONDITIONS.
3. LANDSCAPE DESIGNER SHALL INCLUDE POSITIVE SURFACE DRAINAGE OF PLANTED AREAS THROUGHOUT THE PROJECT AREA.
4. ALL SOILS WILL BE FERTILIZED, AMENDED, AND TILLED TO CONFORM TO RECOMMENDATIONS MADE BY A SOIL TESTING LABORATORY AND/OR LANDSCAPE ARCHITECT IN ORDER TO PROMOTE HEALTHY AND VIGOROUS PLANT GROWTH.
5. ALL PLANTING AREAS WILL BE MAINTAINED IN A WEED AND DESERT FREE CONDITION.

LEGEND:
 E — EXISTING ELECTRICAL LINE
 TC — EXISTING TIELO LINE
 G — EXISTING GAS LINE
 T — PROPOSED ELECTRICAL LINE
 — PROPOSED TIELO LINE

PG# 173102
Exhibit "A"
 Approved 12/9/2009
 (date)
 Permit No. CUP # 623391

Booth & Suarez
 ARCHITECTURE & PLANNING

1000 N. 10TH AVENUE, SUITE 100, SAN DIEGO, CA 92161
 TEL: 619.594.1000 FAX: 619.594.1001



PREPARED FOR

verizon wireless

P.O. BOX 19707
 IRVINE, CA 92613-9707
 (949) 232-7000

APPROVALS

NAME	DATE
TC	DATE
IF	DATE
MT	DATE
CL/PH	DATE
OPS	DATE
CL/INT	DATE

PROJECT NAME

MICRO HEIGHTS

CORNER OF DEL MAR HEIGHTS ROAD
 & MAR SCENIC DR.
 SAN DIEGO, CA 92130
 SAN DIEGO COUNTY

DRAWING DATES

06/23/09	REVISED WORK 29 (4)
10/06/09	REVISED WORK 29 (4)
10/12/09	REVISED WORK 29 (4)

SHEET TITLE

**LANDSCAPE
 DEVELOPMENT PLAN**

PROJECTS\verizon\080209\A\080209A.L1.dwg

L-1

Exhibit C

Equipment at the Site

Exhibit D

Memorandum of Lease Form

Recording Requested By and
When Recorded Return To:

FOR RECORDER'S USE ONLY

No APN: Street Right-of-Way

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE is entered into on _____, 20__ (the "Memorandum Date"), by and between THE CITY OF SAN DIEGO, a California municipal corporation, ("CITY"), with an office at 1200 Third Avenue, Suite 1700, San Diego, CA 92101-4155, and VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company doing business as Verizon Wireless ("LESSEE"), with its principal offices at One Verizon Way, Mailstop 4AW100, Basking Ridge, NJ 07920.

1. CITY and LESSEE entered into that certain CITY OF SAN DIEGO RIGHT-OF-WAY TELECOMMUNICATIONS LEASE ("Lease") dated _____, 20__, for the purpose of installing, operating, and maintaining LESSEE'S telecommunications facilities and other improvements. All of the foregoing is set forth in the Lease.
2. The term of the Lease is ten (10) years.
3. The property (i.e., Pole Attachment) that is the subject of the Lease is described in Exhibit A, attached hereto.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Lease to be effective as of the Memorandum Date.

CITY:

THE CITY OF SAN DIEGO, a
California municipal corporation

By _____

(print name) _____

(title) _____

LESSEE:

By _____

(print name) _____

(title) _____

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, CITY ATTORNEY

By _____

(print name) _____

(title) _____

Exhibit E

Interference Protection Requirements

1. **Interference.** Anytime during the term of this Lease, LESSEE may be required to provide an intermodulation report ("Report") to CITY. This Report shall include the calculation parameters used to compile the Report, all intermodulation "hits," a brief description of the results of the intermodulation calculations, a list of possible interference situations that may result from the proposed equipment, transmission frequencies that are currently being operated on site, and similar or other relevant data from the lessees and/or users operating on-site. The information required to compile this report, including transmit frequencies currently operated on-site, may require collection of data from other lessees operating on-site. A list of other lessees of the Site can be obtained from CITY. CITY is not responsible for any omitted data provided for the purpose of creating this Report. If required, the Report shall be provided to CITY'S General Services Department, Communications Division, Senior Communications Engineer.
2. **Pre-installation Notification.** LESSEE shall notify all operators and/or lessees at the Site of any proposed installation and/or modification at least fourteen (14) calendar days prior thereto. A list of all Site lessees and/or users operating at the Site may be obtained from CITY and used to compile a notification list. The notification shall be in the form of a letter to each listed Site lessee and/or user, giving a technical data summary of the proposed new and/or modified equipment and/or installation to be installed at the Site, and shall specify the approximate date of the installation or modification. An additional notification letter shall be sent to CITY'S Communication Engineer at CITY'S General Services Department, Communications Division. This letter shall include a list of all Site lessees and/or users notified. LESSEE shall make complete arrangements and conduct all tests and operations in accordance with all applicable Federal (including FCC) Rules and Regulations.
3. **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 CITY'S existing radio equipment installed at the Site or used in the general area. Resulting degraded technical performance in this instance includes, but is not limited to: (a) detectable or measurable received intermodulation; (b) audio distortion or noise; and (c) receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test.
4. **Modifications to Equipment.** Modifications to transmitting equipment (including, but not limited to, those which change effective radiated power, transmitter frequency, transmitter modulation, and/or transmitter spurious and harmonic emissions) may require re-notification to existing Site lessees and/or users, as well as a new Report.
5. **Resulting Interference.** Should an interference problem occur at the Site (or surrounding area) as a result of any new and/or modified equipment and/or installation, LESSEE shall initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. If harmful interference cannot be resolved, CITY may recognize the right of other authorized users and withhold consent or disallow use of the new and/or

modified equipment and/or installation, pending settlement of the interference problems between LESSEE and other authorized users.

6. No Obligation by CITY for Loss. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of the foregoing interference protection requirements, and LESSEE expressly waives any claim for expense or loss which LESSEE might incur as a result of CITY'S enforcement thereof.

Exhibit F

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 (800) 264-6620**.

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.

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 FEB 18, 2010
DOCUMENT NUMBER 2010-0081478
DAVID L. BUTLER, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 12:13 PM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 43-2058

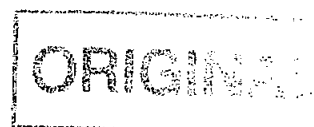
CONDITIONAL USE PERMIT NO. 623391
VERIZON WIRELESS MICRO HEIGHTS ROW PROJECT NO. 173182
HEARING OFFICER

This Conditional Use Permit No. 623391 is granted by the Hearing Officer of the City of San Diego to the **CITY OF SAN DIEGO**, Owner, and **VERIZON WIRELESS**, Permittee/Applicant, pursuant to San Diego Municipal Code [SDMC] section Chapter 12, Article 6, Division 3 and Land Development Code Section 141.0420. The project site is located within City of San Diego Public Right-of-Way at the intersection of Del Mar Heights and Mar Scenic Drive in the RS-1-13 zone of the Torrey Pines Community Planning Area.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee for wireless communication facility, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated December 9, 2009, on file in the Development Services Department.

The project shall include:

- a. A Verizon wireless communication facility consisting of the installation of three (3) panel antennas mounted on top of a replacement light standard. Microcells associated with this wireless communication facility are installed inside one above ground equipment cabinet as illustrated in the approved 'Exhibit A' dated December 9, 2009. The project also includes the installation of Power and Telco equipment and trenching for coax cable and utilities.
- b. 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 thirty-six (36) 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 Conditional Use Permit [CUP] and corresponding use of this site shall **expire on December 9, 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 date of this Conditional Use Permit [CUP] the Permittee may submit new permit applications to the Development Services Department for consideration with review and a decision by the appropriate decision makers 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 Permittee 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 Permittee shall secure all necessary building permits. The 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.

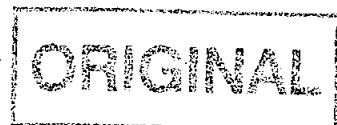
13. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit 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 applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant 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, applicant 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 applicant 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 applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

ENGINEERING REQUIREMENTS:

14. Prior to the issuance of any construction permits, the applicant shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications, Satisfactory to the City Engineer.
15. Prior to the issuance of any building permits, the applicant shall obtain a Nonexclusive Right-of-Way Use Agreement from the City of San Diego for the proposed work within the Del Mar Heights Right-of-Way.
16. Prior to the issuance of any construction permits, the applicant 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.
17. The applicant shall replace the existing public improvements (joint to joint) in which the trenching or construction of private facilities run through, satisfactory to the City Engineer.
18. The applicant shall assure, by permit and bond, the proposed work in the City right-of-way, show all of the proposed work on City Standard "D Sheets" and upon completion and acceptance of the work by the City Engineer, the applicant shall provide as-built the drawings, satisfactory to the City Engineer.
19. The applicant shall obtain a Public Right-of-Way Permit for the construction of facilities in Del Mar Heights Right-of-Way, satisfactory to the City Engineer.

LANDSCAPE/PARK & RECREATION REQUIREMENTS:

20. Verizon Wireless shall be responsible for a Maintenance and Monitoring period that ensures plant material establishment through supplemental irrigation for the first 25 months and no supplemental irrigation for an additional 11 months, for a total of 36 months of Maintenance and Monitoring.
21. Prior to issuance of construction permits, Verizon Wireless shall enter into a bonded landscape establishment maintenance agreement for all landscape improvements.
22. Prior to building permit issuance, the applicant shall submit construction document plans for review and approval to the Park & Recreation Department.
23. Prior to activation of facility, Permittee shall install all required landscape and obtain all required landscape inspections.
24. Prior to issuance of Public Right-of-Way Permit, Permittee shall route construction plans to the Development Services Department Landscape Review Section for review and approval.



25. All required landscape areas, located within the limit of work, shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees adjacent to the Wireless Communication Facility is not permitted.

26. All disturbed planting areas shall be covered with mulch to a minimum depth of 2 inches, excluding slopes requiring revegetation and areas planted with groundcover. All exposed soil areas without vegetation shall also be mulched to this minimum depth (LDC 142.0413[b]).

PLANNING/DESIGN REQUIREMENTS:

27. The Permittee shall be required to place appropriate signs per CAL-OSHA requirements to the satisfaction of Development Services Department.

28. 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 building(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 Permittee.

29. A total of three (3) wireless communication antennas (55" length) shall be installed onto the exterior of a replacement 12" diameter concrete aggregate light standard located on the intersection of Del Mar Heights Road and Mar Scenic Drive as illustrated in the approve Exhibit A. The antennas shall be painted to match the light standard. All conduits shall be routed to and from the light standard without the use of a doghouse.

30. All conduits from the antennas shall be routed with minimal visual impact into the hand hole to the satisfaction of Development Services Department.

31. Neither the antennas, nor any components shall exceed the 30'-0" Coastal Height Limit.

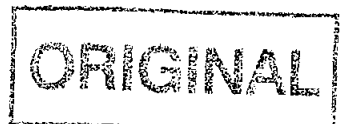
32. Appropriate RF Signage shall be placed on both replacement light standards for safety purposes to the satisfaction of Development Services Department.

33. All existing signage(s) from the previous light standard shall be reinstalled onto the replacement light standard to the satisfaction of the Development Services Department.

34. 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.

35. No mechanical equipment, tank, duct, elevator, cooling tower, mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed, architecturally integrated structure whose top and sides may include grillwork, louvers, and latticework.

36. Prior to obtaining a Construction Permit the following items shall be illustrated on the construction drawings; coax cable tray, meters, telco, A/C units, generator receptacles, cable



runs, 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.

37. The applicant of record is responsible for notifying the city prior to the sale or takeover of this site to any other provider.

38. Final inspection shall not be granted until the final product conforms to the stamped approved plans and approved photosimulation(s).

39. The photosimulation(s) for the proposed project must be printed (not stapled) on the building plans. This is to ensure the construction team building the project is aware of the approved design.

40. Prior to the issuance of a right-of-way 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 shall be considered in the radio frequency model study.

41. 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.

42. Per LDC Section §59.5.0404 Construction Noise (a), It shall be unlawful for any person, between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day, or on legal holidays as specified in Section 21.04 of the San Diego Municipal Code, with exception of Columbus Day and Washington's Birthday, or on Sundays, to erect, construct, demolish, excavate for, alter or repair any building or structure in such a manner as to create disturbing, excessive or offensive noise unless a permit has been applied for and granted beforehand by the Noise Abatement and Control Administrator.

43. All construction activities (including staging areas and/or storage areas) shall be restricted to the development area as shown on the approved Exhibit A. No equipment maintenance shall be conducted within or near the adjacent open space and/or sensitive areas and shall be restricted to the development area as shown the approved Exhibit A and shall not encroach into sensitive biological areas within either the open-space and/or MHPA areas.

TRANSPORTATION CONDITIONS:

44. The applicant shall obtain a "Public Right-of-Way Permit for Traffic Control" permit prior to any work within the public right-of-way to the satisfaction of the City Engineer.

45. The applicant shall protect any City property removed as part of the project and return said property to the satisfaction of the City Engineer.



46. The applicant shall provide and implement Public Improvement Plan including a Traffic Control Plan to the satisfaction of the City Engineer.
47. The applicant shall provide and maintain a telephone contact number available 24 hours/7 days a week clearly posted on the system to allow City staff to immediately contact the system provider to the satisfaction of the City Engineer.
48. The applicant shall install and maintain a separate power meter for the project to the satisfaction of the City Engineer.
49. The applicant shall inform the City and the City agrees to inform the applicant in the event of a knock over, to the satisfaction of the City Engineer.
50. A foundation analysis shall be required during the Public Improvement Plan Process.
51. The material of the proposed street light standard shall match the appropriate material shown in City of San Diego Standard Drawing SDE-101 or the existing street light standard that is to be replaced.
52. If the luminaire mounting height or length of mast arm of the proposed street light standard does not match City of San Diego Standard Drawing SDE-101 or the existing street light standard that is to be replaced, a lighting study and a Deviation from Standards Form shall be provided during the Public Improvement Plan Process. If a lighting study is not required, the lamp type and wattage shall comply with *The City of San Diego Street Design Manual*, satisfactory to the City Engineer.

INFORMATION ONLY:

- 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 Hearing Officer of the City of San Diego on December 9, 2009 and Resolution No. (TBD)

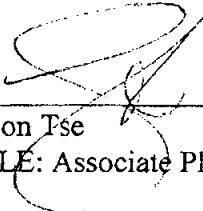
ORIGINAL

Date of Approval: December 9, 2009

PTS No. 173182; Job No. 43-2058

Conditonal Use Permit No. 623391

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

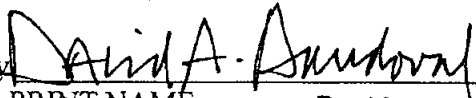

Simon Tse
TITLE: Associate Planner

**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.

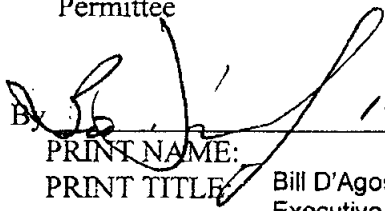
[CITY OF SAN DIEGO]

Owner

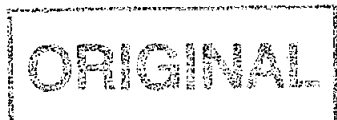
By 
PRINT NAME: David A. Sandoval, CCIM
PRINT TITLE: Deputy Director, Real Estate Asset

[VERIZON WIRELESS]

Permittee

By  1-31-10
PRINT NAME: Bill D'Agostino, Jr.
PRINT TITLE: Executive Director Network

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On Feb. 17, 2010 before me, Stacie L. Maxwell, Notary Public

personally appeared Simon Tse



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 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: Verizon Wireless Micro Heights - PTS 173182

Document Date: _____ Number of Pages: _____

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: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

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
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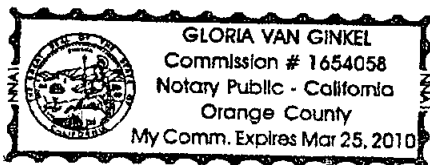
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On Feb 1, 2010 before me, Gloria Van Ginkel Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Bill D'Agostino Jr.
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 Gloria Van Ginkel
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: Conditional Use Permit No. 623391

Document Date: _____ Number of Pages: _____

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: _____

RIGHT THUMBPRINT
OF SIGNER
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Signer's Name: _____

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

Signer Is Representing: _____

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OF SIGNER
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Diego

On February 11, 2010 before me, TERESA DOLORES MORSE, Notary Public

personally appeared

David A. Sandoval



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

Teresa Dolores Morse

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: Conditional Use Permit - 623391 (Verizon Wireless)

Document Date: December 9, 2009 Number of Pages: _____

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: _____

RIGHT THUMBPRINT
OF SIGNER
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Signer's Name: _____

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

Signer Is Representing: _____

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OF SIGNER
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HEARING OFFICER RESOLUTION NO. HO-09-126
CONDITIONAL USE PERMIT NO. 623391
VERIZON WIRELESS MICRO HEIGHTS ROW
PTS #173182

WHEREAS, CITY OF SAN DIEGO, Owner, and VERIZON, Permittee, filed an application with the City of San Diego for a permit to a wireless communication facility consisting of the installation of three (3) panel antennas mounted on top of a replacement light standard. Microcells associated with this wireless communication facility are installed inside one above ground equipment cabinet on the intersection of Del Mar Heights and Mar Scenic Drive as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Conditional Use Permit No. 623391;

WHEREAS, the project site is located in the City of San Diego public Right-of-Way on the intersection of Del Mar Heights and Mar Scenic Drive in the RS-1-13 zone of the Torrey Pines Community Plan;

WHEREAS, the project site is legally described as the City of San Diego Public Right-of-Way at the intersection of Del Mar Heights and Mar Scenic Drive;

WHEREAS, on December 9, 2009, the HEARING OFFICER of the City of San Diego considered CONDITIONAL USE PERMIT No. 623391 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the HEARING OFFICER of the City of San Diego as follows:

That the HEARING OFFICER adopts the following written Findings, dated December 9, 2009.

FINDINGS:

Conditional Use Permit - Section 126.0305

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

The Torrey Pines Community Plan does not address wireless communication facilities as specific land use. However, the City of San Diego General Plan addresses these facilities, recommending that they minimize visual impact by concealing the wireless facilities in existing structures when possible, designing facilities to be aesthetically pleasing and respectful to the neighborhood context. 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. The panel antennas are mounted above the light arm and painted to match the concrete aggregate light standard. The antennas are also flush mounted to the pole with minimal airspace in between. The conduits to and from the antennas are concealed within the pole with minimal looping from the antennas. The associated microcells are installed inside the one above ground cabinet adjacent to the open space. The cabinet will be painted to help minimize the visual impact it may have to the surrounding area. As a result, the proposed development would not

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adversely affect the Torrey Pines Community Plan or 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 Verizon to perform RF testing and submit the finding in a report to the City of San Diego prior to the issuance of a building 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

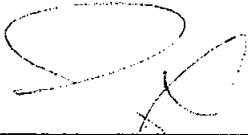
The project complies with all applicable development regulations of the Land Development Code and the City of San Diego Communication Antenna Regulations (Land Development Code Section 141.0420). This section of the code requires telecommunication facilities to be minimally visible through the use of architecture, landscape architecture and siting solutions. The antennas are painted to match the concrete aggregate light standard. The associated microcells will be installed inside one above ground cabinet adjacent to the open space area. These cabinets will be painted to help minimize the visual impact to the surrounding area. Per Section 141.0420, Wireless Communication Facilities with above ground equipments requires a Conditional Use Permit. There are no deviations from the development regulations or variances requested with this application. Therefore, Verizon's project is in full compliance with the applicable regulations of the Land Development Code.

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

Typically, the City of San Diego encourages wireless carriers to locate on non-residential properties. In this case, the search ring is surrounded by strictly residential properties and open space adjacent to the Right-of-Way facility. After presenting the design to the project review committee, Verizon proposed an alternate location adjacent to the open space to the satisfaction of the community group. The panel antennas are painted to match the concrete aggregate light standard with minimum airspace between the antennas and the pole and as such, it meets the Wireless Communication Facility regulations. Additionally, Verizon Wireless is required to submit a Radio Frequency Study and an On-Air Report demonstrating compliance with Federal Communication Commissions standards. This project has been designed to comply with Section 141.0420 and the Wireless Communication Facility Guidelines. Additionally, this site will address Verizon's limited network coverage to the roadways, homes, and business located in the area. Thus, the proposed use is appropriate for this site.

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BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the HEARING OFFICER CONDITIONAL USE PERMIT NO. 623391 is hereby GRANTED by the HEARING OFFICER to the referenced Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 623391 copy of which is attached hereto and made a part hereof.



Simon Tse - Development Project Manager
Development Services

Adopted on: December 9, 2009
Job Order No. 42-2058

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