CITY OF SAN DIEGO

RIGHT-OF-WAY TELECOMMUNICATIONS LEASE

between

THE CITY OF SAN DIEGO

and

T-MOBILE WEST CORPORATION

for

Windy Ridge ROW
Northwest Corner of Windy Ridge Way and Calle Cristobal

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 T-MOBILE WEST CORPORATION, a Delaware corporation ("LESSEE"), hereinafter collectively referred to as the "Parties," to be effective on the first day of the first month following the date of execution by CITY ("Effective Date"), once the Lease is approved by the San Diego City Attorney.

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 provide records and accounts 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. The aforementioned limits may be satisfied by a combination of primary and umbrella policies;

7.1.2. LESSEE shall obtain a Causes of Loss – Special Form Property insurance policy providing coverage on LESSEE'S 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 equivalent form], naming "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additional insureds in the Commercial General Liability insurance policy (described above), and deliver to READ a copy of such endorsement(s) or certificate of insurance; and

7.1.4. The commercial general liability insurance policies described above shall

provide that the coverage is primary and noncontributory to any coverage carried or maintained by CITY for claims arising from the negligence or willful misconduct of LESSEE.

7.2. Qualified Insurer(s). All insurance required under this Lease shall be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. CITY may accept non-admitted surplus lines insurers, provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

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

7.4. Continuity of Coverage. Each insurance policy required under this Lease shall be in effect prior to LESSEE'S Operations, except that "course of construction fire insurance" shall be in force 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 sixty (60) 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, as of the Effective Date, 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 CITY'S Development Services Department 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. 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.

10.3. 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.

10.4. 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 area within one thousand (1,000) feet of any RF transmitting antenna on 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 areas 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 forth in applicable manufacturer installation instructions or any succeeding regulations or standards. In addition to the requirements stated above , 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 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. Notwithstanding the foregoing, LESSEE shall only be responsible for those Hazardous Substances LESSEE brings onto the Site, and not for pre-existing Hazardous Substances at the Site or any Hazardous Substances brought onto the Site by CITY or any other party not controlled by LESSEE.

15.3. Notice of Release. If LESSEE knows, or has reasonable cause to believe, that a Hazardous Substance has been released on or beneath the 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, within twenty-four (24) hours of receipt of written 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 notice shall be required), and LESSEE shall comply with all applicable safety requirements issued by CITY to ensure the safety of CITY personnel performing such maintenance on the 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. CITY shall, at its sole cost and expense, maintain all illumination required at any Approved Light Pole, Streetlight Pole, and/or Traffic Signal on the Site.

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 unless the placement of certain equipment is required to be placed above ground by the utility company 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 ten (10) calendar days after notice of such filing, either: (a) take all actions necessary to record a valid release of

the lien; or (b) deliver to CITY a bond, cash, or other security acceptable to CITY in an amount sufficient to pay in full all claims of all persons seeking relief under the lien.

23. ASSIGNMENT AND SUBLETTING.

23.1. Assignment.

23.1.1. For the purposes of this section, "Assignment" shall include, without limitation, the transfer of any interest in this Lease by LESSEE or by any partners, principals, or controlling shareholders of LESSEE, and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE'S general partners, principals, or controlling shareholders.

23.1.2. LESSEE shall not assign this Lease, or any interest in this Lease, without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. LESSEE shall not assign this Lease, or any interest in this Lease, to any person or entity engaged in the design, development, construction, operation, sale, and/or leasing of telecommunication towers or poles.

23.1.3. CITY'S consent to any Assignment pursuant to Section 23.1.2 shall be conditioned upon the assignee agreeing, in writing, that it will assume the rights and obligations assigned, and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired.

23.1.4. LESSEE shall not permit any person (other than the employees, agents, contractors, and/or guests of LESSEE) to use or occupy the 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 asserted claims or liability to the extent they arise from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents, and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses, at its own election, to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including, without limitation, reasonable attorney fees and costs, but shall not include attorney fees or any other services or expenses that are unreasonably duplicative of services provided by LESSEE to CITY.

24.2. CITY'S Indemnity Obligation. CITY shall protect, defend, indemnify, and hold LESSEE, its officers, representatives, agents, and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with CITY'S occupancy, development, use, operation, or maintenance of the 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 asserted claims or liability to the extent they arise 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 and obtain, 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. Any relocation shall be at LESSEE'S expense, unless CITY'S relocation requirement results from CITY'S desire to lease space to non-governmental third-party users. In such case, CITY will promptly reimburse LESSEE for the reasonable relocation costs of LESSEE. Any relocation shall not result in a lessening of LESSEE'S ability to use the Site for its intended purpose, or of the quality of such use.

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 after notice to LESSEE that payment is past due;

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 legal rights through LESSEE, a written "Five-Day Notice to Pay or Quit," or CITY may terminate this Lease, and all rights of LESSEE and of all persons claiming legal rights through LESSEE to 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 within one hundred eighty (180) calendar days.

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.

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

29.4. 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 the expiration or earlier termination of this Lease, 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, and unless this Lease is terminated early by CITY.

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

30.2. On or before the expiration of this Lease, or as CITY may direct upon earlier termination of this Lease, LESSEE shall remove from the 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. <u>NOTICES</u>.

All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. CITY or LESSEE may from time to time designate any other address for this purpose by providing written notice to the other party.

If to LESSEE:

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

With a copy to:

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

If to CITY:

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

If to CITY'S 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.

[The remainder of this page intentionally left blank.]

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: 10/4/10

THE CITY OF SAN DIEGO, a California municipal corporation

By _____

(Print Name) James F. Barwick, CCIM

(Title) Director, Real Estate Assets

Date: 9.29.10

LESSEE: T-MOBILE WEST CORPORATION, a Delaware corporation

By _____

(Print Name) _____

(Title) _____

T-Mobile Legal Approval By:

APPROVED AS TO FORM AND LEGALITY:

Date: 10.5.10

JAN I. GOLDSMITH, City Attorney

By _____

A.C. Dixon

Deputy City Attorney

Exhibit A: <u>Description of Site and Pole Attachment</u>

CITY Site No.: _____ LESSEE Site No.: SD07290

Location: Northwest corner of Windy Ridge Way and Calle Cristobal.

Assessor's Parcel Number: N/A

Legal Description: N/A

Description of Premises: T-Mobile telecommunications facility located in the right-of-way. The site will consist of three (3) panel antennas mounted on top of the traffic light pole. The equipment cabinets will be stored above ground on a concrete pad adjacent to the traffic light pole in the right-of-way.

Exhibit B: Site Plans

Exhibit C: <u>Equipment at the Site</u>

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 _____ ("LESSEE"), with its principal offices at_____.

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 _____ 9-29-10

(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 1-888-662-4662.**

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

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

LESSEE shall not 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.