



**CITY OF SAN DIEGO  
TELECOMMUNICATIONS LEASE**

**between**

**THE CITY OF SAN DIEGO**

**and**

**NEW CINGULAR WIRELESS PCS, LLC**

**for**

**City Traffic Signal Light Pole Attachment  
Northwest Corner of Expedition Way and North Torrey Pines Road  
(South - SD0427)**

**CITY OF SAN DIEGO  
TELECOMMUNICATIONS LEASE**

This CITY OF SAN DIEGO TELECOMMUNICATIONS LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("LESSEE"), hereinafter collectively referred to as the "Parties," to be effective on the first day of the first month following the date of execution by CITY ("Effective Date"), once the Lease is approved by the San Diego City Attorney.

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

**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 in Section 1.3) on certain CITY-owned property, more particularly identified and defined herein.

B. CITY is the record owner of the certain public rights-of-way within the City of San Diego.

C. CITY and LESSEE's predecessor-in-interest, GTE Wireless of the Pacific, Inc., a Delaware corporation, were parties to that certain Flat Rate Lease dated January 22, 2001 whereby CITY leased to LESSEE a portion of the Site (defined below in Section 1.7) which expired January 21, 2011. LESSEE has remained on the Site and is currently in "holdover" status. The Improvements, if any, installed or constructed during the term of the original lease will remain owned by the LESSEE during the Term of this Lease.

D. LESSEE desires to maintain and operate a wireless communication facility, including utility lines, transmission lines, electronic equipment, and transmitting and receiving antennas, which facilities are more fully defined below as Communications Equipment on the Site.

E. CITY is willing to grant LESSEE a new Lease with new terms for the right to use a portion of the Site for the operation and maintenance of the Communications Equipment, including the Communications Equipment attached to the Site in order to transmit and receive communications signals.

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

**1. DEFINITIONS.**

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

- 1.1. "Approved Light Pole" – a CITY-approved light pole installed by LESSEE on City-Right of Way, with the intent that said light pole will become CITY-owned property after installation, will be approved by CITY for the Allowed Uses (as set forth in Section 3), and will be leased by LESSEE solely for the Allowed Uses. Any Approved Light Pole is for the primary purpose of providing lighting by CITY for its municipal purposes, but may have the secondary purpose of accommodating "LESSEE'S Operations" (defined below in Section 1.5) on the Site.
- 1.2. "City Right-of-Way"— any public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including, without limitation, any public utility easements and public service easements, as the same may now or 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, air-conditioned equipment shelters, back-up power sources, and related fixtures, more particularly described in **Exhibit B**.
- 1.4. "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, and all types of petroleum-related substances and their chemical constituents.
- 1.5. "LESSEE'S Operations" – LESSEE'S development, occupancy, use, and/or maintenance of the Site and "Pole Attachment Area" (defined below in Section 1.6).
- 1.6. "Pole Attachment Area" – that certain portion of the Site used by LESSEE, more particularly described and depicted in **Exhibit A**.
- 1.7. "Site" – an Approved Light Pole or "Street Light Pole" (defined below in Section 1.8) or "Traffic Signal" (defined below in Section 1.9) located within a portion of the City Right-of-Way at **Northwest corner of Expedition Way and North Torrey Pines Road**, more particularly described in **Exhibit A**. Notwithstanding anything to the contrary that may be contained in this Lease, no provision contained herein shall be construed to indicate that LESSEE is leasing from CITY, or paying rent for, any ground space portion of any City Right-of-Way.
- 1.8. "Street Light Pole" – any concrete, fiberglass, metal, or wooden pole that has a mast arm for electrolier support.
- 1.9. "Traffic Signal" – any standard-design concrete, fiberglass, or metal pole that has a mast arm for electrolier support and is used for traffic signal control purposes. Traffic Signals may also integrate a streetlight.

## **2. LEASEHOLD AREA.**

- 2.1. Lease of Pole Attachment Area. Under the terms and conditions of this Lease, CITY leases to LESSEE and LESSEE leases from CITY, the discrete Pole Attachment Area located on the Site.
- 2.2. Access to Site. Unless otherwise provided, LESSEE, its agents, employees, contractors, guests, and invitees may have access to the Site on a 24-hour, non-exclusive basis to access the Pole Attachment Area.

### 3. USES.

LESSEE shall use the Pole Attachment Area 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 ("Allowed Uses").

- 3.1. Primary Purpose of Site. The primary purpose of the Site is to provide signals for traffic control and lighting by CITY for its municipal purposes, but may have the secondary purpose of accommodating LESSEE'S Operations at the Site.
- 3.2. Other Uses. Except as permitted in this Lease, LESSEE shall not operate the Communications Equipment or use the Site for other related or incidental activities of any kind without CITY'S prior written consent, in each instance, which consent shall be in the CITY'S sole discretion. Communications Equipment installed on a Traffic Signal shall not interfere with the operations of the Traffic Signal or cause visual impairment, distraction, or confusion to motorists.
- 3.3. No Nuisance. LESSEE shall not use the Site in any manner which creates a nuisance, as defined in California Civil Code section 3479 (or any amendment thereto or renumbering thereof).
- 3.4. Continuous Use. LESSEE shall continuously occupy and use the Pole Attachment Area throughout the "Term" (defined below) of this Lease.
- 3.5. Unauthorized Use. The use of the Site or Pole Attachment Area for any unauthorized, illegal, or non-permitted purpose shall constitute a default of this Lease. Notwithstanding any other 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.
- 3.6. Nothing contained in this Lease shall be construed as a limitation, restriction or prohibition against CITY entering into agreements with other parties regarding the use of the Site provided that such other use does not interfere with LESSEE'S use of the Pole Attachment Area.

### 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. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Pole Attachment Area after expiration or termination shall be month-to-month, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the Rent to fair market value. Calculation of all prorated rents under this Section 4.1 shall be based on a 30-day month. Notice of any such increase in Rent shall be given in writing at least thirty (30) days prior to becoming effective. CITY or LESSEE may terminate the holdover upon thirty (30) days prior written notice to the other Party.
- 4.2. Surrender. Upon the expiration or within sixty (60) days after the earlier termination of this Lease, LESSEE shall surrender the Pole Attachment Area to CITY in a decent, safe, and sanitary condition, and free and clear of all liens and encumbrances caused by or resulting from LESSEE'S Operations, except those liens and encumbrances which: (1) existed on the Effective Date, and (2) exist after the Effective Date and are not the result of LESSEE'S Operations. LESSEE shall surrender the Pole Attachment Area in the same or better 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 \$16,500.00 (Sixteen Thousand Five Hundred Dollars) for the first year of this Lease, which amount shall be subject to annual adjustments as of the first day of the second Lease Year and each Lease Year thereafter for Lease Years Two through Ten as follows:

|                  |             |
|------------------|-------------|
| Lease Year Two   | \$17,077.50 |
| Lease Year Three | \$17,675.21 |
| Lease Year Four  | \$18,293.84 |
| Lease Year Five  | \$18,934.13 |
| Lease Year 6     | \$19,596.82 |
| Lease Year 7     | \$20,282.71 |
| Lease Year 8     | \$20,992.61 |
| Lease Year 9     | \$21,727.35 |
| Lease Year 10    | \$22,487.81 |

- 5.1. The above rent schedule reflects an annual rent escalation equal to three and one-half percent (3.5%) above the annual rent for each preceding Lease Year.
- 5.2. Invoicing Courtesy. CITY may invoice LESSEE for amounts payable under this Lease. However, any such invoicing shall be deemed a courtesy only; LESSEE shall make all payments under this Lease on or before each applicable due date, regardless of being invoiced. Except as provided in this Lease, no grace period shall apply to any amount payable under this Lease.

- 5.3. 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 129030  
San Diego, California 92112-9030

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. LESSEE's failure to include said customer account number may result in LESSEE's payment not being timely applied to LESSEE's account and the application of late payment charges. LESSEE assumes all risk of loss and responsibility for all fees and/or penalties for its failure to include said customer account number with its payment. The place of payment may be changed at any time by CITY upon thirty (30) calendar days prior written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 5.4. Delinquent Rent. If LESSEE fails to pay Rent when due, LESSEE shall pay, in addition to the unpaid Rent, five percent (5%) of the delinquent Rent. If the Rent is still unpaid at the end of fifteen (15) calendar days past due, LESSEE shall pay an additional five percent (5%), for a total of ten percent (10%), which is agreed by the Parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of Rent be less than \$25 (twenty-five dollars). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.
- 5.5. 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 Area. LESSEE shall make any and all of its records and accounts relating to its use of the Pole Attachment Area 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 Area. 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.

## **7. INSURANCE**

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

7.2. LESSEE shall obtain and maintain throughout the Term of this Lease, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Lease. Notwithstanding any provision of this Lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Lease. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):

- (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from a personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle

(including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease.

- (c) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees who are subject to this Lease, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000) each accident, by disease policy limits, and by disease each employee, and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

7.2.1. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the Pole Attachment.

7.2.2. Primary & Non-Contributory. The Commercial General Liability and the Commercial Automobile Liability policies must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.

7.2.3. Severability of Interest. Each policy shall provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.2.4. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- 7.2.5. Deductibles/Retentions. All self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed at the time evidence of insurance is provided.
- 7.2.6. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least ten (10) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 7.2.7. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 7.2.8. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Site or Pole Attachment or otherwise related to the Allowed Uses. 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.
- 7.2.9. Self-Insurance. LESSEE may provide READ evidence of self-insurance. Such evidence of self-insurance shall be in lieu of the foregoing insurance requirements set forth in this Section 7.2 and no further proof of insurance is required unless changes are made to LESSEE'S insurance status.
- 7.2.10. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Pole Attachment under this Lease in an amount to cover one hundred percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

## **8. ACCEPTANCE OF SITE AND POLE ATTACHMENT AREA.**

LESSEE represents and warrants that LESSEE has independently inspected the Site and Pole Attachment Area and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Site and Pole Attachment Area and their suitability for the Allowed Uses. LESSEE further represents and warrants that LESSEE is not relying on any representation by CITY as to the condition of the Site or Pole Attachment Area or their suitability for the Allowed Uses, and 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 Area are in the condition called for herein, and that CITY has performed all work with respect to the Site and Pole Attachment Area that is necessary and/or required by this Lease, and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Site and/or Pole Attachment Area. LESSEE accepts and assumes all risk of harm to all persons and property, including without limitation, LESSEE'S employees, from and defects within the Site and Pole Attachment Area, and shall be solely responsible therefor. LESSEE has been given the opportunity to investigate the Site and Pole Attachment Area 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 and Pole Attachment Area. LESSEE waives any claims against CITY which may result from the presence of Hazardous Substances on the Site and Pole Attachment Area.

#### **9. SITE PLANS.**

LESSEE shall occupy and maintain the Pole Attachment Area in accordance with plans approved by CITY'S Development Services Department or other City Department as appropriate ("Site Plan") and attached as **Exhibit B**. CITY may, in its sole discretion, authorize changes to such Site Plan, provided the principal components thereof are not modified, and a document evidencing approved changes is filed with CITY'S Real Estate Assets Department ("READ). LESSEE'S failure to comply with the approved Site Plan shall constitute a material default of this Lease, whereby CITY may immediately terminate this Lease upon written notice to LESSEE.

#### **10. IMPROVEMENTS AND ALTERATIONS.**

Other than as approved by the Site Plan, depicted in **Exhibit B**, LESSEE shall not construct any improvements, structures, or installations on the Pole Attachment Area, or make any alterations to the Pole Attachment Area (with the exception of necessary maintenance and/or repairs to LESSEE'S Communications Equipment that do not include swapping out or replacing any of the Communications Equipment) without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. LESSEE shall not make structural or architectural design alterations to approved improvements, structures, or installations on the Pole Attachment Area without CITY'S prior written consent, which consent shall be in CITY'S sole discretion. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

10.1. Replacement of Existing Light Pole. LESSEE may replace an existing light pole with an Approved Light Pole, in conformance with the description of the Site and Pole

Attachment Area set forth in **Exhibit A**, the approved Site Plan set forth in **Exhibit B**, and in compliance with all applicable codes and standards of CITY, state, and federal agencies.

10.2. Information to Permitting Authorities. In obtaining any required permits for improvements, structures, installations, and/or alterations on the Pole Attachment Area, LESSEE shall inform permitting authorities, in writing, that the Pole Attachment Area is CITY-owned property.

10.3. Repair and Restoration. The provisions of Section 10, shall not relieve LESSEE of any obligation under this Lease to maintain the Pole Attachment Area in a decent, safe, healthy, and sanitary condition, including, without limitation, structural repair and restoration of damaged or worn LESSEE improvements.

## **11. COMPETENT MANAGEMENT.**

Throughout the Term, LESSEE shall provide competent management of the Pole Attachment Area for the Allowed Uses to the reasonable satisfaction of CITY. For purposes of this Section 11, "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 in the construction, maintenance, occupancy, and operation of the Pole Attachment Area, comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE'S sole cost and expense. LESSEE shall comply with any and all notices issued by CITY, or other government agency under the authority of all current or future laws, statutes, ordinances, or regulations. LESSEE shall promptly deliver to City copies of all documentary evidence of such compliance received by or otherwise available to LESSEE.

12.2. Nondiscrimination. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S operations, including, but not limited to, the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

12.3. Water Quality Assurances –Best Management Practices. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Site in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE shall at a minimum, implement and comply, as applicable with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

12.4 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the Term of this Lease.

12.5 Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. LESSEE shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

12.5.1. LESSEE and Sub-lessee Requirement. The Equal Pay Ordinance applies to any sub-lessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sub-lessees to certify compliance with the Equal Pay Ordinance in their subleases.

12.5.2. Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

### **13. TELECOMMUNICATIONS PROVISIONS.**

13.1. Entire Installation. LESSEE represents and warrants that the Communications Equipment listed in **Exhibit B** constitutes the entire installation, which LESSEE shall update from time to time as any changes to the Communications Equipment are made, or within thirty (30) calendar days after CITY'S demand for such an update. No changes to the Communications Equipment shall be made without first obtaining written approval by CITY.

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 Pole Attachment Area, casually accessible by the general public or by any worker at ground level, shall be maintained below limits stated for General Population/Uncontrolled Exposure. LESSEE shall report to CITY any areas discovered by LESSEE to exceed such federally mandated limits. LESSEE shall not hold CITY responsible for its radiation levels found to exceed such limits. LESSEE shall indemnify, defend and hold the CITY harmless for any liabilities, fines, or other penalties claimed or imposed against the CITY that result from the existence of levels of radiation that exceed such federally mandated limits, which are caused in whole or in part, or contributed to, by

LESSEE'S Operations; provided, however, that the duty to indemnify shall not extend to any liabilities, fines, or other penalties claimed or imposed against the CITY arising from the CITY's established sole negligence or willful misconduct. Hazardous RF radiation levels may be encountered when climbing on antenna structures (refer to FCC OET Bulletin 65). Any equipment installed on the Site may, at times, require shutdown to allow maintenance on antenna structures. LESSEE shall allow shutdown periods when required for such maintenance, provided CITY uses reasonable efforts to ensure that the shutdowns do not occur during peak hours of operation. Protection of employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is of primary concern. Any areas in which such employees may be subjected to radiation levels that exceed the General Population/Uncontrolled Exposure limits must be clearly identified as required by CAL-OSHA. LESSEE shall provide CITY with written shutdown procedures, contact names, and telephone numbers. LESSEE shall notify CITY, in writing, of any changes to the shutdown procedures, contact names, or telephone numbers at least ten (10) calendar days before the change.

- 13.3. Radio Frequency Interference. LESSEE shall comply with all requirements set forth in **Exhibit D**, which may be updated from time to time in CITY'S sole discretion. LESSEE warrants that all Communications Equipment installations, modifications, and maintenance will not result in degraded performance or RF interference with any CITY-authorized equipment on the Site.
- 13.4. Industry Standards. LESSEE shall perform LESSEE'S Operations in adherence to standards and guidelines set by the Federal Communications Commission ("FCC"). In addition, LESSEE shall comply with the following supplemental requirements:
  - 13.4.1. LESSEE shall remove all trash and debris from the Site and the adjacent real property at the end of each workday and upon completion of a project;
  - 13.4.2. Tower and structure climbing shall be done in compliance with all CAL-OSHA requirements;
  - 13.4.3. All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to other users on the Site; and
  - 13.4.4. LESSEE shall comply with the requirements set forth in **Exhibit E** with respect to any Communications Equipment installation or modification. CITY may, in its sole discretion, update **Exhibit E** from time to time.
- 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 (in no event later than one (1) hour of knowledge thereof) give notice to CITY of any fire or any other damage that occurs on the Site or Pole Attachment Area. LESSEE shall not commit, or allow to be committed, any waste or injury or any public or private nuisance in connection with LESSEE'S Operations. LESSEE shall keep the Site and/or Pole Attachment Area clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Site and/or Pole Attachment Area is damaged by any cause that puts the Site and/or Pole Attachment Area into a condition which is not decent, safe, healthy, and sanitary, LESSEE immediately (in no event later than one (1) hour of knowledge thereof) notify CITY of said damage, and shall, unless CITY states otherwise, make, or cause to be made, full repair of the damage and restore the Site and/or Pole Attachment Area to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and remove from the Site and/or Pole Attachment Area all debris resulting from the damage and restore the Site and/or Pole Attachment Area in accordance with plans and specifications previously submitted to and approved by CITY, in writing, in order to replace in kind and scope the operation which existed prior to the damage. LESSEE shall commence preliminary steps toward performing repairs and/or restoration of the Site and/or Pole Attachment Area as soon as practicable, but no later than ten (10) calendar days after the occurrence of the fire or damage, and shall complete the required repairs and/or restoration within sixty (60) calendar days after such occurrence. Failure to timely repair damage to the Site and/or Pole Attachment will be considered a default under the Lease.

**15. HAZARDOUS SUBSTANCES.**

LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under, or from the Pole Attachment Area or Site by any of LESSEE'S officers, employees, agents, contractors, invitees and guests. LESSEE and LESSEE'S officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Pole Attachment Area or Site without CITY'S prior written consent. LESSEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- 15.1 Release. For the purpose of this Lease, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a Hazardous Substance.

- 15.2 Remediation. If LESSEE'S Operations result in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal, including, but not limited to all penalties, and consultants' and attorneys' fees and costs, to the CITY's satisfaction for unrestricted reuse of the Site, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 15.3 Removal. If LESSEE or LESSEE'S officers employees, agents, contractors, invitees and guests has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Site, LESSEE shall remove all Hazardous Substances in any type of container, equipment or device from the Site immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Site and Pole Attachment Area and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances, wastes, or other containers, equipment or devices from the Site. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 15.4 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, (i) costs of environmental assessments, (ii) costs of regulatory remediation oversight, (iii) costs of remediation and removal, (iv) any necessary CITY response costs, damages for injury to natural resources or the public, (v) all fines, penalties, and fees assessed by any regulatory agency, (vi) damages for injury to natural resources, LESSEE's officers, employees, agents, contractors, invitees and guests, or the public, and (vii) costs of any health assessments or health effect studies.
- 15.5 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on or beneath the Pole Attachment Area or Site, LESSEE shall immediately notify CITY and any appropriate regulatory agency or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) calendar days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. 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 in writing of any violation, notice to comply, or notice of violation received, or the initiation of environmental actions or private suits related to the Pole Attachment Area and/or the Site.
- 15.6 Environmental Assessment. Upon reasonable cause to believe that LESSEE'S Operations resulted in any Hazardous Substance being released on, from or beneath any portion of the Pole Attachment Area or Site, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a

Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at 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 Pole Attachment Area or Site, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment, such that unrestricted re-use of the Pole Attachment Area and Site and compliance with environmental laws and regulations are achieved, and LESSEE shall pay all costs and expenses therefor. LESSEE's failure to comply with all provisions in this Section 16 shall constitute a material default of this Lease, whereby CITY, in its sole discretion, may immediately terminate this Lease upon written notice to LESSEE.

#### **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 Pole Attachment Area or the Site without CITY'S prior written consent, in each instance, which consent shall be in CITY'S sole discretion. If any such unauthorized item is found on the Pole Attachment Area or the Site, LESSEE shall remove the item at LESSEE'S sole cost and expense within twenty-four (24) hours after CITY'S demand therefor, or CITY may then enter the Pole Attachment Area and Site and summarily remove the item(s) at LESSEE'S cost and expense. LESSEE shall post clearly marked signs required by law at the Pole Attachment Area indicating LESSEE'S name and emergency telephone number.

#### **17. MAINTENANCE.**

Except as provided in Section 18.3 below, LESSEE shall, at its sole cost and expense, continuously maintain the Pole Attachment Area 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 Area in a decent, safe, healthy, and sanitary condition. All such maintenance, repairs, restoration, and replacements shall be completed to the reasonable satisfaction of CITY, in conformance with the description of the Site and Pole Attachment Area set forth in **Exhibit A**, the approved Site Plan 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 without providing notice to LESSEE, including, but not limited to the replacement of light bulbs on the Site. However, should CITY have reason to

believe that the performance of such maintenance will affect LESSEE'S Operations, 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). CITY shall not be liable and LESSEE shall hold CITY, its elected officials, officers and employees, harmless for any damage to LESSEE'S Operations and/or Communications Equipment occurring while CITY is engaged in needed maintenance. 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 the Site is an Approved Light Pole, after City inspection and approval of the installation thereof, 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), and shall remove and replace the pole pursuant to City-approved specifications and timelines.

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. Before, during or after such replacement, City shall not be liable for any disruption to/of LESSEE'S Operations and/or damages to LESSEE'S Communication Equipment.

17.3.4. All such maintenance, repairs, and replacements by LESSEE shall be completed to the reasonable satisfaction of CITY, in conformance with the description of the Site and Pole Attachment Area 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 Pole Attachment Area for the purpose of viewing and ascertaining the condition of the Pole Attachment Area, or to protect CITY'S interest in the Site and/or Pole Attachment Area, or to inspect the operations conducted on the Pole Attachment Area. If CITY'S entry or inspection discloses that the Pole Attachment Area 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 Area 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 Area is not in a decent, safe, healthy, and sanitary condition, CITY may, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate, in CITY'S opinion, to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligation on CITY or increase CITY'S obligations elsewhere in this Lease.

**19. UTILITIES.**

LESSEE shall order, obtain, and pay for all utilities, including installation and service charges, in connection with LESSEE'S Operations. All utilities on the Pole Attachment Area 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 Area, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE, or levied by reason of LESSEE'S business or other LESSEE activities related to the Pole Attachment Area, including, without limitation, any licenses or permits. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on the leasehold interests. LESSEE shall pay all such possessory interest taxes. LESSEE'S payment of taxes, fees, and assessments shall not reduce any Rent due CITY.

**21. SUPERIOR INTERESTS.**

This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, and rights-of-way pertaining to the Pole Attachment Area, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or may become necessary or reasonably advisable to allow LESSEE'S Operations, relative to any such superior interest. If LESSEE'S Operations are or become inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to

remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

## **22. ENCUMBRANCES.**

Only with CITY'S prior written consent in each instance, which consent shall be in CITY'S sole discretion, and upon the condition that LESSEE apply any Pole Attachment Area-related loan proceeds exclusively to its installation of wireless communication facilities on the Pole Attachment Area, LESSEE may pledge its leasehold estate hereunder to secure its performance under the subject debt instrument.

- 22.1. Use of Loan Proceeds. A reasonable portion of such loan proceeds may be disbursed for payment of incidental costs of installing LESSEE'S wireless communication facilities on the Pole Attachment Area, including, but not limited to, the following: off-site improvements for service of the Pole Attachment Area; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs, such as discounts, interest, and commissions; and architectural, engineering, and attorney fees and other normal expenses incidental to such installation.
- 22.2. Subsequent Encumbrances. After the Pole Attachment Area is fully developed, as contemplated by this Lease and to CITY'S satisfaction, if LESSEE proposes a subsequent encumbrance on its leasehold estate hereunder, then CITY'S consent thereto may be subject, in CITY'S sole discretion and without limitation, to increasing the rent to then-current market rates. LESSEE may use the proceeds from any such subsequent encumbrance for any purpose approved by CITY.
- 22.3. Acceptance of Approved Mortgagee or Beneficiary. Upon a foreclosure or transfer in lieu of foreclosure of a CITY-approved encumbrance, CITY shall accept the approved mortgagee or beneficiary as the "LESSEE" under this Lease, with all rights and obligations thereof granted and imposed herein. Such mortgagee or beneficiary may assign its interest in this Lease to its nominee if CITY deems, in its sole discretion, such nominee to be a reputable, qualified, and financially responsible person.
- 22.4. Encumbrance Approved by CITY. Any CITY-approved encumbrance shall be subject and subordinate to all of the terms, covenants, and conditions of this Lease, and shall not be deemed to amend or alter any such term, covenant, or condition. LESSEE acknowledges that pursuant to City Charter section 225, each person having an interest in this Lease shall be subject to CITY'S review and approval, which may not be unreasonably withheld.
- 22.5. Liens. LESSEE shall at all times protect, defend, indemnify, and hold CITY harmless from and against any and all claims for labor or materials in connection with LESSEE'S use, improvement, alteration, maintenance, or repair of the Pole Attachment Area, 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 Area results in a lien or notice of lien being filed against the Pole Attachment Area or Site 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 24.1.2 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 Area, or any part of the Pole Attachment Area.
- 23.1.5. Consent by CITY to any Assignment of this Lease pursuant to Section 24.1.2 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 Area by any other person, in violation of the foregoing provisions (Sections 24.1.1 through 24.1.6) shall be void and a default of this Lease, and CITY may immediately terminate this Lease upon notice to LESSEE.

### **23.2. Subletting.** LESSEE shall not sublet, in whole or in part, the Pole Attachment Area, or any right or appurtenant privilege to the Pole Attachment Area.

- 23.2.1. Any subletting, in whole or in part, of the Pole Attachment Area shall be void and shall be a default of this Lease, and CITY may immediately terminate this Lease upon notice to LESSEE.

- 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 for damages or injuries to any person or property, including injury to LESSEE'S officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE'S Operations, including damages arising out of release of Hazardous Substances, 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 established liability arising from the sole negligence, or 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.

## **25. OTHER GOVERNMENTAL ACTIONS.**

By entering into this Lease, neither CITY nor the San Diego City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development, occupancy, use, or maintenance of the Pole Attachment Area. Discretionary action includes, but is not limited to re-zonings, 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 Pole Attachment Area, 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 Pole Attachment Area.
- 26.2. Use. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Pole Attachment Area for utilities, thoroughfares, or access as CITY deems advisable, in its sole discretion, for the public good.
- 26.3. Entry. CITY may enter the Pole Attachment Area at any time to develop and/or make repairs to municipal resources and services. CITY shall not unreasonably interfere with LESSEE'S use of the Site and shall reimburse LESSEE for physical damages, if any, to

the permanent improvements located on the Site or to LESSEE'S Communications Equipment resulting from CITY exercising the rights reserved in this Section. Such reimbursement may include a reduction in the Rent proportionate to the amount of physical damage, as reasonably determined by CITY. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

## **27. REASSIGNMENT OF SPACE.**

At any time during the Term, but only once during the Term, CITY, in its sole discretion, may reassign LESSEE to a different location ("Reassignment Space").

- 27.1. Timing and Costs. LESSEE shall remove its Communications Equipment from the Site within forty-five (45) days after written notice that CITY is reassigning LESSEE. LESSEE shall cooperate fully with CITY and its contractors during any reassignment, and shall pay all expenses associated with the reassignment.
- 27.2. Physical Relocation of Equipment. The physical removal and installation of all or any part of LESSEE'S Communications Equipment shall only be done by LESSEE or LESSEE'S contractors.
- 27.3. Broadcast and/or Receiving Capability. CITY shall use its best efforts to ensure continuous, uninterrupted broadcast, and/or receiving capability during any conversion, including the installation and operation by LESSEE of a CITY-approved temporary wireless communication facility at a different location.
- 27.4. No Agreement. If CITY and LESSEE are unable to agree on an acceptable Reassignment Space, then LESSEE may terminate this Lease upon thirty (30) calendar days prior written notice to CITY, without further obligation thereto. If, either Party terminates this Lease as a result of being unable to reach an agreement on an acceptable Reassignment Space, LESSEE shall remove all of its Communications Equipment within thirty (30) calendar days of such termination.
- 27.5. Site and Pole Attachment Area Redefined. After a reassignment and relocation as provided in this Section 28, the Site and Pole Attachment Area shall be redefined to be the Reassignment Space. CITY and LESSEE agree that "as built" drawings of the Reassignment Space, including any access and utility easements, may be prepared by a licensed architect at LESSEE'S sole cost and expense. In such event, **Exhibits A and B** of this Lease shall be amended (pursuant to Section 33.11 below) to include a full description of the Reassignment Space and the new "as built" drawings. Except as expressly provided in this section, any such reassignment and relocation shall not alter, modify, or otherwise change any of the terms or conditions of this Lease.

## **28. EMINENT DOMAIN.**

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

- 28.1. Full Taking. If the entire Pole Attachment Area is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 28.2. Partial Taking - Remainder Unusable. If a partial taking of the Pole Attachment Area occurs, and in the opinion of CITY, the remaining part of the Pole Attachment Area is unsuitable for the LESSEE'S Operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 28.3. Partial Taking - Remainder Usable. If a partial taking of the Pole Attachment Area occurs, and in the opinion of CITY, the remaining part of the Pole Attachment Area is suitable for continued LESSEE'S 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 Pole Attachment Area taken, but only to the extent that LESSEE'S use of the Pole Attachment Area is reduced or impaired.
- 28.4. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee, or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE'S then-remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 28.5. Transfer. CITY may transfer CITY'S interests in the Pole Attachment Area 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 Pole Attachment Area 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. DEFAULT AND REMEDIES.**

- 29.1. Default. Each of the following shall constitute an event of default under this Lease:
  - 29.1.1. LESSEE'S failure to make any payment required under this Lease when due, if the failure continues for thirty (30) calendar days past due following written notice of the failure by CITY;

- 29.1.2. LESSEE'S breach of any of its obligations under this Lease, other than those requiring payment to CITY, and LESSEE either: (i) fails to cure the breach within thirty (30) calendar days following written notice from CITY; or, (ii) if such breach is not curable within thirty (30) calendar days, fails to commence to cure the breach within thirty (30) calendar days and to diligently pursue the cure to completion;
- 29.1.3. LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law;
- 29.1.4. LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) calendar days of filing;
- 29.1.5. LESSEE is adjudicated a bankrupt;
- 29.1.6. LESSEE makes a general assignment for the benefit of creditors; and
- 29.1.7. LESSEE uses the Pole Attachment Area for any unauthorized purpose.

29.2. Remedies.

- 29.2.1. General. Upon LESSEE'S default under this Lease, CITY may pursue any one or more of the remedies listed in this Section 30 in addition to any other remedies now or later available to CITY, in law or equity. Such remedies shall be cumulative and not exclusive.
- 29.2.2. For Monetary Default. Upon LESSEE'S default for nonpayment under Section 30.1.1 of this Lease, 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 the Pole Attachment Area or to possession of the Pole Attachment Area, and CITY may enter and take possession of the Pole Attachment Area and may recover the amount set forth below.
- 29.2.3. For Non-Monetary Default. Upon LESSEE'S default based upon Sections 30.1.2 through 30.1.7 of this Lease, CITY may, in its sole discretion, terminate this Lease, and all rights of LESSEE and of all persons claiming rights through LESSEE to the Pole Attachment Area or possession of the Pole Attachment Area, and CITY may enter and take possession of the Pole Attachment Area and may recover from LESSEE the amount set forth below. If any default described in Sections 30.1.2 through 30.1.7 of this Lease is not curable within thirty (30) calendar days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.

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

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

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

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

29.2.4.4. 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

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

29.2.4.6. As used in Sections 30.2.4.1 and 30.2.4.2, the "worth at time of award" shall be computed by allowing interest at the rate of ten percent (10%) per annum. As used in Section 30.2.4.3, the "worth at the time of award" shall be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include base rent, percentage rent, and any and all other amounts that LESSEE is required to pay to CITY under this Lease.

29.2.4.7. The calculation of any sum under this section shall be based on a 30-day month and a 360-day year.

29.3. Leasehold Pledged as Security. If LESSEE is in default under this Lease and the leasehold is pledged as security for a CITY-authorized encumbrance, CITY shall notify the mortgagee or beneficiary thereof of LESSEE'S default. CITY shall allow such mortgagee or beneficiary thirty (30) calendar days to cure the default or, if the default is not curable within thirty (30) calendar days, to commence to cure the default and diligently pursue the cure to completion. CITY may, in its sole discretion, extend such time to cure the default if CITY deems that the mortgagee or beneficiary is pursuing the cure with reasonable diligence.

- 29.3.1. If the mortgagee or beneficiary is required to exercise its right to cure a default through litigation or foreclosure, then CITY may take the following actions to expeditiously cure the default:
- 29.3.1.1. CITY may correct the default and charge the costs incurred to LESSEE'S account, which charge shall be due and payable on the date that the Rent is next due after CITY'S statement of such costs is delivered to LESSEE and mortgagee or beneficiary;
  - 29.3.1.2. CITY may correct the default and may recover the costs incurred from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the cost of correction performed by or at the direction of CITY; or
  - 29.3.1.3. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any CITY-authorized encumbrance on the leasehold. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of CITY'S early payoff of the related obligations. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in entering into a new lease with the same terms and conditions as this Lease with the new tenant shall be the responsibility of the terminated LESSEE, and LESSEE shall reimburse CITY for all such costs.
- 29.3.2. If the default is not curable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee are approved by CITY, may substitute itself in the place of LESSEE by assuming all of LESSEE'S rights and obligations under this Lease. If such a lender notifies CITY of its intention to substitute itself in LESSEE'S place, in writing, within thirty (30) calendar days after receipt of CITY'S notice of default, and the default is cured by the lender, then this Lease will not terminate pursuant to the default. Subject to such a cure and LESSEE'S assignment to the lender of LESSEE'S rights and obligations under this Lease, CITY shall consent to the assignment.
- 29.4. 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 Area. If LESSEE fails or refuses to deliver any such quitclaim deed, CITY may prepare and record a notice reciting LESSEE'S failure to perform such obligation, and such notice shall be conclusive evidence of the

termination of this Lease and termination of LESSEE'S rights to the Pole Attachment Area.

- 29.5. Abandonment by LESSEE. If LESSEE breaches this Lease and abandons the Pole Attachment Area, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including, without limitation, the right to recover the Rent as it becomes due, plus damages.
- 29.6. Waiver. CITY'S waiver of a default shall not constitute a waiver of any other default. Any waiver of a default shall be in a writing executed by CITY in order to constitute a valid and binding waiver. CITY'S delay or failure to exercise a remedy or right shall not be a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default shall not waive the use of another remedy or right for the same or any other default. CITY'S acceptance of any Rent shall not be a waiver of any default preceding the Rent payment. The property constituting the Pole Attachment Area is CITY- owned and held in trust for the benefit of the citizens of the City of San Diego. CITY'S failure to discover a breach or default or take prompt action to require the cure of any breach or default shall not result in an equitable estoppel, but CITY may, at all times, require the cure of any breach or default regardless of when discovered.

### **30. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY.**

Except as otherwise provided in this section, all improvements to the Site and/or Pole Attachment Area (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"). Notwithstanding the foregoing, at all times any Approved Light Pole shall be the property of CITY following installation and final approval and acceptance of the Approved Light Pole by the required CITY Department.

- 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 Site 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 Area 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 Area, and upon LESSEE'S consent, CITY may acquire or purchase such property.

30.3. LESSEE shall repair, at its sole cost and expense, all damage to the Site and any adjacent CITY-owned property resulting from the removal of LESSEE'S Property from the Site 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. Any proration of annual Rent will be calculated based on twelve 30-day months.

### **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:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site # SD0427; Cell Site Name: North Torrey Pines  
Fixed Asset No.: 10085127  
575 Morosgo Drive NE  
Atlanta, GA 30324

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department – Network Operations

Re: Cell Site # SD0427; Cell Site Name: North Torrey Pines  
Fixed Asset No.: 10085127  
208 S. Akard Street  
Dallas, Texas 75202-4206

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  
Transportation & Storm Water Department, Street Division  
2781 Caminito Chollas  
San Diego, CA 92105

- 31.1. Address Changes. Any party entitled or required to receive notice under this Lease may, by like notice, designate a different address to which notices shall be sent.
- 31.2. When Effective. Notice shall be effective upon personal service, or five (5) calendar days after deposit in the U. S. mail.

### **32. MISCELLANEOUS PROVISIONS.**

- 32.1. Governing Law. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 32.2. Entire Understanding. This Lease contains the entire understanding of the Parties. CITY and LESSEE agree that there is no other written or oral understanding between them with respect to LESSEE'S Operations. Each party has relied on its own examination of the Site and Pole Attachment Area, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each party to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read this Lease or other documents, inspect the Site and Pole Attachment Area, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.
- 32.3. Supersedure. As of the Effective Date, this Lease shall supersede and annul all prior leases, right-of-entry permits, or other agreements concerning LESSEE'S Operations, by and between CITY and LESSEE, and each such agreement shall be void and of no

effect, except as to any rentals and fees that may have accrued or any rights and remedies accrued or granted to CITY under those agreements.

- 32.4. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 32.5. Time of the Essence. Time is of the essence for each and every term, covenant, and condition of this Lease.
- 32.6. Standard of Conduct. LESSEE and its employees shall, at all times, conduct themselves and LESSEE'S Operations on the Pole Attachment Area in a creditable manner and in accordance with industry standards.
- 32.7. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 32.8. Unavoidable Delay. If the performance of any act required of CITY or LESSEE under this Lease is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing that act for a period equal to the period of the prevention or delay. This provision shall not apply to LESSEE'S obligation to pay Rent. If CITY or LESSEE claims the existence of such a delay, the party claiming the delay shall notify the other party, in writing, of the fact within ten (10) calendar days after the beginning of any such claimed delay.
- 32.9. CITY'S Consent or Approval. Whenever required under this Lease, CITY'S consent or approval shall mean the written consent or approval of CITY'S Mayor or his/her designee, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made at the Mayor's discretion, unless otherwise expressly provided.
- 32.10. Consent by Either Party. Except as otherwise expressly provided in this Lease, consent to be given by either party may not be unreasonably withheld or delayed.
- 32.11. 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.
- 32.12. Cost Recovery. CITY collects various fees to offset the administrative costs incurred for CITY staff services. CITY shall process each of LESSEE'S service requests upon receipt of LESSEE'S payment of the applicable fee. The fee schedule, which is on file at the Office of the City Clerk, may be updated from time to time in CITY'S sole discretion.
- 32.13. 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.

32.14. 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.

32.15. 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.

32.16. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act (CPRA). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

32.17. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Site has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

32.18. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

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

such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association, in good standing in its home state, and that such entity is qualified to do business in the State of California.

32.20. 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.]

32.21. 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.

Date: 3/21/18

THE CITY OF SAN DIEGO, a California municipal corporation

By [Signature]  
Cybele Thompson,  
Director, Real Estate Assets

Date: 3/15/18

New Cingular Wireless PCS, LLC, a Delaware limited liability company

By: AT&T Mobility Corporation

Its: Manager

By [Signature]  
(Print Name) JARROD BOSS  
(Title) DIRECTOR

ENVIRONMENTAL ANALYSIS SECTION:

Categorically exempt from CEQA pursuant to CEQA State Guidelines, Section 15301 (Existing Facilities) and 15303 (New Construction).

Date: March 19, 2018

By [Signature]

Name: Anna L. McPherson

Title: Senior Planner

APPROVED AS TO FORM:

Date: 3/23/18

MARA W. ELLIOTT, City Attorney

By [Signature]  
Melissa Ables, Deputy City Attorney

**Exhibit A**

**Description of Site and Pole Attachment**

CITY Site No.:

LESSEE Site No.: SD0427

Location: NWC of 9170 1/3 North Torrey Pines Road and Expedition Way, La Jolla, CA 92037

Assessor's Parcel Number: N/A

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

See Plot Map attached

**DESCRIPTION OF LEASED PREMISES**

A portion of the Northwest Corner of Torrey Pines Road and Expedition Way.

**Exhibit B**

**Site Plans and Equipment**

III  
EXISTING



**SD0427**  
**South Torrey Pines**  
R.O.W. on Northwest Corner  
of Expedition Way & North  
Torrey Pines Rd.  
La Jolla, CA 92037  
3rd Carrier Unit



CITY OF SAN DIEGO-DEVELOPMENT SERVICES DEPARTMENT  
ENTITLEMENTS-WIRELESS COMMUNICATION FACILITIES

**EXHIBIT "A"**

Project Number:

22722 1

Approval Date:

7/11/12

Signature: \_\_\_\_\_



Existing antennas mounted closer to pole with proposed RET motor cover painted to match existing pole

Proposed battery units and RRU units mounted to existing H frame and painted dark green

Existing and proposed equipment

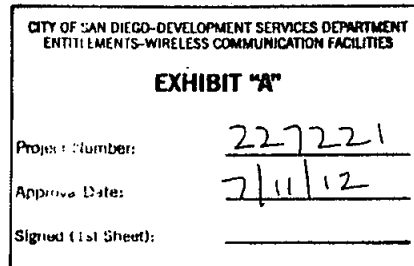
**PROPOSED**

**Photosimulation of proposed telecommunications site**

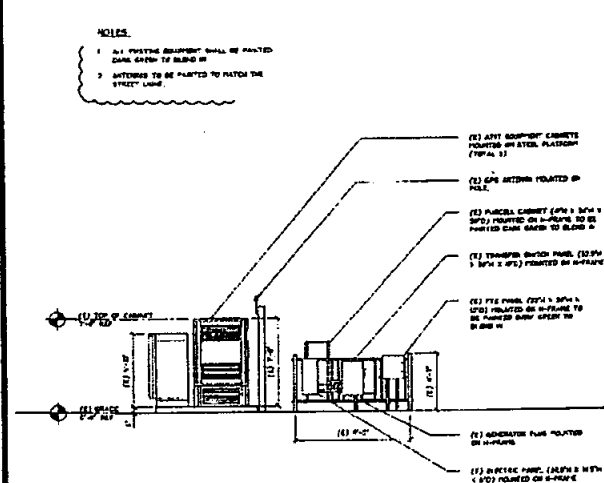


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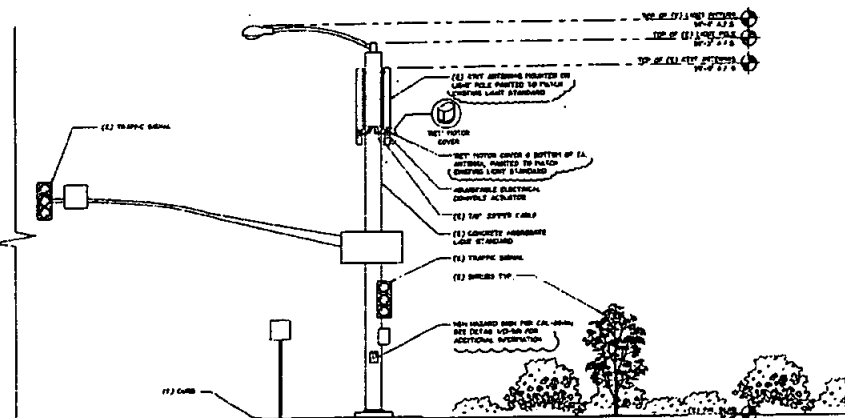




**3 WEST ELEVATION**



**EAST ELEVATION**



**2 EAST ELEVATION**

5

10

4

10

10

40

\_\_\_\_\_

CONCEPTUAL FLAWS - NOT FOR CONSTRUCTION

CITY OF SAN DIEGO-DEVELOPMENT SERVICES DEPARTMENT  
ENTITLEMENTS-WIRELESS COMMUNICATION FACILITIES

EXHIBIT "A"

Project Number: 227221  
Approval Date: 7/11/12  
Signed (1st Sheet): \_\_\_\_\_

PLANTING LEGEND:

- "ALL TREES SHALL BE PLANTED BY AN APPROPRIATE LANDSCAPE AREA. THE MINIMUM DRAINAGE (INCHES) OF THIS AREA SHALL BE 3 FEET."
- "TESTING IRRIGATION SYSTEM SHALL BE INSTALLED AND SHALL BE PROTECTED IN PLACE. ANY IRRIGATION VALVES OR PIPES DAMAGED DURING CONSTRUCTION SHALL BE REPLACED IN-ROAD AS ALLOWED FOR PROPER OPERATION AND FUNCTION OF THE EXISTING AND PROPOSED VEGETATION LAYOUT OF THE IRRIGATION SHALL BE ADJUSTED TO ACCOMMODATE PROPOSED IMPROVEMENTS."
- "ALL LANDSCAPE AND IRRIGATION SHALL CONFORM TO THE STANDARDS OF THE CITY-WIDE LANDSCAPE REGULATIONS, THE CITY OF SAN DIEGO LAND DEVELOPMENT MANUAL, LANDSCAPE STANDARDS AND OTHER LANDSCAPE RELATED CITY AND REGIONAL STANDARDS."
- "MAINTENANCE: ALL REQUIRED LANDSCAPE AREAS SHALL BE MAINTAINED BY AT&T AT LEAST. THE LANDSCAPE AREAS SHALL BE MAINTAINED FREE OF CLIPPINGS AND LITTER AND ALL PLANT MATERIAL SHALL BE MAINTAINED BY A HEALTHY GROWING CONDITION. TREE TIES OR DEAD PLANT MATERIAL SHALL BE SATISFACTORILY TREATED OR REPLACED FOR THE CONDITIONS OF THE PLANT."

PLANTING LEGEND:

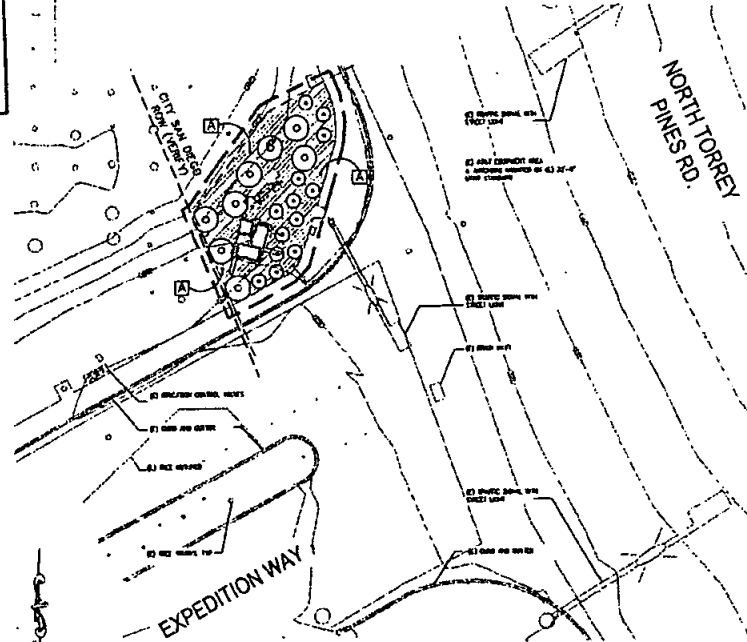
| SYMBOL        | BOTANICAL NAME                                        | COMMON NAME    | SIZE/HIGHTS & SPREAD | QUANTITIES |
|---------------|-------------------------------------------------------|----------------|----------------------|------------|
| SHRUBS:       |                                                       |                |                      |            |
| ⊙             | DETEN NOLTA                                           | PORTWORTH LILY | 15CM/30"X30"         | 13         |
| ⊙             | MEYERHOLES AMSTUTZII                                  | TOYON          | 15CM/30"X30"         | 8          |
| GROUNDCOVERS: |                                                       |                |                      |            |
| ⊙             | 5' DEEP SHAIR ON WHICH ALL PLANTERS AND PLANTER BOXES |                |                      |            |

NOTE: ALL LANDSCAPE WILL BE MAINTAINED BY AT&T ON A REGULAR MAINTENANCE SCHEDULE BY Hired LANDSCAPE CONSTRUCTION LANDSCAPE CONTRACTOR TO PROVIDE WATERING ON 2 TIMES A MONTH DURING THE SPRING AND SUMMER SEASONS. WHEN PLANT MATERIALS HAVE BEEN ESTABLISHED FOR THE PERIOD OF 2 YEARS. ALL PLANT MATERIALS THAT DOES NOT SURVIVE WILL NEED TO BE REPLACED DURING THE ESTABLISHMENT PERIOD.



Call TOLL FREE  
1-800-422-4133

LANDSCAPE DEVELOPMENT PLAN  
SCALE: 1" = 10'-0"



Gardens Design Associates, Inc.  
LANDSCAPE ARCHITECTURE PLANNING  
1000 S. LA JOLLA BLVD. SUITE 100  
SAN DIEGO, CA 92161  
TEL: 619-594-1111 FAX: 619-594-1112

LANDSCAPE DEVELOPMENT PLAN

SOUTH TORREY PINES  
1000 S. LA JOLLA BLVD. SUITE 100  
SAN DIEGO, CA 92161  
TEL: 619-594-1111 FAX: 619-594-1112

AT&T

architect Mitchell J architecture

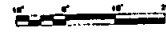
LDP-1.0

CONCEPTUAL PLANS - NOT FOR CONSTRUCTION

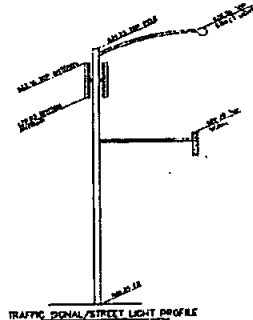
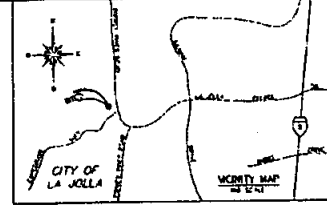
NORTHWEST QUADRANT OF THE INTERSECTION OF  
EXPEDITION WAY AND SOUTH TORREY PINES ROAD  
LA JOLLA, CALIFORNIA 92037

- [illegible]

L-2: HXK: 32 8274.033" 00  
 L-2: HXK: 32 8274.033" 00  
 L-2: HXK: 32 8274.033" 00



SCALE: 1" = 10'



TRAFFIC SIGNAL/STREET LIGHT PROFILE  
NO SCALE

~~Signed 1st Sheet):~~

[illegible]

~~DATE OF SURVEY~~  
MAY 18, 1973

WILLIAM A. WATSON 1943

## REVISIONS

**JRN CIVIL ENGINEERS**

**SOUTH TORREY PINES SD0427**

SCALE: 1" = 10'

**C1**

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

WHEN RECORDED MAIL TO  
CITY CLERK

PROJECT MANAGEMENT  
PERMIT CLERK  
MAIL STATION 501

THE ORIGINAL OF THIS DOCUMENT  
WAS RECORDED ON AUG 29, 2012  
DOCUMENT NUMBER 2012-0517720  
Ernest J. Dronenburg, Jr., COUNTY RECORDER  
SAN DIEGO COUNTY RECORDER'S OFFICE  
TIME: 10:07 AM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24001364

CONDITIONAL USE PERMIT NO. 899985  
AT&T - SOUTH TORREY PINES R.O.W., PROJECT NO. 227221  
HEARING OFFICER

This CONDITIONAL USE PERMIT NO. 899985 is granted by the Hearing Officer of the City of San Diego to the CITY OF SAN DIEGO, Owner, and AT&T MOBILITY, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0301 and 141.0420. The site is located within the public right-of-way on the northwest corner of the intersection of Expedition Way and North Torrey Pines Road with an address of 9170 1/3 North Torrey Pines Road in the RS-1-7 zone of the La Jolla community plan area. The project site's coordinates are Latitude 32° 52' 16.029" N and Longitude 117° 14' 36.859" W.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to construct, operate, and maintain a Wireless Communication Facility (WCF) described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 11, 2012, on file in the Development Services Department.

The project shall include:

- a. Three panel antennas attached to an existing 34"4" high street light standard with associated above-ground equipment cabinets consisting of three cabinets located on a platform and electrical and telco panels located on an H-frame structure;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. This light standard is for the primary purpose of illuminating the street and supporting traffic control signals, but may have the secondary purpose of accommodating Permittee's Operations on the Premises.

ORIGINAL

- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by July 25, 2012.
  2. Prior to issuance of construction permits, evidence of a valid permit or exemption, issued by the California Coastal Commission shall be submitted by the Permittee.
  3. This Conditional Use Permit [CUP] and corresponding use of this site shall ~~expire on July 11, 2022.~~ 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.
  4. No later than ninety (90) days prior to the expiration of this permit, the Owner/Permittee may submit a new application to the City Manager for consideration with review and a decision by the appropriate decision maker at that time. Failure to submit prior to the deadline will be cause for enforcement for noncompliance, which may include penalties and fines.
- 
5. Under no circumstances, does approval of this permit authorize the Permittee to utilize this site for wireless communication purposes beyond the permit expiration date. Use of this permit beyond the expiration date of this permit is prohibited.
  6. 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.
  7. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

8. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

9. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

10. 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.).

11. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

12. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

13. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If 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.

14. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the

event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

**ENGINEERING REQUIREMENTS:**

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

16. Prior to the issuance of any construction permits, the Owner/Permittee shall obtain a Public Right-of-Way Permit for the construction of facilities in North Torrey Pines Road satisfactory to the City Engineer.

**LANDSCAPE REQUIREMENTS:**

17. Prior to the issuance of a construction permit, landscape construction documents shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this Permit and Exhibit 'A' on file in the office of Development Services Department.

18. Landscape installed as part of the project shall be maintained and irrigated for the life of the permit. All required landscape shall be maintained in a disease, weed and litter free condition at all times.

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19. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within 30 days of damage.

**PLANNING/DESIGN REQUIREMENTS:**

20. 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 Owner/Permittee.

21. All facilities and related equipment shall be: maintained in good working order; free from trash, debris, graffiti; and designed to discourage vandalism. Any damaged equipment shall be repaired or replaced within thirty (30) calendar days of notification by the City of San Diego.

22. The Permittee shall notify the City within 30 days of the sale or transfer of this site to any other provider or if the site is no longer operational requiring the removal and the restoration of this site to its original condition.
23. The photosimulation(s) for the proposed project shall be printed (not stapled) on the building plans. This is to ensure the construction team building the project is in compliance with approved the 'Exhibit A.'
24. No overhead cabling is allowed for this project.
25. Exposed mounting apparatus shall be removed and shall not remain on the light standard absent antennas.
26. The Owner/Permittee shall not cause or allow the antennas located on the light standard to be different sizes (length, width, or height) than as shown on the stamped approved plans.
27. The final product shall conform to the stamped approved plans and approved photosimulations prior to final inspection approval.
28. Please note that an Administrative Planning Hold will be placed on the project prior to Final Clearance from the City's Building Inspector to ensure compliance with the approved plans and associated conditions. Prior to calling for your Final Inspection from your building inspection official, please contact the Project Manager at (619) 446-5349 to schedule an inspection of the completed facility. Please schedule this administrative inspection at least five working days ahead of the requested Final.
29. Prior to the issuance of a construction permit, the telecommunication provider shall provide a certified cumulative radio frequency model study demonstrating compliance with the Federal Communications Commission's Radio Frequency Guidelines. All significant contributors to the ambient RF environment should be considered in the radio frequency model study.
30. All equipment, including transformers, emergency generators and air conditioners belonging to the Permittee shall be designed and operated consistent with the City noise ordinance. Ventilation openings shall be baffled and directed away from residential areas. Vibration resonance of operating equipment in the equipment enclosures shall be eliminated.
31. The Permittee shall place and maintain appropriate signage on the WCF as required by CAL-OSHA and the FCC to the satisfaction of the Development Services Department.

**TRANSPORTATION REQUIREMENTS:**

32. The applicant shall obtain an "Encroachment Maintenance and Removal Agreement," satisfactory to the City Engineer.
33. The applicant shall obtain a "Public Right-of-Way Permit for Traffic Control" permit prior to any work within the public right-of-way, satisfactory to the City Engineer.

34. The applicant shall protect any City property removed as part of the project and return said property, satisfactory to the City Engineer.
35. The applicant shall provide a Public Improvement Plan including a Traffic Signal Plan and a Traffic Control Plan, satisfactory to the City Engineer.
36. The applicant shall provide and maintain a telephone contact number available 24 hours/7 days a week clearly posted on the pole at eye level to allow City staff to immediately contact the system provider, satisfactory to the City Engineer.
37. The applicant shall provide a switch to allow City staff to immediately turn off the system, satisfactory to the City Engineer.
38. City staff should contact the applicant as soon as possible with notification of the emergency shut-off of the system, satisfactory to the City Engineer.
39. The applicant shall install and maintain a separate power meter for the project, satisfactory to the City Engineer.
40. The applicant shall hold the City of San Diego harmless for interrupted signal transmission due to a signal pole knock over in the event of an accident, due to an electrical power failure, an emergency shut-off or as a result of any maintenance activity, satisfactory to the City Engineer.
41. Upon written request by the City of San Diego, the applicant shall remove or relocate the system, or any part of the system, within 45 days at the applicant's cost, satisfactory to the City Engineer.
- 
42. The applicant shall inform the City and the City agrees to inform the applicant in the event of a knock over, satisfactory to the City Engineer.
43. The applicant shall shut down the system upon request of the City, and the City will notify the applicant in advance whenever possible of such request, satisfactory to the City Engineer.
44. Prior to any routine maintenance activity, the applicant shall notify the City a minimum of one work day in advance, satisfactory to the City Engineer.
45. A foundation analysis shall be required during the Public Improvement Plan Process, satisfactory to the City Engineer.
46. If the luminaire mounting height or length of mast arm of the new traffic signal standard does not match the appropriate State of California Department of Transportation Standard Plans drawing number ES-7C through ES-7H, 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:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this 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-section 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 July 11, 2012 and HO-6539.

**ORIGINAL**

Permit Type/PTS Approval No.: CUP No. 899985  
Date of Approval: 7/11/12

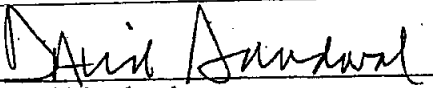
AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

  
Alex Hempton, AICP  
Associate Planner, acting as Development Project Manager

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

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

CITY OF SAN DIEGO,  
REAL ESTATE ASSETS DEPT.  
Owner

By   
David Sandoval  
Deputy Director

AT&T MOBILITY  
Permittee

By   
Kevin Becker  
Network Manager

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

ORIGINAL

## ACKNOWLEDGMENT

State of California  
County of San Diego

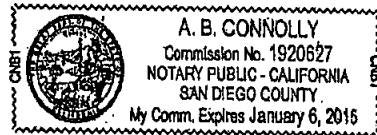
On 7/27/12 before me, A. B. Connolly, Notary Public  
(insert name and title of the officer)

personally appeared Kenn C. Becker  
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 A. B. Connolly (Seal)



ORIGINAL

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

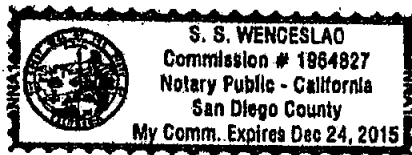
CIVIL CODE § 1189

State of California

County of San Diego

On August 28, 2012 before me, S. S. Wenceslao, Notary Public

personally appeared Alex Hempton  
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: [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: AT&T-South Torrey Pines R.O.W. - PTS #227221

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ 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: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

ORIGINAL

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

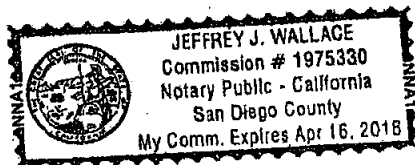
CIVIL CODE § 1189

State of California

County of San Diego }

On 8/22/2012 before me, Jeffrey J. Wallace, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared David Sandoval, Deputy Director  
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.

Place Notary Seal Above

Signature: Jeffrey J. Wallace

Signature of Notary Public

**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. 899985

Document Date: 8/22/2012 Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

## Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ 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: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

**ORIGINAL**

HEARING OFFICER RESOLUTION NO. HO-6539  
CONDITIONAL USE PERMIT NO. 899985  
AT&T – SOUTH TORREY PINES ROW  
PROJECT NO. 227221

WHEREAS, THE CITY OF SAN DIEGO, Owner, and AT&T MOBILITY, Permittee, filed an application with the City of San Diego for a permit to construct, operate, and maintain a Wireless Communication Facility (WCF) consisting of two panel antennas and above-ground equipment cabinets (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 899985);

WHEREAS, the project site is located at 9170 1/3 North Torrey Pines Road, within the public right-of-way, on the northwest corner of Expedition Way and North Torrey Pines Road, adjacent to the RS-1-7 zone of the La Jolla community plan area;

WHEREAS, on July 11, 2012, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 89985 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on May 25, 2012 the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guidelines Sections 15301 (Existing Facilities) and 15303 (New Construction) and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520; 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 July 11, 2012.

FINDINGS:

Conditional Use Permit - Section 126.0305

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

The City of San Diego's General Plan (UD-15) requires that the visual impact of wireless facilities be minimized by concealing wireless facilities in existing structures or using screening techniques to hide or blend them into the surrounding area. The plan also calls for these facilities to be designed to be aesthetically pleasing and respectful of the neighborhood context. Furthermore, the plan states that equipment associated with wireless facilities be concealed from view. This project consists of two panel antennas mounted to an existing traffic light standard. Equipment associated with the antennas will be located in above-ground equipment cabinets. The antennas will be flush-mounted to the light standard and painted and textured to match the light standard. Cables will be concealed within the pole or covered with "chin straps." The equipment cabinets will be painted green to blend in with adjacent landscape material and additional planting will be

installed. Based on the design of this facility and its siting, this Wireless Communication Facility will not adversely affect the applicable land use plan.

**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 that AT&T Mobility perform a cumulative model RF test 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 within the jurisdiction of the city.

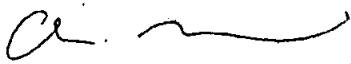
**3. The proposed *development* will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code; and**

The Wireless Communication Facility (WCF) Regulations, Land Development Code Section 141.0420, require that WCF's utilize the smallest, least visually intrusive antennas, components, and other necessary equipment. The applicant is required to use all reasonable means to conceal or minimize the visual impact of the WCF through integration utilizing architecture, landscape, and siting. In this case, the project consists of antennas mounted to a City traffic light standard. ~~The antennas will be mounted to the top~~ portion of the pole, painted and textured to match the pole. Cables attached to the antennas will be routed inside the pole. Equipment associated with the antennas will be located in above-ground equipment cabinets painted green and screened with landscape material. Therefore, the project complies with the regulations of the Land Development Code.

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

WCF's are permitted within the public right-of-way with above-ground equipment with the processing of a Process 3 Conditional Use Permit. Council Policy 600-43 identifies the public right-of-way as a more preferable location than a residential zone with a residential use. This particular WCF consists of two panel antennas, mounted to the top portion of a traffic light standard. The WCF is located adjacent to a residential zone with a non-residential use. Based on this analysis, the WCF is appropriate at this location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 899985 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 899985, a copy of which is attached hereto and made a part hereof.



---

Alex Hempton, AICP  
Associate Planner  
Development Services

Adopted on: July 11, 2012

Internal Order No. 24001364

**Exhibit C**

**Memorandum of Lease Form**

Recording Requested By and  
When Recorded Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APN#  
Site #

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE is effective as of \_\_\_\_\_, 20\_\_ (the Effective Date”).

1. THE CITY OF SAN DIEGO, a California municipal corporation (“CITY”), with an office at 1200 Third Avenue, M.S. 51A, San Diego, CA 92101-4155, and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (“LESSEE”), with an office at 575 Morosgo Drive NE, Atlanta, GA 30324, entered into that certain CITY OF SAN DIEGO TELECOMMUNICATIONS LEASE (“Lease”) dated \_\_\_\_\_, 20\_\_, for the purpose of installing, operating, and maintaining a wireless communication facility and other improvements as set forth in the Lease.
2. The term of the Lease is \_\_\_\_\_ ( ) years and commenced on \_\_\_\_\_, 20\_\_.
3. The land which is the subject of the Lease is described in attached Exhibit “A.” The portion of the land being leased to LESSEE is set forth in the Lease.

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

CITY:

LESSEE:

THE CITY OF SAN DIEGO, a  
California municipal corporation

New Cingular Wireless PCS, LLC, a  
Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form this \_\_\_\_\_ day of  
\_\_\_\_\_, 201\_\_.

MARA W. ELLIOTT, City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **Exhibit D**

### **Interference Protection Requirements**

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

#### **Pre-installation or pre-use Testing**

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

- (c) Notification to permittees/lessees/users shall be sent via U.S. Mail, pre-paid First-Class postage, certified return receipt requested or hand delivered.
  - (d) The notification letter to the GSDCD Senior Communications Engineer shall include a list of all permittees/lessees/users notified.
- (2) Following the completion of the tests, LESSEE shall provide a letter to the GSDCD Senior Communications Engineer stating the test results obtained from each permittee/lessee/user participating in the test and a list of those permittees/lessees/users who did not respond.
  - (3) If a notified permittee/lessee/user fails to send a qualified representative to observe and participate in the tests, it will be assumed by CITY that the permittee/lessee/user has assured itself that their operations will not be affected.
  - (4) It shall be the responsibility of LESSEE to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. On-The-Air Tests - Technical Details

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

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

d. Radio Frequency Interference to City Radio Equipment

The radio equipment use proposed by LESSEE shall not directly or indirectly result in degraded technical performance of the CITY'S existing radio equipment installed at the Site or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to:

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

e. Modifications to Equipment

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

f. Resulting Interference

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

## TECHNICAL DATA SUMMARY

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

DATE \_\_\_\_\_

LOCATION \_\_\_\_\_ APPLICANT \_\_\_\_\_

CALL SIGN \_\_\_\_\_ CONTACT NAME \_\_\_\_\_ PHONE \_\_\_\_\_

### TRANSMITTER

### RECEIVER

Manufacturer \_\_\_\_\_ Manufacturer \_\_\_\_\_

Model \_\_\_\_\_ Model \_\_\_\_\_

Emission \_\_\_\_\_

Radiated ERP \_\_\_\_\_ Watts

Transmit Frequency \_\_\_\_\_

Receiver Frequency \_\_\_\_\_

CTCSS or DCS

1. \_\_\_\_\_

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

3. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

4. \_\_\_\_\_

4. \_\_\_\_\_

### ANTENNA

### TRANSMIT CAVITY FILTER ISOLATOR

Make \_\_\_\_\_

Make \_\_\_\_\_

Make \_\_\_\_\_

Model/Type \_\_\_\_\_

Gain \_\_\_\_\_ dBd

Azimuth \_\_\_\_\_

REMARKS:

### TEST RESULTS CERTIFICATION

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

SUBJECT: "ON THE AIR" interference testing

SITE LOCATION \_\_\_\_\_

FREQUENCY \_\_\_\_\_

DATE OF TEST \_\_\_\_\_

TIME OF TEST \_\_\_\_\_

PROPOSED TRANSMITTER OWNED BY \_\_\_\_\_

TEST PERFORMED BY \_\_\_\_\_

Permittee/Lessee/User:

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

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

Details of interference: (if applicable)

Proposed technical resolution: (if applicable)

\_\_\_\_\_  
(Tenant)

\_\_\_\_\_  
(Tenant's Representative)

\_\_\_\_\_  
(Date)

## **Exhibit E**

### **Installation Standards**

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

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

## **Exhibit 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 (888) 662-4662**.

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

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

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

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



THE CITY OF SAN DIEGO

Date of Notice: May 25, 2012

# NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

Internal Order 24001364

**PROJECT NAME/NUMBER:** AT&T South Torrey Pines ROW/No. 227221**COMMUNITY PLAN AREA:** La Jolla**COUNCIL DISTRICT:** 1**LOCATION:** Right-of-Way at Northwest Corner of the intersection of North Torrey Pines Road and Expedition Way

**PROJECT DESCRIPTION:** CONDITIONAL USE PERMIT (CUP) for modifications to an existing Wireless Communication Facility (WCF). The project would modify the site by installing three (3) new RRU units; one (1) new PBC-02 main unit; two (2) battery units; modify the existing antenna mounts which would be painted to match the existing light standard; and installation of "RET" motor cover on the bottom of each existing antenna, which would also be painted to match the existing light standard. The site currently supports two (2) antennas mounted to an existing light standard, and one (1) GPS antenna mounted to the equipment area which will all remain in place. The project site is located within the RS-1-7 zone within the La Jolla Community Plan area.

**ENTITY CONSIDERING PROJECT APPROVAL:** City of San Diego Hearing Officer (Process 3)

**ENVIRONMENTAL DETERMINATION:** Categorically exempt from CEQA pursuant to CEQA State Guidelines, Sections 15301 (Existing Facilities) and 15303 (New Construction).

**ENTITY MAKING ENVIRONMENTAL DETERMINATION:** City of San Diego Development Services Staff

**STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:** The project has been determined to be exempt from CEQA pursuant to Sections 15301 and 15303. Section 15301 allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use. Section 15303 allows for the construction and location of limited numbers of new, small facilities and the installation of small, new equipment and facilities including, but not limited to, accessory structures. None of the exceptions listed in CEQA Guidelines Section 15003.2 apply, therefore these exemptions are applicable to the proposed project.

**DEVELOPMENT PROJECT MANAGER:** Alex Hempton**MAILING ADDRESS:** 1222 First Avenue, MS 501, San Diego, CA  
92101-4153**PHONE NUMBER:** 619-446-5349

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On May 25, 2012 the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Development Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 15 business days from the date of the posting of this Notice. The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.