

INDEMNITY AND HOLD HARMLESS AGREEMENT

THIS INDEMNITY AND HOLD HARMLESS AGREEMENT (the "Agreement") is entered into by and between New Cingular Wireless PCS, LLC, a Delaware limited liability company (dba "AT&T"), on the one hand, and the City of San Diego ("City") and Hazard Construction Company ("Hazard") on the other hand. AT&T, the City and Hazard are sometimes referred to collectively in this Agreement as the "Parties." This Agreement shall be effective on the date that the last of the Parties executes the Agreement (the "Effective Date").

RECITALS

WHEREAS, AT&T operates and maintains certain wireless telecommunications facilities, including antennas, cables and an equipment enclosure pursuant to Neighborhood Use Permit No. 788586 and Planned Development Permit No. 788587, as well as a Master Lease Agreement between the City and AT&T (collectively the "AT&T Facilities") on the real property owned by the City at 200 Catalina Boulevard in Point Loma, California (the "Catalina Site"). AT&T's Facilities are located on and around an existing municipal water tank owned and operated by the City at the Catalina Site;

Whereas, on January 23, 2007, AT&T and the City entered into an addendum to the Master Lease Agreement that allows AT&T to the use of the AT&T Facilities on the Catalina Site.

WHEREAS, the City has contracted with Hazard to install a new municipal water tank on the Catalina Site under its Design Build Contract for Catalina Standpipe Renovation (the "Construction Activities"). Such Construction Activities by Hazard will interfere with some of AT&T's Facilities;

WHEREAS, on February 13, 2012, the City sent AT&T a notice of reassignment for the Catalina Site pursuant to section 1.6 of the Master Lease Agreement. In addition, the City required that AT&T relocate the AT&T Facilities from the Catalina Site by June 15, 2012. On November 21, 2012, the City extended the relocation deadline until February 28, 2013.

WHEREAS, AT&T submitted plans to the City, which the City has approved, to relocate some of the AT&T Facilities (the equipment cabinet and related utility lines and coaxial cable conduits) to another portion of the Catalina Site during the Construction Activities.

WHEREAS, AT&T and the City have been able to ensure operation of the AT&T Facilities on the Catalina Site during the Construction Activities. In addition, the City and AT&T have been able to agree to permanently relocate some of the AT&T Facilities with the exception of the telecommunications antennas presently operating at the Catalina Site on the existing water City tank. Such permanent relocation of the antennas will be addressed in a future agreement between the City and AT&T as required by section 1.6.1 of the Master Lease Agreement.

WHEREAS, the Parties to this Agreement desire to ensure that neither the City nor Hazard shall be responsible or liable for (1) any potential accidental damage to the AT&T Facilities from the Construction Activities, or (2) any reasonable costs incurred to perform the Construction Activities in a manner specially designed and intended to avoid damage to the AT&T Facilities pursuant to section 1.6.1 of the Master Lease Agreement.

NOW, THEREFORE, in consideration of the mutual execution of this Agreement and the promises made in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged by each party to this Agreement, the Parties agree as follows:

AGREEMENT

1. From and after the Effective Date, AT&T shall indemnify, release, defend and hold harmless the City and Hazard (including their elected officials, officers, representatives, agents, employees, contractors or subcontractors as applicable) from and against any and all actual or threatened claims, demands, suits, proceedings, enforcement actions, judgments, fines, penalties, encumbrances, liens, costs, liabilities, losses, damages (including all consequential damages or damage or destruction to property of others) disbursements and expenses in any way arising from, relating to or connected with either (a) any accidental damage, interference or destruction to any AT&T Facilities during the Construction Activities, and/or (b) any reasonable costs incurred or expended by the City or Hazard to perform the Construction Activities in a manner specially designed and intended to avoid damage to the AT&T Facilities (which reasonable costs are presently estimated to be approximately \$2,396.70 pursuant to Exhibit A attached hereto). Such indemnity, release and hold harmless obligation by AT&T stated herein shall not apply, however, with respect to any damage, destruction or interference with the AT&T Facilities arising from or relating to any sole negligence, gross negligence or willful or intentional misconduct of the City or Hazard (including their elected officials, officers, representatives, agents, employees, contractors or subcontractors as applicable) regarding the Construction Activities.

2. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, their respective councilmembers, directors, officers, subsidiaries, stockholders, affiliates, attorneys, agents, employees, representatives, successors, predecessors, assigns, and/or parent corporations.

3. The undersigned acknowledge and represent that they have read this Agreement and consulted with their respective attorneys concerning its contents and consequences, and that the Agreement is being executed solely in reliance on the respective judgments, beliefs and knowledge of the matters set forth herein and on advice of their respective attorneys.

4. This Agreement constitutes the entire agreement and understanding concerning the subject matter of the Agreement between the Parties and supersedes any prior and contemporaneous oral and written agreements, negotiations and discussion regarding the relocation of a portion of AT&T Facilities at the Catalina Site for Construction Activities. This

Agreement does not impact or amend the existing Master Lease Agreement between AT&T and the City. Each of the Parties acknowledges that no other party has made any promise, representation or warranty whatsoever, express or implied, not contained here in the terms of the Agreement, concerning the subject matter hereof, to induce him, her or it to execute this instrument, and each acknowledges that he, her or it shall not execute this instrument in reliance on any such promise, representation or warranty not contained in this Agreement. This instrument may be amended only by an agreement in writing signed by the Parties.

5. This Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of California.

6. This Agreement may be executed in two or more counterparts and in both original form and one or more copies, each of which shall be deemed an original but all of which shall constitute one and the same written instrument. The Parties agree to cooperate and execute any further documents and take such additional action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

7. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either of the Parties hereto, as though each had participated equally in drafting each and every provision hereof.

The undersigned have caused this Agreement to be executed as of the day and year written below.

Dated: 8/26/13

CITY OF SAN DIEGO

By: 

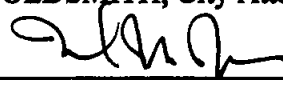
James F. Barwick, CCIM

Its: Director, Real Estate Assets

I HEREBY APPROVE the form and legality of the foregoing Agreement on this 26 day of

August 2013

JAN I. GOLDSMITH, City Attorney

By: 

Deputy City Attorney

April
Dated: ~~March 29~~, 2013

HAZARD CONSTRUCTION COMPANY

By: 

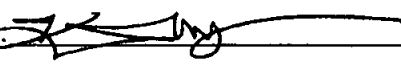
Its: JASON A. MORDHORST, VICE PRESIDENT

Dated: March __, 2013

NEW CINGULAR WIRELESS PCS, LLC,
A DELAWARE LIMITED LIABILITY
COMPANY

By: AT&T Mobility Corporation

Its: Manager

By: 

Its: AREA MANAGER

EXHIBIT A
(Estimate of Additional Costs)



Phone (858) 587-3600
Fax (858) 453-6034
6465 Marindustry Place
San Diego, CA 92121
hazardconstruction.com
License No. 750542A/B

November 30, 2012

*Change Order Request No. 3
(Proposal)*

City of San Diego
Public Works Department
600 B Street, Suite 800, MS 908A
San Diego, CA 92101-4502
Attention: Dwayne Abbey, P.E.

Re: Catalina Standpipe Renovation Design-Build Contract
City of San Diego Contract: K-12-5209-DBA-C-A
HCC Job #11041

Gentlemen:

This letter and the following breakdown are written as a result of the City of San Diego's request to perform potholing for the existing AT&T conduits on the South side of the existing tank where the proposed waterline will cross those facilities on the above referenced project. Upon verification of the depth of the line, it appears that those conduits can stay in place with no impact on the design or construction of the new facilities. This additional potholing is required as these AT&T facilities were to be abandoned and removed prior to construction.

I. Contract Addition / Deduction	Approx. Amt.	Unit Price	Total
A.			
1. Investigate Existing Drainline	1 LS @	\$1,397.00 / LS =	\$1,397.00
2. 10% Mark-up on Subcontractors	1 LS @	\$139.70 / LS =	\$139.70
3. Hazard Foreman & Truck	1 LS @	\$860.00 / LS =	\$860.00
	Grand Total:		\$2,396.70

Please issue a contract change order to allow for this revision to our contract scope of work. Thank you for your cooperation.

Sincerely,
HAZARD CONSTRUCTION COMPANY

Jason A. Mordhorst
Project Manager

JAM:jam

cc: Bob Schang, Kirk Khanna, Sandy Kostyrka, Phil