



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
February 18, 2015**

**TO:** Mayor and City Council  
**FROM:** Michael Chandler, Senior Management Analyst  
**SUBJECT:** AT&T Site License Agreement  
**DATE:** February 5, 2015

**RECOMMENDATION:**

Approve a resolution authorizing the Acting City Manager to execute a Site License Agreement with New Cingular Wireless PCS, LLC, which does business as New Cingular Wireless, AT&T Mobility Corporation.

**BACKGROUND:**

The City and New Cingular Wireless PCS, LLC, doing business as New Cingular Wireless, AT&T Mobility Corporation (“AT&T”), entered into a Letter of Agreement on April 23, 2010, to establish conditions for negotiation of a site license agreement between the parties. AT&T subsequently submitted its formal request to the City on July 22, 2010, to locate a telecommunications facility at the Harborview Reservoir site located at 2380 Harborview Drive.

The Harborview Reservoir site was in need of major reconstruction to repair its aging infrastructure for several years. T-Mobile West had been operating on an old facility on the site since 1996 under a 5-year lease agreement with five 5-year renewal terms. AT&T proposed that the new facility be a “collocation facility,” which would allow T-Mobile West to operate on a modern and enhanced facility. It is common for wireless providers to share telecommunications facilities under a collocation agreement entered into between the providers, with terms under which one or more providers will have a subtenant relationship with that provider which owns the collocation facility.

The reconstruction project was ready to be bid at around the time that the City and AT&T began actively negotiating a license agreement for the new collocation facility in October 2013. As a result, the grading, trenching, and installation of conduit and necessary electrical equipment to prepare for a new communications facility was incorporated into the City’s reconstruction project. The project, which began on April 16, 2014, has continued while the City has been negotiating with AT&T’s representatives on the terms and conditions for the license to construct and operate the new collocation facility. These negotiations have resulted in the site license agreement now being proposed, which terms and conditions have been accepted by AT&T. The communications facility as proposed will largely consist of a 15 x 36 foot equipment enclosure, several outdoor cabinets, and a monopole on which various panel antennas will be installed. The City will also be entitled to space on the monopole for one Omni “whip” antenna for the purpose of transmitting water system data for the reservoir.

AT&T and T-Mobile West, LLC (“T-Mobile”) will each have their own space reserved on the collocation facility, both in the equipment enclosure as well as on the monopole. In April 2014, the City Council approved an agreement between the City and T-Mobile on the terms under which T-Mobile would temporarily vacate the Harborview Reservoir site (which was necessary while the site was being reconstructed). Included as a term of that agreement is a provision that requires the City to pay T-Mobile \$150K in the event an agreement for the construction and operation of the collocation facility is not entered into between the City and AT&T by the time that the reconstruction project is completed. Other terms of the 2014 agreement with T-Mobile require the 1996 lease to be amended by May 31, 2015, to reflect the replacement of the old facility with the new collocation facility and to include an option which may be exercised by T-Mobile for an additional 5-year renewal period.

Key terms of the License Agreement with AT&T include the following:

- Initial term of 10 years, with two automatic 5-year renewal terms thereafter at AT&T’s discretion, and option for a third 5-year renewal term upon mutual discretion
- Initial rent is established as \$2,500/mo and subject to 3% annual adjustments upon anniversary of commencement date thereafter
- City to receive reimbursement of up to approximately \$65K in costs related to electrical connections needed by AT&T for the communications facility to operate on the premises, which costs have been incurred by City during course of the reservoir reconstruction project
- City to receive 15% of any subtenant rent (except for rent, if any, paid by T-Mobile to AT&T)
- City entitled to space on the monopole for antenna to transmit water system data
- AT&T to indemnify City, its employees, officers, and agents for AT&T’s and AT&T’s subtenants’ installation, use, maintenance, repair or removal of the communications facility, except as to the City’s active negligence or intentional acts
- AT&T to be responsible to maintain and repair the communications facility and bear the sole cost and expense of maintenance and repair
- AT&T to take out and carry at its own expense commercial general liability insurance or provide self-insurance subject to the City’s approval in an amount no less than \$4,000,000 combined single limit per accident coverage for personal injury and property damage for each occurrence and in the aggregate
- AT&T to comply with all federal, state and local laws, rules and regulations applicable to AT&T’s construction and AT&T’s and its subtenants’ use, maintenance, or occupation of the communications facility

**FISCAL IMPACT:**

Revenue from the License Agreement goes to the Water System and commences at \$2,500.00 per month/\$30,000.00 per year for the first 12 months of the term (projected to commence June 1, 2015). The rental amount will be subject to a 3% adjustment on each anniversary of the commencement date thereafter.

**ENVIRONMENTAL IMPACT:**

The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15302 in that the Facility that is the subject of the License Agreement is the replacement of an existing facility which will be placed on the same site as the former wireless communications facility and will have substantially the same purpose and capacity as the facility being replaced, within the meaning of CEQA Guidelines Section 15302.

**ACTION:**

Motion approving resolution authorizing the City Manager to execute a Site License Agreement with New Cingular Wireless PCS, LLC.

Attachments:

Resolution

Site License Agreement with five (5) exhibits

**APPROVED BY:**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Interim City Manager

RESOLUTION NO. -15

**AUTHORIZING THE CITY MANAGER TO EXECUTE A SITE LICENSE AGREEMENT  
WITH NEW CINGULAR WIRELESS PCS, LLC**

**WHEREAS**, the City of Martinez ("City") and New Cingular Wireless PCS, LLC, a Delaware Limited Liability Corporation doing business as New Cingular Wireless, AT&T Mobility Corporation ("AT&T") entered into a Letter of Agreement on April 23, 2010, to establish conditions for negotiation of a site license agreement between the parties; and

**WHEREAS**, AT&T subsequently submitted its formal request to the City on July 22, 2010, for location of a telecommunications facility ("Facility") at the Harborview Reservoir site located at 2380 Harborview Drive ("Premises"); and

**WHEREAS**, the parties have reached accord on terms and conditions for a Site License Agreement that are beneficial to the City, including enhanced rent income, reimbursement of certain pre-construction related expenses incurred by the City, and rights to space on AT&T's facility for the purpose of transmitting essential City Water System data; and

**WHEREAS**, the Facility is intended as a collocation facility shared with the City's existing lease tenant on the Premises, T-Mobile West, LLC ("T-Mobile").

**NOW, THEREFORE, BE IT RESOLVED** that the City Council finds that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15302 in that the Facility that is the subject of the License Agreement is the replacement of an existing facility which will be placed on the same site as the former wireless communications facility and will have substantially the same purpose and capacity as the facility being replaced, within the meaning of CEQA Guidelines Section 15302.

**BE IT FURTHER RESOLVED** that the City Council of the City of Martinez hereby authorizes the City Manager to execute a Site License Agreement between the City of Martinez and New Cingular Wireless PCS, LLC.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 18<sup>th</sup> day of February, 2015 by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

**Market:** Northern California  
**Cell Site Number:** CCU0249  
**Search Ring Name:** Harbor View Water Tank  
**Cell Site Name:** Harbor View Water Tank (CA)  
**Fixed Asset Number:** 12798111

## **SITE LICENSE AGREEMENT**

(New Cingular Wireless PCS, LLC)

Site Location: Unaddressed property, Martinez, CA [APN: 376-010-005-1]

THIS SITE LICENSE AGREEMENT (“**Agreement**”) is dated and shall become effective as of the latter of the signature dates below (the “**Effective Date**”), by and between The City of Martinez, a municipal corporation (“**Licensor**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company (“**Licensee**”).

WHEREAS, Licensor is the owner of that certain unaddressed real property in the City of Martinez, County of Contra Costa, State of California [APN: **376-010-005-1**], and as described in Exhibit A, attached hereto (“**Licensor’s Real Property**”).

WHEREAS, Licensee desires to access and use a portion of Licensor’s Real Property, containing approximately three hundred sixty (360) square feet, including the air space above such ground space, and shared use of Licensor’s easements over the contiguous, adjoining or surrounding real property necessary for Licensee’s access and utilities to the licensed area (altogether the “**Premises**”) to the extent allowed by said easements, as shown on the plan set (the “**Final Plan Set**”) with a legal description of the Premises, and Licensor acknowledges and agrees that the Final Plan Set has been reviewed and approved by Licensor and is attached hereto in part and incorporated herein as Exhibit B.

WHEREAS, Licensee has requested a Site License Agreement to access and use the Premises in order to construct, install, remove, replace, maintain, modify, upgrade and operate, at its expense, a wireless communications facility (“**Communication Facility**”) which would be used for wireless communications providers, specifically including T-Mobile West, LLC, a Delaware limited liability company (“**T-Mobile**”), to collocate their equipment on, in, upon, or at such Communication Facility on Licensor’s Real Property pursuant to the terms of an agreement between Licensee and any such wireless communications provider under which the provider shall become a sublicensee, subtenant, or acquire any similar rights to use the Communication Facility (“**Collocation Agreement**”).

WHEREAS, the description of Licensee’s intended operations and initial types of facilities and equipment shall be referred to as the "Approved Operations" as agreed upon by the parties, a copy of which is attached and incorporated herein as Exhibit C and subject to amendment as provided herein. It is intended by the parties that Licensee’s use of the Premises shall conform to the Approved Operations during the Term (as defined in Section 3 below) of this License, unless the Approved Operations is amended in writing and signed by both parties as provided for herein; provided, however, no amendment in writing or Licensor approval shall be required if Licensee is substituting any equipment initially in conformance with the Approved Operations in connection with Licensee’s routine maintenance and/or repair of the Communication Facility.

WHEREAS, Licensee shall be granted access to the Premises based on the schedule, terms and conditions as set forth in the “Licensee’s Access Schedule” attached hereto as Exhibit D. Licensee shall use the Premises in a manner which will not create a legal nuisance to Licensor, any lessee, licensee, or other holder of any rights on, in, or upon the Licensor’s Real Property or any party having rights to property adjacent, contiguous, or surrounding the Licensor’s Real Property.

WHEREAS, prior to the Effective Date, Licensee has expressed to Licensor and Licensee represents that it has expressed to T-Mobile the willingness of Licensee to enter into a Collocation Agreement with T-Mobile on terms and conditions which Licensee would have the right to solely determine, and which Collocation Agreement if concluded between Licensee and T-Mobile would grant to T-Mobile the right to collocate its communication equipment onto a portion of the Communication Facility in a manner approved by Licensee.

WHEREAS, Licensor has been given no authority or control over the establishment, modification, or amendment of the terms and conditions of any Collocation Agreement between Licensee and T-Mobile and/or Licensee and any other wireless communications provider, and this Agreement does not contemplate that Licensor be given any such authority or control during the Term of this Agreement.

WHEREAS, Licensee acknowledges that prior to the Effective Date, Licensor has provided to Licensee (i) that certain Communications Site Lease Agreement dated as of May 30, 1996, subject to which T-Mobile West, LLC, a Delaware limited liability company's ("**T-Mobile**"), as successor-in-interest, to Pacific Bell Mobile Services, a California corporation, leases a portion of Licensor's Real Property for the installation and operation of a communication facility, and (ii) that certain Agreement for Vacation of Reservoir Property During Construction dated April 14, 2014, which was entered into between Licensor and T-Mobile (collectively the "**T-Mobile Prior Agreements**"), and Licensee desires to enter into this Agreement with full knowledge of the terms and conditions set forth within the T-Mobile Prior Agreements.

WHEREAS, Licensor is at this time performing construction on Licensor's Real Property at its own expense, which construction includes, but is not limited to, the rough grading of the Premises, trenching and installation of conduit and requisite substructures, both for electrical service to be installed for the Communication Facility and for the new monopole to be installed by Licensee, and which construction is intended solely to benefit Licensee for its use of Licensor's Real Property as described by this Agreement (collectively "**Licensor's Construction Work Scope**").

WHEREAS, prior to the Effective Date, Licensee has expressed its willingness to reimburse Licensor for the costs incurred by Licensor for such Licensor's Construction Work Scope not to exceed the amount of Sixty-Four Thousand Four Hundred Eighty-One and 13/100 Dollars (\$64,481.13) ("**Construction Reimbursement Cap**").

WHEREAS, Licensee must install antenna on the top of the monopole furnished by the Licensor and all cables, assemblies, coaxial lightning protector, cable and connectors, necessary for the installation of the antenna in order for the antenna to be usable by Licensor for its continuing operations, as agreed upon by the parties pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the covenants contained herein, the parties agree as follows:

**1. Conditions Precedent: Prior Approvals.**

This Agreement is subject to the terms and conditions contained in the licenses, permits and approvals enabling Licensee to construct and operate the Communication Facility on the Premises. This Agreement shall not be legally effective until approved by the Martinez City Council and fully executed and delivered between Licensor and Licensee.

**2. Permitted Uses.**

Licensee shall use the Premises for the construction, installation, and operation of the Communication Facility in conformance with the Approved Operations and, in furtherance thereof, the Licensee may place, use, operate and maintain on the Premises the equipment and facilities described, identified and approved in the Approved Operations. In the event Licensee desires to modify its use of the Premises, or add equipment or facilities or replace the existing equipment or facilities with new or different equipment or facilities, Licensee shall first submit to Licensor for Licensor's review and written approval an amended Approved Operations, which approval shall not be unreasonably withheld, conditioned or delayed by Licensor. Notwithstanding the foregoing, Licensee shall have the right, without obtaining Licensor's written approval, to substitute any equipment initially in conformance with the Approved Operations in connection with Licensee's routine maintenance and/or repair of the Communication Facility.

Licensee shall pay an amount not to exceed the Construction Reimbursement Cap in full satisfaction of Licensee's obligation to reimburse Licensor for the cost of Licensor's Construction Work Scope. If the actual cost of Licensor's Construction Work Scope exceeds the Construction Reimbursement Cap, Licensee shall have no obligation to pay any additional amount to Licensor. Payment shall be within thirty (30) calendar days following the Commencement Date established by Section 3(A) of this

Agreement by delivery to Licensor in the manner described by the notice provisions of this Agreement. As part of the construction of the Communication Facility, Licensee shall install an antenna to be provided by the Licensor on the top of the monopole of the Communication Facility and all cables, assemblies, coaxial lightning protector, and connectors, necessary for the initial installation of the Licensor's antenna in order for the antenna to be usable by Licensor for its operations (collectively "**Licensor's Antenna**"). Licensor's Antenna shall be delivered at Licensor's sole cost to Licensee at the Premises or such other location in the City of Martinez as reasonably requested by Licensee. Licensor's Antenna shall remain the sole property of Licensor. Licensee shall perform the installation of Licensor's Antenna in accordance with specifications to be provided by the Licensor and reasonably approved by Licensee. Throughout the Term (as defined in Section 3(B) below) of this Agreement, Licensee shall allow Licensor to remove and re-install Licensor's Antenna as reasonably required by Licensor within thirty (30) days of receipt of written notice by Licensee from Licensor, provided that such removal and re-installation shall not interfere with the operations of Licensee's then existing Approved Operations. After the installation of Licensor's Antenna, Licensor shall be solely responsible for repairing and maintaining Licensor's Antenna at Licensor's sole cost and expense.

Except as expressly set forth in Section 27 of this Agreement, Licensee accepts the existing conditions of the Premises "as is", and Licensor makes no representation concerning the existing conditions of the Premises, including but not limited to existing topography, soils stability, or existing ability of the Premises to support traffic loads contemplated by the Licensee. The Licensor has neither inspected the site nor made any determination regarding the stability of the Premises for the purposes intended by the Licensee. The Licensee shall make its own determination as to the suitability of the Premises. Licensee may not use the Premises for any purpose or business, construct any additional structures or facilities, or make any improvements to the Premises not in conformance with the Approved Operations without first submitting to the Licensor for review and obtaining Licensor's approval of a written amendment to the Approved Operations which would be contingent upon formal approval of the City Council, which approval shall not be unreasonably withheld, conditioned or delayed.

Notwithstanding the foregoing, Licensee shall have the right, without obtaining Licensor's written approval, to substitute any equipment initially in conformance with the Approved Operations in connection with Licensee's routine maintenance and/or repair of the Communication Facility. Additionally, Licensor acknowledges, consents and agrees that during the Term of this Agreement, a portion of Licensee's antenna arrays and related equipment shown on pages A-1.1, A-2 through A-5 of Exhibit B may encroach into that portion of the airspace of Licensor's Real Property adjacent to the Premises at the same height, elevation, and configuration shown on Exhibit B and into the airspace within the area designated as "T-Mobile Lease Area" (which term is used for identification purposes only, and does not indicate that T-Mobile has as of the Effective Date secured (i) a leasehold interest in the specific area so identified on Exhibit B or (ii) a Collocation Agreement with Licensee for any rights to use the Communication Facility) at the same height, elevation, and configuration shown on pages A-1.1, A-2 through A-5 of Exhibit B. Licensee shall not store vehicles or materials on the Premises other than those specified in the Approved Operations unless otherwise approved by the Licensor.

### 3. **Term.**

A. The term of this Agreement (the "**Initial Term**") is ten (10) years, commencing on the first (1<sup>st</sup>) day of the month following the later to occur of (i) the date that Licensor issues all final and unappealable permits necessary for Licensee to construct and operate the Communication Facility on Licensor's Real Property, and (ii) June 1, 2015 ("**Commencement Date**"). Nothing in this section shall alter the fact that this Agreement shall become effective on the Effective Date and all of its terms shall take full force and effect at that time.

B. This Agreement shall be automatically renewed beyond the Initial Term for two (2) additional terms of five (5) years (each a “**Renewal Term**”), unless Licensee provides Licensor, for any reason or no reason, with written notice of its intention not to renew. Such written notice must be provided not less than twelve (12) months and one (1) day prior to the expiration of the Initial Term or any Renewal Term, as applicable. This Agreement may be automatically renewed beyond the Initial Term and Renewal Terms for one (1) additional term of five (5) years (“**Third Renewal Term**”), unless either party provides the other, for any reason or no reason, with written notice of its intention not to renew not less than twelve (12) months and one (1) day prior to the expiration of the second Renewal Term. The Initial Term, any Renewal Term(s), and any Third Renewal Term exercised are hereinafter collectively referred to as the “Term” (“**Term**”).

4. **Administrative/Processing Deposit.**

At the commencement of discussions between the parties regarding the terms of this Agreement, Licensee entered into a Letter of Agreement (the “**Letter**”) with Licensor which conditioned Licensee to submit a formal, written request for an agreement, and deposit with the Licensor an administrative/processing deposit in the amount of Ten Thousand Dollars (\$10,000) (the “**Deposit**”), subject to replenishment to defray Licensor’s reasonable costs actually incurred by Licensor and directly associated with negotiating, preparing and considering approval of this Agreement. Notwithstanding the terms and conditions of the Letter, Licensor and Licensee hereby confirm and agree that in the event that the Deposit has been exhausted by Licensor, then Licensor shall only have the right to require Licensee to replenish the Deposit by an amount not to exceed Four Thousand Dollars (\$4,000.00) (the “**Deposit Replenishment Cap**”). If Licensor does not exhaust the Deposit and the Deposit Replenishment Cap, then Licensor shall refund to Licensee the total unexpended amount remaining in the Deposit and Deposit Replenishment Cap, accompanied by reasonable substantiation of the reasonable costs actually incurred by Licensor and directly associated with negotiating, preparing and considering approval of this Agreement, within forty-five (45) days of the Effective Date of this Agreement.

5. **Rent.**

Within thirty (30) days of the Commencement Date and provided that Licensor has provided to Licensee a completed IRS Form W-9, California FTB Form 590 and Licensee’s standard Payment Direction Form, Licensee shall pay to Licensor, as “Rent,” the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per month (the “**Rent**”) (until increased as set forth herein). Thereafter, Rent shall be payable on the first day of each month, in advance, partial months to be prorated. The Rent due hereunder shall be increased annually on each anniversary of the Commencement Date during the Term by an amount equal to three (3) percent over the Rent paid in the previous year.

6. **[Intentionally Omitted].**

7. **Due Diligence Contingency and Pre-Commencement Date Access to Premises.**

At any time following the Effective Date but prior to the Commencement Date, Licensee shall have the right (but not the obligation), upon the written consent of Licensor, such consent not to be unreasonably withheld, conditioned or delayed, to enter the Premises for the purpose of making necessary inspections, taking measurements and conducting engineering surveys (and soil tests where applicable) and other reasonably necessary tests to determine the suitability of the Premises for the installation and operation of the Communication Facility (“**Due Diligence**”), and for the purpose of preparing the Premises for the installation or construction of the Communication Facility. During any Due Diligence activities or pre-construction work, Licensee shall have insurance which covers such activities as set forth in Section 19, Insurance and shall be bound by the provisions of Section 17, Indemnification. Licensee will notify Licensor of any proposed tests, measurements or pre-construction work; coordinate the scheduling of such activities with Licensor; and obtain the Licensor’s written approval prior to conducting such activities, such Licensor written approval not to be unreasonably withheld, conditioned or delayed. Except to the extent set forth in Section 17 of this Agreement, Licensor does not make any representation as to the existing conditions, existing topography, or existing soils stability for the proposed use.

**8. Assignment.**

This Agreement may be sold, assigned or transferred by Licensee without any approval or consent of Licensor (i) to Licensee's Affiliate (as defined below); (ii) to any entity which acquires all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission in which the licensed Premises is located by reason of a merger, acquisition or other business reorganization; or (iii) to any entity which acquires or receives an interest in the majority of the communication towers of Licensee in the market defined by the Federal Communications Commission in which the licensed Premises is located, so long as the proposed use and the equipment and facilities to be utilized by the assignee conform to the Approved Operations, attached as Exhibit C. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise. Notice shall be provided to Licensor within thirty (30) days of such an assignment, along with updated copies of the required insurance certificates as specified in Section 19, Insurance. Upon notification to Licensor of such assignment, transfer or sale, Licensee will be relieved of all future performance, liabilities and obligations under this Agreement. If an assignee's use of the Premises would not conform to the Approved Operations attached as Exhibit C, then such sale, assignment or transfer shall require an amendment to the Approved Operations, and Licensor review and approval of an amended Approved Operations shall be required in order for the assignment to be legally effective. Notice shall be provided to the Licensor within thirty (30) days of the assignment, along with updated copies of the required insurance certificates as specified in Section 19, Insurance. As to any other third-parties not specified above in Section 8(i), 8(ii) or 8(iii), this Agreement may not be sold, assigned or transferred without the prior written consent of the Licensor, which consent shall not be within Licensor's sole discretion.

**9. Sublicensing/Sublicensees.**

Licensee shall have the right to sublicense the Premises, in whole or in part, without Licensor's consent to any Affiliate of Licensee. Licensee shall not otherwise have the right to sublicense or otherwise allow any other communications provider to occupy space on any antenna structure or equipment enclosure installed by Licensee on the Premises without Licensor's prior written consent and at the Licensor's sole discretion. Each subtenant or sublicense shall be bound by all the duties and obligations of this Agreement and that Licensee shall be primarily liable to Licensor for such Sublicensee's performance under this Agreement. The termination of this Agreement shall also constitute the termination of any sublicense authorized herein. In the event this Agreement is terminated, each subtenant or sublicense shall remove all of its equipment and improvements and if any subtenant or sublicensee fails to so remove its equipment and improvements, the Licensee shall become responsible for such removal. In the event of any sublicense requiring Licensor's consent and permitted by Licensor, Licensor shall be entitled to Fifteen Percent (15%) of net income actually received by Licensee from each such sublicensee, and payable, no later than thirty (30) days following Licensee's receipt of any payment of net income from each such sublicensee. Licensor and Licensee hereby agree that Licensor shall not be entitled to share any net income received by Licensee from T-Mobile or any Affiliate of T-Mobile.

**10. Improvements.**

Licensor may, at its own discretion and expense, make improvements on Licensor's Real Property as it deems necessary or desirable from time to time without the consent of the Licensee, subject to the terms of this Agreement and provided that any such improvement(s) do not in any way adversely affect or interfere with the Communication Facility, the operations of Licensee or the rights of Licensee under this Agreement.

Upon termination or expiration of this Agreement, or upon the necessary decommissioning of the site due to degradation of the Licensor's water tank, soil destabilization or other condition beyond the reasonable control of Licensor resulting in the Premises and Licensor's Real Property no longer being used for Licensee's Communication Facility and the communication facilities of all other wireless communications providers on Licensor's Real Property, Licensee shall remove at its own expense its above-ground equipment and improvements and will restore the Premises to substantially the same condition existing on the Commencement Date, reasonable wear and tear excepted, unless Licensor notifies Licensee at least ninety (90) days in advance of the expiration of this Agreement or at any time after given notice of the termination of this Agreement by Licensee that Licensor desires to have some or all of the non-electronic above-ground equipment and improvements remain on the Premises, in which event Licensor shall reimburse Licensee for the fair market value of Licensee's non-electronic above-ground equipment and improvements desired to be kept on the Premises by Licensor as such fair market value is determined through a mutually agreed upon appraisal of fair market value, which costs shall be borne equally, provided, however, that in no event shall the fair market value of the non-electronic above-ground improvements be less than Licensee's unamortized cost of such equipment as determined by an accounting of an independent, third party auditor agreed upon by the parties and whose costs shall be borne equally. Licensee agrees to provide said auditor access to those non-proprietary financial records needed to determine the unamortized cost of such equipment unless the costs of the desired non-electronic above-ground improvements have been fully amortized at the time of the accounting. Building(s), antennas attached to poles and all other associated above-ground facilities brought onto Licensor's Real Property by Licensee (excluding Licensor's antenna) shall be removed unless otherwise directed by Licensor in writing in accordance with the provisions of this paragraph.

**11. Maintenance and Repairs.**

Licensee shall be responsible for repairing and maintaining the Communication Facility and any other improvements installed by Licensee or any sublicensee of Licensee on the Premises at its sole cost and expense. Any damage caused by Licensee, its sublicensees, employees, agents, or invited guests shall be promptly repaired at the sole cost and expense of Licensee following receipt of written notice by Licensee from Licensor of such damage or repair. Once discovered, damages to the Communication Facility and other improvements installed by Licensee on the Premises resulting from natural causes such as storms, wind and earthquakes shall be repaired at the Licensee's sole cost and expense. If Licensee fails to make any required repairs within thirty (30) days of Licensee's receipt of Licensor's written notice of such failure, Licensor may, at its option, cause such repairs to be made, and Licensee shall fully reimburse Licensor for the reasonable cost and expense of any such repairs within thirty (30) days following receipt of a written invoice accompanied by reasonable substantiation of any such cost or expense.

**12. Compliance with Laws.**

Licensee agrees that it and all of its sublicensees or subtenants shall comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Licensee's construction, use, maintenance, ownership, or its sublicensees' or subtenants' use, maintenance, or occupation of the Communication Facility on Licensor's Real Property. Licensor agrees to comply with all Laws relating to Licensor's ownership and use of the Property and any improvements on the Property in a manner sufficient to provide to Licensee the rights afforded under this License..

**13. Interference.**

Licensee will resolve technical interference problems caused by Licensee to Licensor's water data transmission equipment and any other equipment, Licensor-owned or otherwise, located on the Premises as of the Commencement Date, provided that such equipment is operating in compliance with all applicable laws and regulations and otherwise in accordance with the recommended operating standards of the manufacturer of the applicable equipment. Licensee will also resolve any technical interference problems caused by equipment that Licensee attaches to the Premises at any future date when Licensee desires to add additional equipment to the Premises in conformance with the Approved Operations. Licensor will not permit or suffer the installation of any future equipment or grant a lease, license, or any other right to any third party which may result in: (a) physical or technical interference

problems with Licensee's then existing equipment, including but not limited to the Communication Facility; or (b) encroaches onto the Premises; provided, however, in the event Licensor introduces equipment for the purposes of supporting its operations at any future date which are incompatible with Licensee's then existing equipment after Licensor has utilized best efforts to minimize technical interference with the Approved Operations, then thereafter, Licensee must resolve any such technical interference problems. Licensor will not grant, after the date of this Agreement, a lease, license or any other right to any third party, if exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Licensee or the rights of Licensee under this Agreement. Licensor will notify Licensee in writing prior to granting any third party the right to install and operate communications equipment on the Property. Licensor will not, nor will Licensor permit its employees, tenants, licensees, invitees, agents or independent contractors to materially and adversely interfere in any way with the Communication Facility, the operations of Licensee or the rights of Licensee under this Agreement. Licensor will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Licensee. In the event any such interference does not cease within the aforementioned cure period, Licensor shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. Notwithstanding any of the above, if the party adversely affecting or interfering with the Licensee's operations or equipment is a party to a Collocation Agreement with Licensee, then Licensor shall have not responsibility under any of the terms of this section for that party's acts or omissions.

**14. Utilities.**

Licensee will pay for all utilities used by it at the Premises. Licensor will cooperate with Licensee in Licensee's efforts to obtain utilities from any location provided by Licensor or the servicing utility, including signing any easement or other instrument reasonably required by the utility company. Licensee shall obtain electrical power directly from a third party and not from or through Licensor. Licensee shall not rely upon Licensor in the provision of electrical service at any time during the term of this Agreement. Licensor acknowledges that Licensee provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Licensee's reasonable determination, Licensor agrees to allow Licensee the right to bring in a temporary source of power for the duration of the interruption, provided that Licensee remains in compliance with all applicable laws and such equipment is immediately removed when no longer necessary to provide electrical power to the Communication Facility. Licensee shall remain fully responsible for any damage or interference caused by the temporary power source to the Licensor's or others' property. Licensor will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Licensor, of such services to be furnished or supplied by Licensor.

**15. Termination.**

A. Subject to the terms of Subsection (B) below, this Agreement may be revoked at any time following the expiration of the first (1<sup>st</sup>) Renewal Term upon written notice from Licensor to Licensee (or Licensee's authorized assignee pursuant to Section 8, Assignment), in the event Licensor, in its sole discretion, determines that this Agreement is no longer compatible with Licensor's present or contemplated future use of Licensor's Real Property after Licensor has utilized reasonable efforts to keep this Agreement in full force and effect in light of such present or contemplated future use of Licensor's Real Property, including, but not limited to, any utility installations. Licensor shall, along with such written notice, furnish Licensee with reasons why Licensor has decided to terminate this Agreement. Licensor shall also furnish Licensee with copies of any plans and specifications, working drawings or other information describing Licensor's plans requiring termination of the Agreement. The termination shall become effective twenty-four (24) months and one (1) day from the date of Licensee's receipt of Licensor's written notice of such termination delivered to Licensee after the expiration of the first (1<sup>st</sup>) Renewal Term, notwithstanding an emergency situation, such as one resulting from floods, earthquakes, and other "acts of God," or similar catastrophic events, in which case the Licensor shall provide only as much notice as is reasonably practical. Licensee shall bear all costs associated with the removal of its equipment and facilities in the event Licensor terminates this Agreement pursuant to

- this Section 15(A).
- B. Within three (3) months of Licensee's receipt of the written notice from Licensor as described in Subsection (A) above, Licensee may furnish Licensor with a proposal (together with plans and specifications, if necessary) describing a means by which termination of this Agreement would not be required. Licensor shall, within thirty (30) days following receipt of such proposal, review the proposal to determine whether Licensee's proposal is acceptable to Licensor. Licensee shall bear all costs associated with any relocation of its Communication Facility, including the reasonable cost for reviewing the proposal(s).
  - C. If Licensor, in its sole discretion, determines that Licensee's proposal is acceptable, this Agreement shall remain in full force and effect in conformance with Licensee's proposal or such modification to said proposal as is mutually agreed to by the parties. Within thirty (30) days of Licensee's receipt of Licensor's invoice therefore, accompanied by reasonable substantiation, Licensee shall reimburse Licensor for any reasonable costs incurred by Licensor resulting from Licensor's acceptance of Licensee's proposal.
  - D. Licensee may terminate this Agreement without further liability at any time after completing construction of the Communication Facility and making it fully operational by giving thirty (30) days written notice to Licensor if: (a) Licensee does not obtain all permits, consents, easements, non-disturbance agreements or other approvals (collectively, "**Approvals**") reasonably required from any governmental authority or third party related to or reasonably necessary to operate the Communication Facility, or if any such Approvals are canceled, expire or withdrawn or terminated, or (b) Licensee, for any other reason or no reason, in its sole discretion, determines that it is unable to use the Premises. Upon termination, all prepaid Rent shall be retained by Licensor, unless termination is pursuant to (a) above or is the result of Licensor's default. Licensee shall bear all costs associated with removal of its Communication Facility in the event Licensee terminates the Agreement; however, Licensor may choose to retain certain non-electronic above-ground portions of the Communication Facility in accordance with the terms and conditions of Section 10 above, by making payment to Licensee in the amount of the fair market value of the Communication Facility to be determined in accordance with the appraisal procedure referred to in Section 10. In the event of termination of this Agreement by Licensee pursuant to this Subsection D, Licensee and any sublicensees shall continue to pay Rent until all equipment and facilities are completely removed from the Premises (in the event that Licensor does not exercise its rights to pay fair market value under Section 10 for any non-electronic above-ground equipment and facilities to remain) subject to the express terms and conditions of Section 10, Improvements above.

#### **16. Default.**

- A. In the event there is a default by Licensee with respect to any of the provisions of this Agreement or its obligations hereunder, Licensor shall give Licensee written notice of such default. After Licensee's receipt of such written notice, Licensee shall have thirty (30) days in which to cure any default, provided that if the default is of such a nature that it cannot be reasonably cured within such thirty (30) days period, then no default shall be deemed to have occurred if Licensee has commenced to cure such default within such thirty (30) day period and thereafter continuously and diligently prosecutes the cure to completion. Delay in curing a default will be excused if due to causes beyond the reasonable control of Licensee, sublicensees or subtenants.
- B. If Licensee does not cure such default within such required time periods as set forth in Subsection (A) above, Licensor may terminate this Agreement with thirty (30) days written notice to Licensee.
- C. After receipt of a written notice of termination by default from Licensor, Licensee, on or before the effective date of termination, shall surrender possession of its portion of the Premises to Licensor. Within thirty (30) days following the date of termination by default, Licensee shall remove any and all improvements or structures brought onto the Premises by Licensee and restore the Premises, subject to the express terms and conditions of Section 10, Improvements above; however, Licensor may choose to pay Licensee the fair market value for any of the non-electronic above-ground portion of the Communication Facility to remain on the Real Property in accordance with Section 10.

- D. In the event there is a default by Licensor with respect to any of the provisions of this Agreement or its obligations hereunder, Licensee shall give Licensor written notice of such default. After Licensor's receipt of such written notice, Licensor shall have thirty (30) days in which to cure any default, provided that if the cure is of such a nature that it cannot be reasonably cured within such thirty (30) days period, then no default shall be deemed to have occurred if Licensor has commenced to cure such default within such thirty (30) day period and thereafter diligently prosecutes the cure to completion. Delay in curing a default will be excused if due to causes beyond the reasonable control of Licensor. If Licensor does not cure such default within such required time periods as set forth in this Subsection (D), Licensee may (i) terminate this Agreement with thirty (30) days written notice to Licensor, and (ii) exercise any and all other rights available to it under law and equity.

**17. Indemnification.**

- A. Licensee agrees to indemnify, defend and hold Licensor, its officers, agents, and employees harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising out of the Licensee's, sublicensee's or subtenant's installation, use, maintenance, repair or removal of the Communication Facility or Licensee's, sublicensee's or subtenant's breach of any provision of this Agreement, except to the extent attributable to the active negligence or intentional act or omission of Licensor, its employees, agents or independent contractors
- B. Licensee further agrees to indemnify, defend and hold Licensor, its agents, employees and officers harmless from any and all costs and expenses, including costs and expenses for inspections, remediation, removals, and restoration as well as any penalties, fines, etc. relating to Licensee's failure to comply with any Federal, State or Local environmental or hazardous substance laws or regulations in connection with and to the extent arising out of Licensee's or sublicensee's or subtenant's use of the Premises and its activities thereon, unless the environmental or hazardous conditions are caused by the Licensor, its agents, employees and officers.
- C. Licensee agrees that Licensor shall not be liable to Licensee for any damage by or from any act of negligence or intentional conduct by any other occupant or user of the Premises or any occupant or user of adjoining or contiguous property, and Licensee hereby expressly waives any and all such claims as against Licensor, its agents, employees and officers, except if caused by Licensor, its agents, employees and officers.
- D. The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 17 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party, which shall not be unreasonably withheld, delayed or conditioned; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.
- E. Licensee agrees to pay for all damages to the Premises, as well as all damage to occupants or users of the Premises, caused by Licensee's or its sublicensees' or subtenants' misuse or neglect of the Premises, except to the extent attributable to the active negligence or intentional act or omission of Licensor, its employees, agents or independent contractors.

**18. Hazardous Substances.**

- A. Licensor represents and warrants that it does not have actual knowledge of any release of hazardous substances, including asbestos-containing materials and lead paint, or of any contamination or hazardous conditions on the Licensor's Real Property resulting in any environmental investigation, inquiry or remediation. Licensor and Licensee agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and

- safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on Licensor's Real Property.
- B. Licensor and Licensee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("Claims"), to the extent arising from that party's breach of its obligations or representations under Section 18(A) above. Licensor agrees to hold harmless and indemnify Licensee from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Licensor for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of Licensor's Real Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Licensor during the Term. Licensee agrees to hold harmless and indemnify Licensor from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Licensee for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto Licensor's Real Property by Licensee or from such contamination caused by the acts or omissions of Licensee, any sublicensees, or subtenants of Licensee during the Term.
  - C. The indemnifications of this Section 18 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Licensor's Real Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 18 will survive the expiration or termination of this Agreement.
  - D. In the event Licensee becomes aware of any hazardous materials on Licensor's Real Property, or any environmental, health or safety condition or matter relating to Licensor's Real Property, that, in Licensee's sole determination, renders the condition of the Premises or Licensor's Real Property unsuitable for Licensee's use, or if Licensee believes that the leasing or continued leasing of the Premises would expose Licensee to undue risks of liability to a government agency or third party, Licensee will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Licensor.

**19. Insurance.**

Licensee shall carry at its own cost and expense the following insurance in accordance with the following terms and conditions:

- A. Commercial general liability insurance including personal injury and property damage insurance for all activities of the Licensee, its subcontractors, sublicensees and subtenants, including any tenant improvements or betterments, arising out of or in connection with this Agreement, written on a commercial general liability form including Licensor as an additional insured party. Licensor's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Licensor, its employees, agents or independent contractors; and (iii) not exceed Licensee's indemnification obligation under this Agreement, if any. Licensee shall endeavor to require Licensee's subcontractors, sublicensees and subtenants to carry the same insurance coverage as required of Licensee under this Agreement (and any other insurance necessary to cover the sublicensees' and subtenants' own interests), also listing Licensor as an additional insured party. Coverage shall be in an amount of Four Million Dollars (\$4,000,000) combined single limit personal injury and property damage for each occurrence and in the aggregate.
- B. Automobile liability insurance of \$1,000,000 combined single-limit per accident for bodily injury and property damage.

- C. The Licensor, its agents, employees and officers shall be added as additional insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Licensee, its subcontractors, sublicensees and subtenants, and with respect to liability arising out of work or operations performed by or on behalf of Licensee, its subcontractors, sublicensees or subtenants, including materials, parts, or equipment furnished in connection with such work or operations.
- D. For any claims relating to work or operations performed by or on behalf of Licensee, the Licensee's required insurance coverage shall be primary insurance as respects the Licensor, its agents, employees and officers. Any insurance or self insurance maintained by the Licensor, its agents, employees and officers shall be excess of the Licensee's insurance and shall not contribute with it.
- E. The Licensee shall also carry Workers' Compensation insurance to cover its employees, and the Licensee shall require all subcontractors, sublicensees and subtenants similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subcontractor's, sublicensees' and subtenants' employees. Licensee's worker's compensation insurance shall include an endorsement waiving all rights of subrogation against Licensor, its agents, officers and employees when acting within the scope of their appointment or employment.
- F. The Licensee shall provide for 30 days prior written notice to Licensor of any cancellation of any required coverage that is not replaced.
- G. Any self-insured retentions must be declared to the Licensor.
- H. Licensor shall secure coverage for its subcontractors, sublicensees and subtenants as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor, sublicensee and subtenant. All coverages for subcontractors, sublicensees and subtenants shall be subject to the requirements stated herein.
- I. Prior to Licensee's execution of this Agreement, Licensee shall furnish proof of coverage by delivering to Licensor certificates of insurance and additional insured endorsements, which shall be subject to Licensor's approval. Licensee shall update these certificates of insurance and endorsements as necessary and shall provide Licensor with new certificates and endorsements whenever Licensee changes insurance providers or insurance coverage.
- J. Notwithstanding the forgoing, Licensee may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Agreement. In the event Licensee elects to self-insure its obligation under this Agreement to include Licensor as an additional insured, the following conditions apply: (i) Licensor shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.

**20. Taxes.**

Licensee shall pay all taxes assessed against Licensee's improvements on the Premises resulting directly from this Agreement, specifically including all possessory interest taxes described by this section. Pursuant to California Revenue and Taxation Code section 107.6, Licensee is notified that the property interest acquired by Licensee in the Premises under this Agreement may be subject to property taxation as a possessory interest in real property, and Licensee may be subject to the payment of property taxes levied on that interest.

**21. Destruction of Premises.**

If the Premises or Licensor's Real Property is destroyed or damaged so to hinder, in Licensee's reasonable opinion, its effective use of Licensor's Real Property, Licensee may elect to terminate this Agreement as of the date of the damage or destruction by so notifying Licensor no more than forty-five (45) days following the date of Licensee's receipt of written notice from Licensor of such damage or destruction. In such events, all rights and obligations of the parties shall cease except for those rights and obligations that survive the termination or expiration of this Agreement. Licensee shall have sixty (60) days from the date Licensee terminates this Agreement to remove its equipment and facilities and all other personal property it owns from the Premises, subject to the terms and conditions of Section 10, Improvements above, and to assure that any sublicensees also remove their equipment and facilities and all other personal property from the Premises. Licensee hereby waives and releases Licensor from any and all liability and damages relating to the damage or destruction of the Premises, Licensor's Real Property or sublicensee's property, except to the extent attributable to the active negligence or intentional act or omission of Licensor, its employees, agents or independent contractors. Licensee further indemnifies Licensor for any claims, actions or judgments relating to damage to sublicensee's property, except to the extent attributable to the negligent or intentional act or omission of Licensor, its employees, agents or independent contractors.

**22. Entire Agreement.**

This Agreement constitutes the entire agreement and understanding between the parties regarding Licensee's use of the Premises and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by authorized representatives of both parties.

**23. Recording.**

Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum or Short Form of License substantially in the form attached as Exhibit E, except that the recording party's information shall be provided for return of the document after being recorded. Either party may record this Memorandum or Short Form of License at any time during the Term, in its absolute discretion.

**24. Miscellaneous.**

- A. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- B. Each party represents and warrants that said party has full power and authority, and the person(s) executing this Agreement have full power and authority, to execute and deliver this Agreement, and that this Agreement constitutes a valid and binding obligation of each party, enforceable in accordance with its terms. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.
- C. No provision of this Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Agreement.
- D. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be Contra Costa County.
- E. The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and court costs.
- F. Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

- G. The parties acknowledge and agree that each of the parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Agreement. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Agreement.
- H. The foregoing recitals and Exhibits attached hereto are incorporated herein by this reference.

**25. Notices.**

All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

Licensor: City of Martinez  
Attn: City Manager  
525 Henrietta Street  
Martinez, CA94553  
Facsimile: (925) 229-5012

Licensee: New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: CCU0249  
Search Ring Name: Harbor View Water Tank  
Cell Site Name: Harbor View Water Tank (CA)  
Fixed Asset No.: 12798111  
575 Morosgo Drive NE  
Suite 13F, West Tower  
Atlanta, GA 30324

With a copy to AT&T Legal Department:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department – Network Operations  
Re: Cell Site #: CCU0249  
Search Ring Name: Harbor View Water Tank  
Cell Site Name: Harbor View Water Tank (CA)  
Fixed Asset No.: 12798111  
208 S. Akard Street  
Dallas, TX75202

The copy sent to the AT&T Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

**26. Waiver of Licensor's Liens.**

Licensor waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Licensor consents to Licensee's right to remove all or any portion of the Communication Facility from time to time in Licensee's sole discretion and without Licensor's consent.

**27. Warranties.**

**A. Licensor Warranties.** Licensor represents, warrants and agrees that: (i) Licensor solely owns the Licensor's Real Property in fee simple; (ii) to the best of Licensor's knowledge, the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements (collectively "**Encumbrances**") not of record which would cause Interference with Licensee's Permitted Use as defined in Section 2 of this Agreement, or materially and adversely affect the rights expressly granted or conferred by Licensor to Licensee pursuant to this Agreement as such rights related to Licensee's access or utilities; (iii) after the Effective Date the Property will not be encumbered with any Encumbrances of record or not of record which would cause Interference with Licensee's Permitted Use or materially and adversely affect the rights expressly granted or conferred by Licensor to Licensee pursuant to this Agreement as such rights relate to Licensee's access or utilities; (iv) as long as Licensee is not in default beyond any applicable notice and cure period, then Licensor grants to Licensee sole, actual, quiet and peaceful use, enjoyment and possession of the Premises as consistent with Exhibit B; (v) the Prior T-Mobile Agreements provided by Licensor to Licensee prior to the Effective Date constitute the entire agreement between Licensor and T-Mobile at Licensor's Real Property, and there are no written or oral amendments thereto.

**B. Licensee Warranties.** Licensee represents, warrants and agrees that prior to the Effective Date, Licensee has expressed to Licensor and Licensee represents that it has expressed to T-Mobile the willingness of Licensee to enter into a Collocation Agreement with T-Mobile on terms and conditions which Licensee would have the right to solely determine, and which Collocation Agreement if concluded between Licensee and T-Mobile would grant to T-Mobile the right to collocate its communication equipment onto a portion of the Communication Facility in a manner approved by Licensee. Licensee represents, warrants and agrees that the Final Plan Set and Licensee's subsequent construction improvement plans for provisioning of fiber to the Communication Facility will be designed to accommodate at least one (1) communications service provider in addition to Licensee, and which communications service provider would initially be T-Mobile provided that Licensee and T-Mobile enter into a Collocation Agreement.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the last date written below.

LICENSOR

City of Martinez,  
a municipal corporation

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

Print: \_\_\_\_\_

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

Date: \_\_\_\_\_, 2015

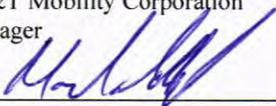
Approved as to form:

\_\_\_\_\_  
Assistant City Attorney  
City of Martinez

LICENSEE

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

By: AT&T Mobility Corporation  
Its: Manager

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

Print: **Michael Gulbord** \_\_\_\_\_  
**Director**

Title: **Construction & Engineering** \_\_\_\_\_

Date: **2-10** \_\_\_\_\_, 2015

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING TWO (2) PAGES]

**LICENSOR ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

**LICENSEE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Contra Costa )

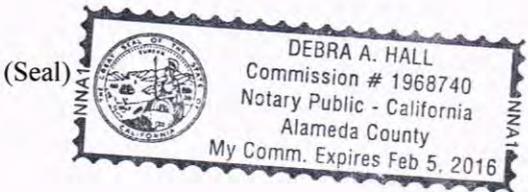
On February 10, 2015 before me, Debra A Hall Notary Public  
(insert name and title of the officer)

personally appeared Michael Guibard,  
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 Debra A Hall



**EXHIBIT A**

**DESCRIPTION OF LICENSOR'S REAL PROPERTY**

Page 1 of 1

to the Site License Agreement dated \_\_\_\_\_, 2015, by and between The City of Martinez, a municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

**Licensor's Real Property is legally described as follows:**

BEGINNING AT THE NORTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM CLARA NETHERTON TO THE HOUSING AUTHORITY OF THE COUNTY OF CONTRA COSTA, FILED DECEMBER 31, 1941 IN VOLUME 627 AT PAGE 482 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF CONTRA COSTA COUNTY, CALIFORNIA; THENCE FROM SAID POINT OF BEGINNING, ALONG THE EAST LINE OF SAID HOUSING AUTHORITY PARCEL SOUTH 220.00 FEET; THENCE LEAVING SAID EAST LINE, SOUTH 89° 05' 15" WEST 220.00 FEET; THENCE NORTH 220.00 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID PARCEL; THENCE ALONG SAID NORTH LINE NORTH 89° 05' 15" EAST 220.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

**APN: 376-010-005-1**

**EXHIBIT B**

**DESCRIPTION OF PREMISES**

Page 1 of 7

to the Site License Agreement dated \_\_\_\_\_, 2015, by and between The City of Martinez, a municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

**The Premises are described and/or depicted as follows:**

[Plan Set Dated July 8, 2014 Created by Jeffrey Rome Associates Consisting of Twenty-Two (22) Pages Has Been Delivered To Licensor Prior To The Effective Date (“**Final Plan Set**”). Sheets T-1, C-1, A-0, A-1, A-1.1 and A-2 from the Final Plan Set appear on following page]

**Notes:**

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY LICENSEE.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY’S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.



# at&t

## CCU0249

# HARBOR VIEW WATER TANK 2380 HARBOR VIEW DRIVE MARTINEZ, CALIFORNIA 94553

## SPECIAL INSPECTIONS

|      |  |      |   |
|------|--|------|---|
| 1    | CONCRETE   | 13.1 | VERIFY SOIL CONDITIONS ARE SUBSTANTIALLY IN CONFORMANCE WITH THE SOIL INVESTIGATION REPORT  |
| 2    | BOLTS INSTALLED IN CONCRETE  | 13.2 | VERIFY THAT FOUNDATION EXCAVATIONS EXTEND TO PROPER DEPTH AND BEARING STRATA  |
| 3    | CONCRETE MOMENT-RESISTING SPACE FRAME  | 13.3 | PROVIDE SOIL COMPACTION TEST RESULTS, DEPTH OF PROPER DEPTH AND BEARING STRATA  |
| 4    | REINFORCING STEEL AND PRESTRESSING STEEL   | 13.4 | FILL, REGRADE DENSITY, BEARING VALUES EXPANSION INDEX, RECOMMENDATIONS FOR FOUNDATIONS, ON-GRADE FLOOR SLAB DESIGN FOR EACH BUILDING SITE |
| 5    | ALL STRUCTURAL WELDING   |      |   |
| 5.1  | WELDING QUALITY CONTROL  |      |   |
| 5.2  | WELDING QUALITY CONTROL  |      |   |
| 5.3  | WELDING QUALITY CONTROL  |      |   |
| 6    | HIGH-STRENGTH BOLTING  |      |   |
| 7    | STRUCTURAL MASONRY   |      |   |
| 8    | REINFORCED GYPSUM CONCRETE   |      |   |
| 9    | INSULATING CONCRETE FILL   |      |   |
| 10   | SPRAY-APPLIED FIREPROOFING   |      |   |
| 11   | DEEP FOUNDATIONS (PILING, DRILLED & CAISSONS)  |      |   |
| 12   | SHOTCRETE  |      |   |
| 13.1 | VERIFY SOIL CONDITIONS ARE SUBSTANTIALLY IN CONFORMANCE WITH THE SOIL INVESTIGATION REPORT |      |   |
| 13.2 | VERIFY THAT FOUNDATION EXCAVATIONS EXTEND TO PROPER DEPTH AND BEARING STRATA               |      |   |
| 17   | HILTI KWIK BOLT TZ (ESP-1817)  |      |   |

## VICINITY MAP



MARTINEZ

DRIVING DIRECTIONS: FROM AT&T OFFICE @ 2600 CAMINO RAMON, SAN RAMON, CA. TURN RIGHT ONTO BOLLINGER CANYON ROAD, MERGE ONTO I-680 N VIA THE RAMP TO SACRAMENTO, TAKE THE EXIT ONTO CA-4 W TOWARD MARTINEZ/HERCULES. TAKE THE ALTERNATE TURN RIGHT ONTO SHILOH AVENUE, TURN RIGHT ONTO HARBOUR VIEW DRIVE. DESTINATION WILL BE ON THE RIGHT.

## CONSULTANT TEAM

**CLIENTS REPRESENTATIVE:**  
**ERICSSON INC.**  
 6140 STONERIDGE WALL ROAD  
 SUITE 366  
 PLEASANTON, CALIFORNIA 94588

**CONSTRUCTION MANAGER:**  
 TODD MERRILL  
 PHONE: (530) 605-5765

**SMARTLINK, LLC**  
 14432 SE EASTGATE WAY  
 SUITE: 260  
 BELLEVUE, WASHINGTON 98007  
 PHONE: (425) 274-4444  
 FAX: (425) 274-4449

**SITE ACQUISITION & ZONING:**  
 DAVID SNIPES  
 PHONE: (925) 519-5081

**ARCHITECT:**  
**JEFFREY ROME AND ASSOCIATES**  
 131 INNOVATION DRIVE  
 SUITE: 100  
 NEWPORT BEACH, CALIFORNIA 92860  
 PHONE: (702) 324-4338  
 FAX: (949) 760-3931  
**CONTACT: ROBIN NELSON**

**LAND SURVEYOR:**  
**CAL VALD SURVEYING, INC.**  
 411 JENNINS CIRCLE, SUITE 205  
 CORONA, CALIFORNIA 92880  
 PHONE: (951) 280-9960  
 FAX: (951) 280-9746  
**CONTACT: RAMON GONZALEZ**

**ELECTRICAL ENGINEER:**  
**CT ENGINEERING GROUP**  
 14321 PLEASANT STREET  
 GARDEN GROVE, CALIFORNIA 92843  
 PHONE: (714) 249-3501  
 FAX: (714) 531-3645  
**CONTACT: CHAU TANG**

## DEVELOPMENT SUMMARY

**APPLICANT:**  
 AT&T MOBILITY  
 2600 CAMINO RAMON, 4TH FLOOR, WEST WING  
 SAN RAMON, CALIFORNIA 94583

**PROPERTY OWNER:**  
 CITY OF MARTINEZ  
 525 HENRETTA STREET  
 MARTINEZ, CALIFORNIA 94553  
**CONTACT: ALEX STROUP**  
 PHONE: (925) 372-3589

**PROJECT ADDRESS:**  
 2380 HARBOR VIEW DRIVE  
 MARTINEZ, CALIFORNIA 94553

**OTHER ON-SITE TELECOM FACILITIES:**  
 T-MOBILE

**ASSESSORS PARCEL NUMBER:**  
 376-010-005

**LATITUDE:**  
 38° 00' 09.69" N

**LONGITUDE:**  
 122° 07' 32.17" W

**LAT/LONG TYPE:**  
 NAD-83

**GROUND ELEVATION:**  
 236.0' AMSL

**EXISTING ZONING:**  
 GENERAL COMMERCIAL

**PROPOSED PROJECT AREA:**  
 670 SQUARE FEET

**PROPOSED TYPE OF CONSTRUCTION:**  
 U

**PROPOSED OCCUPANCY:**  
 NOT APPLICABLE

**EXISTING OCCUPANCY:**  
 CITY OF MARTINEZ

**JURISDICTION:**  
 CONTRA COSTA COUNTY

## PROJECT DESCRIPTION

AT&T MOBILITY PROPOSES TO CONSTRUCT, OPERATE AND MAINTAIN AN UNMANNED WIRELESS COMMUNICATIONS FACILITY. THIS FACILITY WILL CONSIST OF THE FOLLOWING:

- INSTALL (12) PROPOSED AT&T ANTENNAS MOUNTED ON PROPOSED 85'-0" TALL MONOPOLE.
- INSTALL (18) LINES OF 7/8" COAXIAL CABLE, (24) FIBER OPTIC RUNS, (24) DC POWER RUNS, (6) LTE RRUS-11, (15) UMS RRUS-11 AND (6) TMA'S.
- INSTALL 85'-0" TALL MONOPOLE WITHIN A PROPOSED 36'X15' SHARED CMU ENCLOSURE.
- INSTALL AT&T OUTDOOR EQUIPMENT WITHIN A 8'-8" TALL CMU ENCLOSURE.
- UNDERGROUND UTILITY RUNS FOR ELECTRICAL AND TELEPHONE TO LEASE AREA.
- INSTALL CITY OF MARTINEZ ANTENNA TO MONOPOLE.

## LEGAL DESCRIPTION

BEGINNING AT THE NORTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM CLARA NEITHERTON TO THE HOUSING AUTHORITY OF THE COUNTY OF CONTRA COSTA, FILED DECEMBER 31, 1941 IN VOLUME 627 AT PAGE 482 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER.

-LONG SAID NORTH LINE NORTH 89°05'15" EAST  
 200.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

## SHEET INDEX

|       |   |
|-------|---|
| T-1   | TITLE SHEET   |
| T-2   | SPECIFICATIONS AND NOTES                                |
| T-3   | ABBREVIATIONS AND SYMBOLS                               |
| C-1   | SITE SURVEY (FOR REFERENCE ONLY)                        |
| A-0   | OVERALL SITE PLAN                                       |
| A-1   | ENLARGE SITE PLAN                                       |
| A-1.1 | EQUIPMENT LAYOUT PLAN & ANTENNA LAYOUT PLAN             |
| A-2   | SOUTH ELEVATION   |
| A-3   | NORTH ELEVATION   |
| A-4   | WEST ELEVATION  |
| A-5   | EAST ELEVATION  |
| A-6   | AT&T OUTDOOR EQUIPMENT & ANTENNA DETAILS                |
| A-7   | AT&T OUTDOOR EQUIPMENT                                  |
| A-8   | RRU DETAILS   |
| A-9   | FOUNDATION PLAN & CMU WALL DETAILS                      |
| A-10  | RETRAINING WALL DETAIL                                  |
| A-11  | DETAILS   |
| A-12  | RF SIGNAGE  |
| A-13  | ELECTRICAL SITE PLAN & GENERAL NOTES                    |
| E-1   | GROUNDING DETAILS, PANEL SCHEDULE & SINGLE LINE DIAGRAM |
| E-2   | GROUNDING PLAN & DETAILS                                |
| E-3   |   |

## APPLICABLE CODES

ALL WORK SHALL COMPLY WITH THE FOLLOWING APPLICABLE CODES:

2013 CALIFORNIA BUILDING CODE AND LOCAL AMENDMENTS  
 2013 CALIFORNIA MECHANICAL CODE AND LOCAL AMENDMENTS  
 2013 CALIFORNIA ELECTRICAL CODE AND LOCAL AMENDMENTS  
 2013 CALIFORNIA FIRE CODE AND LOCAL AMENDMENTS  
 2013 CALIFORNIA ENERGY CODE  
 2013 CALIFORNIA FIRE CODE AND LOCAL AMENDMENTS  
 2013 CALIFORNIA ENERGY CODE  
 2013 REFERENCED STANDARD CODE

IN THE EVENT OF CONFLICT, THE MOST RESTRICTIVE CODE SHALL PREVAIL.

## ACCESSIBILITY DISCLAIMER

THIS PROJECT IS AN UNOCCUPIED WIRELESS TELECOMMUNICATIONS FACILITY IS EXEMPT FROM DISABLED ACCESS REQUIREMENTS.

## SCALE

THE DRAWING SCALES SHOWN IN THIS SET REPRESENT THE CORRECT SCALE ONLY WHEN THESE DRAWINGS ARE PRINTED IN A 24"X36" FORMAT. IF THIS DRAWING SET IS NOT 24"X36", THIS SET IS NOT TO SCALE.

TITLE SHEET

T-1



**Jeffrey Rome | ASSOCIATES**  
 architecture | telecommunications  
 131 Innovation Drive, Suite 100  
 Irvine, California 92617  
 tel 949.760.3929 | fax 949.760.3931

### PROPRIETARY INFORMATION

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT SET FORTH HEREIN IS STRICTLY PROHIBITED.

STAMP



PREPARED FOR



2600 Camino Ramon, 4th Floor, West Wing  
 San Ramon, California 94583

APPROVALS

|                           |      |
|---------------------------|------|
| R.F. ENGINEER             | DATE |
| SITE ACQ AND ZONING       | DATE |
| ERICSSON CM               | DATE |
| AT&T CONSTRUCTION MANAGER | DATE |
| OWNER APPROVAL            | DATE |

**PROJECT NAME**  
**HARBOR VIEW**  
**WATER TANK**  
**PROJECT NUMBER**  
**CCU0249**

2380 HARBOR VIEW DRIVE  
 MARTINEZ, CALIFORNIA 94553  
 CONTRA COSTA COUNTY

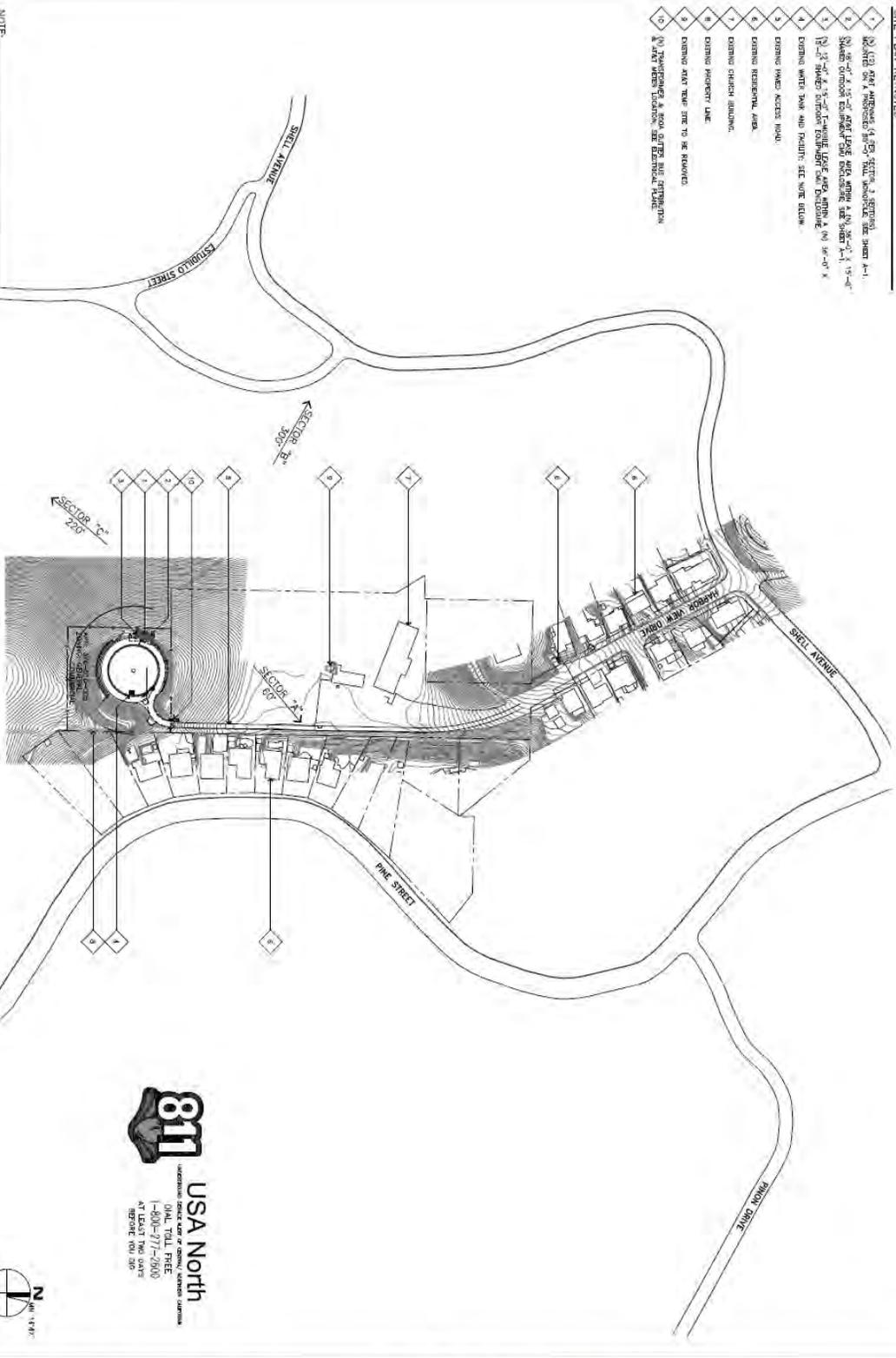
|               |                     |      |
|---------------|---------------------|------|
| PROJECT TYPE: | RE-LO               |      |
| DRAWING DATES | AS                  |      |
| DRAWN BY:     | JS                  |      |
| CHECKED BY:   | RN                  |      |
| DATE          | DESCRIPTION         | REV. |
| 01/14/14      | 90% CDS             | A    |
| 02/10/14      | 100% CDS            | 0    |
| 02/20/14      | REVISED CDS         | 1    |
| 02/26/14      | REVISED CDS         | 2    |
| 04/07/14      | CLIENT COMMENTS     | 3    |
| 07/08/14      | PLAN/CHECK COMMENTS | 4    |
| 08/13/14      | PLAN/CHECK COMMENTS | 5    |
| 01/14/15      | CLIENT COMMENTS     | 6    |

RFDS: REVISION LEVEL 1.0  
 SHEET TITLE



**OVERALL SITE PLAN**

NOTE:  
ALL EXISTING CONDITIONS SHOWN SUBJECT TO CITY OF SAN DIEGO HEALTH DEPARTMENT  
REVISIONS/REVISIONS PROJECT SHEET 02/04/2013



- SITE PLAN REVISIONS**
1. (N) (1)2' ASPT IMPROVED 4' DIA. SECTOR A SECTIONS
  2. (N) (1)2' ASPT IMPROVED 4' DIA. SECTOR B SECTIONS
  3. (N) (1)2' ASPT IMPROVED 4' DIA. SECTOR C SECTIONS
  4. (N) (1)2' ASPT IMPROVED 4' DIA. SECTIONS
  5. (N) (1)2' ASPT IMPROVED 4' DIA. SECTIONS
  6. (N) (1)2' ASPT IMPROVED 4' DIA. SECTIONS
  7. (N) (1)2' ASPT IMPROVED 4' DIA. SECTIONS
  8. (N) (1)2' ASPT IMPROVED 4' DIA. SECTIONS
  9. (N) (1)2' ASPT IMPROVED 4' DIA. SECTIONS
  10. (N) (1)2' ASPT IMPROVED 4' DIA. SECTIONS

**811 USA North**  
 OPERATIONAL SERVICE CENTER FOR CALIFORNIA, ALABAMA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN, WYOMING

DIAL TOLL FREE  
 1-800-777-7900  
 AT LEAST TWO DAYS  
 BEFORE YOU DIG

SCALE: 1" = 100'

0 25 50 100'

1

|   |   |  |   |
|---|---|--|---|
| <p>PROJECT NO. 2000</p>   |   | <p>PROFESSIONAL ENGINEER<br/>         CIVIL ENGINEERING<br/>         STATE OF CALIFORNIA<br/>         NO. 10000</p>  |   |
| <p>PROJECT NAME<br/> <b>HARBOR VIEW WATER TANK</b></p> <p>PROJECT NUMBER<br/> <b>CC010249</b></p> <p>3000 Capital Square, 4th Floor, Suite 400<br/>         San Diego, California 92161</p> |   | <p>PROFESSIONAL INFORMATION</p> <p>THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF AT&amp;T. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF AT&amp;T.</p> |   |
| <p>DATE: 02/04/14</p> <p>REVISION: 001</p> <p>DATE: 02/04/14</p> <p>REVISION: 002</p> <p>DATE: 02/04/14</p> <p>REVISION: 003</p> <p>DATE: 02/04/14</p> <p>REVISION: 004</p>                 | <p>DATE: 02/04/14</p> <p>REVISION: 001</p> <p>DATE: 02/04/14</p> <p>REVISION: 002</p> <p>DATE: 02/04/14</p> <p>REVISION: 003</p> <p>DATE: 02/04/14</p> <p>REVISION: 004</p> | <p>DATE: 02/04/14</p> <p>REVISION: 001</p> <p>DATE: 02/04/14</p> <p>REVISION: 002</p> <p>DATE: 02/04/14</p> <p>REVISION: 003</p> <p>DATE: 02/04/14</p> <p>REVISION: 004</p>  | <p>DATE: 02/04/14</p> <p>REVISION: 001</p> <p>DATE: 02/04/14</p> <p>REVISION: 002</p> <p>DATE: 02/04/14</p> <p>REVISION: 003</p> <p>DATE: 02/04/14</p> <p>REVISION: 004</p> |



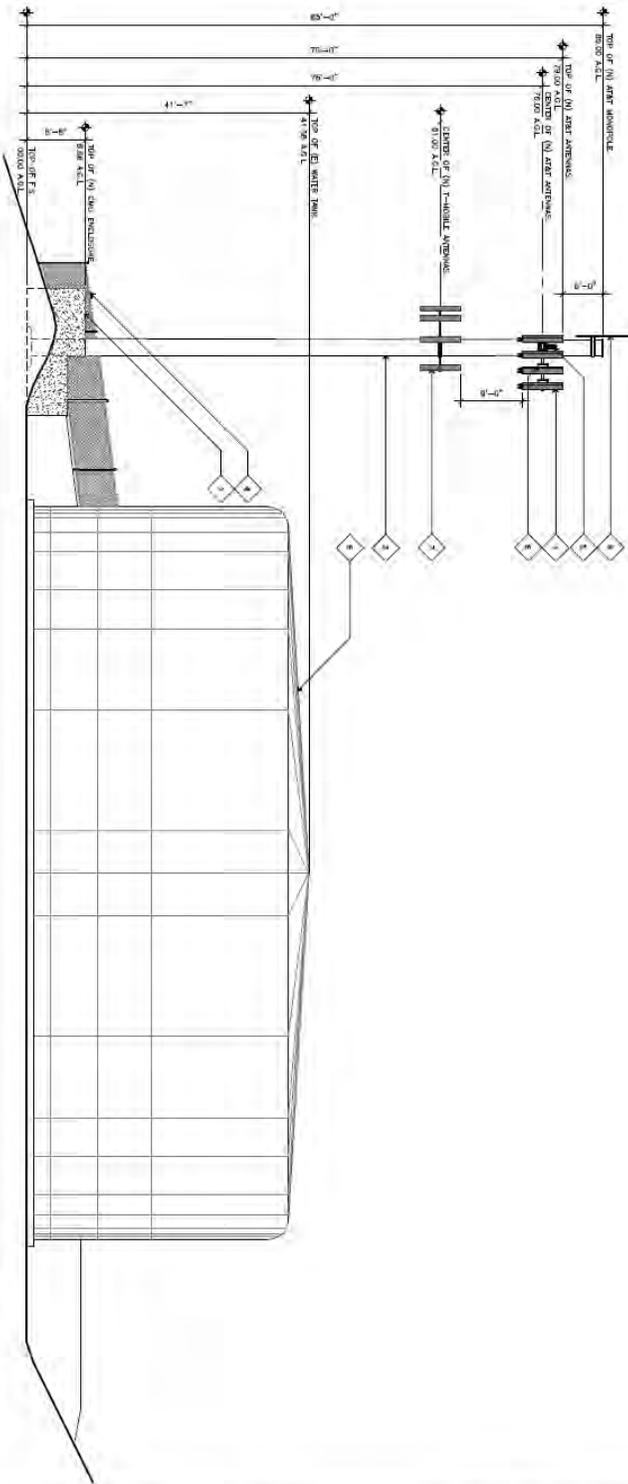


ELEVATION NOTES

- 1 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS
- 2 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS
- 3 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS
- 4 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS
- 5 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS
- 6 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS
- 7 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS
- 8 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS
- 9 (N) (U) NOT ANTENNAS (U) ARE SERVICED BY OTHERS

NOTE

ALL DIMENSIONS SHOWN HEREIN ARE TO FACE UNLESS OTHERWISE NOTED



SOUTH ELEVATION

SCALE: 1/8"=1'-0"

|   |  |
|---|--|
|   |  |
| PROJECT NAME: HARBOR VIEW WATER TANK<br>PROJECT NUMBER: CC100249<br>PROJECT TYPE: RE-LO |  |
| DESIGNER: [Firm Name]<br>DATE: [Date]   |  |
| CHECKED BY: [Name]<br>DATE: [Date]  |  |
| DRAWN BY: [Name]<br>DATE: [Date]  |  |
| SHEET TITLE: SOUTH ELEVATION  |  |
| SHEET NUMBER: A-2   |  |

## **Exhibit “C”**

### **Approved Operations**

#### **Licensee’s Approved Equipment**

- (15’ X 36’) shared CMU Equipment enclosure
- (2) - UMTS Purcell Outdoor Cabinets
- (1) - LTE Outdoor Purcell Cabinet
- (2) - RBA72 Outdoor Power & Battery Cabinets
- (1) - GPS mounted to equipment cabinet
- (1) - Emerson electrical panel, Telco alarm cabinet, Ciene and UAM mounted to a H - frame
  
- (85’) - Monopole w/ (12) Panel Antennas on (3) sectors
- (18) - lines of 7/8” coax
- (24) - fiber optic runs
- (24) - DC Power runs
- (1) - DC Surge suppressor
- (6) - LTE RRUS
- (6) - TMA’s
- (9) - UMTS RRUS-11

#### **Licensor’s Approved Equipment**

1 Omni Antenna located at the top of monopole

All Ancillary equipment necessary to conduct telecommunication services

#### **Process for Licensor to Add or Modify Licensor’s Antenna on Tower**

- Application with Licensee shall be submitted with proposed modifications and reasonable evidence that the proposed modifications will not cause Interference with the operation of Licensee’s then Approved Operations.
- Licensee will provide Licensor with a purchase order request and will run a structural analysis at the cost of Licensor.
- Upon passing structural analysis, Licensor must obtain appropriate zoning approval/building permit for the modifications.

## EXHIBIT D

### LICENSEE'S ACCESS SCHEDULE

Page 1 of 1

to the Site License Agreement dated \_\_\_\_\_, 2015, by and between The City of Martinez, a municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

1. Licensee must provide in advance a current list of individuals that are authorized to access the site, and a current list of individuals that are authorized to place the notification phone calls. These lists will be provided to the Martinez Water System and Martinez Police Department and kept on file, and updated as necessary based on input from Licensee.
2. For routine work during the weekday business hours of 7 a.m. to 4 p.m., a 24 hour notice to the Martinez Water System at the pre-designated number is needed. If no one answers this line, it is acceptable to leave a message that includes the name of person calling; the name(s) of person(s) accessing the site; the date/time of requested access; and expected duration of work.
3. For emergency work, call the Water System pre-designated number; if no one answers, wait 5 minutes and attempt a 2<sup>nd</sup> time. If still no answer, call the pre-designated number for the Water Superintendent.
4. In all cases, routine or emergent, the Martinez Police Department must be contacted at (925) 372-3440 by an authorized individual just prior to the site being accessed.

**EXHIBIT E**

**MEMORANDUM OF LICENSE**

**[FOLLOWS ON NEXT PAGE]**

**MEMORANDUM OF LICENSE**

**Recording Requested By  
& When Recorded Return To:**

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
575 Morosgo Drive NE  
Suite 13F, West Tower  
Atlanta, GA 30324

**APN: 376-010-005-1**

---

(Space Above This Line For Recorder’s Use Only)

**Cell Site Number: CCU0249**  
**Search Ring Name: Harbor View Water Tank**  
**Cell Site Name: Harbor View Water Tank (CA)**  
Fixed Asset Number: 12798111  
State: California  
**County: Contra Costa**

**MEMORANDUM  
OF  
LICENSE**

This Memorandum of License is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between The City of Martinez, a municipal corporation, having a mailing address of 525 Henrietta Street, Martinez, CA 94553 (hereinafter referred to as “**Licensor**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Suite 13F, West Tower, Atlanta, GA 30324 (hereinafter referred to as “**Licensee**”).

1. Licensor and Licensee entered into a certain Site License Agreement (“**Agreement**”) on the \_\_\_\_ day of \_\_\_\_\_, 2015, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be ten (10) years commencing on the Commencement Date of the Agreement, with two (2) successive five (5) year options to renew.
3. The portion of the land being licensed to Licensee and associated easements are described in **Exhibit 1** annexed hereto.
4. This Memorandum of License is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of License and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of License as of the day and year first above written.

LICENSOR

City of Martinez,  
a municipal corporation

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

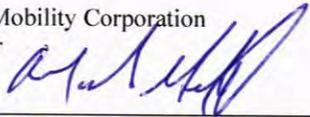
Print: \_\_\_\_\_

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

Date: \_\_\_\_\_, 2015

LICENSEE

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

By: AT&T Mobility Corporation  
Its: Manager 

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

Print: **Michael Gulbord**

Title: **Director**  
**Construction & Engineering**

Date: \_\_\_\_\_, 2015

*2-10-15*

**[ACKNOWLEDGMENTS APPEAR ON FOLLOWING TWO (2) PAGES]**

**LICENSOR ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

**LICENSEE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Contra Costa

On February 10, 2015 before me, Debra A Hall - Notary Public  
(insert name and title of the officer)

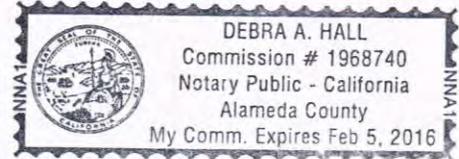
personally appeared Michael Swibord  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their 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 Debra A Hall

(Seal)



**EXHIBIT 1**

**DESCRIPTION OF PREMISES**

Page 1 of 2

to the Memorandum of License dated \_\_\_\_\_, 2015, by and between The City of Martinez, a municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

**Licensor's Real Property is legally described as follows:**

BEGINNING AT THE NORTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM CLARA NETHERTON TO THE HOUSING AUTHORITY OF THE COUNTY OF CONTRA COSTA, FILED DECEMBER 31, 1941 IN VOLUME 627 AT PAGE 482 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF CONTRA COSTA COUNTY, CALIFORNIA; THENCE FROM SAID POINT OF BEGINNING, ALONG THE EAST LINE OF SAID HOUSING AUTHORITY PARCEL SOUTH 220.00 FEET; THENCE LEAVING SAID EAST LINE, SOUTH 89° 05' 15" WEST 220.00 FEET; THENCE NORTH 220.00 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID PARCEL; THENCE ALONG SAID NORTH LINE NORTH 89° 05' 15" EAST 220.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

**APN: 376-010-005-1**

**The Premises are described and/or depicted as follows:**

[One (1) Page Depiction of the Premises Suitable for Recording in Contra Costa County  
Appears on Following Page]

