CITY OF MARTINEZ **CITY COUNCIL AGENDA**
May 20, 2015

TO: Mayor and City Council

FROM: Michael Chandler, Senior Management Analyst

SUBJECT: First Amendment to Reservoir Property Vacation Agreement with T-Mobile West, LLC

DATE: May 14, 2015

RECOMMENDATION:

Motion authorizing the City Manager to execute a First Amendment to Agreement with T-Mobile West, LLC ("T-Mobile") for Vacation of Reservoir Property During Construction.

BACKGROUND:

The City and Pacific Bell Mobile Services ("Pacific Bell") entered into a lease agreement on May 30, 1996 which allowed Pacific Bell to construct, maintain and operate a telecommunications facility on the City's Harborview Reservoir Site for a total period of 30 years (initial 5-year term plus 5 successive 5-year renewal terms). Cingular Wireless, LLC ("Cingular") acquired the lease soon thereafter and maintained those rights until ultimately T-Mobile acquired the lease agreement via its transaction with Cingular in 2004.

The Harborview Reservoir site was in need of major reconstruction for several years to repair its aging infrastructure and the City began bidding the capital improvement project for demolition and reconstruction of the site in early 2014. New site applicant AT&T proposed constructing a facility on the premises following reconstruction that would serve as a "collocation facility," which would afford T-Mobile space 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.

In April 2014, the City Council approved an Agreement for Vacation of Reservoir Property During Construction ("Vacation Agreement") between the City and T-Mobile with 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 agreement was a provision requiring the City to pay T-Mobile $150K in the event an agreement for the construction and operation of the collocation facility was not entered into between the City and AT&T by the time the reconstruction project was completed. Other terms of the 2014 agreement with T-Mobile required 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.

The City and AT&T finalized a Site License Agreement between the parties, which was adopted by the City Council on February 18, 2015. AT&T and T-Mobile have not yet reached terms on their collocation agreement and as a result, T-Mobile has indicated to the City it is not willing to execute a First Amendment to Lease by May 31, 2015, as required by the Vacation Agreement. The parties have therefore agreed to amend the Vacation Agreement to afford additional time until July 15, 2015, to complete the First Amendment to Lease.

FISCAL IMPACT:

No fiscal impact.

ACTION:

Motion authorizing the City Manager to execute a First Amendment to Agreement with T-Mobile West, LLC for Vacation of Reservoir Property During Construction.

Attachments:
First Amendment to Vacation Agreement
Agreement for Vacation of Reservoir Property During Construction

APPROVED BY: Rob Braulik
Rob Braulik, City Manager

Attachment 1

FIRST AMENDMENT TO AGREEMENT BETWEEN CITY OF MARTINEZ AND T-MOBILE FOR VACATION OF RESERVOIR PROPERTY DURING CONSTRUCTION

This First Amendment to Vacation Agreement ("First Amendment") is made by and between CITY OF MARTINEZ ("CITY"), a municipal entity, and T-MOBILE WEST LLC, a Delaware limited liability company ("T-MOBILE"), on this 20th day of May, 2015.

RECITALS

A. T-MOBILE leases the CITY's Property that is described in Exhibit "A" to that "Communications Site Lease Agreement" dated May 30, 1996, for mobile wireless communications purposes. Pursuant to the Lease, T-MOBILE has the right to remain on some portion of the Property for approximately eleven (11) more years from the date of this Agreement.

B. On April 14, 2014, the parties to this First Amendment entered into that certain "Agreement Between City of Martinez and T-Mobile for Vacation of Reservoir Property During Construction" ("Vacation Agreement") under which terms and conditions the CITY agreed that it would perform construction at the Property and enter into an agreement with another wireless provider to allow the construction of a wireless collocation facility on which T-MOBILE would be given the opportunity to collocate and resume operations under the Lease.

C. Section 6 of the Vacation Agreement included the terms that: 1) the Lease would be amended to substitute the location that T-Mobile will occupy under the Lease for the description of the leased premises set forth by, or incorporated into, the Lease; 2) the term of the Lease would be extended one additional 5-year renewal period; and 3) all other terms and conditions of the Lease would remain unmodified.

D. Section 6 of the Vacation Agreement also provided that the Lease amendment described by Recital C would be executed by the parties no later than May 31, 2015.

E. On or about February 18, 2015, the CITY entered into a Site License Agreement, under which terms and conditions New Cingular Wireless, LLC ("AT&T") was given permission to use the Property for the construction and operation of a wireless collocation facility.

F. At this time T-MOBILE and AT&T are in the process of preparing a wireless communications site plan that would designate the location of specific equipment and facilities that would belong to T-MOBILE and be placed on the Property in tandem with the construction of the collocation facility ("T-MOBILE SITE PLAN"). Upon completion of construction, T-MOBILE would operate on the Property under the terms and conditions of the Lease and Vacation Agreement in the area shown by the T-MOBILE SITE PLAN to be solely for T-MOBILE's use.

G. At this time the parties anticipate that the T-MOBILE SITE PLAN will be completed and approved by no later than July 15, 2015. Upon the completion of the T-MOBILE SITE PLAN, it is the parties' intent to execute an amendment to the Lease that would substitute the location that T-Mobile will occupy under the Lease by replacing the description of the leased premises set forth by, or incorporated into, the Lease with the area shown by the T-MOBILE SITE PLAN to be solely for T-MOBILE's use.

H. The parties now wish to set forth their mutual understandings, covenants and agreements as set forth below.

NOW, THEREFORE, the parties hereto agree to enter into this First Amendment with the following terms:

1. The second sentence of Section 6 is hereby deleted and is replaced as follows:

"The parties agree that by no later than July 15, 2015, they shall execute an amendment to the Lease ("Amendment") that modifies the exhibits and/or description of the wireless communication facilities and the location of the wireless facilities on the Property to conform the Lease with the T-MOBILE SITE PLAN."

2. Except as amended or modified herein, the Vacation Agreement shall remain in full force and effect on the same terms and conditions as originally stated.

3. Each party represents and warrants that said party has full power and authority, and the person(s) executing this First Amendment have full power and authority, to execute and deliver this First Amendment, and that this First Amendment constitutes a valid and binding obligation of each party, enforceable in accordance with its terms. This First Amendment shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

4. This First Amendment, the Vacation Agreement and the Lease, constitutes the entire agreement and understanding between the parties regarding the subject matter contained herein and supersedes all offers, negotiations, and other agreements concerning same. Except as provided in this First Amendment, each and every term, condition and agreement contained in the Vacation Agreement will remain in full force and effect.

5. This First Amendment shall be governed and construed in accordance with the laws of the State of California. Venue shall be in the County of Contra Costa.

6. The parties acknowledge and agree that each of the parties has been represented by counsel and that each of the parties has participated in the negotiation and drafting of this First Amendment. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this First Amendment 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 First Amendment.

7. This First Amendment may be executed in counterparts.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF MARTINEZ

By:_____

Print:_____

Title:_____

Date: _____

T-MOBILE WEST LLC, a Delaware limited liability company

By:_____

Print:_____

Title:_____

Date: _____

AGREEMENT BETWEEN CITY OF MARTINEZ AND T-MOBILE FOR VACATION OF RESERVOIR PROPERTY DURING CONSTRUCTION

This Agreement is made on this 14th day of April, 2014 ("Effective Date"), by and between CITY OF MARTINEZ ("CITY"), a municipal entity, and T-MOBILE WEST LLC, a Delaware limited liability company ("T-MOBILE").

RECITALS

A. T-MOBILE currently owns and operates wireless communications facilities on a property with an aging water reservoir facility which is owned by the CITY and is identified as Contra Costa County Assessor's Parcel Number 376-010-005 ("Property").

B. T-MOBILE occupies that portion of the Property that is identified in Exhibit "B" to that certain Communications Site Lease Agreement, dated May 30, 1996 ("Lease"), subject to which conditions T-MOBILE leases from the CITY the Property for wireless communications purposes. Pursuant to the Lease, T-MOBILE has the right to remain on the Property for approximately twelve (12) more years from the date of this Agreement.

C. The CITY has determined that the water reservoir facility on the Property is in immediate need of being removed from the Property due to health and safety concerns.

D. At the request of the CITY, and subject to the terms and conditions herein, and for the consideration set forth herein, T-MOBILE has agreed to relocate its wireless communications facility to a temporary location and subsequently a permanent location. The CITY will commence construction on the Property to demolish the water tank and rebuild the reservoir and that portion of the Property where T-MOBILE's wireless facilities are located (the "Project"). That construction will entail the necessary removal of the wireless facilities and vacation of T-MOBILE from the Property until such time as the Project is fully completed and accepted by the CITY.

E. The period during which the Project is anticipated to continue until it is accepted by the CITY is roughly and generally estimated to be 12 to 18 months commencing on April 16, 2014 (hereafter referred to as the "Construction Period"), but cannot be known with certainty at the time of the drafting of this Agreement.

F. As a result of the inability of T-MOBILE to use the Property in the manner contemplated by the Lease, T-MOBILE shall incur costs generally for its removal, temporary operations off the Property, and anticipated relocation onto the Property in an amount that has been partially incurred and cannot be fully known at this time.

G. In order for the CITY to redress the costs being claimed by T-MOBILE and go forward with the Project at the same time, T-MOBILE will need to fully and finally release the CITY of any and all legal claims related to the inability of T-MOBILE to

occupy and use the Property as described by the Lease during the Construction Period.

H. AT&T has proposed in concept the construction of a permanent wireless communications facility on the Property after the Project has been completed to both the CITY and T-MOBILE. The proposal is to collocate T-MOBILE and AT&T at the permanent facility on the Property. It is the parties' intent at this time that they each enter into an agreement with AT&T subsequent to the date of this Agreement that would help implement this proposal. However, as of the date of this Agreement neither the CITY nor T-MOBILE has made any warranty or assurance to the other that they will enter into such agreement with AT&T, nor has AT&T agreed to enter into such agreement with CITY or T-MOBILE.

I. As material consideration for T-MOBILE voluntarily relocating its wireless communications facility to a temporary site and subsequently a permanent site on the Property, CITY will need to fully and finally release T-MOBILE from any and all legal claims arising out of or related to T-MOBILE's performance under the Lease prior to the Effective Date and during the Construction Period.

I. The parties now wish to set forth their mutual understandings, covenants and agreements as set forth below.

NOW, THEREFORE, the parties hereto agree as follows:

1. By no later than 5:00 PDT, April 15, 2014, T-MOBILE shall remove all of its wireless facilities, equipment, materials, belongings, personal property, or other objects owned by T-MOBILE, by whatever name they may be known. No structures, equipment, antennas, facilities, machinery, materials, no matter whether they are fixed or attached to the Property or fully or partially detached from the Property, shall be allowed to remain on the Property after that date. Any object, belonging, or fixture continuing to remain on the Property after that date shall become the property of the CITY and may be immediately destroyed without notice to T-MOBILE at CITY's sole cost and expense. T-MOBILE shall be entitled to no compensation for the destruction or removal of any of its property remaining on the Property on or after the commencement of the Project.

2. T-MOBILE shall have no rights to use, occupy, enter or access the Property during the Construction Period without the prior consent of the CITY. If for any reason T-MOBILE has a need or desire to enter or access the Property during the Construction Period then T-MOBILE must seek and obtain the approval of the CITY and be accompanied by a member of the CITY at all times that it remains on the Property.

3. The CITY shall notify T-MOBILE in writing of the date that the Project is finally completed and the new premises are available for T-MOBILE. Until such notification is provided, T-MOBILE shall not return to the Property. Notification under this paragraph shall not be required until the Project has been finally approved and accepted by the CITY.

4. The CITY agrees that it shall reimburse T-MOBILE for the reasonable and necessary costs that are actually incurred by T-MOBILE which are described in Item numbers 4-7, 9-15, and 29-30 on the costs spreadsheet attached hereto and incorporated by reference herein as Exhibit "A". The parties agree that each of the costs listed in the item numbers specified by this section shall be demonstrated by the presentation of complete and accurate invoices and any supporting documentation that would be necessary to fully describe the services, products, materials, or equipment that are summarized in the item description and would allow verification that the amounts were actually paid by T-MOBILE. The invoices and documentation required by this section shall be presented by T-MOBILE to the CITY. Within thirty (30) days of receiving the invoices and supporting documentation CITY may request any additional documentation or information reasonably necessary to verify the items or services purchased or the amounts actually paid. In such event, by no later than thirty (30) days after receiving the CITY's request T-MOBILE shall respond in writing with the additional documentation and information requested or an explanation as to why such documentation or information is not presently available but will be provided (if available) within a reasonable time frame not exceeding sixty (60) days. CITY shall reimburse T-MOBILE for the fully documented and verified amounts that have been paid by T-MOBILE by no later than thirty (30) days after receipt of the last invoice, backup documentation, or other costs information requested by the CITY (if any) or receipt of the invoice or backup documentation for the item from T-MOBILE if no additional information or documentation has been requested by the CITY. T-MOBILE shall not be entitled to be reimbursed for any item if it fails to provide an invoice or other documentation that will allow the CITY to review the documentation and determine from the documentation alone that the item has been paid in the amount requested by T-MOBILE. T-MOBILE shall not be entitled to reimbursement in an amount that is in excess of the payment that it has actually made for any item in Exhibit "A" that is specified by this section. The total amount that the CITY shall be obligated to pay for reimbursement of all items specified by this section is One Hundred Twelve Thousand Seven Hundred Twenty-Four and 25/100 Dollars ($112,724.25) less the rent owed under the rent abatement provisions of Section 6. T-MOBILE shall not be entitled to payment under this section for any amount in excess of the "not-to-exceed" number of $112,724.25 less the rent owed under rent abatement provisions of Section 6.

5. The CITY agrees that it shall reimburse T-MOBILE for the reasonable and necessary costs that are actually incurred by T-MOBILE which are described in Item numbers 1-3, 8, and 16-28 of Exhibit "A". The parties agree that each of the costs listed in the item numbers specified by this section shall be demonstrated by the presentation of complete and accurate invoices and any supporting documentation that would be necessary to fully describe the services, products, materials, or equipment that are summarized in the item description and would allow verification that the amounts were actually paid. The invoices and documentation required by this section shall be presented by T-MOBILE to the CITY. Within thirty (30) days of receiving the invoices and backup documentation, CITY may request any additional documentation or information that it believes necessary to verify the items or services purchased or the amounts actually paid. In such event, by no later than sixty (60) days after receiving the CITY's request T-

MOBILE shall respond in writing with the additional documentation and information requested or an explanation as to why such documentation or information is not presently available but will be provided (if available) within a reasonable time frame not exceeding thirty (30) days. CITY shall reimburse T-MOBILE for the fully documented and verified amounts that have been paid by T-MOBILE by no later than thirty (30) days after receipt of the last invoice, backup documentation, or other costs information requested by the CITY (if any) or receipt of the invoice or supporting documentation for the item from T-MOBILE if no additional information or documentation has been requested by the CITY. T-MOBILE shall not be entitled to be reimbursed for any item if it fails to provide an invoice or other documentation that will allow the CITY to determine from the documentation alone that the item has been paid in the amount requested by T-MOBILE. T-MOBILE shall not be entitled to reimbursement in an amount that is in excess of the payment that it has actually made for any item in Exhibit "A" that is specified by this section. The total amount that the CITY shall be obligated to pay for reimbursement of all items specified by this section is Seventy Thousand Four Hundred Fifty-Five and no/100 Dollars ($70,455.00) less the rent owed under the o rent abatement provisions of Section 6. T-MOBILE shall not be entitled to payment under this section for any amount in excess of the "not-to-exceed" number of $70,455 less the rent owed under the rent abatement provisions of Section 6.

6. During the Construction Period rent due under the Lease shall be abated by the actual costs that CITY shall be obligated to pay to T-MOBILE under Sections 4 and 5 of this Agreement. The parties agree that prior to the end of the Construction Period, but in no event later than May 31, 2015, they shall execute an amendment to the Lease ("Amendment") that modifies the exhibits and/or description of the wireless communication facilities and the location of the wireless facilities on the Property to conform the Lease with the new facilities that will be located on the Property after the Construction Period has ended. The term of the Lease shall continue to run in an uninterrupted manner during the Construction Period (with the rent owed by T-MOBILE to be abated by the reimbursement costs to be paid by the CITY under Sections 4 and 5 of this Agreement). The Amendment shall also extend the term of the Lease by adding one (1) successive five-year Renewal Term (as that term is defined by Section 4 of the Lease). All other terms and conditions of the Lease shall remain unmodified and in full force and effect.

7. CITY represents that it intends to enter into a lease agreement with AT&T to construct a wireless communications facility ("Facility") on the Property after the Construction Period upon which T-MOBILE shall be permitted to collocate its communications equipment. If CITY and AT&T do not enter into a lease or license agreement (or similar agreement) for the construction and operation of a Facility on the Property on before the end of the Construction Period, CITY agrees to grant T-MOBILE the right, subject to CITY's approval of the construction plans for the Facility (such approval not to be unreasonably withheld, conditioned or delayed), under the existing Lease (as amended pursuant to Section 6 above), to construct the Facility promptly after the Construction Period ends (but in no event more than three (3) months after the end of the Construction Period). T-MOBILE shall be permitted to construct a new Facility on

the Property on the same terms and conditions of the Lease, including the additional successive Renewal Term referenced above. In the event T-MOBILE constructs the Facility, the parties agree to add the following mutual indemnification provision to the Lease effective on the date that CITY approves T-MOBILE's construction plans for the Facility:

"Lessor and Lessee each agree to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees, to the extent caused by or arising out of (a) the negligent acts or omissions or willful misconduct in the operations or activities on the Lessor's Property by the indemnifying party or the employees, agents, contractors, licensees, Lessees and/or sublessees of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this Lease. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The indemnifying party's obligations under this section are contingent upon (i) its receiving prompt written notice of any event giving rise to an obligation to indemnifying the other party and (ii) the indemnified party's granting it the right to control the defense and settlement of the same. Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease. Lessee shall not be responsible to Lessor, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing Lessor's Property, including the Premises."

8. CITY agrees to reimburse T-MOBILE for its actual costs and expenses to construct the new Facility ("Costs") in an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) ("NTE Amount"). T-MOBILE will provide CITY with invoices and reasonable supporting documentation evidencing such Costs. CITY shall not be obligated to reimburse any Costs that are not supported with invoices and reasonable supporting documentation. CITY agrees that the monthly rent paid under the Lease shall be abated by T-MOBILE's Costs up to the NTE amount. T-MOBILE shall not be permitted to abate any rental payment, or portion thereof, unless such Costs being reimbursed through rental abatement have been supported with invoices and reasonable supporting documentation prior to the date that the rental payment, or portion thereof, is being abated. In the event that the abatement of rent for the remainder of the term of the Lease (including all Renewal Terms) has not yet reimbursed T-MOBILE for its Costs, CITY agrees to extend the term of the Lease for the number of months necessary to allow T-MOBILE to be fully reimbursed for its Costs up to the NTE Amount. During T-MOBILE's construction of the Facility on the Property, T-MOBILE shall be permitted to keep a cell on wheels ("COW") in place on or near the Property along with an alternate source of power until T-MOBILE's equipment is in commercial operation at the new Facility.

9. T-MOBILE on its own behalf and on behalf of its respective agents, assigns,

servants, stockholders, principals, partners, employees, employers, directors, officers, parents, subsidiaries, affiliates, representatives, insurers, attorneys, assignors, assignees, predecessors, and successors hereby forever release and fully discharge CITY and all of its past, present and future officers, directors, principals, agents, employees, successors, assigns, beneficiaries, insurers and attorneys (hereinafter referred to collectively as "RELEASEES"), and each of them, of and from each and every claim, demand, action, cause of action, damage, cost, expense, attorney's fee, obligation and liability of whatever kind or nature, in law or equity, whether known or unknown, including, but not limited to, claims for breach of contract or lease agreement, express or implied warranties, lost profits, loss of use, property damage and/or destruction, costs of repair, loss of prospective business advantage, loss of business opportunity, economic losses, professional fees, attorneys' fees, costs, statutory penalties, injunctive relief, interest and any other alleged injuries, damages or losses of any kind arising out of, connected with, or related to any of the following: a) the Project; b) vacation of, and removal of facilities from the Property; c) temporary loss of operations on, use of, and/or occupation of the Property; d) loss of T-MOBILE's facilities on the Property; and e) operations during the Construction Period, specifically including but not limited to any claims related to the duration of the Project, provided that the Construction Period does not exceed eighteen (18) months.

10. This release is expressly intended to cover and include all claims, several or otherwise, past, present or future, known or unknown, which can or may ever be asserted by heirs or otherwise, as the result of (a) through (e) described by the immediately preceding section, the effects or consequences thereof.

11. T-MOBILE understands and agrees that this full and final release covers and includes all claims of every kind or nature, past, present or future, known or unknown, suspected or unsuspected, and all claims or rights pursuant to Section 1542 of the Civil Code of the State of California are hereby expressly waived. T-MOBILE understands that said Section 1542 provides:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

A. In this regard, T-MOBILE expressly understands and agrees that it is possible that other injuries or consequences resulting from the herein described and referred to matters and events which are not now known, will occur or be discovered by T-MOBILE and T-MOBILE agrees and understands that this release is intended to cover and does cover and include all such future damages and/or injuries or their effects, consequences or results, including all causes of action therefor.

B. The terms of this Agreement are in full, complete and final compromise,

settlement and satisfaction of, and as the sole consideration for, the full and final release and discharge of all actions, claims, demands, and rights of every kind and nature, in law or in equity, that now exist or may hereafter accrue or exist on behalf of T-MOBILE, or its heirs or assigns against CITY and RELEASEES for the matters described herein. This release shall bind and be binding upon the heirs, personal representatives or executors, administrators, and assigns of T-MOBILE, and shall inure to the benefit of the CITY and RELEASEES.

12. CITY on its own behalf and on behalf of its respective agents, assigns, servants, stockholders, principals, partners, employees, employers, directors, officers, parents, subsidiaries, affiliates, representatives, insurers, attorneys, assignors, assignees, predecessors, and successors hereby forever release and fully discharge T-MOBILE and all of its past, present and future officers, directors, principals, agents, employees, successors, assigns, beneficiaries, insurers and attorneys (hereinafter referred to collectively as "RELEASEES"), and each of them, of and from each and every claim, demand, action, cause of action, damage, cost, expense, attorney's fee, obligation and liability of whatever kind or nature, in law or equity, whether known or unknown, including, but not limited to, claims for breach of contract or lease agreement, express or implied warranties, lost profits, loss of use, property damage and/or destruction, costs of repair, loss of prospective business advantage, loss of business opportunity, economic losses, professional fees, attorneys' fees, costs, statutory penalties, injunctive relief, interest and any other alleged injuries, damages or losses of any kind arising out of, connected with, or related to any of the following: a) the Project; b) vacation of, and removal of facilities from the Property; c) temporary loss of operations on, use of, and/or occupation of the Property; d) loss of T-MOBILE's facilities on the Property; and e) operations during the Construction Period, specifically including but not limited to any claims related to the duration of the Project, provided that the Construction Period does not exceed eighteen (18) months.

13. This release is expressly intended to cover and include all claims, several or otherwise, past, present or future, known or unknown, which can or may ever be asserted by heirs or otherwise, as the result of (a) through (e) described by the immediately preceding section, the effects or consequences thereof.

14. CITY understands and agrees that this full and final release covers and includes all claims of every kind or nature, past, present or future, known or unknown, suspected or unsuspected, and all claims or rights pursuant to Section 1542 of the Civil Code of the State of California are hereby expressly waived. CITY understands that said Section 1542 provides:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

A. In this regard, CITY expressly understands and agrees that it is possible that other injuries or consequences resulting from the herein described and referred to matters and events which are not now known, will occur or be discovered by CITY and CITY agrees and understands that this release is intended to cover and does cover and include all such future damages and/or injuries or their effects, consequences or results, including all causes of action therefor.

B. The terms of this Agreement are in full, complete and final compromise, settlement and satisfaction of, and as the sole consideration for, the full and final release and discharge of all actions, claims, demands, and rights of every kind and nature, in law or in equity, that now exist or may hereafter accrue or exist on behalf of CITY, or its heirs or assigns against T-MOBILE and RELEASEES for the matters described herein. This release shall bind and be binding upon the heirs, personal representatives or executors, administrators, and assigns of CITY, and shall inure to the benefit of T-MOBILE and RELEASEES.

15. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight delivery services to the address of the respective parties set forth below:

CITY: Anna Gwyn Simpson, Interim City Manager
525 Henrietta Street
Martinez, CA 94553

T-MOBILE: T-Mobile USA, Inc.
12920 S.E. 38th Street
Bellevue, WA 98006
Attn: Property Management
Site No. BA91245A

16. 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.

17. This Agreement constitutes the entire agreement and understanding between the parties regarding the subject matter contained herein and supersedes all offers, negotiations, and other agreements concerning same. 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.

18. This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue shall be in the County of Contra Costa.

19. The parties acknowledge and agree that each of the parties has been represented by 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.

20. The recitals above are hereby incorporated into this Agreement by this reference.

21. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

CITY OF MARTINEZ

By: _____

Print: Anna Gwyn Simpson

Title: Interim City Manager

Date: 4/15/2014

T-MOBILE WEST LLC, a Delaware limited liability company

By: _____

Print: Daniel Paul

Area Director, Network Eng-OPS

Title _____

Date: 4/14/2014

T-Mobile Legal Approval
Kevin Brinkley

Attachment 2

EXHIBIT "A" - Cost Spread Sheet

Item #	Project	Type	Company	Description	PO Number	Line	Amount	Paid?
1	PERM SITE	A&E	ZON	Zoning Drawings	4550916811	1	$1,700	YES
2	PERM SITE	A&E	ZON	Zoning Application	4550916811	2	$5,000	YES
3	PERM SITE	A&E	ZON	Zoning Approved	4550916811	3	$3,000	YES
4	PERM SITE	Planning	ZON	Building Permit Applied	4550916811	4	$1,300	NO
5	PERM SITE	Planning	ZON	Building Permit Approved	4550916811	5	$800	NO
6	PERM SITE	Leasing	ZON	Cost Share Agreement w/AT&T	4551020961	1	$2,750	NO
7	PERM SITE	Leasing	ZON	Lease	4551031283	4	$6,000	NO
8	PERM SITE	A&E	ZON	Construction Drawings	4550916811	6	$2,200	YES
9	PERM SITE	A&E	ZON	Survey	4550916811	7	$2,000	NO
10	PERM SITE	A&E	ZON	1A Certification Letter	4550916811	8	$800	NO
11	PERM SITE	Power	PG&E	Permanent Power			$7,500	ESTMATE
12	PERM SITE	Fiber	AT&T	Permanent Fiber			$7,500	ESTMATE
13	PERM SITE	Site Build	AT&T Mobility	Cost Share for New Site Build			$50,000	ESTMATE
14	PERM SITE	Site Build	TBD	T-Mobile Equipment Install			$22,500	ESTMATE
15	TEMP SITE	Environmental	EAS	PHASE 1 - Update	4551013773	1	$800	NO
16	TEMP SITE	Environmental	EAS	Phase 1 & NEPA	4550925917	1	$3,030	YES
17	TEMP SITE	GC	TEPS	Power Study	4550959006	1	$1,500	NO
18	TEMP SITE	Leasing	ZON	Site Visit	4550872771	1	$600	YES
19	TEMP SITE	Leasing	ZON	New Lease for COW	4550872771	2	$5,000	YES
20	TEMP SITE	Leasing	ZON	Current Lease Amendment	4550872771	3	$2,750	NO
21	TEMP SITE	A&E	ZON	Site Visit	4550869276	1	$600	YES
22	TEMP SITE	A&E	ZON	Construction Drawings	4550869276	2	$2,100	YES
23	TEMP SITE	A&E	ZON	Survey	4550901243	4	$2,000	YES
24	TEMP SITE	A&E	ZON	1A Certification Letter	4550901243	5	$800	YES
25	TEMP SITE	A&E	ZON	Structurals	4550949705	1	$2,500	YES
26	TEMP SITE	Planning	ZON	Building Permit Applied/Approved	4550901243	6	$1,300	YES
27	TEMP SITE	GC	TCI	COW Install & Site DEMO	4551017395	1	$34,700	NO
28	TEMP SITE	Transport	TTS	COW Delivery	NA	NA	$1,675	NO
29	TEMP SITE	Transport	TTS	COW Return	NA	NA	$1,256	ESTMATE
30	TEMP SITE	TELCO	AT&T	Fiber Relocation	Check	NA	$9,518	YES
					TOTAL		**$183,179**	

$70,455

$112,724.25