

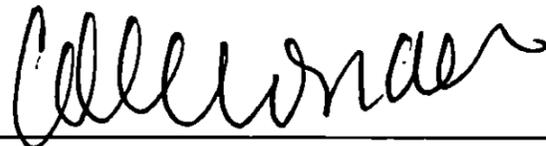
3. The Lease shall commence on the first day of the month during which the latter of the two dates listed occurs, which are: (i) the date of final approval of any Building Permit, if required, provided that Lessee is diligently pursuing this Building Permit after obtaining the necessary Use Permit; or (ii) the date of the vacation of the wire clearance easement encumbering the City Property by the CITY (which easement imposes a height limitation of 15 feet on Improvements located within the easement area).
4. The terms, covenants and provisions of the Lease, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of CITY and LESSEE.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year last written below.

CITY:

CITY OF CUPERTINO, CALIFORNIA

APPROVED AS TO FORM:



 Randolph Stevenson Hom
City Attorney

Date: 3/10/14



David Brandt
City Manager

Date: 3-14-16

ATTEST:



City Clerk
"City"

Date: 3-14-16

LESSEE:

GTE Mobilnet of California Limited Partnership,
d/b/a Verizon Wireless

By: Cellco Partnership, its General Partner

By: 

Name: Phillip French

Title: Executive Director – Network

Date: 3/7/2016

CITY ACKNOWLEDGEMENT

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 Santa Clara)

On March 15, 2016, before me, Grace Schmidt, Notary Public, personally appeared David Brandt, 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.



Grace Schmidt
Notary Public

(Seal)

EXHIBIT A

Legal Description of Property

Real property in the City of Cupertino, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

LOT 7, AS SHOWN ON THAT CERTAIN MAP ENTITLED TRACT NO. 3743 CUPERTINO TOWN CENTER, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 16, 1964, IN BOOK 186 OF MAPS PAGE(S) 36 AND 37.

PARCEL TWO:

PARCELS A, B, C & D, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP, BEING ALL OF LOT 4, TRACT NO. 3743, CITY OF CUPERTINO", WHICH PARCEL MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MARCH 7, 1974 IN BOOK 337 OF MAPS, AT PAGE 11.

APN: 369-31-033

ANTENNA GROUND LEASE

Between THE CITY OF CUPERTINO and

**GTE Mobilnet of California Limited Partnership,
a California limited partnership,
d/b/a Verizon Wireless**

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ANTENNA GROUND LEASE

This Lease ("Lease") is made and entered into as of January ²⁰¹⁶ 19, 2015, by and between the City of Cupertino, California, ("City" or "Lessor"), and GTE Mobilnet of California Limited Partnership, a California limited partnership, d/b/a Verizon Wireless ("Lessee").

RECITALS

The following recitals are a substantive portion of this Lease:

A. City is the owner of certain real property situated in Santa Clara County, State of California, as more particularly described in **Exhibit "A"** attached and incorporated by this reference.

B. Lessee is a limited partnership organized under the laws of the State of California whose principal business is telecommunications.

C. Lessee requests the lease of certain real property owned by the City for the construction, installation and operation of a cellular telephone communication facility.

D. City is willing to permit Lessee to lease the property in accordance with the terms, conditions and covenants of this Lease.

E. Lessee acknowledges that this project will require a use permit from the City before this Lease will be effective.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

Premises and Improvements

1.1 Lease of Premises. City hereby leases to Lessee and Lessee leases from City for the term, at the rental and upon all of the terms and conditions set forth, a portion of the real property located at 10800 Torre Avenue, Cupertino, CA APN# 369-31-033, commonly known as Cupertino Civic Center ("City Property"). Lessee shall lease approximately 743.0 square feet, with an aerial easement of approximately 112.1 square feet, as described in **Exhibit "B"** attached and incorporated herein (the "Premises").

1.2 Improvements. The Premises shall be used by Lessee only to locate multiple equipment cabinets, landscaping, underground cable and conduit, and a mono-eucalyptus tower (alternately, the "Mono-Eucalyptus" or "antenna structure") for the location of Lessee's antennas ("Improvements"). The Improvements are more particularly shown on plans, which have been submitted for site development and use permit approvals, as required by the City. A copy of the plans is attached and incorporated by this reference as **Exhibit "C"**. The plans shall reflect, among other things, the height of Lessee's antennas on the antenna structure at 55 feet. The plans shall also identify the trees surrounding the antenna structure which Lessee may trim as it deems necessary, at its expense and in accordance with applicable local, state or federal law, to a height of 44 feet. It is understood and agreed that the final plan for the

Improvements will be the plans approved by the City through its site development and use permit process(es).

ARTICLE 2

Term

2.1 Initial Term. The term of this Lease shall be for a period of approximately five (5) years beginning on the Commencement Date and terminating on the fifth anniversary of the Commencement Date, unless terminated earlier (“Term”).

2.2 Option to Extend. Provided Lessee is not in default, either at the time of exercise or at the time the extended Term commences, Lessee shall have the option to extend the initial Term of this Lease for two (2) additional periods of five (5) years (“Option Period”) on the same terms, covenants and conditions provided. City shall not unreasonable deny this extension. Lessee shall exercise its option by giving City written notice (“Option Notice”) at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration of the initial Term of this Lease, or the successive term.

2.3 Commencement Date. The Commencement Date of this Lease shall be the first of the month during which the latter of the two dates listed occurs, which are: (i) the date of final approval of any Building Permit, if required, provided that Lessee is diligently pursuing this Building Permit after obtaining the necessary Use Permit; or (ii) the date of the vacation of the wire clearance easement encumbering the City Property by the City (which easement imposes a height limitation of 15 feet on Improvements located within the easement area).

2.4 Relocation of Mono-Eucalyptus and Adjacent structures. City, on one (1) occasion, may relocate the Premises to another location on City Property (herein referred to as the “Alternate Property”), provided:

2.4.1 the Alternate Property is similar to the Premises in size and is compatible for Lessee’s use in Lessee’s sole discretion;

2.4.2 City shall pay all costs incurred by Lessee for relocating Lessee’s equipment from the Premises to a mutually agreeable site and improving the Alternate Property so that the Alternate Property is substantially similar to the Premises, including all costs incurred to obtain all of the certificates, permits and other approvals that may be required by any Federal, State or Local authorities as well as any satisfactory soil boring tests which will permit Lessee use of the Alternate Property as set forth in Section 1.2 above;

2.4.3 City shall give Lessee at least twelve (12) months written notice before requiring Lessee to relocate;

2.4.4 Lessee must be provided advanced notice of the redevelopment process and layout of City’s intended expansion; and

2.4.5 Lessee’s service will not be interrupted and Lessee shall be allowed if necessary to place a temporary cell site and antenna structure on the City Property during relocation.

ARTICLE 3
Rental

3.1 Base Rent. Commencing on the Commencement Date, Lessee shall pay to City as rent for the Premises in advance on the first day of each calendar month of this Lease without deduction, offset, prior notice or demand, in lawful money of the United States, the sum of Three Thousand One Hundred Twenty Dollars (\$3,120.00) ("Base Rent"). Rent shall be provided to: City of Cupertino, Finance Department, 10300 Torre Avenue, Cupertino, CA 95014-3202. Lessor and Lessee agree and acknowledge that the initial rental payment(s) may not actually be sent until forty-five (45) days after the Commencement Date.

3.2 Annual Increase. During the Term of this Lease, including the Option Periods, the Base Rent shall be increased annually by 4%, beginning on January 1, 2016 and effective each January 1st thereafter throughout the Term and any Option Period. The sum shall be adjusted annually resulting in a compound rate of increase. For example, the Base Rent for December 1, 2015 would be Three Thousand One Hundred Twenty Dollars (\$3120.00) per month and the rate on January 1, 2016 would be Three Thousand Two Hundred Forty Four Dollars and 80 cents (\$3244.80.).

3.3 Transactional Costs. Lessee shall pay to City, as additional rent, any reasonable transactional costs, which shall include any reasonable attorneys' fees incurred by City as a result of the negotiation, preparation, execution and delivery of this Lease, any amendment, any future consent of City required and the preparation and negotiation of an amendment to this Lease ("Transactional Costs") not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) without prior written approval of Lessee. Lessee has provided a deposit to City to cover any transactional costs. City shall furnish Lessee with an invoice reflecting the Transactional Costs deducted from the deposit. In the event that the deposit is exceeded or costs are incurred without a deposit than City shall provide an invoice to Lessee and Lessee shall make full payment to City of these costs within forty-five (45) days from the date of receipt of City's invoice.

3.4 Late Charge. Lessee acknowledges late payment by Lessee to City of rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. If any installment of rent due from Lessee is not received by City within ten (10) days after the date rent is due, Lessee shall pay to City an additional sum of ten percent (10%) of the overdue rent as a late charge. This penalty shall not be imposed for the first two payments under the Lease in order to permit Lessee to enroll the Lease in its payment system. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

3.5 Additional Consideration. As additional consideration for City's entering into this Lease, Lessee agrees to pay to City the sum of Two Thousand Five Hundred Dollars (\$2,500.00) upon the earlier of: (a) sixty (60) days after full execution of this Lease by the City; or (b) issuance of a certificate of occupancy. This amount shall be in addition to all other sums payable by Lessee to City under this Lease, and shall be nonrefundable to Lessee unless the City Council fails to approve the Lease or any requisite use permit.

ARTICLE 4

Use

4.1 Permitted Uses. Lessee shall use the Premises for installation, operation, maintenance and use of a wireless communications facility, consisting of the equipment, improvements and facilities and the utilities, cables and wires reasonably needed to support the operation of a communications facility. The installation of the Improvements shall be subject to the reviews and approvals set forth in Section 4.4. Lessee shall be solely responsible for all costs associated with the construction, installation, maintenance and use of the Improvements.

4.2 Access. City grants Lessee reasonable non-exclusive vehicular and foot access to the Premises. Access shall be available to Lessee, Lessee's employees and invitees during normal business hours, except if an emergency occurs. It is anticipated, after installation of the Improvements is completed, that reasonable access shall occur once every two (2) weeks for the purpose of ordinary tuning of the Lessee's equipment, appropriate maintenance of the Improvements and the repair and replacement of communication equipment located on the Premises. City acknowledges that off peak maintenance (non-business hours) of the site is required approximately once per month. Lessee shall provide 24-hours' notice to City prior to off peak maintenance except in cases of emergency.

4.3 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted. Lessee shall not: (a) create, cause, or permit any nuisance or waste in, on or about the Premises or permit the Premises to be used for any unlawful; (b) do or permit anything which unreasonably disturbs the users of the City Property or the occupants of neighboring property; provided, however, that Lessee's use of the Property pursuant to this Lease shall not be deemed an unreasonable interference; specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Premises; and Lessee shall not store any materials or articles of any nature outside upon any portion of the Premises.

4.4 Approval by the City and Other Agencies. Lessee, at its sole cost and expense, may install the Improvements, subject to Lessee's obtaining all required permits, licenses and approvals from the City of Cupertino as the permitting authority and not as lessor hereunder, and any other governmental agencies having jurisdiction. Lessee shall maintain permits, licenses and approvals in force through the term of this Lease, as may be extended. Should Lessee wish to subsequently change the Improvements (excluding any minor modification which would not require an amendment to the site development permit or a building permit, and which would not materially expand or increase the Improvements or are wholly contained in Lessee's equipment cabinets), it shall not do so without the prior approval of City and amendment of this lease and without obtaining all required permits, licenses and approvals from the City of Cupertino as the permitting authority and not as lessor hereunder, and any other governmental agencies with jurisdiction. City's approval of these modifications shall not be unreasonably withheld. If a change in the Improvements is approved, Lessee and City shall amend **Exhibit "C"** to reflect the change. Should Lessee change or expand any Improvements without the prior approval of City, City may require that Lessee remove the expansion at Lessee's sole cost and expense. Lessee shall be solely responsible for conducting any environmental review required in association with Lessee's use of the Premises and for all costs associated, as well as all fees, charges or other expenses imposed by

the City as the regulatory agency or other regulatory agencies arising directly out of Lessee's use of the Premises prior to the Lease commencement or at any time during the term of the Lease.

4.5 Additional Antenna(s) to be added by City. Subject to the conditions set forth in Section 4.8.8 herein, City shall have the right to install additional antennas at its sole cost and expense on the Mono-Eucalyptus provided these antennas may only be utilized for a public purpose. The location of the antenna(s) shall be approved by Lessee. The antennas shall not interfere with any activity or use by Lessee. In the event that City's antenna(s) interfere with Lessee's use, City's antenna(s) shall be adjusted or removed to ameliorate this interference.

4.6 Compliance with Laws. Lessee shall not do or permit anything to be done in, on the Premises, or bring or keep anything in, on the Premises which will conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted.

4.7 Condition, Use of Premises. Except for any warranties and representations expressly set forth herein, City makes no warranty or representation concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and disclaims any personal knowledge, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is and has ascertained that it can be used for the limited purposes specified in Section 4.1.

4.8 Hazardous Materials.

4.8.1 Hazardous Materials on Premises. City and Lessee shall not introduce any Hazardous Materials (as defined below) to the Premises or the Property excluding any Hazardous Materials that are components of commercially available products or are typically used, stored, or handled in Lessee's industry or are typically stored or handled by the City, provided that Hazardous Materials are transported, obtained, handled, stored and/or disposed of in accordance with all federal, state and local laws, ordinances, rules, regulations or policies.

4.8.2 Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the following statutes and regulations: (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Secs. 9601 et seq.; (b) RCRA, 42 U.S.C. Secs. 6901 et seq.; (c) CWA, 33 U.S.C. Secs. 1251 et seq.; (d) CAA, 42 U.S.C. Secs. 7401 et seq.; (e) TSCA, 15 U.S.C. Secs. 2601 et seq.; (f) The Refuse Act of 1899, 33 U.S.C. Secs. 407; (g) OSHA, 29 U.S.C. Secs. 651 et seq.; (h) Hazardous Materials Transportation Act, 49 U.S.C. Secs. 5101 et seq.; (i) USDOT Table (49 CFR Sec. 172.101 App. A and amendments) or the EPA Table (40 CFR Part 302 and amendments); (j) Carpenter-Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code Secs. 25300 et seq.; (k) California Hazardous Waste Control Act, Cal. Health & Safety Code Secs. 25100 et seq.; (l) Porter-Cologne Act, Cal. Water Code Secs. 13000 et seq.; (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq.; (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq.; (o) Hazardous Substances Underground

Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq.; (p) California Hazardous Substance Act, Cal. Health & Safety Code Secs. 108100 et seq.; (q) Air Resources Law, Cal. Health & Safety Code Secs. 39000 et seq.; (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500 et seq.; (s) TPCA, Cal. Health and Safety Code Secs. 25208 et seq.; and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos; (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and (vii) radioactive materials and waste.

4.8.3 Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold Lessor harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses, including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorney's fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), to the extent arising from, or caused or resulting, during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Premises by Lessee, Lessee's agents, employees, licensees or invitees acting on Lessee's behalf or at Lessee's direction, of Hazardous Material, or by Lessee's failure to comply with any laws pertaining to any Hazardous Materials Law, whether knowingly or by strict liability. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises, and the presence and implementation of any closure, remedial action or other required plans for the Premises, and shall survive the expiration of or early termination of the Term. For purposes of the indemnity, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of Lessee while acting on behalf of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. Lessee's indemnity obligations shall not include claims, liabilities, losses, damages, costs, or other expenses arising from the negligence or misconduct of City or City's employees, agents, sublessees, assignees, invitees, subcontractors or contractors.

4.8.4 City's Right to Perform Tests. At any time prior to the expiration of the Term, City shall have the right to enter upon the Premises in order to conduct tests of water and soil, which tests shall not disrupt or interfere with Lessee's operations, and to deliver to Lessee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Lessee's use of the Premises. Lessee shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities

including actual attorney's fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return the Premises and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials to the extent such presence arises out of Lessee's use of the Premises. The testing shall be at Lessee's expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the Premises, which has been caused by or resulted from the activities of Lessee, its agents, employees, contractors or invitees acting on Lessee's behalf or at Lessee's direction.

4.8.5 Survival. This entire Section 4.8 of this Lease shall survive termination of the Lease, as to any activities during the term of this Lease.

4.8.6 Termination of Lease. City shall have the right to terminate the Lease in City's sole and absolute discretion in the event that: (i) any use of the Premises by Lessee involves the generation or storage, use, treatment, disposal or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) Lessee has been required to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material on the Premises. Lessee shall have thirty (30) days after receipt of notice from City to cure or commence cure, prior to City's ability to exercise its rights under this Section.

4.8.7 Covenant of Non-Interference. Lessee shall be responsible for inspecting City Property and finding adequate space at the site without moving or relocating any of City's facilities or equipment, or any other facility, or utility located at the City Property at the time Lessee's facilities are installed. Lessee's equipment shall not cause incurable interference with any other existing facility or antenna on the City Property as of the date of this Agreement. In the event that Lessee's equipment does cause incurable interference with other facilities, Lessee shall be required to install, at its own expense, frequency filters or take other reasonable measures to correct the problem. Lessee shall be required to coordinate with other existing utilities located at the City Property, to ensure that Lessee's equipment does not interfere with the existing frequency utilized by existing utilities. Lessor shall not permit the installation or subsequent equipment on the City Property by Lessor or a third party which interferes with Lessee's operations.

4.8.8 Co-location. Lessee acknowledges that it has given City prior approval that it will lease one (1) position on Lessee's antenna structure on the Premises to one (1) other communications provider (the "First Other User"), subject to the First Other User's compliance with the conditions below. Lessee further acknowledges and approves that City shall be entitled to require Lessee to lease additional positions on Lessee's antenna structure on the Premises, subject to the conditions below. The City may also require that the antenna structure be extendable to a height of up to 80 feet, following the grant of a height exception. If Lessor wishes to require Lessee to lease space on Lessee's antenna structure on the Premises to allow a second other communications provider (the "Second Other User") to attach its communications equipment on the antenna structure, Lessor shall submit a written request to Lessee listing the proposed equipment to be placed on the antenna structure. The terms "First Other User" and "Second Other User" are collectively referred to hereinafter as the "Other User." Lessee shall review such request

and determine the following, including without limitation (1) whether the Other User's proposed installation interferes or conflicts with Lessee's or other users' use of the antenna structure or the Premises; (2) whether the antenna structure can withstand the structural load of Other User's proposed equipment; or (3) if Other User's proposed equipment jeopardizes Lessee's permits or any approval for use of the Premises. If testing or analysis, including without limitation a structural analysis, intermodulation study, construction or zoning drawings, or any environmental testing is required, Other User shall be responsible for the costs of such testing or analysis. Upon approval, Lessee and Other User shall enter into a separate agreement permitting Other User to attach its approved equipment to the antenna structure. Lessee shall have no liability of any nature to Lessor for failure to allow Other User(s) to use Lessee's antenna structure. Lessee shall receive 100% of the rental for any Other Users' use of Lessee's antenna structure, and City shall receive 100% of the rental, negotiated by City and such Other User for the portion of the Other User's lease of any City Property. All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements. Should City add new facilities on the City Property in the future, Lessee will not cause measurable electronic or physical interference with City owned and operated equipment that is related to public health and safety and is located on the City Property. Lessee shall reasonably cooperate with current and future users of the City Property. Lessor will not grant a lease to any party for use of the City Property if the new use would interfere with Lessee's operation of its communications facility. Any future lease of the Site which permits installation of communication equipment shall be conditioned upon not interfering with Lessee's operation of the Premises.

4.8.9 Electromagnetic Emissions. Lessee's operations on the Premises shall comply with all applicable federal laws and regulations regarding electromagnetic emissions. After its Improvements are constructed on the Premises, Lessee shall conduct all necessary tests to ensure that its facilities are in compliance with those laws and regulations. The tests shall be conducted by a licensed engineer, and the results shall be provided to the City.

ARTICLE 5

Maintenance, Repairs and Alterations

5.1 General. Lessee shall keep in good order, condition and repair the Premises, and the Improvements placed on the Premises. Lessee shall keep the Premises clean and free of debris.

5.2 Surrender. Within ninety (90) days after the last day of the Term, or any Option Term if so extended, Lessee shall surrender the Premises to City in the same condition as when received, clean and free of debris, reasonable wear and tear. Lessee shall also remove all Improvements and cables and wires located above ground or below ground that Lessee placed upon the Premises, and repair any damage to the Premises by the installation, maintenance or removal of Lessee's Improvements and any related cables, wires or other equipment, and shall restore the Premises to the same conditions as when Lessee received the Premises from City, reasonable wear and tear.

5.3 City's Rights. If Lessee is in default, subject to City mailing or delivering notice in accordance with Section 20.6 herein and the expiration of any applicable cure periods, City may (but shall not be required to) enter upon the Premises, (except in the case of an emergency, in which case no notice shall be required), to perform obligations on Lessee's behalf and put the Premises and/or Improvements in good order, condition and repair, and the cost, together with

interest at the maximum rate then allowable by law, shall become due and payable as additional rent to City with Lessee's next rental installment, provided, however, in the case of a non-emergency, City shall notify Lessee of City's intention to perform Lessee's obligations ten (10) days prior to performing any work on Lessee's behalf. If no rental installment is due to City, these costs shall become due and payable within thirty (30) days from the date of City's invoice accompanied by supporting documentation for such costs.

5.4 City Repair Obligations. City shall have no obligation to repair and maintain the Premises nor the Improvements and facilities. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Premises in good order, condition and repair.

5.5 Security Measures. City shall have the right to require a reasonable security system, device, operation or plan be installed and implemented to protect the Premises or the Improvements. Should City, in its sole discretion, require Lessee to install a security system, Lessee agrees to bear the sole cost of any security system, device, operation or plan and the installation and implementation. Lessee shall obtain City's prior approval before installing or implementing any security system, device, operation or plan. Any security and fencing depicted in the exhibits attached hereto have been approved by City.

5.6 Improvements.

5.6.1 Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic or material lien against the Premises or any interest therein. Lessee shall give City not less than ten (10) days' notice prior to the commencement of any work on the Premises, and City shall have the right to post notices of non-responsibility in or on the Premises. If Lessee, in good faith, contests the validity of any lien, claim or demand, then Lessee shall, at its sole expense, defend itself and City against it and shall pay any adverse judgment that may be rendered before enforcement against the City. If City shall require, Lessee shall furnish to City a surety bond satisfactory to City in an amount equal to the contested lien, claim indemnifying City against liability for and holding the Premises free from the lien or claim. In addition, City may require Lessee to pay City's attorneys' fees and costs in participating in the action if City decides to participate.

5.6.2 Lessor shall submit to the City for the City's approval the plans prior to submitting the Lease to the City for the City's approval. Before construction of any subsequent Improvements are commenced on the Premises, and before any building materials have been delivered to the Premises by Lessee or agents, Lessee shall comply with the following conditions or procure City's written waiver of the conditions specified:

5.6.2.1 Construction Schedule. A construction schedule approved by Lessee and the City setting forth in detail a description of the Improvements and all steps for construction of the Improvements, and Lessee's best estimate of the date upon which each step shall be substantially completed is attached and incorporated herein as **Exhibit "D"**. A construction schedule shall not be required for like kind replacement following after initial installation.

5.6.2.2 Protection of Adjacent Property, Indemnity of the City. Lessee shall protect the City Property and adjacent property against damage resulting from the performance of work undertaken by Lessee or Lessee's agents, employees, contractors excluding any damage caused by gross negligence or the willful act of City, and shall indemnify the City against all liens or liability arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment or power on behalf of Lessee.

5.6.2.3 Insurance. In addition to the insurance coverage otherwise required under this Lease, Lessee shall maintain workers' compensation insurance covering all persons employed in connection with the construction of any Improvements, repair or maintenance activities with respect to whom death or injury claims could be asserted against the City, Lessee or the Premises. City may require any third party(ies) performing work at the Premises to maintain workers' compensation insurance as contractor's sole cost and expense at all times when any work is in process and shall otherwise conform to the requirements of this Lease for insurance.

5.6.2.4 Final Inspection. Lessee shall not provide service to its customers from the Improvements in any way without receiving a final inspection of the Improvements from the City.

5.6.2.5 Notice of Changes in Plans. Upon completion of any Improvement, Lessee shall give City notice of all changes in the plans and specifications made during the course of the work and at the same time deliver to City "as built" drawings accurately reflecting all changes, provided that no change that substantially alters the final plans last approved by the City shall be made without the City's prior written approval.

5.7 City Access. The City or its agents, may enter into the Project at all reasonable times during the term of this Lease Agreement for the purpose of determining whether or not Lessee is complying with the terms and conditions or for any other purpose incidental to rights of the City. City shall provide Lessee with at least two (2) business days' prior notice and shall have the ability but not the obligation to accompany City during any such inspection.

5.8 Lessee Access. Lessee may enter into or upon the Premises during normal business hours, Monday thru Friday from 8 a.m. to 5 p.m. upon reasonable notice to the City. In the event of an emergency, Lessee's access shall be 24/7. Lessee acknowledges that other lessees and licensees also have rights to access the Premises, and that if multiple lessees or licensees request simultaneous access, the City may have to delay Lessee's access to the Premises to accommodate all parties. City acknowledges that off peak maintenance (non-business hours) is required approximately once per month. Lessee shall provide 24-hours' notice to City prior to off peak maintenance except in cases of emergency.

5.9 Lessee Access During Security Alert. During times of high security alert by the Homeland Security Advisory System, Lessee must obtain City's consent to access the Project.

ARTICLE 6

Indemnity and Insurance

6.1 Indemnity. This Lease is made upon the express condition that Lessee shall indemnify and hold harmless the City and its officers, agents and employees against any suits, claims or actions to

the extent arising out of Lessee's use of the Premises or from any act permitted, or any omission to act, in or about the Premises or the City Property by Lessee or its agents, employees, contractors or invitees, including, but not limited to, any injury or injuries to, or death or deaths of, persons or property that may occur, or that may be alleged to have occurred from any cause or causes whatsoever, while in, upon, about or in any way connected with the Premises during the term of this Lease, or during any holdover tenancy thereof (except where caused solely by the active negligence or willful misconduct of City, its employees or agents). Lessee agrees to defend any actions, suits or claims and pay all reasonable charges of attorneys and all other costs and expenses arising therefrom; and, if any judgment be rendered against the City or any of the other individuals enumerated above in any action, except to the extent the judgment arises from the negligence or willful misconduct of the City, its employees or agents, Lessee shall, at its sole cost and expense, satisfy and discharge same.

6.2 Waiver of Claims. Lessee waives any claims against City for injury to Lessee's business or any loss of income, for damage to Lessee's property, or for injury or death of any person in or about the Premises or the City Property, from any cause whatsoever, except to the extent caused by City's negligence or willful misconduct.

6.3 Insurance. During the term of this Lease, Lessee shall maintain in full force and affect the following insurance policies:

6.3.1 Commercial general liability policy (bodily injury and property damage); and

6.3.2 Comprehensive automobile liability insurance policy.

These policies shall be maintained with respect to employees and vehicles using the Property with coverage amounts and including the required endorsements, certificates of insurance and coverage verifications as defined in **Exhibit "E"** attached and incorporated by this reference.

ARTICLE 7

Damage, Destruction and Termination

7.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease, unless Premises are rendered unusable as a cell site.

7.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee, shall excuse the performance by Lessee for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractor's results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

7.3 Waiver. City and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

ARTICLE 8

Taxes

8.1 Personal Property. Lessee shall pay prior to delinquency all taxes, license fees and public charges assessed or levied against Lessee or Lessee's estate in this Lease or Lessee's Improvements, trade fixtures, furnishings, equipment and other personal property.

8.2 Real Property. Lessee shall pay Lessee's share of any increased real property taxes (as defined in Section 8.3 below) which become due and payable by Lessee. Should these taxes become due and payable by the City then on or before the later of ten (10) days prior to the delinquency, or three (3) days after the date on which Lessee receives a copy of the tax bill and notice of City's determination including documentation reasonably supporting of the determination hereunder that the tax has increased due to this Lease and installation of Lessee's antenna. Lessee's liability to pay real property taxes shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the Lease term at the commencement or expiration or earlier termination of this Lease. Lessee is not responsible for taxes related to rental income to City under this Lease. Lessee specifically acknowledges it is familiar with Section 107.6 of the California Revenue and Taxation Code, realizes that a possessory interest subject to property taxes may be created, agrees to pay any tax, and waives any rights Lessee may have under Revenue and Taxation Code 107.6.

8.3 Definition. The term "real property taxes" as used herein shall mean:

8.3.1 All increased taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to (i) value, occupancy, use or possession of the Improvements, (ii) any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises, (iii) use of the Improvements public utilities or energy within the Premises;

8.3.2 All increased charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the Improvements, imposed due to the Improvements installed by Lessee;

8.3.3 Intentionally omitted; and,

8.3.4 All costs and fees (including reasonable attorneys' fees) incurred by City in contesting any increase in real property taxes at Lessee's written request and in negotiating with public authorities as to any real property taxes affecting the Premises as a result of this Lease. If at any time during the Term, the taxation or assessment of the Improvements prevailing as of the commencement of this Lease shall be altered, then any tax or charge, however designated, shall be included within the meaning of the term "real property taxes." If any real property taxes are based upon the Improvements, then only that part of such tax that is fairly allocable to the

Improvements, as determined by City, on the basis of the assessor's worksheets or other available information, shall be included within the meaning of the term "real property taxes."

ARTICLE 9

Utilities

Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes.

ARTICLE 10

Signs

Lessee shall not place any signs upon the Premises without prior written consent of City except as required by law.

ARTICLE 11

Assignment and Subletting

11.1 City's Consent Required. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without City's prior written consent, which consent shall not be unreasonably withheld. City shall respond to Lessee's request for consent in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without consent shall be void and shall constitute a breach of this Lease.

11.2 Net Worth Requirements. Notwithstanding the foregoing, Lessee may assign or sublet the Premises, or any portion thereof, without the City's consent, to any entity which controls, is controlled by, or is under the common control with Lessee, or to any entity resulting from any merger or consolidation with Lessee, or to any partner of Lessee or to any partnership in which Lessee is a general partner, or to any person or entity which acquires all of the assets of Lessee on the City Property, or to any entity which obtains a security interest in a substantial portion of Lessee's assets. Any entity listed in this paragraph or its general partner, affiliate, or parent company shall have a net worth of not less than Ten Million Dollars (\$10,000,000) as evidenced by publicly available financial or investor related statements or documentation, or by a net worth letter from an officer of a publicly-traded affiliate of Lessee.

11.3 No Release of Lessee. No subletting or assignment as approved by City shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, City may proceed directly against Lessee without the necessity of exhausting remedies against said assignee.

11.4 Right of First Refusal. If Lessor elects, during the Term to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications

facilities or the management thereof, with or without an assignment of this Agreement to such third party, Lessee shall have the right of first refusal to meet any bona fide offer of transfer on the same terms and conditions of such offer. If Lessee fails to meet such bona fide offer within thirty (30) days after written notice thereof from Lessor, Lessor may grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

ARTICLE 12

Defaults; Remedies

12.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this Lease by Lessee:

12.1.1 The abandonment of the Premises by Lessee as defined by Civil Code §1951.3.

12.1.2 The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where the failure shall continue for a period of ten (10) business days after receipt of written notice from City to Lessee.

12.1.3 The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect to be observed or performed by Lessee, other than those described in Section 12.1(B) above, where the failure shall continue for a period of thirty (30) days after receipt of written notice from City to Lessee; provided, however, that if the nature of Lessee's default is that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default, if Lessee commenced cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

12.1.4 The making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, it is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where seizure is not discharged within thirty (30) days.

12.2 Remedies. In the event of any material default or breach by Lessee, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of default or breach:

12.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises and Improvements to City. In that event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including if necessary, removal of Improvements and restoration of the Premises, reasonable attorneys' fees, the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and the worth at the time of award of the amount by which the unpaid rent for the balance of the term after

the time of such award exceeds the amount of rental loss for the same period that Lessee proves could be reasonably avoided.

12.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In that event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover rent as it becomes due.

12.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

12.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

ARTICLE 13 Termination of Lease

13.1 Termination by Lessee. Except as provided otherwise herein or by applicable law, Lessee may terminate this Lease for cause upon the giving of not less than thirty (30) days written notice to City if any of the following occur:

13.1.1 The failure by City to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect to be observed or performed by City, where the failure shall continue for a period of thirty (30) days after written notice from Lessee to City; provided, however, that if the nature of the City's default is such that more than thirty (30) days are reasonably required for its cure, then City shall not be deemed to be in default, if City commenced to cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion;

13.1.2 Lessee fails to obtain or loses any permits necessary for operation of the Premises as a cellular telephone communications facility.

13.1.3 Lessee determines that the site is inappropriate for technological reasons, beyond its control; including but not limited to signal interference.

13.2 Termination by City. Except as otherwise provided or by applicable law, City may terminate this Lease for cause upon giving thirty (30) days written notice if any of the following occur:

13.2.1 The City Council of the City of Cupertino determines through credible scientific evidence collected with regard to the cellular telecommunications facility operated at the Premises, that the facility is a threat to public health or safety. The City shall provide at least 30-days' prior written notice to Lessee of the intent to revoke the permit and Lessee shall have a full and fair opportunity to provide contradictory scientific data prior to City Council action; or

13.2.2 Lessee loses or fails to satisfy any condition of any permit required by City necessary for operation of the Premises as a cellular telephone communication facility.

13.3 Condemnation of Leased Premises. Should all or part of the Premises be taken by any public or quasi-public agency or entity under the power of eminent domain under the term of this lease:

13.3.1 Either City or Lessee may terminate this Lease by giving the other thirty (30) days' prior written notice of termination; and

13.3.2 Any damages and compensation awarded or paid because of the taking shall belong to the City, except for amounts paid Lessee for relocation expenses or for damage to property owned by Lessee and the value of the unexpired term of this Lease.

ARTICLE 14 City's Liability

The term "City" as used herein, shall mean the City only while the City is the owner of the fee title of the Premises. In the event of any transfer of title or interest, the City (and in case of any subsequent transfer, then the grantor) shall, after the date of such transfer, be relieved from all liability with respect to its obligations hereunder occurring after the transfer date, provided that any funds in the hands of City at the time of transfer, in which Lessee has an interest, shall be delivered to the City's grantee.

ARTICLE 15 Interest on Past-Due Obligations

Except as expressly provided, any amount due City when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate allowable by law from the date due.

ARTICLE 16 Holding Over

If Lessee remains in possession of the Premises or any part after the expiration of the term or option term the occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation of 150% of the Base Rent in effect at the time of expiration.

ARTICLE 17 City's Access

City and City's agents shall have the right to enter the Premises for the purpose of showing to prospective purchasers, lenders or lessees, and making alterations, repairs, improvements or additions to the Premises as City may deem necessary. City shall provide Lessee with at least five (5) business days' prior written notice and Lessee shall have the ability but not the obligation to accompany City during any such inspection.

ARTICLE 18
Quiet Possession

Upon Lessee's paying rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed, Lessee shall have quiet possession of the Premises for the entire term subject to all of the provisions of this Lease.

ARTICLE 19
Easements

City reserves to itself, the right, from time to time, to grant such easements, rights and dedications outside of the Premises and subject to the terms of this Lease, that City deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of City and failure to do so shall constitute a material breach of this Lease.

ARTICLE 20
General Provisions

20.1 Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision.

20.2 Time of Essence. Time is of the essence under this Lease.

20.3 Additional Rent. Any monetary obligations of Lessee to City under the terms of this Lease shall be deemed to be rent and all references herein to "rent" shall be deemed to include the Base Rent and all other sums paid or payable by Lessee to City.

20.4 Entire Agreement, Modification. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding shall be effective. This Lease may be modified in writing only.

20.5 No Warranty. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the City nor any employees or agents of the City has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of the Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of the Premises and compliance with all applicable laws and regulations in effect during the term of this Lease.

20.6 Notices. Any notice required or permitted to be given, shall be in writing and may be given by personal delivery or by first class mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Lessee or to City at the address noted below:

Lessee:

GTE Mobilnet of California Limited Partnership,
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate
Re: DeAnza Stevens Creek

City:

David Brandt
City Manager, City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

With Copy to:

Randolph Stevenson Hom, City
Attorney 20410 Town Center Lane,
Suite 210 Cupertino, CA
95014-3255

Each notice shall specify the provision pursuant to which it is given. Either party may specify a different address or contact person. A copy of all notices required or permitted to be given to City hereunder shall be concurrently transmitted to the party at the address as City designated by notice to Lessee. Notice given under this section shall be deemed in compliance with applicable statutory notice requirements, including Code of Civil Procedure §1162.

20.7 Waivers. No waiver by City or Lessee of any provision shall be deemed a waiver of any other provision or of any subsequent breach by City or Lessee of the same or any other provision. City's or Lessee's approval of any act shall not be deemed to render unnecessary obtaining of their consent of any subsequent act. The acceptance of rent by City shall not be a waiver of any preceding breach by Lessee of a provision, other than the failure of Lessee to pay the particular rent so accepted, regardless of City's knowledge of the breach at the time of acceptance of rent.

20.8 Cumulative Remedies. No remedy or election under this Lease shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

20.9 Choice of Law. This Lease shall be governed by the laws of the State of California. The language of all parts of this Lease shall be construed with its fair meaning and not strictly for or against the City or Lessee.

20.10 Condition to Effectiveness of Lease. The approval of the City Council of City constitutes an express condition precedent to the effectiveness of this Lease.

20.11 Attorneys' Fees. If either party brings an action to enforce the terms or declare rights hereunder, the prevailing party in any such action, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the other party.

20.12 Brokers. Each party represents that it has not had dealings with any real estate broker or finder, with respect to this lease in any manner. Each Party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

20.13 Authority. Each individual executing this Lease on behalf of Lessee and City represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said party.

20.14 Non-Liability of Officials and Employees of the City. No official or employee of City shall be personally liable for any default or liability under this agreement.

20.15 Non-Discrimination. Lessee covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in any activity under this lease.

20.16 Independent Contractor. It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

20.17 Conflict of Interest. Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement.

20.18 Memorandum of Lease. Following execution of this Lease, either party, at its sole expense shall be entitled to record a Memorandum of Lease in the official records of Santa Clara County. Upon termination or expiration of this Lease, Lessee shall execute and record a quitclaim deed.

20.19 Estoppel Certificate. Lessee shall, from time to time, upon at least thirty (30) days receipt of prior written notice from City, execute, acknowledge and deliver to City a statement in writing: (a) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (b) acknowledging that there are not to Lessee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the City Property.

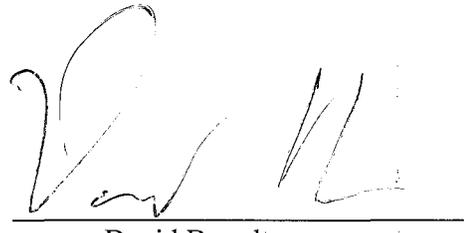
[Signature page follows]

CITY OF CUPERTINO, CALIFORNIA

APPROVED AS TO FORM:



Randolph Stevenson Hom
City Attorney



David Brandt
City Manager

ATTEST:



Erica Schmidt 3-14-16
City Clerk
"City"

GTE Mobilnet of California Limited Partnership,
d/b/a Verizon Wireless

By: Cellco Partnership
Its: General Partner

By: 

Phillip French,
Executive Director – Network

Date: 3/7/2016

"Lessee"

Exhibit A
Property

[See attached]

Exhibit A

Property

Real property in the City of Cupertino, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

LOT 7, AS SHOWN ON THAT CERTAIN MAP ENTITLED TRACT NO. 3743 CUPERTINO TOWN CENTER, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 16, 1964, IN BOOK 186 OF MAPS PAGE(S) 36 AND 37.

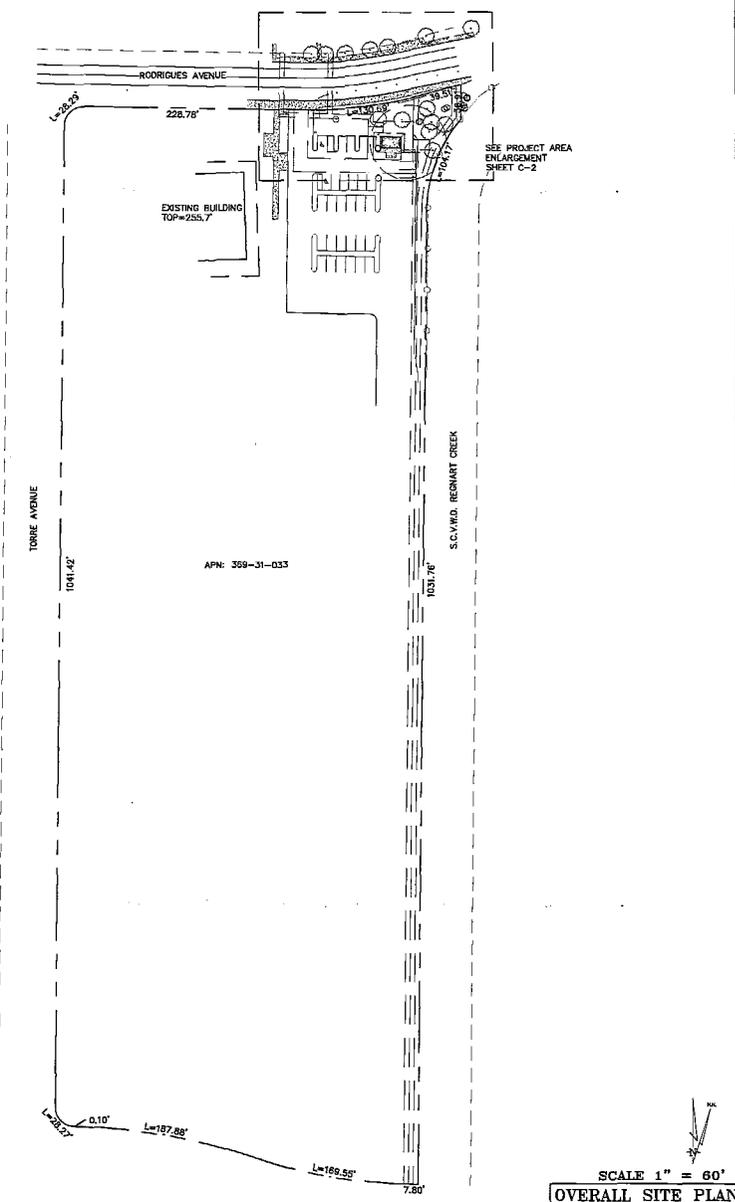
PARCEL TWO:

PARCELS A, B, C & D, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP, BEING ALL OF LOT 4, TRACT NO. 3743, CITY OF CUPERTINO", WHICH PARCEL MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MARCH 7, 1974 IN BOOK 337 OF MAPS, AT PAGE 11.

APN: 369-31-033

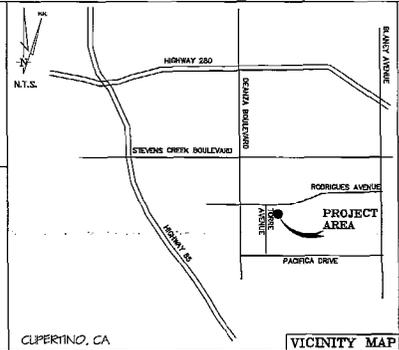
Exhibit B
Premises

[See attached]



DATE OF SURVEY: 05-28-14
 SURVEYED BY OR UNDER DIRECTION OF: KENNETH D. GEIL, P.C.E. 14805
 CONTRACTOR IS RESPONSIBLE TO VERIFY LEASE AREA PRIOR TO CONSTRUCTION.
 LOCATED IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
 BEARINGS SHOWN ARE BASED UPON MONUMENTS FOUND AND RECORD INFORMATION. THIS IS NOT A BOUNDARY SURVEY.
 ELEVATIONS SHOWN ON THIS PLAN ARE BASED UPON U.S.C.S. N.A.V.D. 88 DATUM, ABOVE MEAN SEA LEVEL UNLESS OTHERWISE NOTED.
 N.G.V.D. 1929 CORRECTION: SUBTRACT 2.74' FROM ELEVATIONS SHOWN.
 CONTOUR INTERVAL: N/A
 ASSESSOR'S PARCEL NUMBER: 389-31-033
 OWNER(S): CITY OF CUPERTINO
 10800 TORRE AVENUE
 CUPERTINO, CA 95014
 SITE CONTACT: MARK CASEY
 918-528-7945

BOUNDARY SHOWN IS BASED ON MONUMENTATION FOUND AND RECORD INFORMATION. THIS IS NOT A BOUNDARY SURVEY. THIS IS A SPECIALIZED TOPOGRAPHIC MAP WITH PROPERTY LINES AND EASEMENTS BEING A GRAPHIC REPRESENTATION OF INFORMATION GATHERED FROM VARIOUS SOURCES OF RECORD AND AVAILABLE MONUMENTATION FOUND DURING THE FIELD SURVEY. NO EASEMENTS WERE RESEARCHED OR PLOTTED. PROPERTY LINES AND LINES OF TITLE WERE NOT INVESTIGATED NOR SURVEYED. NO PROPERTY MONUMENTS WERE SET.
 THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATION AS INSTRUMENTS OF SERVICE, ARE THE EXCLUSIVE PROPERTY OF GEL ENGINEERING AND THEIR USE AND PUBLICATION SHALL BE RESTRICTED TO THE ORIGINAL SITE AND CARRIER FOR WHICH THEY ARE PREPARED. REUSE, REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR IN PART, IS PROHIBITED EXCEPT BY WRITTEN PERMISSION FROM GEL ENGINEERING TITLE TO THESE PLANS AND/OR SPECIFICATIONS SHALL REMAIN WITH GEL ENGINEERING WITHIN THE PRECISE AND VISUAL CONTACT WITH THEM SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.



Gel Engineering
 Engineering * Surveying * Planning
 1226 High Street
 Auburn, California 95603-5015
 Phone: (530) 885-0428 * Fax: (530) 823-1309
 Verizon Wireless
 PCS Equipment A.S.A.C. Survey Form
 Project Name: Deanza Stevens Creek
 Project Site Location: 10800 Torre Avenue
 Cupertino, CA 95014
 Santa Clara County
 Date of Observation: 05-28-14
 Equipment/Procedure Used to Obtain Coordinates: Trimble Geo-XT post, accessed with ProBuilder Office software.
 Type of Antenna Mount: Proposed Mono-Eucalyptus Tower
 NAD 83 Coordinates: Latitude: N 37° 19' 08.92" Longitude: W 122° 01' 40.53"
 NAD 27 Coordinates: Latitude: N 37° 19' 08.13" Longitude: W 122° 01' 36.73"
 ELEVATION of Ground at Base of Structure (NAVD88) 225' AMSL
 CERTIFICATION: I, the undersigned, do hereby certify elevation listed above is based on a field survey done under my supervision and that the accuracy of these elevations meet or exceed 1-A Standards as defined in the FAA ASAC Information Sheet 911003, and that they are true and accurate to the best of my knowledge and belief.
 Kenneth D. Geil California RCE 14803

LEASE AREA DESCRIPTION
 ALL THAT CERTAIN LEASE AREA BEING A PORTION OF THAT CERTAIN LOT 7 AS IS SHOWN ON THAT CERTAIN TRACT MAP RECORDED AT BOOK 186 OF TRACT MAPS AT PAGE 36, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING LOCATED IN THE CITY OF CUPERTINO, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT A STANDARD MONUMENT IN BOX SET ON THE MONUMENT LINE IN THE INTERSECTION OF RODRIGUES AVENUE AND TORRE AVENUE AS IS SHOWN ON THE ABOVE REFERENCED TRACT MAP, FROM WHICH A SIMILAR MONUMENT BEARS SOUTH 89°03'20" EAST 278.78 FEET; THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 80°47'11" EAST 368.33 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING NORTH 01°22'30" EAST 12.67 FEET; THENCE SOUTH 88°37'30" EAST 31.54 FEET; THENCE SOUTH 01°22'30" WEST 19.00 FEET; THENCE SOUTH 88°37'30" EAST 17.43 FEET; THENCE SOUTH 01°22'30" WEST 10.68 FEET; THENCE NORTH 89°30'50" WEST 26.44 FEET; THENCE NORTH 01°56'32" EAST 17.40 FEET; THENCE NORTH 80°47'11" WEST 22.61 FEET TO THE POINT OF BEGINNING.
 TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR UTILITY PURPOSES FIVE FEET IN WIDTH THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH BEARS SOUTH 01°22'30" WEST 4.17 FEET FROM THE NORTHWEST CORNER OF THE ABOVE DESCRIBED LEASE AREA AND RUNNING THENCE NORTH 88°37'30" WEST 13.30 FEET; THENCE NORTH 01°22'30" EAST 7.55 FEET; THENCE NORTH 88°37'30" WEST 43.41 FEET TO A POINT HEREAFTER DEFINED AS POINT "A"; THENCE CONTINUING NORTH 88°57'30" WEST 50.77 FEET; THENCE NORTH 01°22'30" EAST 8.12 FEET MORE OR LESS TO THE PUBLIC RIGHT OF WAY.
 ALSO TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR UTILITY PURPOSES FIVE FEET IN WIDTH THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE PREVIOUSLY DESCRIBED POINT "A" AND RUNNING THENCE NORTH 01°22'30" WEST 7.44 FEET MORE OR LESS TO THE PUBLIC RIGHT OF WAY.
 ALSO TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR ACCESS & UTILITY PURPOSES FIFTEEN FEET IN WIDTH THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH BEARS SOUTH 89°30'50" WEST 22.10 FEET FROM THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED LEASE AREA AND RUNNING THENCE SOUTH 01°22'30" WEST 18.18 FEET; THENCE NORTH 89°51'15" WEST 113.26 FEET; THENCE NORTH 01°04'40" EAST 58.5 FEET TO THE PUBLIC RIGHT OF WAY.
 ALSO TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR ACCESS PURPOSES SIX FEET IN WIDTH THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH BEARS SOUTH 01°22'30" WEST 9.33 FEET FROM THE NORTHWEST CORNER OF THE ABOVE DESCRIBED LEASE AREA AND RUNNING THENCE NORTH 88°37'30" WEST 12.80 FEET; THENCE SOUTH 01°22'30" WEST 36.00 FEET.
 ALSO TOGETHER WITH AN AERIAL EASEMENT HAVING A RADIUS OF 10.00 FEET AND BEING CENTERED ON THE PROPOSED TOWER LOCATION AS IS SHOWN HEREON.

REVISIONS	DATE	BY	DESCRIPTION
1	05-28-14	KG	Final Design
2	06-03-14	KG	As-Built
3	06-03-14	KG	Final Design
4	06-03-14	KG	As-Built
5	06-03-14	KG	Final Design
6	06-03-14	KG	As-Built
7	06-03-14	KG	Final Design
8	06-03-14	KG	As-Built
9	06-03-14	KG	Final Design
10	06-03-14	KG	As-Built

DEPT.	APPROVED	DATE
ARC		
REC		
INT		
EVN		
OPS		
EVOUT		

DATE	BY	DESCRIPTION
05-28-14	KG	Final Design
06-03-14	KG	As-Built
06-03-14	KG	Final Design
06-03-14	KG	As-Built
06-03-14	KG	Final Design
06-03-14	KG	As-Built
06-03-14	KG	Final Design
06-03-14	KG	As-Built
06-03-14	KG	Final Design
06-03-14	KG	As-Built

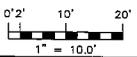
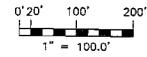
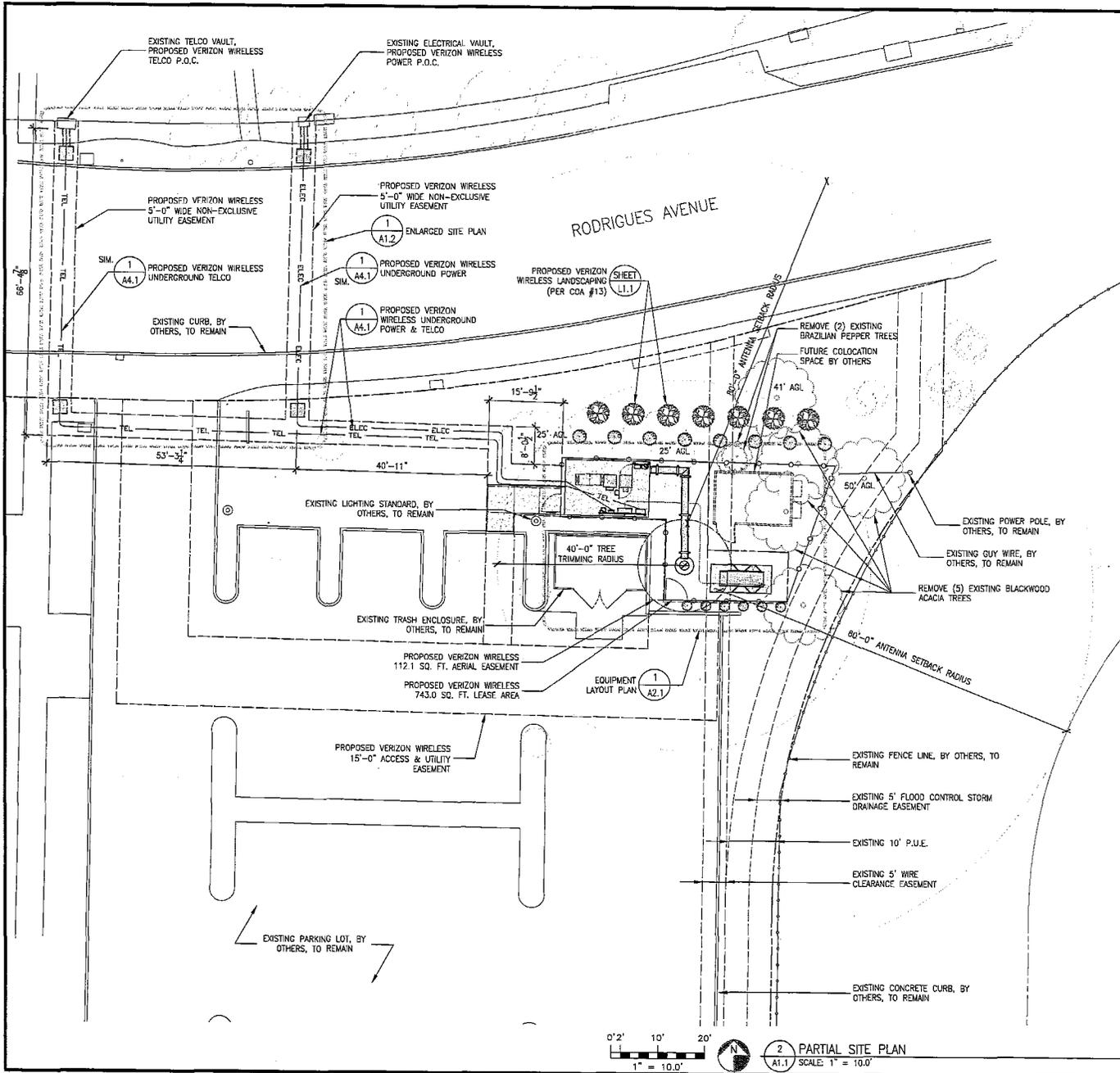


DEANZA STEVENS CREEK
 10800 TORRE AVENUE
 CUPERTINO, CA 95014
 PLOT PLAN AND
 SITE TOPOGRAPHY

C-1

Exhibit C
Site Plans

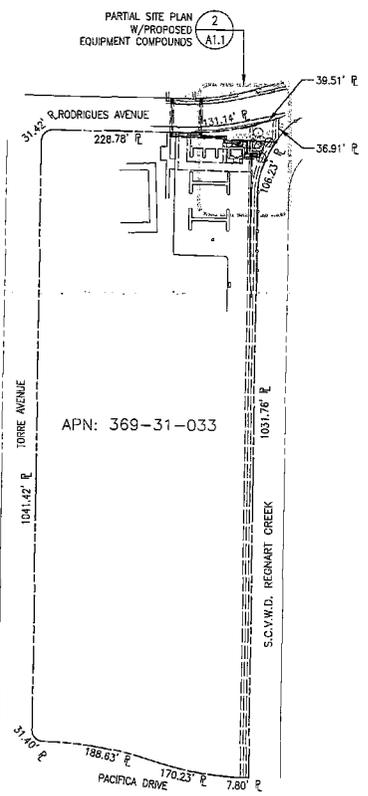
[See attached]



2 PARTIAL SITE PLAN
A1.1 SCALE: 1" = 10.0'



1 OVERALL SITE PLAN
A1.1 SCALE: 1" = 100.0'



MIST ARCHITECTS
2225 Howe Park Drive, Livermore, CA 94551
925-945-8800
www.mistarchitects.com



DEANZA STEVENS CREEK
10800 TORRE AVENUE
CUPERTINO, CA 95014

verizon
SHEET TITLE: OVERALL SITE PLAN



Revisions:

File: 162826_A11.dwg
Drawn By: MSR
Checked By: MSR
Scale: AS NOTED
Date: 12/11/2013

Job No. 162826

A1.1

Exhibit D
Construction Schedule

[See attached]

Site Name: De Anza Stevens Creek

General Contractor: _____ Supervisor's Name and Contact Number: _____

ACTIVITY	Week 1							Week 2							Week 3							Week 4							Week 5							Week 6							Week 7						
	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
PreCon Meeting	Completed Previous Week																																																
Dig Alert/Utility Marks	Completed Previous Week																																																
Telco Conduits																																																	
Electrical Conduits																																																	
Tower Foundation																																																	
Equipment Foundation																																																	
Generator Pad																																																	
Tower Set																																																	
Equipment Set																																																	
Coax Cable Tray/Conduits																																																	
Antennas & Coax																																																	
Site Electrical																																																	
Site Grounding																																																	
Landscape & Irrigation																																																	
Building Final																																																	

NOTES:

Exhibit E
Insurance Requirements

Lessee shall purchase and maintain the insurance policies set forth below at its sole cost and expense. Such policies shall be maintained for the full term of this Lease. The term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Cupertino, California, individually or collectively.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.**

On or before the commencement of the terms of this Lease, Lessee shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with this Exhibit. These certificates, which do not limit Lessee's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, Lessee affording coverage shall provide thirty (30) days' advance written notice to the City of Cupertino, "Attention: City Manager." Endorsements including the City as additional insured shall be submitted with the insurance certificates. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence
	\$2,000,000 aggregate - all other
Property Damage:	\$500,000 each occurrence
	\$1,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily injury:	\$500,000 each occurrence
Property Damage:	\$500,000 each occurrence or

Combined Single Limit: \$1,000,000 each occurrence

2. SUBROGATION WAIVER:

Lessee agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Lessee shall look solely to its insurance for recovery. Lessee hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any insurer of Lessee may acquire against City by virtue of the payment of any loss under the insurance.

3. ABSENCE OF INSURANCE COVERAGE.

City may direct Lessee to immediately cease all activities with respect to this Lease if it determines that Lessee fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Lease. Any delays or expense caused due to stopping of work and change of insurance shall be considered Lessee's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Lessee.

4. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.

A Certificate of Insurance, on an Accord form, and completed coverage verification shall be provided to City by each of Lessee's insurance companies as evidence of the stipulated coverages prior to commencement of this Lease, and annually thereafter for the term of this Agreement. All of the insurance companies providing insurance for Lessee shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202